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S.B. 1718
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1718 promotes independence and stability in the judiciary, and reduces the influence of fundraising in judicial campaigns. This bill adds nonpartisan retention elections to the current electoral process for all courts.

Under current law, when a vacancy occurs, the governor appoints a judge for the remainder of the vacated term. Upon appointment, the judge or justice faces a partisan election at the next succeeding general election, which does not necessarily coincide with the end of the vacated term. This system would continue under S.B. 1718, except that once elected, the judge or justice would face a nonpartisan retention election at the end of the term and at each succeeding election. The bill provides that all currently elected judges and justices would face a nonpartisan retention election at their regularly scheduled election. The bill also authorizes the senate to adopt a rule to address interim confirmations.

As proposed, S.B. 1718 amends current law 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.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter D, Chapter 22, Government Code, by adding Sections 22.303 and 22.304, as follows:

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

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

(2) the initial term, including a partial term, of a justice or judge who was appointed expires.

(b) Provides that, 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 an appellate justice or judge is elected, and in conjunction with the last general election to be held before the end of each following continuous term in that office, the justice or judge is subject to retention or rejection at the nonpartisan judicial retention election in accordance with Chapter 521, Election Code.

(c) Requires that the vacancy existing at the beginning of the succeeding term, if an appellate justice or judge does not seek retention, or withdraws from the retention election, as provided by Chapter 521, Election Code, be filled in the manner prescribed by the constitution.

(d) Requires that a vacancy, if the vacancy occurs in the office of an appellate justice or judge seeking retention and the name of the justice or judge is omitted from the retention election ballot under Chapter 521, Election Code, be filled in the manner prescribed by the constitution.

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

(b) Provides that, if less than a majority of the votes received on the question are for retention, a vacancy in the office exists on the first day of the following January, and the vacancy is required to be filled in the manner prescribed by the constitution.

(c) Provides that if the name of an appellate justice or judge seeking retention appears on the retention election ballot under Chapter 521, Election Code, although a vacancy has occurred in the office, the retention election for that office has no effect, and the vacancy is required to be filled in the manner prescribed by the constitution.

SECTION 2. Amends Chapter 24, Government Code, by adding Subchapter A-1, as follows:

SUBCHAPTER A-1. ELECTION AND RETENTION OF DISTRICT JUDGES

Sec. 24.051. ELECTION AND RETENTION CYCLE. (a) Provides that a district judge is subject to partisan election in accordance with the applicable provisions of the Election Code at the last general election for state and county officers to be held before the date:

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

(2) the initial term, including a partial term, of a judge who was appointed expires.

(b) Provides that, 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 district judge is elected, and in conjunction with the last general election to be held before the end of each following continuous term in that office, the judge is subject to retention or rejection at the nonpartisan judicial retention election in accordance with Chapter 521, Election Code.

(c) Requires that the vacancy existing at the beginning of the succeeding term, if a district judge does not seek retention, or withdraws from the retention election, as provided by Chapter 521, Election Code, be filled in the manner prescribed by the constitution.

(d) Requires that a vacancy, if a vacancy occurs in the office of a district judge seeking retention and the judge's name is omitted from the retention election ballot under Chapter 521, Election Code, be filled in the manner prescribed by the constitution.

Sec. 24.052. EFFECT OF RETENTION VOTE. (a) Entitles a person, if a majority of the votes received on the question are for the retention of the district judge, to remain in office for a

regular term of four years beginning on the first day of the following January, unless the person becomes ineligible or is removed as provided by law.

(b) Provides that, if less than a majority of the votes received on the question are for retention, a vacancy in the office exists on the first day of the following January, and the vacancy is required to be filled in the manner prescribed by the constitution.

(c) Provides that if the name of a district judge seeking retention appears on the retention election ballot under Chapter 521, Election Code, although a vacancy has occurred in the office, the retention election for that office has no effect, and the vacancy is required to be filled in the manner prescribed by the constitution.

SECTION 3. Amends the Election Code by adding Title 18, as follows:

TITLE 18. NONPARTISAN JUDICIAL RETENTION ELECTIONS

CHAPTER 521. RETENTION ELECTION

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

(b) Prohibits a declaration from being filed earlier than the 30th day before the date of the filing deadline. Provides that a declaration filed by mail is considered to be filed at the time of its receipt by the appropriate authority.

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

Sec. 521.002. WITHDRAWAL, DEATH, OR INELIGIBILITY. (a) Provides that, with respect to withdrawal, death, or ineligibility of a candidate in a nonpartisan judicial retention election, this section supersedes Subchapter A (General Provisions), Chapter 145 (Withdrawal, Death and Ineligibility of Candidate), to the extent of any conflict.

(b) Prohibits a candidate from withdrawing from the retention election after the 74th day before election day.

(c) Requires that a withdrawal request be filed with the authority with whom the withdrawing candidate's declaration of candidacy is required to be filed.

(d) Requires that a candidate's name be omitted from the retention election ballot if the candidate withdraws, dies, or is declared ineligible on or before the 74th day before election day.

(e) Requires that the candidate's name, if the candidate who has made a declaration of candidacy that complies with the applicable requirements dies or is declared ineligible after the 74th day before election day, be placed on the retention election ballot.

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

Sec. 521.003. CERTIFICATION OF NAMES FOR PLACEMENT ON RETENTION ELECTION BALLOT. (a) Requires SOS, except as provided by Subsection (c), to

certify in writing for placement on the nonpartisan judicial retention election ballot the name of each candidate who files with SOS a declaration of candidacy that complies with Section 521.001.

(b) Requires SOS not later than the 62nd day before election day, to deliver the certification to the authority responsible for having the official ballot prepared in each county in which the candidate's name is to appear on the ballot.

(c) Prohibits a candidate's name from being certified if, before delivering the certification, SOS learns that the name is to be omitted from the ballot under Section 521.002.

Sec. 521.004. RETENTION ELECTION BALLOT. Requires that the name of the person subject to retention or rejection be submitted to the voters on the nonpartisan judicial retention election ballot following the offices subject to election under the heading "Retention of Nonpartisan Judicial Offices," in a certain form. Sets forth the form of the ballot.

Sec. 521.005. GENERAL PROCEDURE FOR CONDUCT OF RETENTION ELECTION. (a) Requires that the nonpartisan judicial retention election, except as otherwise provided by this code, be conducted and the results canvassed, tabulated, and reported in the manner applicable to partisan offices in the general election for state and county officers.

(b) Requires that a certificate of election be issued to a retained officer in the same manner as provided for a candidate elected to an office.

Sec. 521.006. WRITE-IN VOTING PROHIBITED. Provides that write-in voting is not permitted in a nonpartisan judicial retention election.

Sec. 521.007. POLITICAL CONTRIBUTIONS AND EXPENDITURES. Provides that a candidate for retention of a judicial office is subject to Title 15 (Regulating Political Funds and Campaigns) and is required to comply with that title in the same manner as a candidate for election to the office.

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

Sec. 521.009. ADDITIONAL PROCEDURES. Requires SOS to prescribe any additional procedures necessary for the orderly and proper administration of elections held under this chapter.

SECTION 4. Amends Section 1.005, Election Code, by amending Subdivision (9) and adding Subdivisions (12-a) and (12-b) to redefine "independent candidate" and define "nonpartisan judicial candidate" and "nonpartisan judicial retention election," respectively.

SECTION 5. Amends Section 41.002, Election Code, to require that the general election for state and county officers, including the nonpartisan judicial retention election, be held on the first Tuesday after the first Monday in November in even-numbered years.

SECTION 6. Amends Section 52.092, Election Code, by amending Subsection (a) and adding Subsections (f-1) and (f-2), as follows:

(a) Requires that the offices, 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, 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.

(f-1) Requires that nonpartisan statewide judicial retention election offices be listed in the following order:

    (1) chief justice, supreme court;

    (2) justice, supreme court;

    (3) presiding judge, court of criminal appeals;

    (4) judge, court of criminal appeals;

    (5) chief justice, court of appeals;

    (6) justice, court of appeals.

(f-2) Requires that nonpartisan district judicial retention election offices be listed in the following order:

    (1) district judge;

    (2) criminal district judge;

    (3) family district judge.

SECTION 7. Amends Section 145.003(b), Election Code, as follows:

(b) Authorizes a candidate in the general election for state and county officers, including the nonpartisan judicial retention election, to be declared ineligible before the 30th day preceding election day by:

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

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

SECTION 8. Amends Section 145.005(a), Election Code, to require that the votes cast for the candidate, if the name of a deceased or ineligible candidate appears on the ballot, rather than appears on the ballot under this chapter, be counted and entered on the official election returns in the same manner as for other candidates.

SECTION 9. Amends Section 202.001, Election Code, as follows:

Sec. 202.001. APPLICABILITY OF CHAPTER. Provides that this chapter applies to elective offices of the state and county governments except the offices of:

(1) state senator and state representative; and

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

SECTION 10. Amends Section 253.153(a), Election Code, as follows:

(a) Prohibits a judicial candidate or officeholder, a specific-purpose committee for supporting or opposing a judicial candidate, or a specific-purpose committee for assisting a judicial officeholder from knowingly accepting a political contribution except during the period:

(1) beginning on:

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

(B) if the office is not subject to a nonpartisan judicial retention election 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, if the election is for a full term; or 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 the election in which the candidate or officeholder last appeared on the ballot, regardless of whether the candidate or officeholder has an opponent in that election.

Makes a nonsubstantive change.

SECTION 11. (a) Provides that each appellate justice or judge in office January 1, 2012, unless otherwise removed as provided by law, continues in office subject to this section.

(b) Provides that each appellate justice or judge who is in office January 1, 2012, is subject to retention or rejection, in the manner provided by law for a justice or judge appointed to the office after the effective date of this Act, at the last general election preceding the expiration of the regular or unexpired term for which each was elected or appointed.

SECTION 12. (a) Provides that each district judge in office January 1, 2012, unless otherwise removed as provided by law, continues in office subject to this section.

(b) Provides that each district judge in office January 1, 2012, is subject to retention or rejection, in the manner provided by law, at the general election preceding the expiration of the regular or unexpired term for which each was elected or appointed. Provides that a vacancy does not exist in those offices until the expiration of the term of the person who held the office January 1, 2012, or until that person does not hold the office, whichever occurs first.

SECTION 13. Effective date: January 1, 2012, contingent upon approval by the voters of the constitutional amendment relating to providing for appointment to fill vacancies in the offices of the justices and judges of the appellate courts, for partisan elections for all judicial offices, and for subsequent nonpartisan retention elections for all judicial offices.