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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, judges in Texas are subject to partisan elections. This method of selection has encouraged judges to spend a significant amount of time and money running for office as opposed to concentrating on their judicial responsibilities. Judges often raise money from the lawyers who practice in their courts, creating a perception of improper influence. In addition, judges are just as susceptible to partisan sweeps as any other candidate. Qualifications and integrity barely influence whether a judge remains in office.

As proposed, S.B. 2226 provides that a partisan election for judicial selection at the appellate level be held at the next election cycle, followed thereafter by nonpartisan retention elections. The bill requires that a vacancy trigger gubernatorial appointment, and the legislation adds senate confirmation to the process. The bill requires, for district court offices, a partisan election at the next election cycle, followed by nonpartisan retention elections.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter D, Chapter 22, Government Code, by adding Sections 22.303 and 22.304, as follows:

> Sec. 22.303. ELECTION, RETENTION, AND APPOINTMENT OF APPELLATE JUSTICES AND JUDGES. (a) Provides that the office of appellate justice or judge is subject to partisan election in accordance with the applicable provisions of the Election Code at the last general election for state and county officers to be held before certain dates.

>> (b) Provides that in conjunction with the last general election for state and county officers to be held before the end of a term of office to which an appellate justice or judge is elected, and in conjunction with the last general election to be held before the end of each following continuous term in that office, the justice or judge is subject to retention or rejection at the nonpartisan judicial retention election in accordance with Chapter 521, Election Code.

>> (c) Requires the vacancy to be filled in the manner prescribed by the Texas Constitution if a vacancy occurs in the office of an appellate justice or judge seeking retention and the name of the justice or judge is omitted from the retention election ballot under Chapter 521, Election Code.

> Sec. 22.304. EFFECT OF RETENTION VOTE. (a) Provides that if a majority of the votes received on the question are for the retention of the appellate justice or judge, the person is entitled to remain in office for a regular term beginning on the first day of the following January, unless the person becomes ineligible or is removed as provided by law.

>> (b) Requires the vacancy to be filled in the manner prescribed by the Texas Constitution if less than a majority of the votes received on the question are for

retention and a vacancy in the office exists on the first day of the following January.

(c) Requires the vacancy to be filled in the manner prescribed by the Texas Constitution if the name of an appellate justice or judge seeking retention appears on the retention election ballot under Chapter 521, Election Code, although a vacancy has occurred in the office, and the retention election for that office has no effect.

SECTION 2. Amends Chapter 24, Government Code, by adding Subchapter A-1, as follows:

SUBCHAPTER A-1. ELECTION AND RETENTION OF DISTRICT JUDGES

Sec. 24.051. ELECTION AND RETENTION CYCLE. (a) Provides that a district judge is subject to partisan election in accordance with the applicable provisions of the Election Code.

(b) Provides that the judge is subject to retention or rejection at the nonpartisan judicial retention election in accordance with Chapter 521, Election Code, in conjunction with the last general election for state and county officers to be held before the end of a term of office to which a district judge is elected, and in conjunction with the last general election to be held before the end of each following continuous term in that office.

(c) Requires the vacancy existing at the beginning of the succeeding term to be filled in the manner prescribed by the Texas Constitution if a district judge does not seek retention, or withdraws from the retention election, as provided by Chapter 521, Election Code.

(d) Requires the vacancy to be filled in the manner prescribed by the Texas Constitution if a vacancy occurs in the office of a district judge seeking retention and the judge's name is omitted from the retention election ballot under Chapter 521, Election Code.

Sec. 24.052. EFFECT OF RETENTION VOTE. (a) Provides that if a majority of the votes received on the question are for the retention of the district judge, the person is entitled to remain in office for a regular term of four years beginning on the first day of the following January, unless the person becomes ineligible or is removed as provided by law.

(b) Requires the vacancy to be filled in the manner prescribed by the Texas Constitution if less than a majority of the votes received on the question are for retention and a vacancy in the office exists on the first day of the following January.

(c) Requires the vacancy to be filled in the manner prescribed by the Texas Constitution if the name of a district judge seeking retention appears on the retention election ballot under Chapter 521, Election Code, although a vacancy has occurred in the office, and the retention election for that office has no effect.

SECTION 3. Amends the Election Code by adding Title 18, as follows:

TITLE 18. NONPARTISAN JUDICIAL RETENTION ELECTIONS

CHAPTER 521. RETENTION ELECTION

Sec. 521.001. DECLARATION OF CANDIDACY. (a) Provides that not later than 5 p.m. on December 1 preceding the nonpartisan judicial retention election at which the justice or judge is subject to retention or rejection, a justice or judge who seeks to continue to serve in that office must file with the secretary of state a declaration of candidacy to succeed to the next term.

(b) Prohibits a declaration from being filed earlier than the 30th day before the date of the filing deadline. Provides that a declaration filed by mail is considered to be filed at the time of its receipt by the appropriate authority.

(c) Provides that the filling of the subsequent vacancy for the office for which a declaration of candidacy is not filed is covered by Section 22.303, Government Code, for an appellate justice or judge or Chapter 24 (District Courts), Government Code, for the office of district judge.

Sec. 521.002. WITHDRAWAL, DEATH, OR INELIGIBILITY. (a) Provides that with respect to withdrawal, death, or ineligibility of a candidate in a nonpartisan judicial retention election, this section supersedes Subchapter A (General Provisions), Chapter 145 (Withdrawal, Death, and Ineligibility of Candidate), to the extent of any conflict.

(b) Prohibits a candidate from withdrawing from the retention election after the 65th day before election day.

(c) Requires a withdrawal request to be filed with the authority with whom the withdrawing candidate's declaration of candidacy is required to be filed.

(d) Requires a candidate's name to be omitted from the retention election ballot if the candidate withdraws, dies, or is declared ineligible on or before the 65th day before election day.

(e) Requires the candidate's name to be placed on the retention election ballot if a candidate who has made a declaration of candidacy that complies with the applicable requirements dies or is declared ineligible after the 65th day before election day.

(f) Provides that the filling of the subsequent vacancy for the office following implementation of Subsection (d) or (e) is covered by Section 22.303, Government Code, for an appellate justice or judge or Chapter 24, Government Code, for the office of district judge.

Sec. 521.003. CERTIFICATION OF NAMES FOR PLACEMENT ON RETENTION ELECTION BALLOT. (a) Requires the secretary of state to certify in writing for placement on the nonpartisan judicial retention election ballot the name of each candidate who files with the secretary a declaration of candidacy that complies with Section 521.001, except as provided by Subsection (c).

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

(c) Prohibits a candidate's name from being certified if, before delivering the certification, the secretary of state learns that the name is to be omitted from the ballot under Section 521.002.

Sec. 521.004. RETENTION ELECTION BALLOT. Requires the name of the person subject to retention or rejection to be submitted to the voters on the nonpartisan judicial retention election ballot following the offices subject to election under a certain heading and in a certain form.

Sec. 521.005. GENERAL PROCEDURE FOR CONDUCT OF RETENTION ELECTION. (a) Requires the nonpartisan judicial retention election to be conducted and the results canvassed, tabulated, and reported in the manner applicable to partisan offices in the general election for state and county officers, except as otherwise provided by this code.

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

Sec. 521.006. WRITE-IN VOTING PROHIBITED. Prohibits write-in voting from being permitted in a nonpartisan judicial retention election.

Sec. 521.007. POLITICAL CONTRIBUTIONS AND EXPENDITURES. Provides that a candidate for retention of a judicial office is subject to Title 15 (Regulating Political Funds and Campaigns) and is required to comply with that title in the same manner as a candidate for election to the office.

Sec. 521.008. APPLICABILITY OF OTHER PARTS OF CODE. Provides that the other titles of this code apply to a nonpartisan judicial retention election except provisions that are inconsistent with this title or that cannot feasibly be applied in a retention election.

Sec. 521.009. ADDITIONAL PROCEDURES. Requires the secretary of state to prescribe any additional procedures necessary for the orderly and proper administration of elections held under this chapter.

SECTION 4. Amends Section 1.005, Election Code, by amending Subdivision (9) and adding Subdivisions (12-a) and (12-b), to redefine "independent candidate" and to define "nonpartisan judicial candidate" and "nonpartisan judicial retention election."

SECTION 5. Amends Section 41.002, Election Code, as follows:

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

SECTION 6. Amends Section 52.092, Election Code, by amending Subsection (a) and adding Subsections (f-1) and (f-2), as follows:

(a) Requires offices to be listed in a certain order for an election at which offices regularly filled at the general election for state and county officers, including the nonpartisan judicial retention election, are to appear on the ballot.

(f-1) Requires nonpartisan statewide judicial retention election offices to be listed in a certain order.

(f-2) Requires nonpartisan district judicial retention election offices to be listed in a certain order.

SECTION 7. Amends Section 145.003(b), Election Code, to authorize a candidate in the general election for state and county officers, including the nonpartisan judicial retention election, to be declared ineligible before the 30th day preceding election day by the authority with whom the candidate's application for a place on the ballot or declaration of candidacy is required to be filed, in the case of an independent candidate or a nonpartisan judicial candidate, as applicable.

SECTION 8. Amends Section 145.005(a), Election Code, to require that the votes cast for the candidate be counted and entered on the official election returns in the same manner as for the other candidates if the name of a deceased or ineligible candidate appears on the ballot. Deletes the provision that the name of a deceased or ineligible candidate appears on the ballot under this chapter.

SECTION 9. Amends Section 202.001, Election Code, as follows:

Sec. 202.001. APPLICABILITY OF CHAPTER. Provides that this chapter applies to elective offices of the state and county governments except the offices of state senator and state representative and justice or judge of an appellate or district court.

SECTION 10. Amends Section 253.153(a), Election Code, as follows:

(a) Prohibits a judicial candidate or officeholder, a specific-purpose committee for supporting or opposing a judicial candidate, or a specific-purpose committee for assisting a judicial officeholder from knowingly accepting a political contribution except during the period:

(1) beginning on the 210th day before the date a declaration of candidacy is required to be filed if the office is subject to a nonpartisan judicial retention election, or on certain other days if the office is not subject to a nonpartisan judicial retention election. Makes conforming changes.

(2) ending on the 120th day after the date of the general election for state and county officers if the office is subject to a nonpartisan judicial retention election. Makes conforming changes.

SECTION 11. (a) Provides that each appellate justice or judge in office January 1, 2010, unless otherwise removed as provided by law, continues in office subject to this section.

(b) Provides that each appellate justice or judge who is in office January 1, 2010, is subject to retention or rejection, in the manner provided by law for a justice or judge appointed to the office after the effective date of this Act, at the last general election preceding the expiration of the regular or unexpired term for which each was elected or appointed.

SECTION 12. (a) Provides that each district judge in office January 1, 2010, unless otherwise removed as provided by law, continues in office for the term to which elected.

(b) Provides that each district judge in office January 1, 2010, is subject to retention or rejection, in the manner provided by law, at the general election preceding the expiration of the regular or unexpired term for which each was elected or appointed. Provides that a vacancy does not exist in those offices until the expiration of the term of the person who held the office January 1, 2010, or until that person does not hold the office, whichever occurs first.

SECTION 13. Effective date: January 1, 2010.
Makes application of this Act prospective.