

By: Duncan

S.B. No. 2226

A BILL TO BE ENTITLED

AN ACT

1
2 relating to filling vacancies in appellate judicial offices by
3 appointment, partisan elections for all judicial offices, and
4 nonpartisan elections for the retention or rejection for all
5 judicial offices.

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

7 SECTION 1. Subchapter D, Chapter 22, Government Code, is
8 amended by adding Sections 22.303 and 22.304 to read as follows:

9 Sec. 22.303. ELECTION, RETENTION, AND APPOINTMENT OF
10 APPELLATE JUSTICES AND JUDGES. (a) The office of appellate justice
11 or judge is subject to partisan election in accordance with the
12 applicable provisions of the Election Code at the last general
13 election for state and county officers to be held before the date:

14 (1) the term of a justice or judge who was elected in a
15 partisan election or retained in a nonpartisan judicial retention
16 election expires, if the justice or judge does not seek retention;
17 or

18 (2) the initial term of a justice or judge who was
19 appointed expires.

20 (b) In conjunction with the last general election for state
21 and county officers to be held before the end of a term of office to
22 which an appellate justice or judge is elected, and in conjunction
23 with the last general election to be held before the end of each
24 following continuous term in that office, the justice or judge is

1 subject to retention or rejection at the nonpartisan judicial
2 retention election in accordance with Chapter 521, Election Code.

3 (c) If a vacancy occurs in the office of an appellate
4 justice or judge seeking retention and the name of the justice or
5 judge is omitted from the retention election ballot under Chapter
6 521, Election Code, the vacancy shall be filled in the manner
7 prescribed by the Texas Constitution.

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

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

18 (c) If the name of an appellate justice or judge seeking
19 retention appears on the retention election ballot under Chapter
20 521, Election Code, although a vacancy has occurred in the office,
21 the retention election for that office has no effect, and the
22 vacancy shall be filled in the manner prescribed by the Texas
23 Constitution.

24 SECTION 2. Chapter 24, Government Code, is amended by
25 adding Subchapter A-1 to read as follows:

26 SUBCHAPTER A-1. ELECTION AND RETENTION OF DISTRICT JUDGES

27 Sec. 24.051. ELECTION AND RETENTION CYCLE. (a) A district

1 judge is subject to partisan election in accordance with the
2 applicable provisions of the Election Code.

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

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

15 (d) If a vacancy occurs in the office of a district judge
16 seeking retention and the judge's name is omitted from the
17 retention election ballot under Chapter 521, Election Code, the
18 vacancy shall be filled in the manner prescribed by the Texas
19 Constitution.

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

26 (b) If less than a majority of the votes received on the
27 question are for retention, a vacancy in the office exists on the

1 first day of the following January, and the vacancy shall be filled
2 in the manner prescribed by the Texas Constitution.

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

8 SECTION 3. The Election Code is amended by adding Title 18
9 to read as follows:

10 TITLE 18. NONPARTISAN JUDICIAL RETENTION ELECTIONS

11 CHAPTER 521. RETENTION ELECTION

12 Sec. 521.001. DECLARATION OF CANDIDACY. (a) Not later than
13 5 p.m. on December 1 preceding the nonpartisan judicial retention
14 election at which the justice or judge is subject to retention or
15 rejection, a justice or judge who seeks to continue to serve in that
16 office must file with the secretary of state a declaration of
17 candidacy to succeed to the next term.

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

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

26 Sec. 521.002. WITHDRAWAL, DEATH, OR INELIGIBILITY. (a)
27 With respect to withdrawal, death, or ineligibility of a candidate

1 in a nonpartisan judicial retention election, this section
2 supersedes Subchapter A, Chapter 145, to the extent of any
3 conflict.

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

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

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

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

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

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

26 (b) Not later than the 55th day before election day, the
27 secretary of state shall deliver the certification to the authority

1 responsible for having the official ballot prepared in each county
2 in which the candidate's name is to appear on the ballot.

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

6 Sec. 521.004. RETENTION ELECTION BALLOT. The name of the
7 person subject to retention or rejection shall be submitted to the
8 voters on the nonpartisan judicial retention election ballot
9 following the offices subject to election under the heading
10 "Retention of Nonpartisan Judicial Offices," in substantially the
11 following form:

12 "Shall (Justice or Judge)_____

13 _____

14 be retained in office as (justice or judge) of the
15 (name of court)_____?"

16 _____ "Yes"

17 _____ "No"

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

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

27 Sec. 521.006. WRITE-IN VOTING PROHIBITED. Write-in voting

1 is not permitted in a nonpartisan judicial retention election.

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

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

10 Sec. 521.009. ADDITIONAL PROCEDURES. The secretary of
11 state shall prescribe any additional procedures necessary for the
12 orderly and proper administration of elections held under this
13 chapter.

14 SECTION 4. Section 1.005, Election Code, is amended by
15 amending Subdivision (9) and adding Subdivisions (12-a) and (12-b)
16 to read as follows:

17 (9) "Independent candidate" means a candidate in a
18 nonpartisan election or a candidate in a partisan election who is
19 not the nominee of a political party. The term does not include a
20 nonpartisan judicial candidate.

21 (12-a) "Nonpartisan judicial candidate" means a
22 candidate in a nonpartisan judicial retention election.

23 (12-b) "Nonpartisan judicial retention election"
24 means an election held under Title 18.

25 SECTION 5. Section 41.002, Election Code, is amended to
26 read as follows:

27 Sec. 41.002. GENERAL ELECTION FOR STATE AND COUNTY

1 OFFICERS. The general election for state and county officers,
2 including the nonpartisan judicial retention election, shall be
3 held on the first Tuesday after the first Monday in November in
4 even-numbered years.

5 SECTION 6. Section 52.092, Election Code, is amended by
6 amending Subsection (a) and adding Subsections (f-1) and (f-2) to
7 read as follows:

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

- 12 (1) offices of the federal government;
- 13 (2) offices of the state government:
 - 14 (A) statewide offices;
 - 15 (B) district offices;
- 16 (3) offices of the county government:
 - 17 (A) county offices;
 - 18 (B) precinct offices.

19 (f-1) Nonpartisan statewide judicial retention election
20 offices shall be listed in the following order:

- 21 (1) chief justice, supreme court;
- 22 (2) justice, supreme court;
- 23 (3) presiding judge, court of criminal appeals;
- 24 (4) judge, court of criminal appeals;
- 25 (5) chief justice, court of appeals;
- 26 (6) justice, court of appeals.

27 (f-2) Nonpartisan district judicial retention election

1 offices shall be listed in the following order:

- 2 (1) district judge;
- 3 (2) criminal district judge;
- 4 (3) family district judge.

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

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

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

18 SECTION 8. Section 145.005(a), Election Code, is amended to
19 read as follows:

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

24 SECTION 9. Section 202.001, Election Code, is amended to
25 read as follows:

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

1 except the offices of:

2 (1) state senator and state representative; and

3 (2) justice or judge of an appellate or district
4 court.

5 SECTION 10. Section 253.153(a), Election Code, is amended
6 to read as follows:

7 (a) A judicial candidate or officeholder, a
8 specific-purpose committee for supporting or opposing a judicial
9 candidate, or a specific-purpose committee for assisting a judicial
10 officeholder may not knowingly accept a political contribution
11 except during the period:

12 (1) beginning on:

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

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

18 (i) the 210th day before the date an
19 application for a place on the ballot or for nomination by
20 convention for the office is required to be filed, if the election
21 is for a full term; or

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

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

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

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

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

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

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

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

18 (b) Each appellate justice or judge who is in office January
19 1, 2010, is subject to retention or rejection, in the manner
20 provided by law for a justice or judge appointed to the office after
21 the effective date of this Act, at the last general election
22 preceding the expiration of the regular or unexpired term for which
23 each was elected or appointed.

24 SECTION 12. (a) Each district judge in office January 1,
25 2010, unless otherwise removed as provided by law, continues in
26 office for the term to which elected.

27 (b) Each district judge in office January 1, 2010, is

1 subject to retention or rejection, in the manner provided by law, at
2 the general election preceding the expiration of the regular or
3 unexpired term for which each was elected or appointed. A vacancy
4 does not exist in those offices until the expiration of the term of
5 the person who held the office January 1, 2010, or until that person
6 does not hold the office, whichever occurs first.

7 SECTION 13. This Act takes effect only if the
8 constitutional amendment proposed by the 81st Legislature, Regular
9 Session, 2009, for filling vacancies in appellate judicial offices
10 by appointment, for partisan elections for all judicial offices,
11 and for subsequent nonpartisan elections for all judicial offices
12 is adopted. If the amendment is adopted, this Act takes effect
13 January 1, 2010.