

## **BILL ANALYSIS**

C.S.H.B. 543  
By: Raney  
Elections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Concerned observers note several state electors in a recent presidential election declared their intention to vote for individuals other than the political party nominees who won the statewide popular vote. C.S.H.B. 543 seeks to address this issue by requiring presidential electors in Texas to vote in alignment with the applicable political party.

### **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. 543 amends the Election Code to require a person, to be eligible to serve as a presidential elector, to meet all eligibility requirements provided by statutory provisions relating to presidential electors and, if representing a political party, all eligibility requirements provided by party rules. The bill replaces the requirement for a person, to become a presidential elector candidate, to be nominated as a political party's elector candidate in accordance with party rules or named as an elector candidate by an independent or write-in candidate for president with the requirement for the state chair of a political party contesting a presidential elector position in Texas in accordance with the method of becoming an elector candidate and party rules or an independent or write-in candidate for president to submit to the secretary of state the names of two qualified individuals for each presidential elector position in Texas. The bill requires one of the individuals to be designated "elector nominee" and the other individual to be designated "alternate elector nominee." The bill requires each political party that holds a national presidential nominating convention to adopt rules providing for the selection of elector nominees and alternate elector nominees. The bill requires the rules to provide that a presidential nominee of that party, not later than the close of the national presidential nominating convention, is required to provide a list of persons eligible for nomination as alternate elector nominee to the state chair of the political party. The bill requires the state chair to forward the names of these individuals to the secretary of state as the party's nominees for alternate elector nominee. The bill requires the party rules to provide an alternate method of selection of alternate elector nominees if the presidential nominee does not timely provide the list and requires any vacancy to be filled as prescribed by statutory provisions relating to an elector vacancy.

C.S.H.B. 543 sets out provisions relating to the execution before a notary of a pledge by each elector nominee and alternate elector nominee of a political party or of an independent or write-in presidential candidate affirming the elector's agreement to serve and intention to mark

the nominee's ballot for the applicable nominee for office. The bill provides for the filing of such a pledge, if applicable, and requires the secretary of state, in submitting Texas' certificate of ascertainment as required by federal law, to certify Texas' electors and to state in the certificate that the electors will serve as electors unless a vacancy occurs in the office of elector before the end of the meeting at which elector votes are cast, in which case a substitute elector will fill the vacancy, and, if a substitute elector is appointed to fill a vacancy, the secretary of state will submit an amended certificate of ascertainment stating the names on the final list of Texas' electors. The bill clarifies that provisions relating to the vacancy of a presidential elector apply to such an elector nominee and alternate elector nominee and provides for the resignation on or after the presidential election day of either elector, if elected.

C.S.H.B. 543 sets out the process by which the secretary of state is required to appoint an individual as a substitute elector to fill a vacancy if an elector or alternate elector resigns, dies, or is declared ineligible on or after presidential election day or if a vacancy occurs at the meeting of electors. The bill requires an individual who has not executed a pledge under the bill's provisions, if required by party rule and to qualify as a substitute elector, to execute a separate pledge for a substitute elector as specified by the bill. The bill requires the state chair, at the time designated for elector voting and after all vacant positions have been filled, to provide each elector with a presidential and a vice-presidential ballot. The bill requires the elector to mark the elector's presidential and vice-presidential ballots with the elector's votes for the offices of president and vice-president, respectively, along with the elector's signature and the elector's legibly printed name. The bill requires each elector to present both completed ballots to the chair, who is required to examine the ballots and accept as cast all ballots of electors whose votes are consistent with the applicable requirements, including any pledges required to be executed by the bill. The bill establishes that an elector who refuses to present a ballot, presents an unmarked ballot, presents a ballot marked in violation of any pledge executed by the elector under the bill's provisions, or refuses or otherwise fails to vote for the candidates for president and vice-president receiving the most votes in Texas in the general election is ineligible to serve, may never serve as an elector or alternate elector in Texas, and vacates the office of elector, creating a vacant position to be filled. The bill requires the chair to distribute ballots to and collect ballots from a substitute elector and repeat the process of examining ballots, declaring and filling vacant positions as required, and recording appropriately completed ballots from the substituted electors, until all of Texas' electoral votes have been cast and recorded.

C.S.H.B. 543 removes the authorization for electors meeting to vote for president and vice-president to appoint a replacement elector by a majority vote of the qualified electors under certain conditions and the requirement for the chair of the electors to notify the secretary of state of the name and residence address of a replacement elector immediately on the replacement's appointment. The bill requires the secretary of state, after the vote of Texas' electors is completed and if the final list of electors differs from any list that the secretary of state previously included on a certificate of ascertainment prepared and transmitted under federal law, to immediately prepare an amended certificate of ascertainment and transmit it to the governor for the governor's signature. The bill requires the electors to prepare a certificate of vote and requires the electors on the final list to sign the certificate. The bill requires the electors to process and transmit the signed certificate with the amended certificate of ascertainment.

#### **EFFECTIVE DATE**

September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 543 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

SECTION 1. Section 192.002, Election Code, is amended by adding Subsection (c) to read as follows:

(c) A person who violates Section 192.009(a) is ineligible to serve as an elector in all subsequent elections.

SECTION 2. Subchapter A, Chapter 192, Election Code, is amended by adding Section 192.009 to read as follows:

Sec. 192.009. REQUIRED VOTE BY ELECTOR. (a) At the meeting of electors, an elector shall vote for the candidates for president and vice-president receiving the most votes in the general election for state and county officers.

(b) An elector who violates Subsection (a) is liable to this state for a civil penalty of \$5,000.

No equivalent provision.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

No equivalent provision.

SECTION 1. Section 192.002(a), Election Code, is amended to read as follows:

(a) To be eligible to serve as a presidential elector, a person must:

- (1) be a qualified voter of this state; ~~and~~
- (2) not hold the office of United States senator, United States representative, or any other federal office of profit or trust; and
- (3) meet all other eligibility requirements provided by this subchapter, and if representing a political party, by party rules.

SECTION 2. Section 192.003, Election Code, is amended to read as follows:

Sec. 192.003. METHOD OF BECOMING ELECTOR AND ALTERNATE ELECTOR NOMINEE [CANDIDATE]. (a) For each presidential elector position in this state, the state chair of a political party contesting the position in accordance with this section and party rules, or an independent or write-in candidate for president, shall submit to the secretary of state the names of two qualified individuals. One of the individuals must be designated "elector nominee" and the other "alternate elector nominee."

(b) Each political party that holds a national presidential nominating convention shall adopt rules providing for the selection of elector nominees and alternate elector nominees. The rules shall provide that a presidential nominee of that party, not later than the close of the national presidential

nominating convention, shall provide a list of persons eligible for nomination as alternate elector nominee to the state chair of a political party. The state chair shall forward the names of these individuals to the secretary of state as the party's nominees for alternate elector nominee. If the presidential nominee does not timely provide the list required by this section, the party rules shall provide an alternate method of selection of alternate elector nominees, and any vacancy shall be filled as prescribed by Section 192.004. [To become a presidential elector candidate, a person must be nominated as a political party's elector candidate in accordance with party rules or named as an elector candidate by an independent or write-in candidate for president.]

No equivalent provision.

SECTION 3. Subchapter A, Chapter 192, Election Code, is amended by adding Sections 192.0031 and 192.0032 to read as follows:

Sec. 192.0031. PLEDGE. (a) If required by political party rule, each elector nominee and alternate elector nominee of the political party shall execute the following pledge before a notary: "If selected for the position of elector, I agree to serve and to mark my ballots for President and Vice President for the nominees for those offices of the party that nominated me."

(b) Each elector nominee and alternate elector nominee of an independent or write-in presidential candidate shall execute the following pledge before a notary: "If selected for the position of elector as a nominee of an independent or write-in presidential candidate, I agree to serve and to mark my ballots for that candidate and for that candidate's vice-presidential running mate."

(c) The executed pledges, if required, must accompany the submission of the corresponding names to the secretary of state.

Sec. 192.0032. CERTIFICATION OF ELECTORS. In submitting this state's certificate of ascertainment as required by 3 U.S.C. Section 6, the secretary of state shall certify this state's electors and state in the certificate that:

(1) the electors will serve as electors unless a vacancy occurs in the office of elector before the end of the meeting at which elector votes are cast, in which case a substitute elector will fill the vacancy; and

(2) if a substitute elector is appointed to fill a

vacancy, the secretary of state will submit an amended certificate of ascertainment stating the names on the final list of this state's electors.

No equivalent provision.

SECTION 4. Section 192.004, Election Code, is amended to read as follows:

Sec. 192.004. ELECTOR NOMINEE AND ALTERNATE ELECTOR NOMINEE [~~CANDIDATE~~] VACANCY. (a) An elector nominee or alternate elector nominee [~~candidate~~] may withdraw from the presidential election before presidential election day, or if elected, may resign on or after the presidential election day, by delivering written notice of the withdrawal or resignation to:

(1) the secretary of state; and  
(2) the state chair of the party that nominated the elector nominee or alternate elector nominee [~~candidate~~] or to the independent or write-in candidate for president who named the elector nominee or alternate elector nominee [~~candidate~~].

(b) If an elector nominee or alternate elector nominee [~~candidate~~] withdraws, dies, or is declared ineligible before presidential election day, a replacement elector nominee or alternate elector nominee [~~candidate~~] may be named by the party that nominated the elector nominee or alternate elector nominee [~~candidate~~] or by the independent or write-in candidate for president who named the elector nominee or alternate elector nominee [~~candidate~~].

(c) An independent or write-in candidate for president naming a replacement elector nominee or alternate elector nominee [~~candidate~~] must file with the secretary of state, before presidential election day, the name and residence address of the replacement nominee [~~candidate~~] and a written statement, signed by the replacement nominee [~~candidate~~], that the person consents to be a nominee, and the executed pledge if required under Section 192.0031 [~~candidate~~].

(d) If a political party's rules do not provide the manner of choosing a replacement elector nominee or alternate elector nominee [~~candidate~~], the party's state executive committee may choose the replacement nominee [~~candidate~~]. The state chair of a political party naming a replacement elector nominee or alternate elector nominee [~~candidate~~] must file with the secretary of

state, before presidential election day, the name and residence address of the replacement nominee, and the executed pledge if required under Section 192.0031 [candidate].

No equivalent provision.

SECTION 5. Section 192.005, Election Code, is amended to read as follows:

Sec. 192.005. VOTE REQUIRED FOR ELECTION. The set of elector nominees or alternate elector nominees [candidates] that is elected is the one that corresponds to the candidates for president and vice-president receiving the most votes.

No equivalent provision.

SECTION 6. Section 192.006, Election Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) If an elector or alternate elector resigns, dies, or is declared ineligible on or after presidential election day or if a vacancy occurs at the meeting of electors, the secretary of state shall appoint an individual as a substitute elector to fill that vacancy as follows:

(1) if the alternate elector is present to vote, by appointing the alternate elector for the vacant position;

(2) if the alternate elector for the vacant position is not present to vote, by appointing an elector chosen by lot from the alternate electors present to vote who were nominated by the same political party or presidential candidate;

(3) if the number of alternate electors present to vote is insufficient to fill any vacant position under Subdivisions (1) and (2), by appointing any immediately available individual who is qualified to serve as an elector and chosen through nomination by and plurality vote of the remaining electors, including nomination and vote by a single elector if only one remains;

(4) if there is a tie between at least two nominees for substitute elector in a vote conducted under Subdivision (3), by appointing an elector chosen by lot from among those nominees; or

(5) if all elector positions are vacant and cannot be filled under Subdivisions (1) through (4), by appointing a single presidential elector, with the remaining vacant positions to be filled under Subdivision (3) and, if necessary, Subdivision (4).

(e) If required by political party rule, to

qualify as a substitute elector under Subsection (d), an individual who has not executed the pledge under Section 192.0031 shall execute the following pledge: "I agree to serve and to mark my ballots for President and Vice President consistent with the pledge of the individual to whose elector position I have succeeded."

No equivalent provision.

SECTION 7. Subchapter A, Chapter 192, Election Code, is amended by adding Section 192.0061 to read as follows:

Sec. 192.0061. ELECTOR VOTING. (a) At the time designated for elector voting and after all vacant positions have been filled under Section 192.006, the chair shall provide each elector with a presidential and a vice-presidential ballot. The elector shall mark the elector's presidential and vice-presidential ballots with the elector's votes for the offices of president and vice-president, respectively, along with the elector's signature and the elector's legibly printed name.

(b) Each elector shall present both completed ballots to the chair, who shall examine the ballots and accept as cast all ballots of electors whose votes are consistent with the requirements of this chapter, including any pledges required to be executed under Section 192.0031 or 192.006(e).

(c) An elector who refuses to present a ballot, presents an unmarked ballot, presents a ballot marked in violation of any pledge executed by the elector under Section 192.0031 or 192.006(e), or refuses or otherwise fails to vote for the candidates for president and vice-president receiving the most votes in this state in the general election:

(1) is ineligible to serve;

(2) may never serve as an elector or alternate elector in this state; and

(3) vacates the office of elector, creating a vacant position to be filled under Section 192.006.

(d) The chair shall distribute ballots to and collect ballots from a substitute elector and repeat the process under this section of examining ballots, declaring and filling vacant positions as required, and recording appropriately completed ballots from the substituted electors, until all of this state's electoral votes have been cast and recorded.

No equivalent provision.

SECTION 8. Section 192.007, Election Code, is amended to read as follows:

Sec. 192.007. ELECTOR REPLACEMENT; ASSOCIATED CERTIFICATES [AFTER ELECTION]. (a) After the vote of this state's electors is completed, if the final list of electors differs from any list that the secretary of state previously included on a certificate of ascertainment prepared and transmitted under 3 U.S.C. Section 6, the secretary of state immediately shall prepare an amended certificate of ascertainment and transmit it to the governor for the governor's signature [~~The electors meeting to vote for president and vice president may appoint a replacement elector by a majority vote of the qualified electors present if:~~

~~[(1) the vacancy occurred before presidential election day and a replacement was not chosen under Section 192.004;~~

~~[(2) on or after presidential election day, an elector is declared ineligible or dies; or~~

~~[(3) the vacancy is declared under Section 192.006(e)].~~

(b) The electors shall prepare a certificate of vote. The electors on the final list shall sign the certificate. The electors shall process and transmit the signed certificate with the amended certificate of ascertainment under 3 U.S.C. Sections 9, 10, and 11 [~~chair of the electors shall notify the secretary of state of the name and residence address of a replacement elector immediately on the replacement's appointment].~~

No equivalent provision.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

SECTION 9. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 10. This Act takes effect September 1, 2017.