

By: Duncan, Ellis

S.B. No. 794

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the appointment of certain judicial offices and a  
3 nonpartisan election for the retention or rejection of a person  
4 appointed to those offices.

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

6 SECTION 1. Chapter 21, Government Code, is amended by  
7 adding Section 21.010 to read as follows:

8 Sec. 21.010. APPOINTMENT AND RETENTION OF JUSTICES AND  
9 JUDGES. (a) This section applies to each office of justice or  
10 judge for which the Texas Constitution requires a person appointed  
11 to fill a vacancy in the office to be subject to retention or  
12 rejection by the voters at the end of the appointed term and each  
13 successive term.

14 (b) In conjunction with the last general election for state  
15 and county officers to be held before the end of a term of office to  
16 which a justice or judge is appointed or retained, the justice or  
17 judge is subject to retention or rejection at the nonpartisan  
18 judicial retention election in accordance with Chapter 291,  
19 Election Code.

20 (c) If a justice or judge does not seek retention, or  
21 withdraws from the retention election, as provided by Chapter 291,  
22 Election Code, the vacancy existing at the beginning of the  
23 succeeding term shall be filled in the manner prescribed by the  
24 Texas Constitution.

1       (d) If a vacancy occurs in the office of a justice or judge  
2 seeking retention and the justice's or judge's name is omitted from  
3 the retention election ballot under Chapter 291, Election Code, the  
4 vacancy shall be filled in the manner prescribed by the Texas  
5 Constitution.

6       (e) If a majority of the votes received on the question are  
7 for the retention of the justice or judge, the person is entitled to  
8 remain in office for a regular term beginning on the first day of  
9 the following January, unless the person becomes ineligible or is  
10 removed as provided by law.

11       (f) If less than a majority of the votes received on the  
12 question are for retention, a vacancy in the office exists on the  
13 first day of the following January, and the vacancy shall be filled  
14 in the manner prescribed by the Texas Constitution.

15       (g) If the name of a justice or judge seeking retention  
16 appears on the retention election ballot under Chapter 291,  
17 Election Code, although a vacancy has occurred in the office, the  
18 retention election for that office has no effect, and the vacancy  
19 shall be filled in the manner prescribed by the Texas Constitution.

20       SECTION 2. The Election Code is amended by adding Title 17  
21 to read as follows:

22       TITLE 17. NONPARTISAN JUDICIAL RETENTION ELECTIONS

23               CHAPTER 291. RETENTION ELECTION

24       Sec. 291.001. DECLARATION OF CANDIDACY. (a) Not later  
25 than 5 p.m. on June 1 preceding the nonpartisan judicial retention  
26 election at which the justice or judge is subject to retention or  
27 rejection, a justice or judge who seeks to continue to serve in that

1 office must file with the secretary of state a declaration of  
2 candidacy to succeed to the next term.

3 (b) A declaration may not be filed earlier than the 30th day  
4 before the date of the filing deadline. A declaration filed by mail  
5 is considered to be filed at the time of its receipt by the  
6 appropriate authority.

7 (c) The filling of the subsequent vacancy for the office for  
8 which a declaration of candidacy is not filed is covered by Section  
9 21.010, Government Code.

10 Sec. 291.002. WITHDRAWAL, DEATH, OR INELIGIBILITY.

11 (a) With respect to withdrawal, death, or ineligibility of a  
12 candidate in a nonpartisan judicial retention election, this  
13 section supersedes Subchapter A, Chapter 145, to the extent of any  
14 conflict.

15 (b) A candidate may not withdraw from the retention election  
16 after the 65th day before election day.

17 (c) A withdrawal request must be filed with the authority  
18 with whom the withdrawing candidate's declaration of candidacy is  
19 required to be filed.

20 (d) A candidate's name shall be omitted from the retention  
21 election ballot if the candidate withdraws, dies, or is declared  
22 ineligible on or before the 65th day before election day.

23 (e) If a candidate who has made a declaration of candidacy  
24 that complies with the applicable requirements dies or is declared  
25 ineligible after the 65th day before election day, the candidate's  
26 name shall be placed on the retention election ballot.

27 (f) The filling of the subsequent vacancy for the office

1 following implementation of Subsection (d) or (e) is covered by  
2 Section 21.010, Government Code.

3 Sec. 291.003. CERTIFICATION OF NAMES FOR PLACEMENT ON  
4 RETENTION ELECTION BALLOT. (a) Except as provided by Subsection  
5 (c), the secretary of state shall certify in writing for placement  
6 on the nonpartisan judicial retention election ballot the name of  
7 each candidate who files with the secretary a declaration of  
8 candidacy that complies with Section 291.001.

9 (b) Not later than the 55th day before election day, the  
10 secretary of state shall deliver the certification to the authority  
11 responsible for having the official ballot prepared in each county  
12 in which the candidate's name is to appear on the ballot.

13 (c) A candidate's name may not be certified if, before  
14 delivering the certification, the secretary of state learns that  
15 the name is to be omitted from the ballot under Section 291.002.

16 Sec. 291.004. RETENTION ELECTION BALLOT. The name of the  
17 person subject to retention or rejection shall be submitted to the  
18 voters on the nonpartisan judicial retention election ballot  
19 following the offices subject to election under the heading  
20 "Retention of Nonpartisan Judicial Offices," in substantially the  
21 following form:

22 "Shall (Justice or Judge)\_\_\_\_\_

23 \_\_\_\_\_

24 be retained in office as (justice or judge) of the

25 (name of court)\_\_\_\_\_?"

26 \_\_\_\_\_ "Yes"

27 \_\_\_\_\_ "No"

1       Sec. 291.005. GENERAL PROCEDURE FOR CONDUCT OF RETENTION  
2 ELECTION. (a) Except as otherwise provided by this code, the  
3 nonpartisan judicial retention election shall be conducted and the  
4 results canvassed, tabulated, and reported in the manner applicable  
5 to partisan offices in the general election for state and county  
6 officers.

7       (b) A certificate of election shall be issued to a retained  
8 officer in the same manner as provided for a candidate elected to an  
9 office.

10       Sec. 291.006. WRITE-IN VOTING PROHIBITED. Write-in voting  
11 is not permitted in a nonpartisan judicial retention election.

12       Sec. 291.007. POLITICAL CONTRIBUTIONS AND EXPENDITURES. A  
13 candidate for retention of a judicial office is subject to Title 15  
14 and shall comply with that title in the same manner as a candidate  
15 for election to the office.

16       Sec. 291.008. APPLICABILITY OF OTHER PARTS OF CODE. The  
17 other titles of this code apply to a nonpartisan judicial retention  
18 election except provisions that are inconsistent with this title or  
19 that cannot feasibly be applied in a retention election.

20       Sec. 291.009. ADDITIONAL PROCEDURES. The secretary of  
21 state shall prescribe any additional procedures necessary for the  
22 orderly and proper administration of elections held under this  
23 chapter.

24       SECTION 3. Section 1.005, Election Code, is amended by  
25 amending Subdivision (9) and adding Subdivisions (25) and (26) to  
26 read as follows:

27               (9) "Independent candidate" means a candidate in a

1 nonpartisan election or a candidate in a partisan election who is  
2 not the nominee of a political party. The term does not include a  
3 nonpartisan judicial candidate.

4 (25) "Nonpartisan judicial candidate" means a  
5 candidate in a nonpartisan judicial retention election.

6 (26) "Nonpartisan judicial retention election" means  
7 an election held under Chapter 291.

8 SECTION 4. Section 41.002, Election Code, is amended to  
9 read as follows:

10 Sec. 41.002. GENERAL ELECTION FOR STATE AND COUNTY  
11 OFFICERS. The general election for state and county officers,  
12 including the nonpartisan judicial retention election, shall be  
13 held on the first Tuesday after the first Monday in November in  
14 even-numbered years.

15 SECTION 5. Section 52.092, Election Code, is amended by  
16 amending Subsections (a), (c), (d), and (h) and adding Subsection  
17 (f-1) to read as follows:

18 (a) For an election at which offices regularly filled at the  
19 general election for state and county officers, including the  
20 nonpartisan judicial retention election, are to appear on the  
21 ballot, the offices shall be listed in the following order:

- 22 (1) offices of the federal government;
- 23 (2) offices of the state government:
- 24 (A) statewide offices;
- 25 (B) district offices;
- 26 (3) offices of the county government:
- 27 (A) county offices;

1 (B) precinct offices.

2 (c) Statewide offices of the state government shall be  
3 listed in the following order:

- 4 (1) governor;
- 5 (2) lieutenant governor;
- 6 (3) attorney general;
- 7 (4) comptroller of public accounts;
- 8 (5) commissioner of the General Land Office;
- 9 (6) commissioner of agriculture;
- 10 (7) railroad commissioner [~~+~~
- 11 [~~(8) chief justice, supreme court,~~
- 12 [~~(9) justice, supreme court,~~
- 13 [~~(10) presiding judge, court of criminal appeals,~~
- 14 [~~(11) judge, court of criminal appeals~~].

15 (d) District offices of the state government shall be listed  
16 in the following order:

- 17 (1) member, State Board of Education;
- 18 (2) state senator;
- 19 (3) state representative;
- 20 (4) [~~chief justice, court of appeals,~~
- 21 [~~(5) justice, court of appeals,~~
- 22 [~~(6) district judge,~~
- 23 [~~(7) criminal district judge,~~
- 24 [~~(8) family district judge,~~
- 25 [~~(9)~~] district attorney;
- 26 (5) [~~(10)~~] criminal district attorney.

27 (f-1) Nonpartisan judicial retention election offices shall

1 be listed in the following order:

2 (1) chief justice, supreme court;

3 (2) justice, supreme court;

4 (3) presiding judge, court of criminal appeals;

5 (4) judge, court of criminal appeals;

6 (5) chief justice, court of appeals;

7 (6) justice, court of appeals;

8 (7) district judge;

9 (8) criminal district judge;

10 (9) family district judge.

11 (h) The secretary of state shall assign a place number to  
12 each position to be voted on [~~filled~~] at the nonpartisan judicial  
13 retention [~~general~~] election for [~~state and county officers for~~  
14 ~~each full or unexpired term in~~] the following offices:

15 (1) justice, supreme court;

16 (2) judge, court of criminal appeals; and

17 (3) justice, court of appeals in a court having a  
18 membership in excess of three, if distinguishing the positions to  
19 be filled is necessary.

20 SECTION 6. Subsection (b), Section 145.003, Election Code,  
21 is amended to read as follows:

22 (b) A candidate in the general election for state and county  
23 officers, including the nonpartisan judicial retention election,  
24 may be declared ineligible before the 30th day preceding election  
25 day by:

26 (1) the party officer responsible for certifying the  
27 candidate's name for placement on the general election ballot, in



1 the case of a candidate who is a political party's nominee; or

2 (2) the authority with whom the candidate's  
3 application for a place on the ballot or declaration of candidacy is  
4 required to be filed, in the case of an independent candidate or a  
5 nonpartisan judicial candidate, as applicable.

6 SECTION 7. Subsection (a), Section 145.005, Election Code,  
7 is amended to read as follows:

8 (a) If the name of a deceased or ineligible candidate  
9 appears on the ballot [~~under this chapter~~], the votes cast for the  
10 candidate shall be counted and entered on the official election  
11 returns in the same manner as for the other candidates.

12 SECTION 8. Subsection (e), Section 172.021, Election Code,  
13 is amended to read as follows:

14 (e) A candidate for an office specified by Section  
15 172.024(a)(8) [~~, (10), or (12),~~] or for justice of the peace in a  
16 county with a population of more than 850,000, who chooses to pay  
17 the filing fee must also accompany the application with a petition  
18 that complies with the requirements prescribed for the petition  
19 authorized by Subsection (b), except that the minimum number of  
20 signatures that must appear on the petition required by this  
21 subsection is 250. If the candidate chooses to file the petition  
22 authorized by Subsection (b) instead of the filing fee, the minimum  
23 number of signatures required for that petition is increased by  
24 250. Signatures on a petition filed under this subsection or  
25 Subsection (b) by a candidate covered by this subsection may not be  
26 obtained on the grounds of a county courthouse or courthouse annex.

27 SECTION 9. Subsection (a), Section 172.024, Election Code,

1 is amended to read as follows:

2 (a) The filing fee for a candidate for nomination in the  
3 general primary election is as follows:

- 4 (1) United States senator . . . . . \$4,000
- 5 (2) office elected statewide, except United States  
6 senator . . . . . 3,000
- 7 (3) United States representative . . . . . 2,500
- 8 (4) state senator . . . . . 1,000
- 9 (5) state representative . . . . . 600
- 10 (6) member, State Board of Education . . . . . 250
- 11 (7) [~~chief justice or justice, court of appeals,~~  
12 ~~other than a justice specified by Subdivision~~  
13 ~~(8)~~ . . . . . ~~1,500~~
- 14 [~~(8) chief justice or justice of a court of appeals~~  
15 ~~that serves a court of appeals district in which a~~  
16 ~~county with a population of more than 850,000 is~~  
17 ~~wholly or partly situated~~ . . . . . ~~2,000~~
- 18 [~~(9) district judge or judge specified by Section~~  
19 ~~52.092(d) for which this schedule does not~~  
20 ~~otherwise prescribe a fee~~ . . . . . ~~1,200~~
- 21 [~~(10) district or criminal district judge of a~~  
22 ~~court in a judicial district wholly contained~~  
23 ~~in a county with a population of more than~~  
24 ~~850,000~~ . . . . . ~~2,000~~
- 25 [~~(11)~~] judge, statutory county court, other than a judge  
26 specified by Subdivision (8) [~~(12)~~] . . . . . 1,200
- 27 (8) [~~(12)~~] judge of a statutory county court in

1 a county with a population of more than  
2 850,000 . . . . . 2,000

3 (9) [~~(13)~~] district attorney, criminal district  
4 attorney, or county attorney performing the  
5 duties of a district attorney . . . . . 1,000

6 (10) [~~(14)~~] county commissioner or judge,  
7 constitutional county court:

8 (A) county with a population of 200,000 or  
9 more . . . . . 1,000

10 (B) county with a population of under  
11 200,000 . . . . . 600

12 (11) [~~(15)~~] justice of the peace or constable:

13 (A) county with a population of 200,000 or  
14 more . . . . . 800

15 (B) county with a population of under  
16 200,000 . . . . . 300

17 (12) [~~(16)~~] county surveyor, inspector of hides and  
18 animals, or public weigher . . . . . 50

19 (13) [~~(17)~~] office of the county government for which  
20 this schedule does not otherwise prescribe a  
21 fee . . . . . 600

22 SECTION 10. Section 202.001, Election Code, is amended to  
23 read as follows:

24 Sec. 202.001. APPLICABILITY OF CHAPTER. This chapter  
25 applies to elective offices of the state and county governments  
26 except the offices of:

27 (1) state senator and state representative;

1           (2) justice or judge of an appellate court; and

2           (3) judge of a district court.

3           SECTION 11. (a) Each appellate justice or judge or  
4 district judge in office January 1, 2004, unless otherwise removed  
5 as provided by law, continues in office subject to this section.

6           (b) Each justice or judge listed in Subsection (a) of this  
7 section who is in office January 1, 2004, is subject to retention or  
8 rejection, in the manner provided by law for a justice or judge  
9 appointed to the office after the effective date of this Act, at the  
10 last general election preceding the expiration of the regular or  
11 unexpired term for which each was elected or appointed.

12           SECTION 12. This Act takes effect January 1, 2004, but only  
13 if the constitutional amendment proposed by the 78th Legislature,  
14 Regular Session, 2003, providing for appointment to fill vacancies  
15 in the offices of the justices and judges of the appellate or  
16 district courts and for nonpartisan retention elections for those  
17 offices is approved by the voters. If that amendment is not  
18 approved by the voters, this Act has no effect.