

BILL ANALYSIS

H.B. 4128
By: Swanson
Elections
Committee Report (Unamended)

BACKGROUND AND PURPOSE

It has been noted that presidential electors in Texas are not bound to cast their presidential and vice-presidential vote in accordance with the will of Texas voters, as the recent presidential election demonstrated. There are concerns that some electors may become faithless and avoid casting their ballots for the presidential candidate that the voters selected. H.B. 4128 seeks to address this issue by establishing an oath for presidential electors to swear to cast ballots for the candidate receiving the most votes and providing for the replacement of electors who fail to uphold that oath.

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

H.B. 4128 amends the Election Code to require a political party nominating a presidential candidate, or an independent presidential candidate, to submit to the secretary of state the names of two qualified individuals for each 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" and establishes that the state's electors are the winning elector nominees under state law.

H.B. 4128 requires each elector nominee and alternate elector nominee of a political party, not later than the seventh day before the meeting of electors, to execute a specified oath swearing that the person, if selected for the position of elector, will serve and mark the person's ballots for president and vice president for the nominees for those offices of the party that nominated the person. The bill requires each elector nominee and alternate elector nominee of an independent presidential candidate, not later than the seventh day before the meeting of electors, to execute a specified oath swearing that the person, if selected for the position of elector as a nominee of the independent presidential candidate, will serve and mark the person's ballots for president and vice president for the independent presidential candidate and that candidate's vice-presidential running mate. The bill requires the executed oath to accompany the submission of the corresponding names to the secretary of state.

H.B. 4128 removes the requirement for the secretary of state to act as temporary chair of the meeting of electors until the electors elect a chair from among themselves and repeals certain provisions relating to the vacancy of an elector candidate, the absence of an elector at the

meeting of electors, and the replacement of vacant elector positions. The bill requires the secretary of state instead to preside at the meeting of electors, establishes that the position of an elector who is not present to vote or who has failed to execute the oath is vacant, and sets out the process by which the secretary of state is required to appoint an individual as a substitute elector to fill a vacancy. The bill requires an individual who has not executed the required oath to execute an oath as specified by the bill to qualify as a substitute elector.

H.B. 4128 requires the secretary of state to provide each elector with a presidential and a vice-presidential ballot at the time designated for elector voting and after all vacant positions have been filled and 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 secretary of state and requires the secretary of state to examine the ballots, read each vote publicly, and accept as cast all ballots of electors whose votes are consistent with their executed oaths. The bill prohibits the secretary of state from accepting or counting either an elector's presidential or vice-presidential ballot if the elector has not marked both ballots or has marked a ballot in violation of the elector's oath. The bill establishes that an elector who refuses to present a ballot, presents an unmarked ballot, or presents a ballot marked in violation of the elector's oath vacates the office of elector, creating a vacant position to be filled by the secretary of state under the bill's provisions. The bill requires the secretary of state to distribute ballots to and collect ballots from a substitute elector and repeat the process of examining ballots, publicly reading the votes, declaring and filling vacant positions as required, and recording appropriately completed ballots from the substituted electors, until all of the state's electoral votes have been cast and recorded.

H.B. 4128 requires the candidates for president and vice president who received the most votes in Texas in the general presidential election, or a legal representative of such a candidate, to certify not later than the seventh day before the meeting of electors that the candidate is willing and able to serve in the position for which the candidate was elected. The bill requires the electors to vote to affirm or deny the certification or, if a candidate fails to make the certification before the meeting of electors, to vote on the issue of whether each candidate is willing and able to serve in the position for which the candidate was elected. If a majority of electors vote to deny a candidate's certification or vote that a candidate is not willing or able to serve, the bill's provisions relating to required action by presidential electors and the replacement of electors do not apply to that meeting of electors with respect to that candidate.

H.B. 4128 repeals the following provisions of the Election Code:

- Sections 192.004(b), (c), and (d)
- Section 192.006(c)
- Section 192.007

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2019.