

By: Landgraf

H.B. No. 4504

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the appointment of certain judicial offices, a board
3 for considering the qualification of applicants for judicial
4 office, and a nonpartisan election for the retention or rejection
5 of a person appointed to those offices.

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

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

9 CHAPTER 21A. JUDICIAL APPOINTMENTS ADVISORY BOARD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 must:

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

4 (2) be at least 35 years of age; and

5 (3) not be licensed to practice law.

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

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

10 (2) be at least 35 years of age;

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

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

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

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

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

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

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

26 (1) review the academic credentials, substantive
27 experience in law, and reputation for competence, fairness, and

1 integrity of any person appointed to a judicial office to which
2 Section 28(b), Article V, Texas Constitution, applies; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 TITLE 15A. NONPARTISAN JUDICIAL RETENTION ELECTIONS

24 CHAPTER 261. RETENTION ELECTION

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

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

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

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

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

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

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

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

16 (2) a justice or judge:
17 (A) does not file a declaration of candidacy for
18 a retention election in accordance with Section 261.004;
19 (B) withdraws from a retention election; or
20 (C) receives less than a majority of the votes
21 cast on the question of retention at a retention election.

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

24 Sec. 261.003. TIMING OF RETENTION ELECTION. Each person
25 appointed to an office to which this chapter applies is subject to
26 retention or rejection by the voters at the nonpartisan judicial
27 retention election held in conjunction with the general election

1 for state and county officers during the fourth and eighth years of
2 the person's 12-year term.

3 Sec. 261.004. DECLARATION OF CANDIDACY. (a) Not later than
4 5 p.m. on June 1 preceding the nonpartisan judicial retention
5 election at which the justice or judge is subject to retention or
6 rejection, a justice or judge who seeks to continue to serve in that
7 office must file with the secretary of state a declaration of
8 candidacy to succeed to the next term.

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

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

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

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

22 (d) A candidate's name shall be omitted from the retention
23 election ballot if the candidate withdraws, dies, or is declared
24 ineligible on or before the 74th day before election day.

25 (e) If a candidate who has made a declaration of candidacy
26 that complies with the applicable requirements dies or is declared
27 ineligible after the 74th day before election day, the candidate's

1 name shall be placed on the retention election ballot.

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

8 (b) Not later than the 68th day before election day, the
9 secretary of state shall deliver the certification to the authority
10 responsible for having the official ballot prepared in each county
11 in which the candidate's name is to appear on the ballot.

12 (c) A candidate's name may not be certified if, before
13 delivering the certification, the secretary of state learns that
14 the name is to be omitted from the ballot under Section 261.005.

15 Sec. 261.007. RETENTION ELECTION BALLOT. The name of the
16 person subject to retention or rejection shall be submitted to the
17 voters on the nonpartisan judicial retention election ballot
18 following the offices subject to election under the heading
19 "Retention of Nonpartisan Judicial Offices," in substantially the
20 following form:

21 "Shall (Justice or Judge)
22 _____
23 be retained in office as (justice or judge) of the
24 (name of court) _____?"
25 "Yes"
26 "No"

27 Sec. 261.008. GENERAL PROCEDURE FOR CONDUCT OF RETENTION

1 ELECTION. (a) Except as otherwise provided by this code, the
2 nonpartisan judicial retention election shall be conducted and the
3 results canvassed, tabulated, and reported in the manner applicable
4 to partisan offices in the general election for state and county
5 officers.

6 (b) A certificate of election shall be issued to a retained
7 officer in the same manner as provided for a candidate elected to an
8 office.

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

11 Sec. 261.010. APPLICABILITY OF OTHER PARTS OF CODE. The
12 other titles of this code apply to a nonpartisan judicial retention
13 election except provisions that are inconsistent with this title or
14 that cannot feasibly be applied in a retention election.

15 Sec. 261.011. ADDITIONAL PROCEDURES. The secretary of state
16 shall prescribe any additional procedures necessary for the orderly
17 and proper administration of elections held under this chapter.

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

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

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

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

8 (12-a) "Nonpartisan judicial candidate" means a
9 candidate in a nonpartisan judicial retention election.

10 (12-b) "Nonpartisan judicial retention election" means
11 an election held under Title 15A.

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

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

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

22 (a) For an election at which offices regularly filled at the
23 general election for state and county officers, including the
24 nonpartisan judicial retention election, are to appear on the
25 ballot, the offices shall be listed in the following order:

26 (1) offices of the federal government;

27 (2) offices of the state government:

- 1 (A) statewide offices;
- 2 (B) district offices;
- 3 (3) offices of the county government:
- 4 (A) county offices;
- 5 (B) precinct offices.

6 (f-1) Nonpartisan statewide judicial retention election
7 offices shall be listed in the following order:

- 8 (1) chief justice, supreme court;
- 9 (2) justice, supreme court;
- 10 (3) presiding judge, court of criminal appeals;
- 11 (4) judge, court of criminal appeals;
- 12 (5) chief justice, court of appeals;
- 13 (6) justice, court of appeals.

14 (f-2) Any nonpartisan district judicial retention election
15 offices shall be listed in the following order:

- 16 (1) district judge;
- 17 (2) criminal district judge;
- 18 (3) family district judge.

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

21 (b) A candidate in the general election for state and county
22 officers, including the nonpartisan judicial retention election,
23 may be declared ineligible before the 30th day preceding election
24 day by:

- 25 (1) the party officer responsible for certifying the
26 candidate's name for placement on the general election ballot, in
27 the case of a candidate who is a political party's nominee; or

1 (2) the authority with whom the candidate's
2 application for a place on the ballot or declaration of candidacy is
3 required to be filed, in the case of an independent candidate or a
4 nonpartisan judicial candidate, as applicable.

5 SECTION 7. Section 145.005(a), Election Code, is amended to
6 read as follows:

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

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

13 (e) A candidate for an office specified by Section
14 172.024(a)(9) [~~172.024(a)(8), (10), or (12),~~] or for justice of the
15 peace in a county with a population of more than 1.5 million, who
16 chooses to pay the filing fee must also accompany the application
17 with a petition for a place on the primary ballot as a candidate for
18 judicial office that complies with the requirements prescribed for
19 the petition authorized by Subsection (b), except that the minimum
20 number of signatures that must appear on the petition required by
21 this subsection is 250. If the candidate chooses to file the
22 petition authorized by Subsection (b) in lieu of the filing fee, the
23 minimum number of signatures required for that petition is
24 increased by 250. Signatures on a petition filed under this
25 subsection or Subsection (b) by a candidate covered by this
26 subsection may not be obtained on the grounds of a county courthouse
27 or courthouse annex.

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

3 (a) The filing fee for a candidate for nomination in the
4 general primary election is as follows:

5 (1) United States senator \$5,000

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

9 (3) United States representative 3,125

10 (4) state senator 1,250

11 (5) state representative 750

12 (6) member, State Board of Education 300

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

15 [~~(8) chief justice or justice of a court of appeals~~
16 ~~that serves a court of appeals district in which a county with a~~
17 ~~population of more than one million is wholly or partly situated~~
18 ~~2,500~~

19 [~~(9)~~] district judge or judge specified by Section
20 52.092(d), who is not subject to a retention election and for which
21 this schedule does not otherwise prescribe a fee 1,500

22 (8) [~~(10) district or criminal district judge of a~~
23 ~~court in a judicial district wholly contained in a county with a~~
24 ~~population of more than 1.5 million~~] 2,500

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

27 (9) [~~(12)~~] judge of a statutory county court in a

1 county with a population of more than 1.5 million 2,500

2 (10) [~~(13)~~] district attorney, criminal district
3 attorney, or county attorney performing the duties of a district
4 attorney 1,250

5 (11) [~~(14)~~] county commissioner, district clerk,
6 county clerk, sheriff, county tax assessor-collector, county
7 treasurer, or judge, constitutional county court:

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

10 (B) county with a population of under 200,000
11 750

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

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

15 (B) county with a population of under 200,000
16 375

17 (13) [~~(16)~~] county surveyor 75

18 (14) [~~(17)~~] office of the county government for which
19 this schedule does not otherwise prescribe a fee 750

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

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

25 (1) state senator and state representative;

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

27 (3) judge of a district court who is subject to a

1 retention election.

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

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

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

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