

BILL ANALYSIS

C.S.H.B. 137
By: Dutton
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the current process for filling certain vacancies in a nomination for a state or county officer does not allow all members of the respective political party to voice input through the normal democratic election process. C.S.H.B. 137 seeks to address this issue by requiring a special primary election in the event of such a vacancy.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 137 amends the Election Code to require a political party, if a candidate's name is to be omitted from the ballot because of the candidate's death and the candidate would have been unopposed in the general election, to conduct a special primary election in accordance with the bill's provisions to fill the vacancy in the party's nomination of a candidate for the general election. The bill requires such an election to be ordered by the state chair of the political party if the vacancy in nomination is for a statewide or district office or the county chair of the political party if the vacancy in nomination is for a county or precinct office. The bill revises statutory provisions relating to the certification of the replacement nominee for placement on the ballot to reflect the special primary election process, as applicable, and specifies that if the certification is not delivered to the appropriate entities by 5 p.m. of the 71st day before election day the certification must be delivered as soon as practicable after that time.

C.S.H.B. 137 requires the state executive committee of each political party holding a primary election to adopt rules for the holding of a special primary election to fill a vacancy in a nomination in which the candidate would have been unopposed in the general election but for the candidate's death. The bill requires the rules, to the extent possible, to incorporate statutory provisions relating to primary elections and to provide for a ranking system of candidates so that the majority vote requirement can be met through a single election. The bill exempts a special primary election from statutory requirements relating to uniform election dates.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 137 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

SECTION 1. Section 145.036, Election Code, is amended to read as follows:

Sec. 145.036. FILLING VACANCY IN NOMINATION BY SPECIAL PRIMARY

ELECTION. (a) Except as provided by Subsection (b), if a candidate's name is to be omitted from the ballot under Section 145.035, the political party shall conduct a special primary election in accordance with Section 172.005 [party's state, district, county, or precinct executive committee, as appropriate for the particular office, may nominate a replacement candidate] to fill the vacancy in the nomination.

(b) A political party [An executive committee] may conduct a special primary election [make a replacement nomination] following a withdrawal only if:

(1) the candidate:

(A) withdraws because of a catastrophic illness that was diagnosed after the first day after the date of the regular filing deadline for the general primary election and the illness would permanently and continuously incapacitate the candidate and prevent the candidate from performing the duties of the office sought; and

(B) files with the withdrawal request a certificate describing the illness and signed by at least two licensed physicians;

(2) no political party that held primary elections has a nominee for the office sought by the withdrawing candidate as of the time of the withdrawal; or

(3) the candidate has been elected or appointed to fill a vacancy in another elective office or has become the nominee for another office.

(c) Under the circumstances described by Subsection (b)(2), [the appropriate executive committee of] each political party making

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. The heading to Section 145.036, Election Code, is amended to read as follows:

Sec. 145.036. FILLING VACANCY IN NOMINATION: GENERAL RULE.

SECTION 2. Section 145.036(a), Election Code, is amended to read as follows:

(a) Except as provided by Subsection (b), if a candidate's name is to be omitted from the ballot under Section 145.035 and Section 145.0361 does not apply, the political party's state, district, county, or precinct executive committee, as appropriate for the particular office, may nominate a replacement candidate to fill the vacancy in the nomination.

nominations for the general election for state and county officers may hold a special primary election [~~make a replacement nomination~~] for the office sought by the withdrawing candidate.

(See Sec. 145.036(d) below.)

(d) A special primary election held to fill a vacancy in a nomination shall be ordered by:

(1) the state chair of the political party if the vacancy in nomination is for a statewide or district office; or

(2) the county chair of the political party if the vacancy in nomination is for a county or precinct office. [For the purpose of filling a vacancy, a majority of the committee's membership constitutes a quorum. To be nominated, a person must receive a favorable vote of a majority of the members present.]

~~[(e) A vacancy in a nomination for a district, county, or precinct office that was made by primary election may not be filled before the beginning of the term of office of the county executive committee members elected in the year in which the vacancy occurs.]~~

SECTION 2. Sections 145.037(a), (c), and (e), Election Code, are amended to read as follows:

(a) For the name of a replacement nominee chosen at a special primary election to be placed on the general election ballot, the chair ordering the special primary election [~~of the executive committee making the replacement nomination~~] must certify in writing the nominee's name for placement

SECTION 3. Subchapter B, Chapter 145, Election Code, is amended by adding Section 145.0361 to read as follows:

Sec. 145.0361. FILLING VACANCY IN NOMINATION CAUSED BY DEATH OF CANDIDATE IN UNOPPOSED RACE.

(a) If a candidate's name is to be omitted from the ballot under Section 145.035 because of the candidate's death and the candidate would have been unopposed in the general election, the political party shall conduct a special primary election in accordance with Section 172.005 to fill the vacancy in the party's nomination of a candidate for the general election.

(b) A special primary election held to fill a vacancy in a nomination under this section shall be ordered by:

(1) the state chair of the political party if the vacancy in nomination is for a statewide or district office; or

(2) the county chair of the political party if the vacancy in nomination is for a county or precinct office.

SECTION 4. Sections 145.037(a), (c), and (e), Election Code, are amended to read as follows:

(a) For the name of a replacement nominee to be placed on the general election ballot, the chair of the executive committee making the replacement nomination or ordering the special primary election must certify in writing the nominee's name for placement on the ballot as provided by this section.

on the ballot as provided by this section.

(c) In addition to the name of the replacement nominee, the certification must include:

- (1) the replacement nominee's residence address and mailing address, if different from the residence address;
- (2) the name of the original nominee;
- (3) the office sought, including any place number or other distinguishing number;
- (4) the cause of the vacancy; and
- (5) the date and result of the special primary election [an identification of the executive committee making the replacement nomination; and
- ~~[(6) the date of the replacement nomination].~~

(e) The certification must be delivered not later than 5 p.m. of the 71st day before election day or as soon as practicable after that time.

No equivalent provision.

No equivalent provision.

SECTION 3. Subchapter A, Chapter 172, Election Code, is amended by adding Section 172.005 to read as follows:

Sec. 172.005. SPECIAL PRIMARY ELECTION. (a) The state executive committee of each political party holding a primary election shall adopt rules for the holding of a special primary election to fill a vacancy in a nomination under Section 145.036. To the extent possible, the rules shall incorporate the provisions of this chapter and shall provide for a ranking system of candidates so that the majority vote requirement can be met through a

(c) In addition to the name of the replacement nominee, the certification must include:

- (1) the replacement nominee's residence address and mailing address, if different from the residence address;
- (2) the name of the original nominee;
- (3) the office sought, including any place number or other distinguishing number;
- (4) the cause of the vacancy;
- (5) the date and result of the special primary election or an identification of the executive committee making the replacement nomination, as applicable; and
- (6) the date of the replacement nomination, if applicable.

(e) The certification must be delivered not later than 5 p.m. of the 71st day before election day or as soon as practicable after that time.

SECTION 5. Section 145.038(a), Election Code, is amended to read as follows:

(a) If a political party's district executive committee is required ~~[fails]~~ to nominate a replacement candidate to fill a vacancy in a nomination for a district office under Section 145.036 and fails to do so, the state executive committee may nominate a candidate to fill the vacancy.

SECTION 6. Section 171.054(e), Election Code, is amended to read as follows:

(e) For the purposes of filling a vacancy in a nomination under Section 145.036, the state chair shall canvass the votes of the district executive committee when meeting separately in each county and make the certification required by Section 145.037.

SECTION 7. Subchapter A, Chapter 172, Election Code, is amended by adding Section 172.005 to read as follows:

Sec. 172.005. SPECIAL PRIMARY ELECTION. (a) The state executive committee of each political party holding a primary election shall adopt rules for the holding of a special primary election to fill a vacancy in a nomination under Section 145.0361. To the extent possible, the rules shall incorporate the provisions of this chapter and shall provide for a ranking system of candidates so that the majority vote requirement can be met through a

single election.

(b) A special primary election is not subject to the requirements of Section 41.001(a).

SECTION 4. Section 572.027(d), Government Code, is amended to read as follows:

(d) An individual nominated to fill a vacancy in a nomination as a candidate for a position as an elected officer under Chapter 145, Election Code, shall file the financial statement not later than the 15th day after the date the certificate of nomination required by Section 145.037 [~~or 145.038~~], Election Code, is filed.

SECTION 5. Sections 145.038 and 171.054(e), Election Code, are repealed.

SECTION 6. This Act takes effect September 1, 2017.

single election.

(b) A special primary election is not subject to the requirements of Section 41.001(a).

No equivalent provision.

No equivalent provision.

SECTION 8. Same as introduced version.