

1-1 By: Duncan, Ellis S.B. No. 794
1-2 (In the Senate - Filed March 3, 2003; March 5, 2003, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 15, 2003, reported favorably by the following vote: Yeas 6,
1-5 Nays 1; April 15, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the appointment of certain judicial offices and a
1-9 nonpartisan election for the retention or rejection of a person
1-10 appointed to those offices.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Chapter 21, Government Code, is amended by
1-13 adding Section 21.010 to read as follows:

1-14 Sec. 21.010. APPOINTMENT AND RETENTION OF JUSTICES AND
1-15 JUDGES. (a) This section applies to each office of justice or
1-16 judge for which the Texas Constitution requires a person appointed
1-17 to fill a vacancy in the office to be subject to retention or
1-18 rejection by the voters at the end of the appointed term and each
1-19 successive term.

1-20 (b) In conjunction with the last general election for state
1-21 and county officers to be held before the end of a term of office to
1-22 which a justice or judge is appointed or retained, the justice or
1-23 judge is subject to retention or rejection at the nonpartisan
1-24 judicial retention election in accordance with Chapter 291,
1-25 Election Code.

1-26 (c) If a justice or judge does not seek retention, or
1-27 withdraws from the retention election, as provided by Chapter 291,
1-28 Election Code, the vacancy existing at the beginning of the
1-29 succeeding term shall be filled in the manner prescribed by the
1-30 Texas Constitution.

1-31 (d) If a vacancy occurs in the office of a justice or judge
1-32 seeking retention and the justice's or judge's name is omitted from
1-33 the retention election ballot under Chapter 291, Election Code, the
1-34 vacancy shall be filled in the manner prescribed by the Texas
1-35 Constitution.

1-36 (e) If a majority of the votes received on the question are
1-37 for the retention of the justice or judge, the person is entitled to
1-38 remain in office for a regular term beginning on the first day of
1-39 the following January, unless the person becomes ineligible or is
1-40 removed as provided by law.

1-41 (f) If less than a majority of the votes received on the
1-42 question are for retention, a vacancy in the office exists on the
1-43 first day of the following January, and the vacancy shall be filled
1-44 in the manner prescribed by the Texas Constitution.

1-45 (g) If the name of a justice or judge seeking retention
1-46 appears on the retention election ballot under Chapter 291,
1-47 Election Code, although a vacancy has occurred in the office, the
1-48 retention election for that office has no effect, and the vacancy
1-49 shall be filled in the manner prescribed by the Texas Constitution.

1-50 SECTION 2. The Election Code is amended by adding Title 17
1-51 to read as follows:

1-52 TITLE 17. NONPARTISAN JUDICIAL RETENTION ELECTIONS

1-53 CHAPTER 291. RETENTION ELECTION

1-54 Sec. 291.001. DECLARATION OF CANDIDACY. (a) Not later
1-55 than 5 p.m. on June 1 preceding the nonpartisan judicial retention
1-56 election at which the justice or judge is subject to retention or
1-57 rejection, a justice or judge who seeks to continue to serve in that
1-58 office must file with the secretary of state a declaration of
1-59 candidacy to succeed to the next term.

1-60 (b) A declaration may not be filed earlier than the 30th day
1-61 before the date of the filing deadline. A declaration filed by mail
1-62 is considered to be filed at the time of its receipt by the
1-63 appropriate authority.

1-64 (c) The filling of the subsequent vacancy for the office for

2-1 which a declaration of candidacy is not filed is covered by Section
 2-2 21.010, Government Code.

2-3 Sec. 291.002. WITHDRAWAL, DEATH, OR INELIGIBILITY.

2-4 (a) With respect to withdrawal, death, or ineligibility of a
 2-5 candidate in a nonpartisan judicial retention election, this
 2-6 section supersedes Subchapter A, Chapter 145, to the extent of any
 2-7 conflict.

2-8 (b) A candidate may not withdraw from the retention election
 2-9 after the 65th day before election day.

2-10 (c) A withdrawal request must be filed with the authority
 2-11 with whom the withdrawing candidate's declaration of candidacy is
 2-12 required to be filed.

2-13 (d) A candidate's name shall be omitted from the retention
 2-14 election ballot if the candidate withdraws, dies, or is declared
 2-15 ineligible on or before the 65th day before election day.

2-16 (e) If a candidate who has made a declaration of candidacy
 2-17 that complies with the applicable requirements dies or is declared
 2-18 ineligible after the 65th day before election day, the candidate's
 2-19 name shall be placed on the retention election ballot.

2-20 (f) The filling of the subsequent vacancy for the office
 2-21 following implementation of Subsection (d) or (e) is covered by
 2-22 Section 21.010, Government Code.

2-23 Sec. 291.003. CERTIFICATION OF NAMES FOR PLACEMENT ON
 2-24 RETENTION ELECTION BALLOT.

2-25 (a) Except as provided by Subsection
 2-26 (c), the secretary of state shall certify in writing for placement
 2-27 on the nonpartisan judicial retention election ballot the name of
 2-28 each candidate who files with the secretary a declaration of
 2-29 candidacy that complies with Section 291.001.

2-30 (b) Not later than the 55th day before election day, the
 2-31 secretary of state shall deliver the certification to the authority
 2-32 responsible for having the official ballot prepared in each county
 2-33 in which the candidate's name is to appear on the ballot.

2-34 (c) A candidate's name may not be certified if, before
 2-35 delivering the certification, the secretary of state learns that
 2-36 the name is to be omitted from the ballot under Section 291.002.

2-37 Sec. 291.004. RETENTION ELECTION BALLOT. The name of the
 2-38 person subject to retention or rejection shall be submitted to the
 2-39 voters on the nonpartisan judicial retention election ballot
 2-40 following the offices subject to election under the heading
 2-41 "Retention of Nonpartisan Judicial Offices," in substantially the
 2-42 following form:

2-43 "Shall (Justice or Judge) _____

2-44 be retained in office as (justice or judge) of the
 2-45 (name of court) _____?"

2-46 _____ "Yes"

2-47 _____ "No"

2-48 Sec. 291.005. GENERAL PROCEDURE FOR CONDUCT OF RETENTION
 2-49 ELECTION. (a) Except as otherwise provided by this code, the
 2-50 nonpartisan judicial retention election shall be conducted and the
 2-51 results canvassed, tabulated, and reported in the manner applicable
 2-52 to partisan offices in the general election for state and county
 2-53 officers.

2-54 (b) A certificate of election shall be issued to a retained
 2-55 officer in the same manner as provided for a candidate elected to an
 2-56 office.

2-57 Sec. 291.006. WRITE-IN VOTING PROHIBITED. Write-in voting
 2-58 is not permitted in a nonpartisan judicial retention election.

2-59 Sec. 291.007. POLITICAL CONTRIBUTIONS AND EXPENDITURES. A
 2-60 candidate for retention of a judicial office is subject to Title 15
 2-61 and shall comply with that title in the same manner as a candidate
 2-62 for election to the office.

2-63 Sec. 291.008. APPLICABILITY OF OTHER PARTS OF CODE. The
 2-64 other titles of this code apply to a nonpartisan judicial retention
 2-65 election except provisions that are inconsistent with this title or
 2-66 that cannot feasibly be applied in a retention election.

2-67 Sec. 291.009. ADDITIONAL PROCEDURES. The secretary of
 2-68 state shall prescribe any additional procedures necessary for the
 2-69 orderly and proper administration of elections held under this

3-1 chapter.

3-2 SECTION 3. Section 1.005, Election Code, is amended by
3-3 amending Subdivision (9) and adding Subdivisions (25) and (26) to
3-4 read as follows:

3-5 (9) "Independent candidate" means a candidate in a
3-6 nonpartisan election or a candidate in a partisan election who is
3-7 not the nominee of a political party. The term does not include a
3-8 nonpartisan judicial candidate.

3-9 (25) "Nonpartisan judicial candidate" means a
3-10 candidate in a nonpartisan judicial retention election.

3-11 (26) "Nonpartisan judicial retention election" means
3-12 an election held under Chapter 291.

3-13 SECTION 4. Section 41.002, Election Code, is amended to
3-14 read as follows:

3-15 Sec. 41.002. GENERAL ELECTION FOR STATE AND COUNTY
3-16 OFFICERS. The general election for state and county officers,
3-17 including the nonpartisan judicial retention election, shall be
3-18 held on the first Tuesday after the first Monday in November in
3-19 even-numbered years.

3-20 SECTION 5. Section 52.092, Election Code, is amended by
3-21 amending Subsections (a), (c), (d), and (h) and adding Subsection
3-22 (f-1) to read as follows:

3-23 (a) For an election at which offices regularly filled at the
3-24 general election for state and county officers, including the
3-25 nonpartisan judicial retention election, are to appear on the
3-26 ballot, the offices shall be listed in the following order:

- 3-27 (1) offices of the federal government;
- 3-28 (2) offices of the state government:
 - 3-29 (A) statewide offices;
 - 3-30 (B) district offices;
- 3-31 (3) offices of the county government:
 - 3-32 (A) county offices;
 - 3-33 (B) precinct offices.

3-34 (c) Statewide offices of the state government shall be
3-35 listed in the following order:

- 3-36 (1) governor;
- 3-37 (2) lieutenant governor;
- 3-38 (3) attorney general;
- 3-39 (4) comptroller of public accounts;
- 3-40 (5) commissioner of the General Land Office;
- 3-41 (6) commissioner of agriculture;
- 3-42 (7) railroad commissioner[+;
- 3-43 [~~(8) chief justice, supreme court,~~
- 3-44 [~~(9) justice, supreme court,~~
- 3-45 [~~(10) presiding judge, court of criminal appeals,~~
- 3-46 [~~(11) judge, court of criminal appeals].~~

3-47 (d) District offices of the state government shall be listed
3-48 in the following order:

- 3-49 (1) member, State Board of Education;
- 3-50 (2) state senator;
- 3-51 (3) state representative;
- 3-52 (4) [~~chief justice, court of appeals,~~
- 3-53 [~~(5) justice, court of appeals,~~
- 3-54 [~~(6) district judge,~~
- 3-55 [~~(7) criminal district judge,~~
- 3-56 [~~(8) family district judge,~~
- 3-57 [~~(9)] district attorney;~~
- 3-58 (5) [~~(10)] criminal district attorney.~~

3-59 (f-1) Nonpartisan judicial retention election offices shall
3-60 be listed in the following order:

- 3-61 (1) chief justice, supreme court;
- 3-62 (2) justice, supreme court;
- 3-63 (3) presiding judge, court of criminal appeals;
- 3-64 (4) judge, court of criminal appeals;
- 3-65 (5) chief justice, court of appeals;
- 3-66 (6) justice, court of appeals;
- 3-67 (7) district judge;
- 3-68 (8) criminal district judge;
- 3-69 (9) family district judge.

4-1 (h) The secretary of state shall assign a place number to
4-2 each position to be voted on ~~[filled]~~ at the nonpartisan judicial
4-3 retention ~~[general]~~ election for ~~[state and county officers for~~
4-4 ~~each full or unexpired term in]~~ the following offices:

- 4-5 (1) justice, supreme court;
- 4-6 (2) judge, court of criminal appeals; and
- 4-7 (3) justice, court of appeals in a court having a
- 4-8 membership in excess of three, if distinguishing the positions to
- 4-9 be filled is necessary.

4-10 SECTION 6. Subsection (b), Section 145.003, Election Code,
4-11 is amended to read as follows:

4-12 (b) A candidate in the general election for state and county
4-13 officers, including the nonpartisan judicial retention election,
4-14 may be declared ineligible before the 30th day preceding election
4-15 day by:

- 4-16 (1) the party officer responsible for certifying the
- 4-17 candidate's name for placement on the general election ballot, in
- 4-18 the case of a candidate who is a political party's nominee; or
- 4-19 (2) the authority with whom the candidate's
- 4-20 application for a place on the ballot or declaration of candidacy is
- 4-21 required to be filed, in the case of an independent candidate or a
- 4-22 nonpartisan judicial candidate, as applicable.

4-23 SECTION 7. Subsection (a), Section 145.005, Election Code,
4-24 is amended to read as follows:

4-25 (a) If the name of a deceased or ineligible candidate
4-26 appears on the ballot ~~[under this chapter]~~, the votes cast for the
4-27 candidate shall be counted and entered on the official election
4-28 returns in the same manner as for the other candidates.

4-29 SECTION 8. Subsection (e), Section 172.021, Election Code,
4-30 is amended to read as follows:

4-31 (e) A candidate for an office specified by Section
4-32 172.024(a)(8) ~~[, (10), or (12),]~~ or for justice of the peace in a
4-33 county with a population of more than 850,000, who chooses to pay
4-34 the filing fee must also accompany the application with a petition
4-35 that complies with the requirements prescribed for the petition
4-36 authorized by Subsection (b), except that the minimum number of
4-37 signatures that must appear on the petition required by this
4-38 subsection is 250. If the candidate chooses to file the petition
4-39 authorized by Subsection (b) instead of the filing fee, the minimum
4-40 number of signatures required for that petition is increased by
4-41 250. Signatures on a petition filed under this subsection or
4-42 Subsection (b) by a candidate covered by this subsection may not be
4-43 obtained on the grounds of a county courthouse or courthouse annex.

4-44 SECTION 9. Subsection (a), Section 172.024, Election Code,
4-45 is amended to read as follows:

4-46 (a) The filing fee for a candidate for nomination in the
4-47 general primary election is as follows:

- 4-48 (1) United States senator \$4,000
- 4-49 (2) office elected statewide, except United States
4-50 senator 3,000
- 4-51 (3) United States representative 2,500
- 4-52 (4) state senator 1,000
- 4-53 (5) state representative 600
- 4-54 (6) member, State Board of Education 250
- 4-55 (7) ~~[chief justice or justice, court of appeals,~~
- 4-56 ~~other than a justice specified by Subdivision~~
- 4-57 ~~(8) 1,500~~
- 4-58 ~~[(8) chief justice or justice of a court of appeals~~
- 4-59 ~~that serves a court of appeals district in which a~~
- 4-60 ~~county with a population of more than 850,000 is~~
- 4-61 ~~wholly or partly situated 2,000~~
- 4-62 ~~[(9) district judge or judge specified by Section~~
- 4-63 ~~52.092(d) for which this schedule does not~~
- 4-64 ~~otherwise prescribe a fee 1,200~~
- 4-65 ~~[(10) district or criminal district judge of a~~
- 4-66 ~~court in a judicial district wholly contained~~
- 4-67 ~~in a county with a population of more than~~
- 4-68 ~~850,000 2,000~~
- 4-69 ~~[(11)] judge, statutory county court, other than a judge~~

5-1 specified by Subdivision (8) [~~(12)~~] 1,200
5-2 (8) [~~(12)~~] judge of a statutory county court in
5-3 a county with a population of more than
5-4 850,000 2,000
5-5 (9) [~~(13)~~] district attorney, criminal district
5-6 attorney, or county attorney performing the
5-7 duties of a district attorney 1,000
5-8 (10) [~~(14)~~] county commissioner or judge,
5-9 constitutional county court:
5-10 (A) county with a population of 200,000 or
5-11 more 1,000
5-12 (B) county with a population of under
5-13 200,000 600
5-14 (11) [~~(15)~~] justice of the peace or constable:
5-15 (A) county with a population of 200,000 or
5-16 more 800
5-17 (B) county with a population of under
5-18 200,000 300
5-19 (12) [~~(16)~~] county surveyor, inspector of hides and
5-20 animals, or public weigher 50
5-21 (13) [~~(17)~~] office of the county government for which
5-22 this schedule does not otherwise prescribe a
5-23 fee 600

5-24 SECTION 10. Section 202.001, Election Code, is amended to
5-25 read as follows:

5-26 Sec. 202.001. APPLICABILITY OF CHAPTER. This chapter
5-27 applies to elective offices of the state and county governments
5-28 except the offices of:

- 5-29 (1) state senator and state representative;
- 5-30 (2) justice or judge of an appellate court; and
- 5-31 (3) judge of a district court.

5-32 SECTION 11. (a) Each appellate justice or judge or
5-33 district judge in office January 1, 2004, unless otherwise removed
5-34 as provided by law, continues in office subject to this section.

5-35 (b) Each justice or judge listed in Subsection (a) of this
5-36 section who is in office January 1, 2004, is subject to retention or
5-37 rejection, in the manner provided by law for a justice or judge
5-38 appointed to the office after the effective date of this Act, at the
5-39 last general election preceding the expiration of the regular or
5-40 unexpired term for which each was elected or appointed.

5-41 SECTION 12. This Act takes effect January 1, 2004, but only
5-42 if the constitutional amendment proposed by the 78th Legislature,
5-43 Regular Session, 2003, providing for appointment to fill vacancies
5-44 in the offices of the justices and judges of the appellate or
5-45 district courts and for nonpartisan retention elections for those
5-46 offices is approved by the voters. If that amendment is not
5-47 approved by the voters, this Act has no effect.

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