

BILL ANALYSIS

C.S.H.B. 3868
By: Murr
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. C.S.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.

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

C.S.H.B. 3868 amends the Election Code to require a presidential elector to consider a certified replacement candidate to be the presidential or vice-presidential candidate for whom the elector is the corresponding presidential elector candidate. The bill provides for the names of certain replacement nominees to be certified to presidential elector candidates by doing the following:

- requiring the secretary of state to certify in writing the name of a political party's replacement nominee for president or vice-president 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 the secretary of state not later than 2 p.m. on the Monday after the second Wednesday in December of a presidential election year; and
- requiring the secretary of state to certify in writing the name of a replacement vice-presidential running mate for an independent candidate for president 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 the secretary of state not later than 2 p.m. on the Monday after the second Wednesday in December of a presidential election year.

C.S.H.B. 3868 requires each elector position in Texas to be nominated in accordance with political party rules or by an independent or write-in presidential candidate, as applicable, and establishes that the state's electors are the winning elector nominees under state law. The bill

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.

C.S.H.B. 3868 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 requires the secretary of state 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. 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.

C.S.H.B. 3868 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.

C.S.H.B. 3868 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.

C.S.H.B. 3868 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 of a candidate 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.

C.S.H.B. 3868 repeals the following provisions of the Election Code:

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

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3868 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include provisions present in the original that required presidential elector candidates to be designated as follows:

- two persons to serve as at-large electors from the state; and
- one person to serve as an elector from each congressional district, who must reside in the respective district.