By:  Landgraf H.B. No. 4504

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of certain judicial offices, a board for considering the qualification of applicants for judicial office, and a nonpartisan election for the retention or rejection of a person appointed to those offices.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subtitle A, Title 2, Government Code, is amended by adding Chapter 21A to read as follows:

CHAPTER 21A. JUDICIAL APPOINTMENTS ADVISORY BOARD

Sec. 21A.001.  DEFINITIONS. In this chapter:

(1)  "Board" means the judicial appointments advisory board.

(2)  "Majority party" means the political party with the most members among the membership of the Texas House of Representatives or the Texas Senate, as applicable.

(3)  "Minority party" means the political party with the second highest number of members among the membership of the Texas House of Representatives or the Texas Senate, as applicable.

Sec. 21A.002.  ADVISORY BOARD. (a) The judicial appointments advisory board is composed of 11 members as follows:

(1) three members appointed by the majority party of the house of representatives as follows:

(A)  two members with the qualifications required by Subsection (b); and

(B)  one member with the qualifications required by Subsection (c);

(2)  two members appointed by the minority party of the house of representatives as follows:

(A)  one member with the qualifications required by Subsection (b); and

(B)  one member with the qualifications required by Subsection (c);

(3)  two members appointed by the majority party of the senate as follows:

(A)  one member with the qualifications required by Subsection (b); and

(B)  one member with the qualifications required by Subsection (c);

(4)  two members appointed by the minority party of the senate as follows:

(A)  one member with the qualifications required by Subsection (b); and

(B)  one member with the qualifications required by Subsection (c);

(5)  one member with the qualifications required by Subsection (c), appointed by the chief justice of the supreme court; and

(6)  one member with the qualifications required by Subsection (c), appointed by the presiding judge of the court of criminal appeals.

(b)  A member of the board who is subject to this subsection must:

(1)  be a citizen of the United States and a resident of this state;

(2)  be at least 35 years of age; and

(3)  not be licensed to practice law.

(c)  A member of the board who is subject to this subsection must:

(1)  be a citizen of the United States and a resident of this state;

(2)  be at least 35 years of age;

(3)  be licensed to practice law in this state; and

(4)  have practiced in this state as a lawyer or as a judge of a court, or both combined, for at least seven years preceding the date of the appointment.

(d)  Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(e)  The members of the board shall serve staggered six-year terms, with the terms of approximately one-third of the members expiring August 31 of each odd-numbered year.

(f)  A person may not serve for more than 12 years on the board.

(g)  The board shall select a presiding officer and other officers from its members.

Sec. 21A.003.  DUTIES OF BOARD. (a) The board shall:

(1)  review the academic credentials, substantive experience in law, and reputation for competence, fairness, and integrity of any person appointed to a judicial office to which Section 28(b), Article V, Texas Constitution, applies; and

(2)  advise the senate on whether the board believes the appointee is "unqualified," "qualified," or "highly qualified" to hold the office to which the person has been appointed.

(b)  The board shall provide its assessment of an appointee's qualifications to the lieutenant governor and the chair of the senate committee with jurisdiction over gubernatorial appointments:

(1)  not later than the 30th day after the date a regular session of the legislature begins, for a person who is appointed before the regular session;

(2)  not later than the 30th day after the date the person is appointed, for a person who is appointed during a regular session of the legislature on a date that is at least 60 days before the date the session will end; or

(3)  within a reasonable time required by the chair of the senate committee with jurisdiction over gubernatorial appointments for a person who is appointed:

(A)  before or during a called session of the legislature; or

(B)  less than 60 days before the date the session of the legislature will end.

Sec. 21A.004.  EXPENSES. (a) A member of the board may not receive compensation for service on the board but is entitled to reimbursement for actual and necessary expenses incurred in performing the duties of the board.

(b)  The board, board officers, and board committees are entitled to reimbursement for the actual and necessary clerical expenses incurred in performing functions under this chapter.

Sec. 21A.005.  REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board that a member:

(1)  does not have, at the time of taking office, or does not maintain during service on the board, the required qualifications;

(2)  cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term;

(3)  is absent from more than one-fourth of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board; or

(4)  is incompetent or inattentive to the member's duties.

(b)  The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

SECTION 2.  The Election Code is amended by adding Title 15A to read as follows:

TITLE 15A. NONPARTISAN JUDICIAL RETENTION ELECTIONS

CHAPTER 261. RETENTION ELECTION

Sec. 261.001.  APPLICABILITY. This chapter applies only to the following judicial offices:

(1)  chief justice or justice of the supreme court;

(2)  presiding judge or judge of the court of criminal appeals;

(3)  chief justice or justice of a court of appeals;

(4)  district judge of a judicial district that contains a county with a population of more than 500,000; and

(5)  district judge of a judicial district in which the voters of the district have voted to have district court judge vacancies filled by appointment under Section 28(b), Article V, Texas Constitution.

Sec. 261.002.  VACANCY IN OFFICE. (a) In addition to the provisions of Chapter 201, a vacancy in a judicial office to which this chapter applies exists on January 1 of the year following the year in which:

(1)  a justice's or judge's 12-year term of office ends; or

(2)  a justice or judge:

(A)  does not file a declaration of candidacy for a retention election in accordance with Section 261.004;

(B)  withdraws from a retention election; or

(C)  receives less than a majority of the votes cast on the question of retention at a retention election.

(b)  A vacancy in an office to which this chapter applies is filled under Section 28(b), Article V, Texas Constitution.

Sec. 261.003.  TIMING OF RETENTION ELECTION. Each person appointed to an office to which this chapter applies is subject to retention or rejection by the voters at the nonpartisan judicial retention election held in conjunction with the general election for state and county officers during the fourth and eighth years of the person's 12-year term.

Sec. 261.004.  DECLARATION OF CANDIDACY. (a) Not later than 5 p.m. on June 1 preceding the nonpartisan judicial retention election at which the justice or judge is subject to retention or rejection, a justice or judge who seeks to continue to serve in that office must file with the secretary of state a declaration of candidacy to succeed to the next term.

(b)  A declaration may not be filed earlier than the 30th day before the date of the filing deadline. A declaration filed by mail is considered to be filed at the time of its receipt by the appropriate authority.

Sec. 261.005.  WITHDRAWAL, DEATH, OR INELIGIBILITY. (a) With respect to withdrawal, death, or ineligibility of a candidate in a nonpartisan judicial retention election, this section supersedes Subchapter A, Chapter 145, to the extent of any conflict.

(b)  A candidate may not withdraw from the retention election after the 74th day before election day.

(c)  A withdrawal request must be in writing and filed with the secretary of state.

(d)  A candidate's name shall 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)  If a 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, the candidate's name shall be placed on the retention election ballot.

Sec. 261.006.  CERTIFICATION OF NAMES FOR PLACEMENT ON RETENTION ELECTION BALLOT. (a) Except as provided by Subsection (c), the secretary of state shall certify in writing for placement on the nonpartisan judicial retention election ballot the name of each candidate who files with the secretary a declaration of candidacy that complies with Section 261.004.

(b)  Not later than the 68th day before election day, the secretary of state shall 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)  A candidate's name may not be certified if, before delivering the certification, the secretary of state learns that the name is to be omitted from the ballot under Section 261.005.

Sec. 261.007.  RETENTION ELECTION BALLOT. The name of the person subject to retention or rejection shall 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 substantially the following form:

"Shall (Justice or Judge)

be retained in office as (justice or judge) of the

(name of court)                    ?"

  "Yes"

  "No"

Sec. 261.008.  GENERAL PROCEDURE FOR CONDUCT OF RETENTION ELECTION. (a) Except as otherwise provided by this code, the nonpartisan judicial retention election shall 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)  A certificate of election shall be issued to a retained officer in the same manner as provided for a candidate elected to an office.

Sec. 261.009.  WRITE-IN VOTING PROHIBITED. Write-in voting is not permitted in a nonpartisan judicial retention election.

Sec. 261.010.  APPLICABILITY OF OTHER PARTS OF CODE. 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. 261.011.  ADDITIONAL PROCEDURES. The secretary of state shall prescribe any additional procedures necessary for the orderly and proper administration of elections held under this chapter.

Sec. 261.012.  EFFECT OF RETENTION ELECTION. (a) If a majority of the votes received on the question are for the retention of the justice or judge, the person is entitled to continue the person's term, unless the person becomes ineligible or is removed as provided by law.

(b)  If the name of a justice or judge appears on the retention election ballot, although a vacancy has occurred in the office pursuant to Chapter 201 or the justice or judge has withdrawn from seeking retention, the retention election for that office has no effect.

SECTION 3.  Section 1.005, Election Code, is amended by amending Subdivision (9) and adding Subdivisions (12-a) and (12-b) to read as follows:

(9)  "Independent candidate" means a candidate in a nonpartisan election or a candidate in a partisan election who is not the nominee of a political party. The term does not include a nonpartisan judicial candidate.

(12-a) "Nonpartisan judicial candidate" means a candidate in a nonpartisan judicial retention election.

(12-b) "Nonpartisan judicial retention election" means an election held under Title 15A.

SECTION 4.  Section 41.002, Election Code, is amended to read as follows:

Sec. 41.002.  GENERAL ELECTION FOR STATE AND COUNTY OFFICERS. The general election for state and county officers, including the nonpartisan judicial retention election, shall be held on the first Tuesday after the first Monday in November in even-numbered years.

SECTION 5.  Section 52.092, Election Code, is amended by amending Subsection (a) and adding Subsections (f-1) and (f-2) to read as follows:

(a)  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, the offices shall 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)  Nonpartisan statewide judicial retention election offices shall 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)  Any nonpartisan district judicial retention election offices shall be listed in the following order:

(1)  district judge;

(2)  criminal district judge;

(3)  family district judge.

SECTION 6.  Section 145.003(b), Election Code, is amended to read as follows:

(b)  A candidate in the general election for state and county officers, including the nonpartisan judicial retention election, may 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 7.  Section 145.005(a), Election Code, is amended to read as follows:

(a)  If the name of a deceased, withdrawn, or ineligible candidate appears on the ballot [~~under this chapter~~], the votes cast for the candidate shall be counted and entered on the official election returns in the same manner as for the other candidates.

SECTION 8.  Section 172.021(e), Election Code, is amended to read as follows:

(e)  A candidate for an office specified by Section 172.024(a)(9) [~~172.024(a)(8), (10), or (12),~~] or for justice of the peace in a county with a population of more than 1.5 million, who chooses to pay the filing fee must also accompany the application with a petition for a place on the primary ballot as a candidate for judicial office that complies with the requirements prescribed for the petition authorized by Subsection (b), except that the minimum number of signatures that must appear on the petition required by this subsection is 250. If the candidate chooses to file the petition authorized by Subsection (b) in lieu of the filing fee, the minimum number of signatures required for that petition is increased by 250. Signatures on a petition filed under this subsection or Subsection (b) by a candidate covered by this subsection may not be obtained on the grounds of a county courthouse or courthouse annex.

SECTION 9.  Section 172.024(a), Election Code, is amended to read as follows:

(a)  The filing fee for a candidate for nomination in the

general primary election is as follows:

(1)  United States senator $5,000

(2)  office elected statewide, except United States senator, chief justice or justice of the supreme court, and presiding judge or judge of the court of criminal appeals 3,750

(3)  United States representative 3,125

(4)  state senator 1,250

(5)  state representative 750

(6)  member, State Board of Education 300

(7)  [~~chief justice or justice, court of appeals, other than a justice specified by Subdivision (8) 1,875~~

[~~(8)  chief justice or justice of a court of appeals that serves a court of appeals district in which a county with a population of more than one million is wholly or partly situated 2,500~~

[~~(9)~~]  district judge or judge specified by Section 52.092(d), who is not subject to a retention election and for which this schedule does not otherwise prescribe a fee 1,500

(8) [~~(10)  district or criminal district judge of a court in a judicial district wholly contained in a county with a population of more than 1.5 million 2,500~~

[~~(11)~~]  judge, statutory county court, other than a judge specified by Subdivision (9) [~~(12)~~] 1,500

(9) [~~(12)~~]  judge of a statutory county court in a county with a population of more than 1.5 million 2,500

(10) [~~(13)~~]  district attorney, criminal district attorney, or county attorney performing the duties of a district attorney 1,250

(11) [~~(14)~~]  county commissioner, district clerk, county clerk, sheriff, county tax assessor-collector, county treasurer, or judge, constitutional county court:

(A)  county with a population of 200,000 or more 1,250

(B)  county  with a population of under  200,000

 750

(12) [~~(15)~~]  justice of the peace or constable:

(A)  county with a population of 200,000 or more 1,000

(B)  county  with a population of under  200,000

 375

(13) [~~(16)~~]  county surveyor 75

(14) [~~(17)~~]  office of the county government for which this schedule does not otherwise prescribe a fee 750

SECTION 10.  Section 202.001, Election Code, is amended to read as follows:

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

(1)  state senator and state representative;

(2)  justice or judge of an appellate court; and

(3)  judge of a district court who is subject to a retention election.

SECTION 11.  Section 172.021(g), Election Code, is repealed.

SECTION 12.  (a) This section applies only to a judicial office to which Title 15A, Election Code, as added by this Act, applies.

(b)  A justice or judge in office on the effective date of this Act, unless otherwise removed as provided by law, continues in office until completion of the term to which the justice or judge was elected.

SECTION 13.  This Act takes effect January 1, 2020, but only if the constitutional amendment proposed by the 86th Legislature, Regular Session, 2019, providing for appointments to fill vacancies in the offices of the supreme court, court of criminal appeals, courts of appeals, and certain district courts, for nonpartisan retention elections every four years for those offices, and for the creation of a judicial appointments advisory board is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.