

By: Swanson

H.B. No. 4128

A BILL TO BE ENTITLED

AN ACT

relating to the required vote by a presidential elector and related procedures.

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

SECTION 1. The heading to Section 192.004, Election Code, is amended to read as follows:

Sec. 192.004. ELECTOR CANDIDATE WITHDRAWAL [VACANCY].

SECTION 2. Section 192.006(b), Election Code, is amended to read as follows:

(b) The secretary of state shall arrange for the meeting place, notify the electors, and call the meeting to order. ~~[The secretary shall act as temporary chair of the meeting until the electors elect a chair from among themselves.]~~

SECTION 3. The heading to Subchapter C, Chapter 192, Election Code, is amended to read as follows:

SUBCHAPTER C. WITHDRAWAL, DEATH, AND INELIGIBILITY OF PRESIDENTIAL
AND VICE-PRESIDENTIAL CANDIDATES; CERTIFICATION OF ABILITY TO
SERVE

SECTION 4. Subchapter C, Chapter 192, Election Code, is amended by adding Section 192.065 to read as follows:

Sec. 192.065. CERTIFICATION OF ABILITY TO SERVE BY WINNING
CANDIDATE; AFFIRMATION OR DENIAL BY ELECTORS. (a) The candidates
for president and vice president who received the most votes in this
state in the general presidential election, or a legal

1 representative of such a candidate, shall certify not later than
2 the seventh day before the meeting of electors that the candidate is
3 willing and able to serve in the position for which the candidate
4 was elected.

5 (b) At the meeting of electors, the electors shall first
6 vote to affirm or deny the certification made under Subsection (a).
7 If a majority of electors vote to deny the certification that the
8 candidate is willing and able to serve, Subchapter D does not apply
9 to that meeting of electors with respect to the candidate for which
10 the certification was denied.

11 (c) If before the meeting of electors a candidate fails to
12 certify that the candidate is willing and able to serve as provided
13 by Subsection (a), the electors shall first vote on the issue of
14 whether each candidate is willing and able to serve in the position
15 for which the candidate was elected. If a majority of electors vote
16 that the candidate is not willing or able to serve in the position
17 for which the candidate was elected, Subchapter D does not apply to
18 that meeting of electors with respect to that candidate.

19 SECTION 5. Chapter 192, Election Code, is amended by adding
20 Subchapter D to read as follows:

21 SUBCHAPTER D. REQUIRED ACTION BY PRESIDENTIAL ELECTORS;

22 REPLACEMENT OF ELECTOR

23 Sec. 192.101. DESIGNATION OF STATE'S ELECTORS. For each
24 elector position in this state, a political party nominating a
25 presidential candidate, or an independent presidential candidate,
26 shall submit to the secretary of state the names of two qualified
27 individuals. One of the individuals must be designated "elector

1 nominee" and the other "alternate elector nominee." Except as
2 otherwise provided in Sections 192.103 and 192.104, this state's
3 electors are the winning elector nominees under the laws of this
4 state.

5 Sec. 192.102. OATH. (a) Not later than the seventh day
6 before the meeting of electors, each elector nominee and alternate
7 elector nominee of a political party shall execute the following
8 oath: "If selected for the position of elector, I swear to serve and
9 to mark my ballots for president and vice president for the nominees
10 for those offices of the party that nominated me."

11 (b) Not later than the seventh day before the meeting of
12 electors, each elector nominee and alternate elector nominee of an
13 independent presidential candidate shall execute the following
14 oath: "If selected for the position of elector as a nominee of an
15 independent presidential candidate, I swear to serve and to mark my
16 ballots for that candidate and for that candidate's
17 vice-presidential running mate."

18 (c) The executed oaths must accompany the submission of the
19 corresponding names to the secretary of state.

20 Sec. 192.103. PRESIDING OFFICER; ELECTOR VACANCY. (a) The
21 secretary of state shall preside at the meeting of electors
22 described in Section 192.104.

23 (b) The position of an elector who is not present to vote or
24 who has failed to execute the oath under Section 192.102 is vacant.
25 The secretary of state shall appoint an individual as a substitute
26 elector to fill a vacancy as follows:

27 (1) if the alternate elector is present to vote, by

1 appointing the alternate elector for the vacant position;

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

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

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

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

19 (c) To qualify as a substitute elector under Subsection (b),
20 an individual who has not executed the oath required under Section
21 192.102 shall execute the following oath: "I swear to serve and to
22 mark my ballots for president and vice president consistent with
23 the oath of the individual to whose elector position I have
24 succeeded."

25 Sec. 192.104. ELECTOR VOTING. (a) At the time designated
26 for elector voting and after all vacant positions have been filled
27 under Section 192.103, the secretary of state shall provide each

1 elector with a presidential and a vice-presidential ballot. The
2 elector shall mark the elector's presidential and
3 vice-presidential ballots with the elector's votes for the offices
4 of president and vice president, respectively, along with the
5 elector's signature and the elector's legibly printed name.

6 (b) Except as otherwise provided by law of this state other
7 than this subchapter, each elector shall present both completed
8 ballots to the secretary of state. The secretary of state shall
9 examine the ballots, read each vote publicly, and accept as cast all
10 ballots of electors whose votes are consistent with their oaths
11 executed under Section 192.102 or 192.103(c). Except as otherwise
12 provided by law, the secretary of state may not accept and may not
13 count either an elector's presidential or vice-presidential ballot
14 if the elector has not marked both ballots or has marked a ballot in
15 violation of the elector's oath.

16 (c) An elector who refuses to present a ballot, presents an
17 unmarked ballot, or presents a ballot marked in violation of the
18 elector's oath executed under Section 192.102 or 192.103(c) vacates
19 the office of elector, creating a vacant position to be filled under
20 Section 192.103.

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

SECTION 6. The following provisions of the Election Code are repealed:

- (1) Sections 192.004(b), (c), and (d);
- (2) Section 192.006(c); and
- (3) Section 192.007.

SECTION 7. 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, 2019.