

By: Hall

S.B. No. 398

A BILL TO BE ENTITLED

AN ACT

relating to the separation of federal elections from state and local elections, and to related practices and procedures.

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

SECTION 1. Section 1.002(a), Election Code, is amended to read as follows:

(a) This code applies to all general, special, federal, and primary elections held in this state.

SECTION 2. Section 1.005, Election Code, is amended by amending Subdivisions (4-b), (7), (14), and (19) and adding Subdivisions (4-c) and (4-d) to read as follows:

(4-b) "Federal election" means a primary or general election for a federal office or a resulting runoff election and does not include an election held for electors for president and vice president of the United States.

(4-c) "Federal judge" means:

(A) a judge, former judge, or retired judge of a United States court of appeals;

(B) a judge, former judge, or retired judge of a United States district court;

(C) a judge, former judge, or retired judge of a United States bankruptcy court; or

(D) a magistrate judge, former magistrate judge, or retired magistrate judge of a United States district court.

1           (4-d) "Federal office" means the office of United  
2 States senator or United States representative.

3           (7) "General election for state and county officers"  
4 means the general election at which officers of the [~~federal~~]  
5 state[~~7~~] and county governments are elected.

6           (14) "Primary election" means an election held by a  
7 political party under Chapter 172 to select its nominees for public  
8 office, and, unless the context indicates otherwise, the term  
9 includes a [~~presidential~~] primary election for a federal office.

10           (19) "Statewide office" means an office of the  
11 [~~federal or~~] state government that is voted on statewide.

12           SECTION 3. Chapters 11, 12, 13, 14, 15, 16, 17, 18, 19, and  
13 20, Election Code, are designated as Subtitle A, Title 2, Election  
14 Code, and a heading is added to Subtitle A to read as follows:

15                           SUBTITLE A. GENERAL REQUIREMENTS

16           SECTION 4. Section 11.002(a), Election Code, is amended to  
17 read as follows:

18           (a) In this code, "qualified voter" means a person who:

19                   (1) is 18 years of age or older;

20                   (2) is a United States citizen;

21                   (3) has not been determined by a final judgment of a  
22 court exercising probate jurisdiction to be:

23                           (A) totally mentally incapacitated; or

24                           (B) partially mentally incapacitated without the  
25 right to vote;

26                   (4) has not been finally convicted of a felony or, if  
27 so convicted, has:

1 (A) fully discharged the person's sentence,  
2 including any term of incarceration, parole, or supervision, or  
3 completed a period of probation ordered by any court; or

4 (B) been pardoned or otherwise released from the  
5 resulting disability to vote;

6 (5) is a resident of this state; and

7 (6) is a registered voter under this subtitle.

8 SECTION 5. Section 15.003(a), Election Code, is amended to  
9 read as follows:

10 (a) On receipt of a voter registration certificate issued  
11 under this subtitle [~~title~~], the person to whom the certificate is  
12 issued must personally sign it in the appropriate space.

13 SECTION 6. Title 2, Election Code, is amended by adding  
14 Subtitle B to read as follows:

15 SUBTITLE B. FEDERAL ELECTIONS

16 CHAPTER 21. GENERAL PROVISIONS

17 Sec. 21.001. DEFINITIONS. In this subtitle:

18 (1) "Federal ballot" means a ballot that only lists  
19 elections and candidates for federal office.

20 (2) "State election" means an election that is not a  
21 federal election.

22 Sec. 21.002. FEDERAL ELECTIONS SEPARATE. (a)  
23 Notwithstanding other law, a federal election is a separate  
24 election from any other election in this state.

25 (b) A federal election under this subtitle may not list on  
26 the federal ballot any proposition or election for state or county  
27 office.

1       (c) To the extent feasible, a federal election and a state  
2 election shall be held separately and concurrently using the same  
3 precincts and polling locations.

4       Sec. 21.003. RULES. (a) The secretary of state shall adopt  
5 rules to enact this subtitle.

6       (b) The rules adopted under this section must reduce voter  
7 disruption and confusion to the greatest extent possible, including  
8 rules requiring use of the same area in which voters are being  
9 accepted for voting and the same voting stations for state and  
10 federal elections.

11       CHAPTER 22. VOTER REGISTRATION FOR FEDERAL ELECTIONS

12       Sec. 22.001. DEFINITION. In this chapter, "military  
13 service voter" means:

14           (1) a member of the armed forces of the United States;

15           (2) a member of the merchant marine of the United  
16 States;

17           (3) a member of the Texas National Guard;

18           (4) a member of the National Guard of another state  
19 serving on active duty under an order of the president of the United  
20 States;

21           (5) a member of a reserve component of the armed forces  
22 of the United States serving on active duty under an order of the  
23 president of the United States or activated on state orders; or

24           (6) a spouse or dependent of a member of a military  
25 organization listed in Subdivisions (1) through (5).

26       Sec. 22.002. ELIGIBILITY TO VOTE IN FEDERAL ELECTIONS. To  
27 be eligible to vote in a federal election in this state, a person

1 must:

2 (1) be a qualified voter as defined by Section 11.002  
3 on the day the person offers to vote; or

4 (2) meet all requirements for voter eligibility under  
5 federal law and:

6 (A) meet all of the requirements to be a  
7 qualified voter under Section 11.002 except the requirement under  
8 Section 11.002(a)(6) that the person be a registered voter under  
9 Subtitle A, and be:

10 (i) a military service voter; or

11 (ii) domiciled in this state but  
12 temporarily living outside the territorial limits of the United  
13 States and the District of Columbia; or

14 (B) be unable to complete the registration  
15 requirements under Subtitle A.

16 Sec. 22.003. REGISTRATION FOR FEDERAL ELECTIONS. (a) If  
17 the United States Congress enacts legislation that allows a voter  
18 to be eligible to register to vote under this subtitle when the same  
19 voter would be ineligible to register to vote under Subtitle A, the  
20 secretary of state shall create and maintain a procedure by which a  
21 person eligible under Section 22.002 may submit an application to  
22 register to vote under this subtitle. The procedure under this  
23 section must comply with all federal laws for voter registration.

24 (b) A person who submits an application for registration  
25 under Chapter 13 that does not comply with all requirements under  
26 Subtitle A but does comply with all requirements under federal law  
27 shall be registered to vote under this subtitle.

1       (c) A person registered to vote under Subsection (b) who  
2 submits an application for registration under Chapter 13 that is  
3 accepted becomes registered to vote under Subtitle A.

4               CHAPTER 23. CONDUCT OF FEDERAL ELECTIONS

5       Sec. 23.001. CREATION OF FEDERAL BALLOT. The authority  
6 preparing a ballot for a concurrent federal and state election  
7 shall prepare a separate federal ballot for voters registered under  
8 this subtitle.

9       Sec. 23.002. BALLOT RECEIVED BY VOTER IN FEDERAL ELECTION.

10 (a) A voter registered to vote under Subtitle A may vote a full  
11 ballot containing propositions and candidates for office in state  
12 and federal elections.

13       (b) A voter registered to vote under this subtitle may only  
14 vote a federal ballot.

15       Sec. 23.003. OTHER CONDUCT. (a) Voting, tabulation, and  
16 reporting procedures for a state election shall be conducted under  
17 the provisions of this code.

18       (b) To the extent possible, voting, tabulation, and  
19 reporting procedures for a federal election shall be conducted  
20 under the provisions of this code.

21       (c) To the extent that federal law conflicts with a  
22 provision of this code regarding voting, tabulation, and reporting  
23 procedures for a federal election, those procedures shall be  
24 conducted under the provisions of the applicable federal law.

25       SECTION 7. Subchapter A, Chapter 41, Election Code, is  
26 amended by adding Section 41.003 to read as follows:

27       Sec. 41.003. GENERAL ELECTION FOR FEDERAL OFFICERS. (a)

1 The general election for federal officers shall be held on the first  
2 Tuesday after the first Monday in November in even-numbered years.

3 (b) To the extent feasible, the general election for federal  
4 officers shall be held concurrently with the general election for  
5 state and county officers.

6 SECTION 8. The heading to Section 41.007, Election Code, is  
7 amended to read as follows:

8 Sec. 41.007. PRIMARY ELECTIONS FOR STATE AND COUNTY  
9 OFFICERS.

10 SECTION 9. Sections 41.007(a) and (d), Election Code, are  
11 amended to read as follows:

12 (a) The general primary election date for state and county  
13 officers is the first Tuesday in March in each even-numbered year.

14 (d) No [~~other~~] election other than a primary election for  
15 federal officers may be held on the date of a primary election.

16 SECTION 10. Subchapter A, Chapter 41, Election Code, is  
17 amended by adding Section 41.0075 to read as follows:

18 Sec. 41.0075. PRIMARY ELECTIONS FOR FEDERAL OFFICERS. (a)  
19 The primary election date for federal officers is the first Tuesday  
20 in March in each even-numbered year.

21 (b) The runoff primary election date for federal officers is  
22 the fourth Tuesday in May following the primary election for  
23 federal officers.

24 (c) To the extent feasible, the primary election for federal  
25 officers shall be held concurrently with the primary election for  
26 state and county officers.

27 SECTION 11. Section 42.002(a), Election Code, is amended to

1 read as follows:

2 (a) The county election precincts are the election  
3 precincts for the following elections:

4 (1) the general election for state and county  
5 officers;

6 (2) a special election ordered by the governor;

7 (3) a primary election;

8 (4) a countywide election ordered by the commissioners  
9 court, county judge, or other county authority, except an election  
10 subject to Section 42.062(2); ~~and~~

11 (5) a federal election; and

12 (6) as provided by Section 42.0621, any other election  
13 held by a political subdivision on a uniform election date.

14 SECTION 12. Section 67.010(a), Election Code, is amended to  
15 read as follows:

16 (a) The county election returns for an election for a  
17 statewide office other than governor or lieutenant governor, a  
18 statewide measure, a district office, a federal office, or  
19 president and vice-president of the United States shall be  
20 canvassed by the governor.

21 SECTION 13. Section 84.014, Election Code, is amended to  
22 read as follows:

23 Sec. 84.014. ACTION BY EARLY VOTING CLERK ON CERTAIN  
24 APPLICATIONS. If an applicant provides a date of birth, driver's  
25 license number, or social security number on the applicant's  
26 application for an early voting ballot to be voted by mail that is  
27 different from or in addition to the information maintained by the

1 voter registrar in accordance with Subtitle A, Title 2, the early  
2 voting clerk shall notify the voter registrar. The voter registrar  
3 shall update the voter's record with the information provided by  
4 the applicant.

5 SECTION 14. Section 101.052, Election Code, is amended by  
6 amending Subsections (e), (f), and (j) and adding Subsection (n) to  
7 read as follows:

8 (e) An applicant who otherwise complies with applicable  
9 requirements is entitled to receive a full ballot to be voted by  
10 mail under this chapter if:

11 (1) the applicant submits a federal postcard  
12 application to the early voting clerk on or before the 20th day  
13 before election day; and

14 (2) the application contains the information that is  
15 required for registration under Subtitle A, Title 2.

16 (f) The applicant is entitled to receive only a federal  
17 ballot to be voted by mail under Chapter 114 if:

18 (1) the applicant submits the federal postcard  
19 application to the early voting clerk after the date provided by  
20 Subsection (e)(1) and before the deadline for submitting a regular  
21 application for a ballot to be voted by mail; and

22 (2) the application contains the information that is  
23 required for registration under Subtitle A, Title 2.

24 (j) If the early voting clerk determines that an application  
25 that is submitted before the time prescribed by Subsection (e)(1)  
26 does not contain the information that is required for registration  
27 under Subtitle A, Title 2, the clerk shall notify the applicant of

1 that fact. If the applicant has provided a telephone number or an  
2 address for receiving mail over the Internet, the clerk shall  
3 notify the applicant by that medium.

4 (n) A federal postcard application that does not meet the  
5 requirements of Subtitle A, Title 2, may still constitute  
6 registration for federal elections if the federal postcard  
7 application meets the requirements of Subtitle B, Title 2.

8 SECTION 15. Section 101.053(b), Election Code, is amended  
9 to read as follows:

10 (b) If an applicant provides a date of birth, driver's  
11 license number, or social security number on the applicant's  
12 federal postcard application that is different from or in addition  
13 to the information maintained by the voter registrar in accordance  
14 with Subtitle A, Title 2, the early voting clerk shall notify the  
15 voter registrar. The voter registrar shall update the voter's  
16 record with the information provided by the applicant.

17 SECTION 16. Section 101.055, Election Code, is amended by  
18 amending Subsection (a) and adding Subsection (a-1) to read as  
19 follows:

20 (a) The submission of a federal postcard application that  
21 complies with the ~~[applicable]~~ requirements of Subtitle A, Title 2,  
22 by an unregistered applicant constitutes registration by the  
23 applicant:

24 (1) for the purpose of voting in the election for state  
25 and county officers for which a ballot is requested; and

26 (2) under Subtitle A, Title 2, if the federal postcard  
27 application complies with the requirements under that subtitle,

1 unless the person indicates on the application that the person is  
2 residing outside the United States indefinitely.

3 (a-1) The submission of a federal postcard application that  
4 complies with the requirements of Subtitle B, Title 2, by an  
5 unregistered applicant constitutes registration by the applicant:

6 (1) for the purpose of voting in the election for  
7 federal officers for which a ballot is requested; and

8 (2) under Subtitle B, Title 2, if the federal postcard  
9 application complies with the requirements under that subtitle,  
10 unless the person indicates on the application that the person is  
11 residing outside the United States indefinitely.

12 SECTION 17. Section 142.005, Election Code, is amended to  
13 read as follows:

14 Sec. 142.005. AUTHORITY WITH WHOM APPLICATION FILED. An  
15 application for a place on the ballot must be filed with:

16 (1) the secretary of state, for a federal, statewide,  
17 or district office; or

18 (2) the county judge, for a county or precinct office.

19 SECTION 18. Section 145.033, Election Code, is amended to  
20 read as follows:

21 Sec. 145.033. AUTHORITY WITH WHOM WITHDRAWAL REQUEST FILED.

22 A candidate must file a withdrawal request with:

23 (1) the secretary of state, for a federal, statewide,  
24 or district office; or

25 (2) the authority responsible for having the official  
26 ballot prepared, for a county or precinct office.

27 SECTION 19. Section 145.037(d), Election Code, is amended

1 to read as follows:

2 (d) The chair must deliver the certification to:

3 (1) the secretary of state, for a federal, statewide,  
4 or district office; or

5 (2) the authority responsible for having the official  
6 ballot prepared, for a county or precinct office.

7 SECTION 20. Section 146.024, Election Code, is amended to  
8 read as follows:

9 Sec. 146.024. AUTHORITY WITH WHOM DECLARATION FILED. A  
10 declaration of write-in candidacy must be filed with:

11 (1) the secretary of state, for a federal, statewide,  
12 or district office; or

13 (2) the county judge, for a county or precinct office.

14 SECTION 21. The heading to Section 161.008, Election Code,  
15 is amended to read as follows:

16 Sec. 161.008. CERTIFICATION OF NOMINEES FOR FEDERAL,  
17 STATEWIDE, AND DISTRICT OFFICES FOR PLACEMENT ON GENERAL ELECTION  
18 BALLOT.

19 SECTION 22. Section 161.008(a), Election Code, is amended  
20 to read as follows:

21 (a) Except as provided by Subsection (c), the secretary of  
22 state shall certify in writing for placement on the general  
23 election ballot the name of each candidate nominated at a primary  
24 election or convention of a political party for a federal,  
25 statewide, or district office.

26 SECTION 23. Section 163.006(d), Election Code, is amended  
27 to read as follows:

1 (d) Before January 15 of each year in which political  
2 parties hold precinct conventions under this title, the secretary  
3 of state shall deliver written notice of the requirements of this  
4 section to the state chair of each party that had a nominee for a  
5 federal, statewide, or district office on the most recent general  
6 election ballot.

7 SECTION 24. Section 172.059(b), Election Code, is amended  
8 to read as follows:

9 (b) A withdrawal request for the runoff primary must be  
10 filed with the state chair, for a federal, statewide, or district  
11 office, or with the county chair, for a county or precinct office.

12 SECTION 25. The heading to Section 172.121, Election Code,  
13 is amended to read as follows:

14 Sec. 172.121. CERTIFICATION OF CANDIDATES FOR FEDERAL,  
15 STATEWIDE, AND DISTRICT OFFICES FOR PLACEMENT ON RUNOFF BALLOT.

16 SECTION 26. Section 172.121(a), Election Code, is amended  
17 to read as follows:

18 (a) The state chair shall certify on the secretary of  
19 state's website for placement on the runoff primary election ballot  
20 the name of each general primary candidate for a federal,  
21 statewide, or district office who is to be a candidate in the  
22 runoff.

23 SECTION 27. The heading to Section 172.122, Election Code,  
24 is amended to read as follows:

25 Sec. 172.122. CERTIFICATION OF NOMINEES WHO FILED AN  
26 APPLICATION FOR A PLACE ON THE BALLOT IN ACCORDANCE WITH THE GENERAL  
27 REQUIREMENTS FOR FEDERAL, STATEWIDE, AND DISTRICT OFFICES TO

1 SECRETARY OF STATE.

2 SECTION 28. Section 172.122(a), Election Code, is amended  
3 to read as follows:

4 (a) The state chair shall certify by posting on the  
5 secretary of state's website the name and address of each primary  
6 candidate who is nominated for a federal, statewide, or district  
7 office. The state chair shall execute and file digitally with the  
8 secretary of state an affidavit certifying that the returns posted  
9 on the secretary of state's website are the correct and complete  
10 returns. The secretary of state shall adopt by rule a process to  
11 allow the chair to submit the affidavit digitally.

12 SECTION 29. Section 173.063, Election Code, is amended to  
13 read as follows:

14 Sec. 173.063. FEE RETAINED BY STATE CHAIR. The state chair  
15 shall deposit in the state primary fund each filing fee  
16 accompanying an application for a place on the ballot filed with the  
17 state chair:

- 18 (1) for a federal office;  
19 (1-a) for a statewide office; or  
20 (2) for a district office if the application is filed  
21 after the regular filing deadline.

22 SECTION 30. Section 181.0311(a), Election Code, is amended  
23 to read as follows:

24 (a) In addition to any other requirements, to be considered  
25 for nomination by convention, a candidate must:

- 26 (1) pay a filing fee to the secretary of state for a  
27 federal, statewide, or district office or the county judge for a

1 county or precinct office; or

2 (2) submit to the secretary of state for a federal,  
3 statewide, or district office or the county judge for a county or  
4 precinct office a petition in lieu of a filing fee that satisfies  
5 the requirements prescribed by Subsection (e) and Section 141.062.

6 SECTION 31. Section 181.032(a), Election Code, is amended  
7 to read as follows:

8 (a) An application for nomination by a convention must be  
9 filed with:

10 (1) the state chair, for a federal, statewide, or  
11 district office; or

12 (2) the county chair, for a county or precinct office.

13 SECTION 32. Section 181.068(b), Election Code, is amended  
14 to read as follows:

15 (b) Not later than the 20th day after the date of the  
16 convention making the nomination, the presiding officer shall  
17 deliver the certification to:

18 (1) the authority responsible for having the official  
19 general election ballot prepared in the county, for certification  
20 of a county or precinct office; or

21 (2) the secretary of state, for certification of a  
22 federal, statewide, or district office.

23 SECTION 33. Sections 231.008(b) and (c), Election Code, are  
24 amended to read as follows:

25 (b) If the judgment in a contest for an office affects the  
26 preparation of the ballot for a succeeding election, the clerk  
27 shall deliver a copy to the authority responsible for having the

1 official ballot prepared or, in the case of a federal, statewide, or  
2 district office, to the authority responsible for certifying the  
3 names of the candidates for placement on the ballot.

4 (c) If the judgment orders that a new general or special  
5 election be held, the clerk shall deliver a copy to the authority  
6 responsible for ordering the election. If the judgment orders a new  
7 primary election, the clerk shall deliver a copy to the state chair  
8 of the appropriate political party, in the case of a federal,  
9 statewide, or district office, or to the county chair, in the case  
10 of a county or precinct office.

11 SECTION 34. Section 232.013(d), Election Code, is amended  
12 to read as follows:

13 (d) If the contested election is a primary, the district  
14 clerk shall deliver a certified copy of the order setting the date  
15 of the runoff to the state chair of the political party in the case  
16 of a federal, statewide, or district office or to the county chair  
17 in the case of a county or precinct office.

18 SECTION 35. Section 232.048(c), Election Code, is amended  
19 to read as follows:

20 (c) The candidate receiving the most votes in a new election  
21 ordered by a court in a primary election contest is the political  
22 party's nominee, regardless of whether the candidate receives a  
23 majority vote, if the date of the final canvass of the court-ordered  
24 primary is on or after:

25 (1) the 85th day before the date of the succeeding  
26 general election in the case of a federal, statewide, or district  
27 office; or

1           (2) the 75th day before the date of the succeeding  
2 general election in the case of a county or precinct office.

3           SECTION 36. Section 252.005, Election Code, is amended to  
4 read as follows:

5           Sec. 252.005. AUTHORITY WITH WHOM APPOINTMENT FILED:  
6 CANDIDATE. An individual must file a campaign treasurer appointment  
7 for the individual's own candidacy with:

8           (1) the commission, if the appointment is made for  
9 candidacy for:

10                   (A) a federal office;

11                   (A-1) a statewide office;

12                   (B) a district office filled by voters of more  
13 than one county;

14                   (C) a judicial district office filled by voters  
15 of only one county;

16                   (D) state senator;

17                   (E) state representative; or

18                   (F) the State Board of Education;

19           (2) the county clerk, if the appointment is made for  
20 candidacy for a county office, a precinct office, or a district  
21 office other than one included in Subdivision (1);

22           (3) the clerk or secretary of the governing body of the  
23 political subdivision or, if the political subdivision has no clerk  
24 or secretary, with the governing body's presiding officer, if the  
25 appointment is made for candidacy for an office of a political  
26 subdivision other than a county;

27           (4) the county clerk if:

1                   (A) the appointment is made for candidacy for an  
2 office of a political subdivision other than a county;

3                   (B) the governing body for the political  
4 subdivision has not been formed; and

5                   (C) no boundary of the political subdivision  
6 crosses a boundary of the county; or

7                   (5) the commission if:

8                   (A) the appointment is made for candidacy for an  
9 office of a political subdivision other than a county;

10                   (B) the governing body for the political  
11 subdivision has not been formed; and

12                   (C) the political subdivision is situated in more  
13 than one county.

14                   SECTION 37. This Act takes effect September 1, 2023.