

By: Murr, Swanson, Bucy, Cain,
A. Johnson of Harris

H.B. No. 3868

A BILL TO BE ENTITLED

AN ACT

relating to the presidential electors of this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 192.004, Election Code, is amended to read as follows:

Sec. 192.004. ELECTOR CANDIDATE WITHDRAWAL [VACANCY].

SECTION 2. Section 192.006(b), Election Code, is amended to read as follows:

(b) The secretary of state shall arrange for the meeting place, notify the electors, and call the meeting to order. [~~The secretary shall act as temporary chair of the meeting until the electors elect a chair from among themselves.~~]

SECTION 3. Subchapter A, Chapter 192, Election Code, is amended by adding Section 192.009 to read as follows:

Sec. 192.009. REPLACEMENT NOMINEE. An elector shall consider a replacement candidate certified under Subchapter C to be the presidential or vice-presidential candidate for whom the elector is the corresponding presidential elector candidate.

SECTION 4. The heading to Subchapter C, Chapter 192, Election Code, is amended to read as follows:

SUBCHAPTER C. WITHDRAWAL, DEATH, AND INELIGIBILITY OF PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDATES; CERTIFICATION OF ABILITY TO SERVE

SECTION 5. Section 192.062(a), Election Code, is amended to

1 read as follows:

2 (a) The secretary of state shall certify in writing [~~for~~
3 ~~placement on the ballot~~] the name of a political party's
4 replacement nominee for president or vice-president of the United
5 States as follows [~~if~~]:

6 (1) for placement on the ballot for an [~~the~~] original
7 nominee who withdraws, dies, or is declared ineligible on or before
8 the 74th day before presidential election day if [~~and~~

9 [~~(2)~~] the party's state chair delivers certification of
10 the replacement nominee's name, signed by the state chair, to the
11 secretary of state not later than 5 p.m. of the 71st day before
12 presidential election day; or

13 (2) to the nominating party's presidential elector
14 candidates for an original nominee who withdraws, dies, or is
15 declared ineligible after the 74th day before presidential election
16 day if the party's state chair delivers certification of the
17 replacement nominee's name, signed by the state chair, to the
18 secretary of state not later than 2 p.m. on the Monday after the
19 second Wednesday in December of a presidential election year.

20 SECTION 6. Section 192.064(a), Election Code, is amended to
21 read as follows:

22 (a) The secretary of state shall certify in writing [~~for~~
23 ~~placement on the ballot~~] the name of a replacement
24 vice-presidential running mate for an independent candidate for
25 president of the United States as follows [~~if~~]:

26 (1) for placement on the ballot for an [~~the~~] original
27 running mate who withdraws, dies, or is declared ineligible on or

1 before the 74th day before presidential election day if [~~;~~ and
2 [~~(2)~~] the independent presidential candidate delivers
3 certification of the replacement running mate's name, signed by the
4 presidential candidate, to the secretary of state not later than 5
5 p.m. of the 71st day before presidential election day; or
6 (2) to the presidential candidate's corresponding
7 presidential elector candidates for an original running mate who
8 withdraws, dies, or is declared ineligible after the 74th day
9 before presidential election day if the independent presidential
10 candidate delivers certification of the replacement running mate's
11 name, signed by the presidential candidate, to the secretary of
12 state not later than 2 p.m. on the Monday after the second Wednesday
13 in December of a presidential election year.

14 SECTION 7. Subchapter C, Chapter 192, Election Code, is
15 amended by adding Section 192.065 to read as follows:

16 Sec. 192.065. CERTIFICATION OF ABILITY TO SERVE BY WINNING
17 CANDIDATE; AFFIRMATION OR DENIAL BY ELECTORS. (a) The candidates
18 for president and vice president who received the most votes in this
19 state in the general presidential election, or a legal
20 representative of such a candidate, shall certify not later than
21 the seventh day before the meeting of electors that the candidate is
22 willing and able to serve in the position for which the candidate
23 was elected.

24 (b) At the meeting of electors, the electors shall first
25 vote to affirm or deny the certification made under Subsection (a).
26 If a majority of electors vote to deny the certification that the
27 candidate is willing and able to serve, Subchapter D does not apply

1 to that meeting of electors with respect to the candidate for which
2 the certification was denied.

3 (c) If before the meeting of electors a candidate fails to
4 certify that the candidate is willing and able to serve as provided
5 by Subsection (a), the electors shall first vote on the issue of
6 whether each candidate is willing and able to serve in the position
7 for which the candidate was elected. If a majority of electors vote
8 that the candidate is not willing or able to serve in the position
9 for which the candidate was elected, Subchapter D does not apply to
10 that meeting of electors with respect to that candidate.

11 SECTION 8. Chapter 192, Election Code, is amended by adding
12 Subchapter D to read as follows:

13 SUBCHAPTER D. REQUIRED ACTION BY PRESIDENTIAL ELECTORS;

14 REPLACEMENT OF ELECTOR

15 Sec. 192.101. DESIGNATION OF STATE'S ELECTORS. Each
16 elector position in this state must be nominated in accordance with
17 political party rules or by an independent or write-in presidential
18 candidate, as applicable. Except as otherwise provided in Sections
19 192.103 and 192.104, this state's electors are the winning elector
20 nominees under the laws of this state.

21 Sec. 192.102. OATH. (a) Not later than the seventh day
22 before the meeting of electors, each elector nominee and alternate
23 elector nominee of a political party shall execute the following
24 oath: "If selected for the position of elector, I swear to serve and
25 to mark my ballots for president and vice president for the nominees
26 for those offices of the party that nominated me."

27 (b) Not later than the seventh day before the meeting of

1 electors, each elector nominee and alternate elector nominee of an
2 independent presidential candidate shall execute the following
3 oath: "If selected for the position of elector as a nominee of an
4 independent presidential candidate, I swear to serve and to mark my
5 ballots for that candidate and for that candidate's
6 vice-presidential running mate."

7 (c) The executed oaths must accompany the submission of the
8 corresponding names to the secretary of state.

9 Sec. 192.103. PRESIDING OFFICER; ELECTOR VACANCY. (a) The
10 secretary of state shall preside at the meeting of electors
11 described in Section 192.104.

12 (b) The position of an elector who is not present to vote or
13 who has failed to execute the oath under Section 192.102 is vacant.
14 The secretary of state shall fill a vacancy with a substitute
15 elector nominated in accordance with political party rules or named
16 by an independent or write-in candidate for president, as
17 applicable.

18 (c) To qualify as a substitute elector under Subsection (b),
19 an individual who has not executed the oath required under Section
20 192.102 shall execute the following oath: "I swear to serve and to
21 mark my ballots for president and vice president consistent with
22 the oath of the individual to whose elector position I have
23 succeeded."

24 Sec. 192.104. ELECTOR VOTING. (a) At the time designated
25 for elector voting and after all vacant positions have been filled
26 under Section 192.103, the secretary of state shall provide each
27 elector with a presidential and a vice-presidential ballot. The

1 elector shall mark the elector's presidential and
2 vice-presidential ballots with the elector's votes for the offices
3 of president and vice president, respectively, along with the
4 elector's signature and the elector's legibly printed name.

5 (b) Except as otherwise provided by law of this state other
6 than this subchapter, each elector shall present both completed
7 ballots to the secretary of state. The secretary of state shall
8 examine the ballots, read each vote publicly, and accept as cast all
9 ballots of electors whose votes are consistent with their oaths
10 executed under Section 192.102 or 192.103(c). Except as otherwise
11 provided by law, the secretary of state may not accept and may not
12 count either an elector's presidential or vice-presidential ballot
13 if the elector has not marked both ballots or has marked a ballot in
14 violation of the elector's oath.

15 (c) An elector who refuses to present a ballot, presents an
16 unmarked ballot, or presents a ballot marked in violation of the
17 elector's oath executed under Section 192.102 or 192.103(c) vacates
18 the office of elector, creating a vacant position to be filled under
19 Section 192.103.

20 (d) The secretary of state shall distribute ballots to and
21 collect ballots from a substitute elector and repeat the process
22 under this section of examining ballots, publicly reading the
23 votes, declaring and filling vacant positions as required, and
24 recording appropriately completed ballots from the substituted
25 electors, until all of this state's electoral votes have been cast
26 and recorded.

27 SECTION 9. The following provisions of the Election Code

1 are repealed:

2 (1) Sections 192.004(b), (c), and (d);

3 (2) Section 192.006(c); and

4 (3) Section 192.007.

5 SECTION 10. This Act takes effect immediately if it
6 receives a vote of two-thirds of all the members elected to each
7 house, as provided by Section 39, Article III, Texas Constitution.
8 If this Act does not receive the vote necessary for immediate
9 effect, this Act takes effect September 1, 2021.