

By: Murr

H.B. No. 87

Substitute the following for H.B. No. 87:

By: Swanson

C.S.H.B. No. 87

A BILL TO BE ENTITLED

AN ACT

relating to the presidential electors of this state.

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

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

Sec. 192.004. ELECTOR CANDIDATE WITHDRAWAL [VACANCY].

~~[(a)]~~ An elector candidate may withdraw from the presidential election before presidential election day, by delivering written notice of the withdrawal to:

(1) the secretary of state; and

(2) the state chair of the party that nominated the elector candidate or to the independent or write-in candidate for president who named the elector candidate.

~~[(b) If an elector candidate withdraws, dies, or is declared ineligible before presidential election day, a replacement elector candidate may be named by the party that nominated the elector candidate or by the independent or write-in candidate for president who named the elector candidate.]~~

~~[(c) An independent or write-in candidate for president naming a replacement elector candidate must file with the secretary of state, before presidential election day, the name and residence address of the replacement candidate and a written statement, signed by the replacement candidate, that the person consents to be a candidate.]~~



1 ~~placement on the ballot]~~ the name of a political party's  
2 replacement nominee for president or vice-president of the United  
3 States as follows [~~if~~]:

4 (1) for placement on the ballot for an [~~the~~] original  
5 nominee who withdraws, dies, or is declared ineligible on or before  
6 the 74th day before presidential election day if [~~and~~

7 [~~2~~] the party's state chair delivers certification of  
8 the replacement nominee's name, signed by the state chair, to the  
9 secretary of state not later than 5 p.m. of the 71st day before  
10 presidential election day; or

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

18 SECTION 6. Section 192.064(a), Election Code, is amended to  
19 read as follows:

20 (a) The secretary of state shall certify in writing [~~for~~  
21 ~~placement on the ballot]~~ the name of a replacement  
22 vice-presidential running mate for an independent candidate for  
23 president of the United States as follows [~~if~~]:

24 (1) for placement on the ballot for an [~~the~~] original  
25 running mate who withdraws, dies, or is declared ineligible on or  
26 before the 74th day before presidential election day if [~~and~~

27 [~~2~~] the independent presidential candidate delivers

1 certification of the replacement running mate's name, signed by the  
2 presidential candidate, to the secretary of state not later than 5  
3 p.m. of the 71st day before presidential election day; or  
4 (2) to the presidential candidate's corresponding  
5 presidential elector candidates for an original running mate who  
6 withdraws, dies, or is declared ineligible after the 74th day  
7 before presidential election day if the independent presidential  
8 candidate delivers certification of the replacement running mate's  
9 name, signed by the presidential candidate, to the secretary of  
10 state not later than 2 p.m. on the Monday after the second Wednesday  
11 in December of a presidential election year.

12 SECTION 7. Subchapter C, Chapter 192, Election Code, is  
13 amended by adding Section 192.065 to read as follows:

14 Sec. 192.065. CERTIFICATION OF WINNING CANDIDATE'S  
15 INABILITY TO SERVE; AFFIRMATION OR DENIAL BY ELECTORS. (a) The  
16 secretary of state shall certify on the seventh day before the  
17 meeting of electors that a candidate for president or vice  
18 president who received the most votes in this state in the general  
19 presidential election is willing and able to serve in the position  
20 for which the candidate was elected, unless the secretary of state  
21 has received a written certification from one of the following  
22 individuals, in order of precedence, that the candidate is unable  
23 or unwilling to serve:

- 24 (1) the candidate;  
25 (2) the executive director of the candidate's  
26 campaign; or  
27 (3) the candidate's spouse or, if the candidate does

1 not have a surviving spouse, the person to whom the candidate's  
2 estate would descend under Section 201.001, Estates Code.

3 (b) Upon receipt of a certification under Subsection (a),  
4 the secretary of state shall notify the party of the candidate who  
5 submitted the certification and post the certification on the  
6 secretary of state's Internet website.

7 (c) The secretary of state may promulgate a form for a  
8 certification under this section of inability or unwillingness to  
9 serve.

10 (d) If before the meeting of electors the secretary of state  
11 receives a certification under Subsection (a) that a candidate is  
12 unwilling or unable to serve, the electors shall first vote on the  
13 issue of whether that candidate is willing and able to serve in the  
14 position for which the candidate was elected. If a majority of  
15 electors vote that the candidate is not willing or able to serve in  
16 the position for which the candidate was elected, Sections 192.102,  
17 192.103(b), 192.103(d), and 192.104(d) and (e) do not apply to that  
18 meeting of electors with respect to that candidate.

19 SECTION 8. 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. Each  
24 elector position in this state must be nominated in accordance with  
25 political party rules or by an independent or write-in presidential  
26 candidate, as applicable. Except as otherwise provided in Sections  
27 192.006, 192.103, and 192.104, this state's electors are the

1 winning elector nominees under the laws of this state.

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

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

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

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

20 (b) The position of an elector is vacant if the elector has  
21 failed to execute the oath under Section 192.102.

22 (c) The secretary of state shall fill a vacancy with a  
23 substitute elector nominated in accordance with political party  
24 rules or named by an independent or write-in candidate for  
25 president, as applicable. A substitute elector who is filling the  
26 position of an elector is considered an elector for purposes of this  
27 chapter. If a person's position as elector is determined to be

1 vacant, the person may not serve as a substitute elector with  
2 respect to that meeting of electors.

3 (d) To qualify as a substitute elector under Subsection (c),  
4 an individual who has not executed the oath required under Section  
5 192.102 shall execute the following oath: "I swear to serve and to  
6 mark my ballots for president and vice president consistent with  
7 the oath of the individual to whose elector position I have  
8 succeeded."

9 Sec. 192.104. ELECTOR VOTING. (a) At the time designated  
10 for elector voting and after all vacant positions have been filled,  
11 the secretary of state shall provide each elector with a  
12 presidential and a vice-presidential ballot. The elector shall mark  
13 the elector's presidential and vice-presidential ballots with the  
14 elector's votes for the offices of president and vice president,  
15 respectively, along with the elector's signature and the elector's  
16 legibly printed name.

17 (b) Except as otherwise provided by law of this state other  
18 than this subchapter, each elector shall present both completed  
19 ballots to the secretary of state. The secretary of state shall  
20 examine the ballots and read each vote publicly.

21 (c) The secretary of state shall accept as cast all ballots  
22 of electors whose votes are consistent with their oaths executed  
23 under Section 192.102 or 192.103(d). Except as otherwise provided  
24 by law, the secretary of state may not accept and may not count  
25 either an elector's presidential or vice-presidential ballot if the  
26 elector has not marked both ballots or has marked a ballot in  
27 violation of the elector's oath.

1       (d) An elector who refuses to present a ballot, presents an  
2 unmarked ballot, or presents a ballot marked in violation of the  
3 elector's oath executed under Section 192.102 or 192.103(d) vacates  
4 the office of elector, creating a vacant position to be filled under  
5 Section 192.103.

6       (e) The secretary of state shall distribute ballots to and  
7 collect ballots from each elector and repeat the process under this  
8 section of examining ballots, publicly reading the votes, declaring  
9 and filling vacant positions as required, and recording  
10 appropriately completed ballots from the substituted electors,  
11 until all of this state's electoral votes have been cast and  
12 recorded.

13       SECTION 9. Section [192.007](#), Election Code, is repealed.

14       SECTION 10. This Act takes effect immediately if it  
15 receives a vote of two-thirds of all the members elected to each  
16 house, as provided by Section [39](#), Article III, Texas Constitution.  
17 If this Act does not receive the vote necessary for immediate  
18 effect, this Act takes effect September 1, 2023.