

1-1 By: Duncan S.B. No. 2226  
1-2 (In the Senate - Filed March 13, 2009; March 31, 2009, read  
1-3 first time and referred to Committee on State Affairs;  
1-4 April 17, 2009, reported favorably by the following vote: Yeas 5,  
1-5 Nays 1; April 17, 2009, sent to printer.)

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

1-8 relating to filling vacancies in appellate judicial offices by  
1-9 appointment, partisan elections for all judicial offices, and  
1-10 nonpartisan elections for the retention or rejection for all  
1-11 judicial offices.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter D, Chapter 22, Government Code, is  
1-14 amended by adding Sections 22.303 and 22.304 to read as follows:

1-15 Sec. 22.303. ELECTION, RETENTION, AND APPOINTMENT OF  
1-16 APPELLATE JUSTICES AND JUDGES. (a) The office of appellate  
1-17 justice or judge is subject to partisan election in accordance with  
1-18 the applicable provisions of the Election Code at the last general  
1-19 election for state and county officers to be held before the date:

1-20 (1) the term of a justice or judge who was elected in a  
1-21 partisan election or retained in a nonpartisan judicial retention  
1-22 election expires, if the justice or judge does not seek retention;  
1-23 or

1-24 (2) the initial term of a justice or judge who was  
1-25 appointed expires.

1-26 (b) In conjunction with the last general election for state  
1-27 and county officers to be held before the end of a term of office to  
1-28 which an appellate justice or judge is elected, and in conjunction  
1-29 with the last general election to be held before the end of each  
1-30 following continuous term in that office, the justice or judge is  
1-31 subject to retention or rejection at the nonpartisan judicial  
1-32 retention election in accordance with Chapter 521, Election Code.

1-33 (c) If a vacancy occurs in the office of an appellate  
1-34 justice or judge seeking retention and the name of the justice or  
1-35 judge is omitted from the retention election ballot under Chapter  
1-36 521, Election Code, the vacancy shall be filled in the manner  
1-37 prescribed by the Texas Constitution.

1-38 Sec. 22.304. EFFECT OF RETENTION VOTE. (a) If a majority  
1-39 of the votes received on the question are for the retention of the  
1-40 appellate justice or judge, the person is entitled to remain in  
1-41 office for a regular term beginning on the first day of the  
1-42 following January, unless the person becomes ineligible or is  
1-43 removed as provided by law.

1-44 (b) If less than a majority of the votes received on the  
1-45 question are for retention, a vacancy in the office exists on the  
1-46 first day of the following January, and the vacancy shall be filled  
1-47 in the manner prescribed by the Texas Constitution.

1-48 (c) If the name of an appellate justice or judge seeking  
1-49 retention appears on the retention election ballot under Chapter  
1-50 521, Election Code, although a vacancy has occurred in the office,  
1-51 the retention election for that office has no effect, and the  
1-52 vacancy shall be filled in the manner prescribed by the Texas  
1-53 Constitution.

1-54 SECTION 2. Chapter 24, Government Code, is amended by  
1-55 adding Subchapter A-1 to read as follows:

1-56 SUBCHAPTER A-1. ELECTION AND RETENTION OF DISTRICT JUDGES

1-57 Sec. 24.051. ELECTION AND RETENTION CYCLE. (a) A district  
1-58 judge is subject to partisan election in accordance with the  
1-59 applicable provisions of the Election Code.

1-60 (b) In conjunction with the last general election for state  
1-61 and county officers to be held before the end of a term of office to  
1-62 which a district judge is elected, and in conjunction with the last  
1-63 general election to be held before the end of each following  
1-64 continuous term in that office, the judge is subject to retention or

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

2-3 (c) If a district judge does not seek retention, or  
 2-4 withdraws from the retention election, as provided by Chapter 521,  
 2-5 Election Code, the vacancy existing at the beginning of the  
 2-6 succeeding term shall be filled in the manner prescribed by the  
 2-7 Texas Constitution.

2-8 (d) If a vacancy occurs in the office of a district judge  
 2-9 seeking retention and the judge's name is omitted from the  
 2-10 retention election ballot under Chapter 521, Election Code, the  
 2-11 vacancy shall be filled in the manner prescribed by the Texas  
 2-12 Constitution.

2-13 Sec. 24.052. EFFECT OF RETENTION VOTE. (a) If a majority  
 2-14 of the votes received on the question are for the retention of the  
 2-15 district judge, the person is entitled to remain in office for a  
 2-16 regular term of four years beginning on the first day of the  
 2-17 following January, unless the person becomes ineligible or is  
 2-18 removed as provided by law.

2-19 (b) If less than a majority of the votes received on the  
 2-20 question are for retention, a vacancy in the office exists on the  
 2-21 first day of the following January, and the vacancy shall be filled  
 2-22 in the manner prescribed by the Texas Constitution.

2-23 (c) If the name of a district judge seeking retention  
 2-24 appears on the retention election ballot under Chapter 521,  
 2-25 Election Code, although a vacancy has occurred in the office, the  
 2-26 retention election for that office has no effect, and the vacancy  
 2-27 shall be filled in the manner prescribed by the Texas Constitution.

2-28 SECTION 3. The Election Code is amended by adding Title 18  
 2-29 to read as follows:

2-30 TITLE 18. NONPARTISAN JUDICIAL RETENTION ELECTIONS

2-31 CHAPTER 521. RETENTION ELECTION

2-32 Sec. 521.001. DECLARATION OF CANDIDACY. (a) Not later  
 2-33 than 5 p.m. on December 1 preceding the nonpartisan judicial  
 2-34 retention election at which the justice or judge is subject to  
 2-35 retention or rejection, a justice or judge who seeks to continue to  
 2-36 serve in that office must file with the secretary of state a  
 2-37 declaration of candidacy to succeed to the next term.

2-38 (b) A declaration may not be filed earlier than the 30th day  
 2-39 before the date of the filing deadline. A declaration filed by mail  
 2-40 is considered to be filed at the time of its receipt by the  
 2-41 appropriate authority.

2-42 (c) The filling of the subsequent vacancy for the office for  
 2-43 which a declaration of candidacy is not filed is covered by Section  
 2-44 22.303, Government Code, for an appellate justice or judge or  
 2-45 Chapter 24, Government Code, for the office of district judge.

2-46 Sec. 521.002. WITHDRAWAL, DEATH, OR INELIGIBILITY.

2-47 (a) With respect to withdrawal, death, or ineligibility of a  
 2-48 candidate in a nonpartisan judicial retention election, this  
 2-49 section supersedes Subchapter A, Chapter 145, to the extent of any  
 2-50 conflict.

2-51 (b) A candidate may not withdraw from the retention election  
 2-52 after the 65th day before election day.

2-53 (c) A withdrawal request must be filed with the authority  
 2-54 with whom the withdrawing candidate's declaration of candidacy is  
 2-55 required to be filed.

2-56 (d) A candidate's name shall be omitted from the retention  
 2-57 election ballot if the candidate withdraws, dies, or is declared  
 2-58 ineligible on or before the 65th day before election day.

2-59 (e) If a candidate who has made a declaration of candidacy  
 2-60 that complies with the applicable requirements dies or is declared  
 2-61 ineligible after the 65th day before election day, the candidate's  
 2-62 name shall be placed on the retention election ballot.

2-63 (f) The filling of the subsequent vacancy for the office  
 2-64 following implementation of Subsection (d) or (e) is covered by  
 2-65 Section 22.303, Government Code, for an appellate justice or judge  
 2-66 or Chapter 24, Government Code, for the office of district judge.

2-67 Sec. 521.003. CERTIFICATION OF NAMES FOR PLACEMENT ON  
 2-68 RETENTION ELECTION BALLOT. (a) Except as provided by Subsection  
 2-69 (c), the secretary of state shall certify in writing for placement

3-1 on the nonpartisan judicial retention election ballot the name of  
3-2 each candidate who files with the secretary a declaration of  
3-3 candidacy that complies with Section 521.001.

3-4 (b) Not later than the 55th day before election day, the  
3-5 secretary of state shall deliver the certification to the authority  
3-6 responsible for having the official ballot prepared in each county  
3-7 in which the candidate's name is to appear on the ballot.

3-8 (c) A candidate's name may not be certified if, before  
3-9 delivering the certification, the secretary of state learns that  
3-10 the name is to be omitted from the ballot under Section 521.002.

3-11 Sec. 521.004. RETENTION ELECTION BALLOT. The name of the  
3-12 person subject to retention or rejection shall be submitted to the  
3-13 voters on the nonpartisan judicial retention election ballot  
3-14 following the offices subject to election under the heading  
3-15 "Retention of Nonpartisan Judicial Offices," in substantially the  
3-16 following form:

3-17 "Shall (Justice or Judge) \_\_\_\_\_  
3-18 \_\_\_\_\_  
3-19 be retained in office as (justice or judge) of the  
3-20 (name of court) \_\_\_\_\_?"

3-21 "Yes"

3-22 "No"

3-23 Sec. 521.005. GENERAL PROCEDURE FOR CONDUCT OF RETENTION  
3-24 ELECTION. (a) Except as otherwise provided by this code, the  
3-25 nonpartisan judicial retention election shall be conducted and the  
3-26 results canvassed, tabulated, and reported in the manner applicable  
3-27 to partisan offices in the general election for state and county  
3-28 officers.

3-29 (b) A certificate of election shall be issued to a retained  
3-30 officer in the same manner as provided for a candidate elected to an  
3-31 office.

3-32 Sec. 521.006. WRITE-IN VOTING PROHIBITED. Write-in voting  
3-33 is not permitted in a nonpartisan judicial retention election.

3-34 Sec. 521.007. POLITICAL CONTRIBUTIONS AND EXPENDITURES. A  
3-35 candidate for retention of a judicial office is subject to Title 15  
3-36 and shall comply with that title in the same manner as a candidate  
3-37 for election to the office.

3-38 Sec. 521.008. APPLICABILITY OF OTHER PARTS OF CODE. The  
3-39 other titles of this code apply to a nonpartisan judicial retention  
3-40 election except provisions that are inconsistent with this title or  
3-41 that cannot feasibly be applied in a retention election.

3-42 Sec. 521.009. ADDITIONAL PROCEDURES. The secretary of  
3-43 state shall prescribe any additional procedures necessary for the  
3-44 orderly and proper administration of elections held under this  
3-45 chapter.

3-46 SECTION 4. Section 1.005, Election Code, is amended by  
3-47 amending Subdivision (9) and adding Subdivisions (12-a) and (12-b)  
3-48 to read as follows:

3-49 (9) "Independent candidate" means a candidate in a  
3-50 nonpartisan election or a candidate in a partisan election who is  
3-51 not the nominee of a political party. The term does not include a  
3-52 nonpartisan judicial candidate.

3-53 (12-a) "Nonpartisan judicial candidate" means a  
3-54 candidate in a nonpartisan judicial retention election.

3-55 (12-b) "Nonpartisan judicial retention election"  
3-56 means an election held under Title 18.

3-57 SECTION 5. Section 41.002, Election Code, is amended to  
3-58 read as follows:

3-59 Sec. 41.002. GENERAL ELECTION FOR STATE AND COUNTY  
3-60 OFFICERS. The general election for state and county officers,  
3-61 including the nonpartisan judicial retention election, shall be  
3-62 held on the first Tuesday after the first Monday in November in  
3-63 even-numbered years.

3-64 SECTION 6. Section 52.092, Election Code, is amended by  
3-65 amending Subsection (a) and adding Subsections (f-1) and (f-2) to  
3-66 read as follows:

3-67 (a) For an election at which offices regularly filled at the  
3-68 general election for state and county officers, including the  
3-69 nonpartisan judicial retention election, are to appear on the

- 4-1 ballot, the offices shall be listed in the following order:
- 4-2 (1) offices of the federal government;
- 4-3 (2) offices of the state government:
- 4-4 (A) statewide offices;
- 4-5 (B) district offices;
- 4-6 (3) offices of the county government:
- 4-7 (A) county offices;
- 4-8 (B) precinct offices.

4-9 (f-1) Nonpartisan statewide judicial retention election  
 4-10 offices shall be listed in the following order:

- 4-11 (1) chief justice, supreme court;
- 4-12 (2) justice, supreme court;
- 4-13 (3) presiding judge, court of criminal appeals;
- 4-14 (4) judge, court of criminal appeals;
- 4-15 (5) chief justice, court of appeals;
- 4-16 (6) justice, court of appeals.

4-17 (f-2) Nonpartisan district judicial retention election  
 4-18 offices shall be listed in the following order:

- 4-19 (1) district judge;
- 4-20 (2) criminal district judge;
- 4-21 (3) family district judge.

4-22 SECTION 7. Subsection (b), Section 145.003, Election Code,  
 4-23 is amended to read as follows:

4-24 (b) A candidate in the general election for state and county  
 4-25 officers, including the nonpartisan judicial retention election,  
 4-26 may be declared ineligible before the 30th day preceding election  
 4-27 day by:

- 4-28 (1) the party officer responsible for certifying the  
 4-29 candidate's name for placement on the general election ballot, in  
 4-30 the case of a candidate who is a political party's nominee; or
- 4-31 (2) the authority with whom the candidate's  
 4-32 application for a place on the ballot or declaration of candidacy is  
 4-33 required to be filed, in the case of an independent candidate or a  
 4-34 nonpartisan judicial candidate, as applicable.

4-35 SECTION 8. Subsection (a), Section 145.005, Election Code,  
 4-36 is amended to read as follows:

4-37 (a) If the name of a deceased or ineligible candidate  
 4-38 appears on the ballot [~~under this chapter~~], the votes cast for the  
 4-39 candidate shall be counted and entered on the official election  
 4-40 returns in the same manner as for the other candidates.

4-41 SECTION 9. Section 202.001, Election Code, is amended to  
 4-42 read as follows:

4-43 Sec. 202.001. APPLICABILITY OF CHAPTER. This chapter  
 4-44 applies to elective offices of the state and county governments  
 4-45 except the offices of:

- 4-46 (1) state senator and state representative; and
- 4-47 (2) justice or judge of an appellate or district  
 4-48 court.

4-49 SECTION 10. Subsection (a), Section 253.153, Election Code,  
 4-50 is amended to read as follows:

4-51 (a) A judicial candidate or officeholder, a  
 4-52 specific-purpose committee for supporting or opposing a judicial  
 4-53 candidate, or a specific-purpose committee for assisting a judicial  
 4-54 officeholder may not knowingly accept a political contribution  
 4-55 except during the period:

- 4-56 (1) beginning on:
- 4-57 (A) if the office is subject to a nonpartisan  
 4-58 judicial retention election, the 210th day before the date a  
 4-59 declaration of candidacy is required to be filed; or
- 4-60 (B) if the office is not subject to a nonpartisan  
 4-61 judicial retention election:

4-62 (i) the 210th day before the date an  
 4-63 application for a place on the ballot or for nomination by  
 4-64 convention for the office is required to be filed, if the election  
 4-65 is for a full term; or

4-66 (ii) [~~(B)~~] the later of the 210th day  
 4-67 before the date an application for a place on the ballot or for  
 4-68 nomination by convention for the office is required to be filed or  
 4-69 the date a vacancy in the office occurs, if the election is for an

5-1 unexpired term; and  
 5-2 (2) ending on the 120th day after the date of:  
 5-3 (A) the general election for state and county  
 5-4 officers, if:  
 5-5 (i) the office is subject to a nonpartisan  
 5-6 judicial retention election; or  
 5-7 (ii) the candidate or officeholder has an  
 5-8 opponent in the general election;  
 5-9 (B) except as provided by Subsection (c), the  
 5-10 runoff primary election, if the candidate or officeholder is a  
 5-11 candidate in the runoff primary election and does not have an  
 5-12 opponent in the general election; or  
 5-13 (C) except as provided by Subsection (c), the  
 5-14 general primary election, if the candidate or officeholder is not a  
 5-15 candidate in the runoff primary election and does not have an  
 5-16 opponent in the general election.

5-17 SECTION 11. (a) Each appellate justice or judge in office  
 5-18 January 1, 2010, unless otherwise removed as provided by law,  
 5-19 continues in office subject to this section.

5-20 (b) Each appellate justice or judge who is in office January  
 5-21 1, 2010, is subject to retention or rejection, in the manner  
 5-22 provided by law for a justice or judge appointed to the office after  
 5-23 the effective date of this Act, at the last general election  
 5-24 preceding the expiration of the regular or unexpired term for which  
 5-25 each was elected or appointed.

5-26 SECTION 12. (a) Each district judge in office January 1,  
 5-27 2010, unless otherwise removed as provided by law, continues in  
 5-28 office for the term to which elected.

5-29 (b) Each district judge in office January 1, 2010, is  
 5-30 subject to retention or rejection, in the manner provided by law, at  
 5-31 the general election preceding the expiration of the regular or  
 5-32 unexpired term for which each was elected or appointed. A vacancy  
 5-33 does not exist in those offices until the expiration of the term of  
 5-34 the person who held the office January 1, 2010, or until that person  
 5-35 does not hold the office, whichever occurs first.

5-36 SECTION 13. This Act takes effect only if the  
 5-37 constitutional amendment proposed by the 81st Legislature, Regular  
 5-38 Session, 2009, for filling vacancies in appellate judicial offices  
 5-39 by appointment, for partisan elections for all judicial offices,  
 5-40 and for subsequent nonpartisan elections for all judicial offices  
 5-41 is adopted. If the amendment is adopted, this Act takes effect  
 5-42 January 1, 2010.

5-43 \* \* \* \* \*