

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 8, 2009**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: SB2226** by Duncan (Relating to filling vacancies in appellate judicial offices by appointment, partisan elections for all judicial offices, and nonpartisan elections for the retention or rejection for all judicial offices.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB2226, As Introduced: a negative impact of (\$883,125) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2010	(\$883,125)
2011	\$0
2012	(\$892,500)
2013	\$0
2014	(\$885,000)

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Savings/(Cost) from General Revenue Fund 1</b>
2010	(\$883,125)
2011	\$0
2012	(\$892,500)
2013	\$0
2014	(\$885,000)

**Fiscal Analysis**

The bill would amend the Government Code and the Election Code relating to filling vacancies in appellate judicial offices by appointment, partisan elections for all judicial offices, and nonpartisan elections for the retention or rejection for all judicial offices. The bill would change certain definitions, filing date deadlines, procedures, and requirements for the election, retention, and appointment of appellate justices and judges as well as district court judges.

The bill would require the justices and judges in the state's appellate courts (including the Supreme Court and Court of Criminal Appeals) along with the state's district judges to be elected initially in a partisan election. At the end of each justice's or judge's initial term of office, the justice or judge would be subject to a nonpartisan retention election. Under provisions of the bill, if the justice or judge

receives a majority of the votes cast in the retention election that justice or judge is entitled to remain in office for a regular term beginning the first day of the following January. If the justice or judge does not receive a majority of the votes in the retention election than a vacancy in the office exists the first day of the following January, and the office would be filled by partisan election.

The bill also requires a justice or judge subject to retention or rejection who seeks to continue to serve in that office to file a declaration of candidacy with the Secretary of State not later than 5 p.m. on December 1 preceding the nonpartisan judicial retention election. A declaration may not be filed earlier than the 30th day preceding the filing deadline date. Under the bill, a candidate would be prohibited from withdrawing from the nonpartisan judicial retention election after the 65th day preceding an election.

The bill requires the Secretary of State to prescribe any additional procedures needed for the orderly and proper administration of elections under the chapters affected by this bill.

The bill amends the Election Code to prohibit the acceptance of political contributions by judicial candidates or officeholders, specific-purpose committees for supporting or opposing a judicial candidate, or a specific-purpose committee for assisting a judicial officeholder, starting on the 210th day before the date a declaration of candidacy must be filed if the office is subject to a nonpartisan judicial retention election.

The bill would take effect only if the constitutional amendment proposed by the Eighty-first Legislature, Regular Session, 2009 (Senate Joint Resolution 44 or similar legislation), for filling vacancies in appellate judicial offices by appointment, for partisan elections for all judicial offices, and for subsequent nonpartisan elections for all judicial offices is adopted by voters. If the constitutional amendment is adopted, the bill would take effect January 1, 2010.

## **Methodology**

According to the Secretary of State's Office, the agency will lose filing fees to assist with the cost of holding primary elections if the bill is enacted because incumbent judges that run for retention election would not pay a filing fee. This estimate assumes that all appellate justices and judges along with district court judges will run for retention election. This estimate also assumes from past analysis conducted by the Secretary of State's Office that approximately one half of justices and judges on the ballot draw an opponent; accordingly, the estimate assumes the loss of opponent filing fee revenue in half the judicial races.

For statewide races (the Supreme Court and the Court of Criminal Appeals), the filing fee is \$3,750. There are differing filing fees paid by justices and challengers running for office at the state's 14 intermediate courts of appeals: \$2,500 or \$1,875, depending on the size of the jurisdiction. At the district court level, filing fees are \$2,500 or \$1,500, depending on the size of the jurisdiction.

For fiscal year 2010, the estimate assumes that 6 justices and judges (3 from the Supreme Court and 3 from the Court of Criminal Appeals) would draw 3 opponents, or total of 9 candidates. A total of 9 candidates times a \$3,750 filing fee represents an estimated revenue loss of \$33,750. The estimate assumes 12 justices at the state's intermediate appellate courts would draw 6 challengers totaling 18 candidates; multiplied times the \$2,500 filing fee results in an estimated revenue loss of \$45,000. It is also assumed that 6 justices at the intermediate appellate courts would draw 3 opponents totaling 9 candidates; multiplied times a \$1,875 filing fee results in an estimated revenue loss of \$16,875. For district judges, it is assumed that 162 district judges would draw 81 challengers totaling 243 candidates; multiplied times a \$2,500 filing fee results in an estimated revenue loss of \$607,500. It is also assumed that 80 district judges would draw 40 opponents totaling 120 candidates; multiplied times a \$1,500 filing fee results in an estimated revenue loss of \$180,000. Total estimated revenue loss for fiscal year 2010 is \$883,125.

Using similar assumptions and the election cycle of 6 years for the appellate judges and justices and 4 years for the district judges, the estimated revenue loss for fiscal year 2012 is \$892,500 and the estimated revenue loss for fiscal year 2014 is \$885,000.

## **Local Government Impact**

Local governments would have to change procedures and forms for holding judicial elections, which would result in additional costs; however according to the Texas Association of Counties, those costs are not anticipated to be significant.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 307 Secretary of State

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