

By: Hunter

H.B. No. 3995

A BILL TO BE ENTITLED

AN ACT

relating to the operation of the judiciary.

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

ARTICLE 1. JUDICIAL APPOINTMENT AND RETENTION

SECTION 1.01. Subchapter D, Chapter 22, Government Code, is amended by adding Section 22.303 to read as follows:

Sec. 22.303. APPOINTMENT AND RETENTION OF JUSTICES AND JUDGES. (a) This section applies to each office of justice or judge for which the Texas Constitution requires a person appointed to fill a vacancy in the office to be subject to retention or rejection by the voters at the end of the appointed term and each successive term.

(b) 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 justice or judge is appointed or retained, the justice or judge is subject to retention or rejection at the nonpartisan judicial retention election in accordance with Chapter 521, Election Code.

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

(d) If a vacancy occurs in the office of a justice or judge

1 seeking retention and the name of the justice or judge is omitted
2 from the retention election ballot under Chapter 521, Election
3 Code, the vacancy shall be filled in the manner prescribed by the
4 Texas Constitution.

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

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

14 (g) If the name of a justice or judge seeking retention
15 appears on the retention election ballot under Chapter 521,
16 Election Code, although a vacancy has occurred in the office, the
17 retention election for that office has no effect, and the vacancy
18 shall be filled in the manner prescribed by the Texas Constitution.

19 SECTION 1.02. The Election Code is amended by adding Title
20 18 to read as follows:

21 TITLE 18. NONPARTISAN JUDICIAL RETENTION ELECTIONS

22 CHAPTER 521. RETENTION ELECTION

23 Sec. 521.001. DECLARATION OF CANDIDACY. (a) Not later than
24 5 p.m. on June 1 preceding the nonpartisan judicial retention
25 election at which the justice or judge is subject to retention or
26 rejection, a justice or judge who seeks to continue to serve in that
27 office must file with the secretary of state a declaration of

1 candidacy to succeed to the next term.

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

6 (c) The filling of the subsequent vacancy for the office for
7 which a declaration of candidacy is not filed is covered by Section
8 22.303, Government Code.

9 Sec. 521.002. WITHDRAWAL, DEATH, OR INELIGIBILITY. (a)
10 With respect to withdrawal, death, or ineligibility of a candidate
11 in a nonpartisan judicial retention election, this section
12 supersedes Subchapter A, Chapter 145, to the extent of any
13 conflict.

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

16 (c) A withdrawal request must be filed with the secretary of
17 state.

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

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

25 (f) The filling of the subsequent vacancy for the office
26 following implementation of Subsection (d) or (e) is covered by
27 Section 22.303, Government Code.

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

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

11 (c) A candidate's name may not be certified if, before
12 delivering the certification, the secretary of state learns that
13 the name is to be omitted from the ballot under Section 521.002.

14 Sec. 521.004. RETENTION ELECTION BALLOT. The name of the
15 person subject to retention or rejection shall be submitted to the
16 voters on the nonpartisan judicial retention election ballot
17 following the offices subject to election under the heading
18 "Retention of Nonpartisan Judicial Offices," in substantially the
19 following form:

20 "Shall (Justice or Judge)_____
21 _____
22 be retained in office as (justice or judge) of the
23 (name of court)_____?"
24 _____ "Yes"
25 _____ "No"

26 Sec. 521.005. GENERAL PROCEDURE FOR CONDUCT OF RETENTION
27 ELECTION. (a) Except as otherwise provided by this code, the

1 nonpartisan judicial retention election shall be conducted and the
2 results canvassed, tabulated, and reported in the manner applicable
3 to partisan offices in the general election for state and county
4 officers.

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

8 Sec. 521.006. WRITE-IN VOTING PROHIBITED. Write-in voting
9 is not permitted in a nonpartisan judicial retention election.

10 Sec. 521.007. POLITICAL CONTRIBUTIONS AND EXPENDITURES. A
11 candidate for retention of a judicial office is subject to Title 15
12 and shall comply with that title in the same manner as a candidate
13 for election to the office.

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

18 Sec. 521.009. ADDITIONAL PROCEDURES. The secretary of
19 state shall prescribe any additional procedures necessary for the
20 orderly and proper administration of elections held under this
21 chapter.

22 SECTION 1.03. Section 1.005, Election Code, is amended by
23 amending Subdivision (9) and adding Subdivisions (25) and (26) to
24 read as follows:

25 (9) "Independent candidate" means a candidate in a
26 nonpartisan election or a candidate in a partisan election who is
27 not the nominee of a political party. The term does not include a

nonpartisan judicial candidate.

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

(26) "Nonpartisan judicial retention election" means an election held under Chapter 521.

SECTION 1.04. Section 41.002, Election Code, is amended to read as follows:

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

SECTION 1.05. Section 52.092, Election Code, is amended by amending Subsections (a), (c), and (d) and adding Subsection (f-1) to read as follows:

(a) 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, the offices shall be listed in the following order:

(1) offices of the federal government;

(2) offices of the state government:

(A) statewide offices;

(B) district offices;

(3) offices of the county government:

(A) county offices;

(B) precinct offices.

(c) Statewide offices of the state government shall be

1 listed in the following order:

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

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

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

25 (f-1) Nonpartisan judicial retention election offices shall
26 be listed in the following order:

- 27 (1) chief justice, supreme court;

- 1 (2) justice, supreme court;
- 2 (3) presiding judge, court of criminal appeals;
- 3 (4) judge, court of criminal appeals;
- 4 (5) chief justice, court of appeals;
- 5 (6) justice, court of appeals.

6 SECTION 1.06. Section 145.003(b), Election Code, is amended
7 to read as follows:

8 (b) A candidate in the general election for state and county
9 officers, including the nonpartisan judicial retention election,
10 may be declared ineligible before the 30th day preceding election
11 day by:

12 (1) the party officer responsible for certifying the
13 candidate's name for placement on the general election ballot, in
14 the case of a candidate who is a political party's nominee; or

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

19 SECTION 1.07. Section 145.005(a), Election Code, is amended
20 to read as follows:

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

25 SECTION 1.08. Section 172.021(e), Election Code, is amended
26 to read as follows:

27 (e) A candidate for an office specified by Section

1 172.024(a)(8) or [7] (10) [~~or (12)~~], or for justice of the peace in
 2 a county with a population of more than 850,000, who chooses to pay
 3 the filing fee must also accompany the application with a petition
 4 for a place on the primary ballot as a candidate for judicial office
 5 that complies with the requirements prescribed for the petition
 6 authorized by Subsection (b), except that the minimum number of
 7 signatures that must appear on the petition required by this
 8 subsection is 250. If the candidate chooses to file the petition
 9 authorized by Subsection (b) in lieu of the filing fee, the minimum
 10 number of signatures required for that petition is increased by
 11 250. Signatures on a petition filed under this subsection or
 12 Subsection (b) by a candidate covered by this subsection may not be
 13 obtained on the grounds of a county courthouse or courthouse annex.

14 SECTION 1.09. Section 172.024(a), Election Code, is amended
 15 to read as follows:

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

18	(1) United States senator	\$5,000
19	(2) office elected statewide, except United States	
20	senator	3,750
21	(3) United States representative	3,125
22	(4) state senator	1,250
23	(5) state representative	750
24	(6) member, State Board of Education	300
25	(7) [chief justice or justice, court of appeals, other	
26	than a justice specified by Subdivision (8)	1,875
27	[(8) chief justice or justice of a court of appeals	

1 ~~that serves a court of appeals district in which a county with a~~
2 ~~population of more than 750,000 is wholly or partly situated~~ 2,500
3 ~~[(9)]~~ district judge or judge specified by Section
4 52.092(d) for which this schedule does not otherwise prescribe a
5 fee 1,500
6 (8) ~~[(10)]~~ district or criminal district judge of a
7 court in a judicial district wholly contained in a county with a
8 population of more than 850,000 2,500
9 (9) ~~[(11)]~~ judge, statutory county court, other than a
10 judge specified by Subdivision (12) 1,500
11 (10) ~~[(12)]~~ judge of a statutory county court in a
12 county with a population of more than 850,000 2,500
13 (11) ~~[(13)]~~ district attorney, criminal district
14 attorney, or county attorney performing the duties of a district
15 attorney 1,250
16 (12) ~~[(14)]~~ county commissioner, district clerk,
17 county clerk, sheriff, county tax assessor-collector, county
18 treasurer, or judge, constitutional county court:
19 (A) county with a population of 200,000 or
20 more 1,250
21 (B) county with a population of under
22 200,000 750
23 (13) ~~[(15)]~~ justice of the peace or constable:
24 (A) county with a population of 200,000 or
25 more 1,000
26 (B) county with a population of under
27 200,000 375

1 (14) [~~(16)~~] county surveyor, inspector of hides and
2 animals, or public weigher 75

3 (15) [~~(17)~~] office of the county government for which
4 this schedule does not otherwise prescribe a fee 750

5 SECTION 1.10. Section 202.001, Election Code, is amended to
6 read as follows:

7 Sec. 202.001. APPLICABILITY OF CHAPTER. This chapter
8 applies to elective offices of the state and county governments
9 except the offices of:

10 (1) state senator and state representative; and

11 (2) justice or judge of an appellate court.

12 SECTION 1.11. Section 253.153(a), Election Code, is amended
13 to read as follows:

14 (a) A judicial candidate or officeholder, a
15 specific-purpose committee for supporting or opposing a judicial
16 candidate, or a specific-purpose committee for assisting a judicial
17 officeholder may not knowingly accept a political contribution
18 except during the period:

19 (1) beginning on:

20 (A) if the office is subject to a nonpartisan
21 judicial retention election, the 210th day before the date a
22 declaration of candidacy is required to be filed; or

23 (B) if the office is not subject to a nonpartisan
24 judicial retention election:

25 (i) the 210th day before the date an
26 application for a place on the ballot or for nomination by
27 convention for the office is required to be filed, if the election

is for a full term; or

(ii) ~~[(B)]~~ the later of the 210th day before the date an application for a place on the ballot or for nomination by convention for the office is required to be filed or the date a vacancy in the office occurs, if the election is for an unexpired term; and

(2) ending on the 120th day after the date of:

(A) the general election for state and county officers, if:

(i) the office is subject to a nonpartisan judicial retention election; or

(ii) the candidate or officeholder has an opponent in the general election;

(B) except as provided by Subsection (c), the runoff primary election, if the candidate or officeholder is a candidate in the runoff primary election and does not have an opponent in the general election; or

(C) except as provided by Subsection (c), the general primary election, if the candidate or officeholder is not a candidate in the runoff primary election and does not have an opponent in the general election.

SECTION 1.12. Section 172.021(g), Election Code, is repealed.

SECTION 1.13. (a) 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) Each appellate justice or judge who is in office January

1 1, 2010, is subject to retention or rejection, in the manner
2 provided by law for a justice or judge appointed to the office after
3 the effective date of this Act, at the last general election
4 preceding the expiration of the regular or unexpired term for which
5 each was elected or appointed.

6 SECTION 1.14. This Article takes effect January 1, 2010,
7 but only if the constitutional amendment proposed by the 81st
8 Legislature, Regular Session, 2009, providing for filling
9 vacancies in appellate judicial offices by appointment and for
10 nonpartisan retention elections for those offices is approved by
11 the voters. If that amendment is not approved by the voters, this
12 Article has no effect.

13 ARTICLE 2. JUDICIAL INDEMNIFICATION AND REPRESENTATION

14 SECTION 2.01 Section 104.001, Civil Practice and Remedies
15 Code, is amended to read as follows:

16 Sec. 104.001. STATE LIABILITY; PERSONS COVERED. In a cause
17 of action based on conduct described in Section 104.002, the state
18 shall indemnify the following persons, without regard to whether
19 the persons performed their services for compensation, for actual
20 damages, court costs, and attorney's fees adjudged against:

21 (1) an employee, a member of the governing board, or
22 any other officer of a state agency, institution, or department;

23 (2) a former employee, former member of the governing
24 board, or any other former officer of a state agency, institution,
25 or department who was an employee or officer when the act or
26 omission on which the damages are based occurred;

27 (3) a physician or psychiatrist licensed in this state

1 who was performing services under a contract with any state agency,
2 institution, or department or a racing official performing services
3 under a contract with the Texas Racing Commission when the act or
4 omission on which the damages are based occurred;

5 (3-a) a phlebotomist licensed in this state who was
6 performing services under a contract with the Texas Department of
7 Criminal Justice when the act or omission on which the damages are
8 based occurred;

9 (4) a chaplain or spiritual advisor who was performing
10 services under contract with the Texas Department of Criminal
11 Justice, the Texas Youth Commission, or the Texas Juvenile
12 Probation Commission when the act or omission on which the damages
13 are based occurred;

14 (5) a person serving on the governing board of a
15 foundation, corporation, or association at the request and on
16 behalf of an institution of higher education, as that term is
17 defined by Section 61.003(8), Education Code, not including a
18 public junior college;

19 (6) a state contractor who signed a waste manifest as
20 required by a state contract; ~~or~~

21 (7) the estate of a person listed in this section;

22 (8) a justice of an appellate court, a district judge,
23 a presiding judge of an administrative region, or an active,
24 retired, or former judge assigned under this chapter in any action
25 or suit in any court in which the judge is a defendant because of the
26 judge's office, if the judge request the assistance of the attorney
27 general in the defense of the suit; or

1 (9) an appointee of the supreme court to a judicial
2 branch board, commission, or task force or a former appointee to
3 such a board, commission, or task force, if the former appointee was
4 serving at the time of an alleged act or omission.

5 SECTION 2.02. Section 74.141, Government Code, is amended
6 to read as follows:

7 Sec. 74.141. DEFENSE OF JUDGES. The attorney general shall
8 defend an appointee or former appointee of the supreme court, as
9 described by Section 104.001(9), Civil Practice and Remedies Code,
10 a justice of an appellate court, a state district judge, a presiding
11 judge of an administrative region, or an active, retired, or former
12 judge assigned under this chapter in any action or suit in any court
13 in which the judge is a defendant because of his office as judge if
14 the judge requests the attorney general's assistance in the defense
15 of the suit.

16 ARTICLE 3. JUDICIAL PREPAREDNESS

17 SECTION 3.01. Section 74.093(c), Government Code, is
18 amended to read as follows:

19 (c) The rules may provide for:

20 (1) the selection and authority of a presiding judge
21 giving preference to a specified class of cases, such as civil,
22 criminal, juvenile, or family law cases;

23 (2) a coordinated response for the transaction of
24 essential judicial functions in the event of a disaster; and

25 (3) [~~2~~] any other matter necessary to carry out this
26 chapter or to improve the administration and management of the
27 court system and its auxiliary services.

SECTION 3.02. Section 418.002, Government Code, is amended to read as follows:

Sec. 418.002. PURPOSES. The purposes of this chapter are to:

(1) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made catastrophes, riots, or hostile military or paramilitary action;

(2) prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster;

(3) provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, the judicial branch, and local governments in prevention of, preparation for, response to, and recovery from disasters;

(5) authorize and provide for cooperation in disaster mitigation, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster mitigation, preparedness, response, and recovery by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(7) provide an emergency management system embodying all aspects of predisaster preparedness and postdisaster response;

1 (8) assist in mitigation of disasters caused or
2 aggravated by inadequate planning for and regulation of public and
3 private facilities and land use; and

4 (9) provide the authority and mechanism to respond to
5 an energy emergency.

6 SECTION 3.03. Section 418.016, Government Code, is amended
7 to read as follows:

8 Sec. 418.016. SUSPENSION OF PROCEDURAL LAWS AND RULES. (a)
9 The governor may suspend the provisions of any regulatory statute
10 prescribing the procedures for conduct of state business or the
11 orders or rules of a state agency if strict compliance with the
12 provisions, orders, or rules would in any way prevent, hinder, or
13 delay necessary action in coping with a disaster.

14 (b) Notwithstanding any other law, the supreme court may
15 exercise the court's inherent authority by rule or by order or on a
16 case by case basis, with or without the consent of the parties, to
17 suspend procedures for the conduct of any court proceeding affected
18 by a disaster. This authority includes the authority to:

19 (1) provide abatements and stays;
20 (2) toll or modify other filings and service
21 deadlines;

22 (3) provide for hearings or trials at locations other
23 than the county of suit;

24 (4) provide for courts of appeals to accept filings
25 and hear arguments in remote courthouses; and

26 (5) provide for alternative notice requirements.

27 (c) In the event that a disaster prevents the supreme court

1 from acting, the chief justice may act on behalf of the supreme
2 court. In the event that a disaster prevents either the supreme
3 court or the chief justice from acting, the court of criminal
4 appeals may act on behalf of the chief justice. In the event that a
5 disaster prevents the supreme court, the chief justice, or the
6 court of criminal appeals from acting, the presiding judge of the
7 court of criminal appeals may act on behalf of the court of criminal
8 appeals.

9 SECTION 3.04. Section 418.042(b), Government Code, is
10 amended to read as follows:

11 (b) In preparing and revising the state emergency
12 management plan, the division shall seek the advice and assistance
13 of local government, the judicial branch, business, labor,
14 industry, agriculture, civic organizations, volunteer
15 organizations, and community leaders.

16 ARTICLE 4. ELECTRONIC STORAGE OF CERTAIN RECORDS

17 SECTION 4.01. Subchapter A, Chapter 51, Government Code, is
18 amended to read as follows:

19 Sec. 51.0045. ELECTRONIC STORAGE. (a) In the performance
20 of the duties imposed by Section 51.004, the clerk of the supreme
21 court may maintain records and documents in an electronic storage
22 format or on microfilm or microfiche. When a document is filed
23 electronically, the electronic document maintained by the clerk is
24 the original. If the clerk stores records or documents in an
25 electronic storage format or on microfilm or microfiche, the clerk
26 may destroy the originals or copies of the records or documents
27 according to the retention policy described by Subsection (b).

1 (b) The clerk of the supreme court shall establish a records
2 retention policy. The retention policy shall provide a plan for the
3 storage and retention of records and documents and shall include a
4 retention period to preserve the records and documents in
5 accordance with applicable state law and rules of the supreme
6 court.

7 (c) For purposes of this section, "electronic storage" has
8 the meaning assigned by Section 51.105(c).

9 SECTION 4.02. Subchapter C, Chapter 51, Government Code, is
10 amended by adding Section 51.205 to read as follows:

11 Sec. 51.205. ELECTRONIC STORAGE. (a) In the performance of
12 the duties imposed by Section 51.204, the clerk of a court of
13 appeals may maintain records and documents in an electronic storage
14 format or on microfilm or microfiche. When a document is filed
15 electronically, the electronic document maintained by the clerk is
16 the original. If the clerk stores records or documents in an
17 electronic storage format or on microfilm or microfiche, the clerk
18 may destroy the originals or copies of the records or documents
19 according to the retention policy described by Subsection (b).

20 (b) The clerk of a court of appeals shall establish a
21 records retention policy. The retention policy shall provide a
22 plan for the storage and retention of records and documents and
23 shall include a retention period to preserve the records and
24 documents in accordance with Section 51.204 and other applicable
25 state law and rules of the court of appeals, the supreme court, or
26 the court of criminal appeals.

27 (c) For purposes of this section, "electronic storage" has

1 the meaning assigned by Section 51.105(c).

2 SECTION 4.03. The change in law made by this Article applies
3 to records received by a clerk before, on or after the effective
4 date.

5 ARTICLE 5. EFFECTIVE DATE

6 SECTION 5.01. Except as otherwise provided by this Act, this
7 Act takes effect immediately if it receives a vote of two-thirds of
8 all the members elected to each house, as provided by Section 39,
9 Article III, Texas Constitution. If this Act does not receive the
10 vote necessary for immediate effect, this Act takes effect
11 September 1, 2009.