

BILL ANALYSIS

C.S.H.B. 87
By: Murr
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been noted that Texas does not have any laws pertaining to faithless electors who cast presidential and vice-presidential votes. Furthermore, current state election law does not provide for a scenario that contemplates the death of a candidate shortly before election day or before the electoral college has gathered to ratify results. C.S.H.B. 87 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. 87 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. 87 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 the

following:

- each elector nominee and alternate elector nominee of a political party, not later than the seventh day before the meeting of electors, must 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; and
- each elector nominee and alternate elector nominee of an independent presidential candidate, not later than the sixth day before the meeting of electors, must 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 executed oath must accompany the submission of the corresponding names to the secretary of state.

C.S.H.B. 87 removes the requirement for the secretary of state to function as temporary chair of the meeting of electors until the electors elect a chair from among themselves and repeals certain provisions relating to the replacement of vacant elector positions by nomination or by majority vote. The bill requires the secretary of state instead to preside at the meeting of electors, establishes that the position of an elector is vacant if the elector has failed to execute the oath, 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 establishes that a substitute elector is considered an elector for purposes of required action by electors and prohibits a person from serving as a substitute elector with respect to a meeting of electors at which the person's position is determined to be vacant. 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. 87 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. The bill requires the following:

- the elector must 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;
- each elector must present both completed ballots to the secretary of state; and
- the secretary of state must 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. 87 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 each 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. 87 requires the secretary of state to certify on the seventh day before the meeting of electors that a candidate for president or vice president who received the most votes in Texas in the general presidential election is willing and able to serve in the position for which the candidate was elected unless the secretary of state has received a written certification from one of the following individuals, in order of precedence, that the candidate is unable or unwilling to serve:

- the candidate;

- the executive director of the candidate's campaign; or
- the candidate's spouse or, if the candidate does not have a surviving spouse, the person to whom the candidate's estate would descend under applicable state law.

The bill requires the secretary of state to notify the party of the candidate who submitted the certification of the candidate's inability or unwillingness to serve and post the certification on the secretary of state's website. The bill authorizes the secretary of state to promulgate a form for a certification.

The bill requires the electors, if the secretary of state receives the certification before the meeting of electors, to vote on the issue of whether that candidate is willing and able to serve in the position for which the candidate was elected. If a majority of electors vote that a candidate is not willing or able to serve, the bill's provisions relating to the required presidential elector oath and the replacement of electors who violate the oath do not apply to that meeting of electors with respect to that candidate.

C.S.H.B. 87 repeals Section 192.007, Election Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 87 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the substitute and the introduced provide for the certification of the willingness and ability of a presidential or vice-presidential candidate who was the winning candidate in the general presidential election and for the subsequent use of the applicable certification at the meeting of the presidential electors. However, they differ as follows:

- the introduced provided for the certification of the candidate's willingness and ability to serve by the winning candidate or a legal representative of the candidate but the substitute provides for the certification of the candidate's willingness and ability to serve by the secretary of state instead;
- the substitute further provides for an exception to that required certification by the secretary of state if the secretary has received a written certification that the candidate is unable or unwilling to serve, provides for notice and the website posting by the secretary on receipt of that written certification of inability or unwillingness to serve, and provides for the promulgation of a form by the secretary for such a certification of inability or unwillingness to serve;
- the substitute specifies that certification of the candidate's willingness and ability to serve must be made on the seventh day before the meeting of electors but the introduced specified that the certification must be made not later than the seventh day before the meeting;
- the substitute does not include the provisions in the introduced that:
 - required the electors at its meeting to first vote to affirm or deny the certification; and
 - provided that all of the bill's provisions regarding the replacement of electors do not apply to that meeting of electors with respect to the certification of willingness and ability if a majority of electors vote to deny the certification;
- whereas the introduced conditions the bill's requirement for the electors to first vote at its meeting on whether each candidate is willing and able to serve in the applicable position on the failure of a candidate, before the meeting, to certify that the candidate is willing and able to serve, the substitute conditions that requirement on the secretary of state, before the meeting, having received the written certification that a candidate is unwilling

- or unable to serve; and
- whereas the introduced makes all of the bill's provisions, without specification, regarding the replacement of electors inapplicable to a meeting of the electors voting, as a majority, that the candidate is not willing or able to serve in the applicable position for which the candidate was elected, the substitute instead provides that only the following specified bill provisions regarding replacement of electors are inapplicable with respect to the electors voting, as a majority, with respect to that candidate:
 - the bill provision requiring the execution of the prescribed oath by an elector nominee and alternate elector nominee;
 - the bill provision establishing a vacancy in the position of an elector failing to execute the oath;
 - the bill provision requiring an individual to qualify as a substitute elector by executing the bill's prescribed oath swearing to serve and mark the substitute elector's ballot for the applicable candidates consistent with the oath of the individual to whose elector position the person has succeeded; and
 - the bill provision that creates an elector vacancy if an elector refuses to present a ballot, presents an unmarked ballot, or presents a ballot marked in violation of the elector's applicable oath.

The substitute and the introduced both set the deadline by which an elector nominee and alternate elector nominee of an independent presidential candidate must take the required oath prescribed by the bill, but the substitute requires that the oath be executed not later than the sixth day before the meeting of electors, whereas the introduced required it to be executed not later than the seventh day before the meeting.

The substitute includes provisions that did not appear in the introduced establishing that a substitute elector is considered an elector for purposes of the bill's provisions and prohibiting a person from serving as a substitute elector with respect to a meeting of electors at which the person's position is determined to be vacant. Whereas the introduced required the secretary of state to distribute ballots to and collect ballots from a substitute elector at the time designated for elector voting, the substitute requires the secretary of state to distribute ballots to and collect ballots from each elector at that time.

The substitute does not repeal the statutory provision that was repealed by the introduced that provides that if an elector is absent at the time for convening the meeting, the electors may declare the elector position vacant by a majority vote of those present at the meeting.