

BILL ANALYSIS

Senate Research Center
87R19411 JON-D

H.B. 3868
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

It has been noted that the State of Texas does not have any laws pertaining to faithless electors who cast presidential and vice-presidential votes. Furthermore, current election law does not provide for a scenario in which a candidate were to die either shortly before election day or before the electoral college has gathered to ratify results.

H.B. 3868 seeks to address these issues by providing for the replacement of faithless electors and by clarifying provisions relating to the withdrawal, death, or ineligibility of certain candidates.

H.B. 3868 amends current law relating to the presidential electors of this state.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 192.004, Election Code, to read as follows:

Sec. 192.004. ELECTOR CANDIDATE WITHDRAWAL.

SECTION 2. Amends Section 192.006(b), Election Code, to delete existing text requiring the Secretary of State of the State of Texas (SOS) to act as temporary chair of the meeting of electors until the electors elect a chair from among themselves.

SECTION 3. Amends Subchapter A, Chapter 192, Election Code, by adding Section 192.009, as follows:

Sec. 192.009. REPLACEMENT NOMINEE. Requires an elector to consider a replacement candidate certified under Subchapter C to be the presidential or vice-presidential candidate for whom the elector is the corresponding presidential elector candidate.

SECTION 4. Amends the heading to Subchapter C, Chapter 192, Election Code, to read as follows:

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

SECTION 5. Amends Section 192.062(a), Election Code, as follows:

(a) Requires SOS to certify in writing the name of a political party's replacement nominee for president or vice-president of the United States as follows:

(1) for placement on the ballot for an original nominee who withdraws, dies, or is declared ineligible on or before the 74th day before presidential election day if the

party's state chair delivers certification of the replacement nominee's name, signed by the state chair, to SOS not later than 5 p.m. of the 71st day before presidential election day; or

(2) to the nominating party's presidential elector candidates for an original nominee who withdraws, dies, or is declared ineligible after the 74th day before presidential election day if the party's state chair delivers certification of the replacement nominee's name, signed by the state chair, to SOS not later than 2 p.m. on the Monday after the second Wednesday in December of a presidential election year.

Makes nonsubstantive changes.

SECTION 6. Amends Section 192.064(a), Election Code, as follows:

(a) Requires SOS to certify in writing the name of a replacement vice-presidential running mate for an independent candidate for president of the United States as follows:

(1) for placement on the ballot for an original running mate who withdraws, dies, or is declared ineligible on or before the 74th day before presidential election day if the independent presidential candidate delivers certification of the replacement running mate's name, signed by the presidential candidate, to SOS not later than 5 p.m. of the 71st day before presidential election day; or

(2) to the presidential candidate's corresponding presidential elector candidates for an original running mate who withdraws, dies, or is declared ineligible after the 74th day before presidential election day if the independent presidential candidate delivers certification of the replacement running mate's name, signed by the presidential candidate, to SOS not later than 2 p.m. on the Monday after the second Wednesday in December of a presidential election year.

Makes nonsubstantive changes.

SECTION 7. Amends Subchapter C, Chapter 192, Election Code, by adding Section 192.065, as follows:

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

(b) Requires the electors, at the meeting of electors, to first vote to affirm or deny the certification made under Subsection (a). Provides that if a majority of electors vote to deny the certification that the candidate is willing and able to serve, Subchapter D does not apply to that meeting of electors with respect to the candidate for which the certification was denied.

(c) Requires the electors, if before the meeting of electors a candidate fails to certify that the candidate is willing and able to serve as provided by Subsection (a), to first vote on the issue of whether each candidate is willing and able to serve in the position for which the candidate was elected. Provides that if a majority of electors vote that the candidate is not willing or able to serve in the position for which the candidate was elected, Subchapter D does not apply to that meeting of electors with respect to that candidate.

SECTION 8. Amends Chapter 192, Election Code, by adding Subchapter D, as follows:

SUBCHAPTER D. REQUIRED ACTION BY PRESIDENTIAL ELECTORS;
REPLACEMENT OF ELECTOR

Sec. 192.101. DESIGNATION OF STATE'S ELECTORS. Requires that each elector position in this state be nominated in accordance with political party rules or by an independent or write-in presidential candidate, as applicable. Provides that except as otherwise provided in Sections 192.103 and 192.104, this state's electors are the winning elector nominees under the laws of this state.

Sec. 192.102. OATH. (a) 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 the following oath: "If selected for the position of elector, I swear 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) 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 the following oath: "If selected for the position of elector as a nominee of an independent presidential candidate, I swear to serve and to mark my ballots for that candidate and for that candidate's vice-presidential running mate."

(c) Requires that the executed oaths accompany the submission of the corresponding names to SOS.

Sec. 192.103. PRESIDING OFFICER; ELECTOR VACANCY. (a) Requires SOS to preside at the meeting of electors described in Section 192.104.

(b) Provides that the position of an elector who is not present to vote or who has failed to execute the oath under Section 192.102 is vacant. Requires SOS to fill a vacancy with a substitute elector nominated in accordance with political party rules or named by an independent or write-in candidate for president, as applicable.

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

Sec. 192.104. ELECTOR VOTING. (a) Requires SOS, at the time designated for elector voting and after all vacant positions have been filled under Section 192.103, to provide each elector with a presidential and a vice-presidential ballot. 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.

(b) Requires each elector, except as otherwise provided by law of this state other than this subchapter, to present both completed ballots to SOS. Requires SOS to examine the ballots, read each vote publicly, and accept as cast all ballots of electors whose votes are consistent with their oaths executed under Section 192.102 or 192.103(c). Prohibits SOS, except as otherwise provided by law, from accepting and from 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.

(c) Provides 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 executed under

Section 192.102 or 192.103(c) vacates the office of elector, creating a vacant position to be filled under Section 192.103.

(d) Requires SOS to distribute ballots to and collect ballots from a substitute elector and repeat the process under this section 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 this state's electoral votes have been cast and recorded.

SECTION 9. Repealers: Sections 192.004(b) (relating to the authorization that a replacement elector be named if an elector candidate withdraws, dies, or is declared ineligible before presidential election day), and (c) (relating to the required filing procedure for an independent or write-in candidate for president naming a replacement elector candidate), Election Code;

Repealers: Sections 192.004(d) (relating to the authority of the party's state executive committee to choose the replacement candidate if a political party's rules do not provide the manner of choosing a replacement elector candidate) and 192.006(c) (relating to the authority of electors, if an elector is absent at a certain time, to declare the position vacant by majority vote), Election Code; and

Repealer: Section 192.007 (Replacement After Election).

SECTION 10. Effective date: upon passage or September 1, 2021.