

By: Duncan

S.B. No. 782

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the filling of a vacancy in an appellate judicial office
3 by appointment and a nonpartisan election for the retention or
4 rejection of the person appointed.

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

6 SECTION 1. Subchapter D, Chapter 22, Government Code, is
7 amended by adding Section 22.303 to read as follows:

8 Sec. 22.303. 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 521,
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 521,
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 name of the justice or judge is omitted
3 from the retention election ballot under Chapter 521, Election
4 Code, the vacancy shall be filled in the manner prescribed by the
5 Texas 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 521,
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 18
21 to read as follows:

22 TITLE 18. NONPARTISAN JUDICIAL RETENTION ELECTIONS

23 CHAPTER 521. RETENTION ELECTION

24 Sec. 521.001. DECLARATION OF CANDIDACY. (a) Not later than
25 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 secretary of state.

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 22.303, Government Code.

10 Sec. 521.002. WITHDRAWAL, DEATH, OR INELIGIBILITY. (a)
11 With respect to withdrawal, death, or ineligibility of a candidate
12 in a nonpartisan judicial retention election, this section
13 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 secretary of
18 state.

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

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

26 (f) The filling of the subsequent vacancy for the office
27 following implementation of Subsection (d) or (e) is covered by

1 Section 22.303, Government Code.

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

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

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

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

21 "Shall (Justice or Judge)_____

22 _____

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

24 (name of court)_____?"

25 _____ "Yes"

26 _____ "No"

27 Sec. 521.005. GENERAL PROCEDURE FOR CONDUCT OF RETENTION

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

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

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

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

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

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

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

26 (9) "Independent candidate" means a candidate in a
27 nonpartisan election or a candidate in a partisan election who is

1 not the nominee of a political party. The term does not include a
2 nonpartisan judicial candidate.

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

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

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

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

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

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

21 (1) offices of the federal government;

22 (2) offices of the state government:

23 (A) statewide offices;

24 (B) district offices;

25 (3) offices of the county government:

26 (A) county offices;

27 (B) precinct offices.

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

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

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

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

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

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

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

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

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

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

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

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

26 SECTION 8. Section 172.021(e), Election Code, is amended to
27 read as follows:

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

15 SECTION 9. Section 172.024(a), Election Code, is amended to
 16 read as follows:

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

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

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

1 (B) county with a population of under
2 200,000 375

3 (14) [~~(16)~~] county surveyor, inspector of hides and
4 animals, or public weigher 75

5 (15) [~~(17)~~] office of the county government for which
6 this schedule does not otherwise prescribe a fee 750

7 SECTION 10. Section 202.001, Election Code, is amended to
8 read as follows:

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

12 (1) state senator and state representative; and

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

14 SECTION 11. Section 253.153(a), Election Code, is amended
15 to read as follows:

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

21 (1) beginning on:

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

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

27 (i) the 210th day before the date an

1 application for a place on the ballot or for nomination by
2 convention for the office is required to be filed, if the election
3 is for a full term; or

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

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

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

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

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

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

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

24 SECTION 12. Section 172.021(g), Election Code, is repealed.

25 SECTION 13. (a) Each appellate justice or judge in office
26 January 1, 2010, unless otherwise removed as provided by law,
27 continues in office subject to this section.

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

7 SECTION 14. This Act takes effect January 1, 2010, but only
8 if the constitutional amendment proposed by the 81st Legislature,
9 Regular Session, 2009, providing for filling vacancies in appellate
10 judicial offices by appointment and for nonpartisan retention
11 elections for those offices is approved by the voters. If that
12 amendment is not approved by the voters, this Act has no effect.