

1-1 By: Murr, et al. (Senate Sponsor - Hughes) H.B. No. 3868
1-2 (In the Senate - Received from the House May 12, 2021;
1-3 May 19, 2021, read first time and referred to Committee on State
1-4 Affairs; May 21, 2021, reported favorably by the following vote:
1-5 Yeas 9, Nays 0; May 21, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	<u>Hughes</u>	X		
1-9	<u>Birdwell</u>	X		
1-10	<u>Campbell</u>	X		
1-11	<u>Hall</u>	X		
1-12	<u>Lucio</u>	X		
1-13	<u>Nelson</u>	X		
1-14	<u>Powell</u>	X		
1-15	<u>Schwertner</u>	X		
1-16	<u>Zaffirini</u>	X		

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the presidential electors of this state.
1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-21 SECTION 1. The heading to Section 192.004, Election Code,
1-22 is amended to read as follows:
1-23 Sec. 192.004. ELECTOR CANDIDATE WITHDRAWAL [VACANCY].
1-24 SECTION 2. Section 192.006(b), Election Code, is amended to
1-25 read as follows:
1-26 (b) The secretary of state shall arrange for the meeting
1-27 place, notify the electors, and call the meeting to order. [~~The~~
1-28 ~~secretary shall act as temporary chair of the meeting until the~~
1-29 ~~electors elect a chair from among themselves.~~]
1-30 SECTION 3. Subchapter A, Chapter 192, Election Code, is
1-31 amended by adding Section 192.009 to read as follows:
1-32 Sec. 192.009. REPLACEMENT NOMINEE. An elector shall
1-33 consider a replacement candidate certified under Subchapter C to be
1-34 the presidential or vice-presidential candidate for whom the
1-35 elector is the corresponding presidential elector candidate.
1-36 SECTION 4. The heading to Subchapter C, Chapter 192,
1-37 Election Code, is amended to read as follows:
1-38 SUBCHAPTER C. WITHDRAWAL, DEATH, AND INELIGIBILITY OF PRESIDENTIAL
1-39 AND VICE-PRESIDENTIAL CANDIDATES; CERTIFICATION OF ABILITY TO
1-40 SERVE
1-41 SECTION 5. Section 192.062(a), Election Code, is amended to
1-42 read as follows:
1-43 (a) The secretary of state shall certify in writing [~~for~~
1-44 ~~placement on the ballot~~] the name of a political party's
1-45 replacement nominee for president or vice-president of the United
1-46 States as follows [~~if~~]:
1-47 (1) for placement on the ballot for an [the] original
1-48 nominee who withdraws, dies, or is declared ineligible on or before
1-49 the 74th day before presidential election day if [and
1-50 ~~(2)]~~ the party's state chair delivers certification of
1-51 the replacement nominee's name, signed by the state chair, to the
1-52 secretary of state not later than 5 p.m. of the 71st day before
1-53 presidential election day; or
1-54 (2) to the nominating party's presidential elector
1-55 candidates for an original nominee who withdraws, dies, or is
1-56 declared ineligible after the 74th day before presidential election
1-57 day if the party's state chair delivers certification of the
1-58 replacement nominee's name, signed by the state chair, to the
1-59 secretary of state not later than 2 p.m. on the Monday after the
1-60 second Wednesday in December of a presidential election year.
1-61 SECTION 6. Section 192.064(a), Election Code, is amended to

2-1 read as follows:

2-2 (a) The secretary of state shall certify in writing [~~for~~
2-3 ~~placement on the ballot~~] the name of a replacement
2-4 vice-presidential running mate for an independent candidate for
2-5 president of the United States as follows [~~if~~]:

2-6 (1) for placement on the ballot for an [~~the~~] original
2-7 running mate who withdraws, dies, or is declared ineligible on or
2-8 before the 74th day before presidential election day if [~~and~~

2-9 [~~2~~] the independent presidential candidate delivers
2-10 certification of the replacement running mate's name, signed by the
2-11 presidential candidate, to the secretary of state not later than 5
2-12 p.m. of the 71st day before presidential election day; or

2-13 (2) to the presidential candidate's corresponding
2-14 presidential elector candidates for an original running mate who
2-15 withdraws, dies, or is declared ineligible after the 74th day
2-16 before presidential election day if the independent presidential
2-17 candidate delivers certification of the replacement running mate's
2-18 name, signed by the presidential candidate, to the secretary of
2-19 state not later than 2 p.m. on the Monday after the second Wednesday
2-20 in December of a presidential election year.

2-21 SECTION 7. Subchapter C, Chapter 192, Election Code, is
2-22 amended by adding Section 192.065 to read as follows:

2-23 Sec. 192.065. CERTIFICATION OF ABILITY TO SERVE BY WINNING
2-24 CANDIDATE; AFFIRMATION OR DENIAL BY ELECTORS. (a) The candidates
2-25 for president and vice president who received the most votes in this
2-26 state in the general presidential election, or a legal
2-27 representative of such a candidate, shall certify not later than
2-28 the seventh day before the meeting of electors that the candidate is
2-29 willing and able to serve in the position for which the candidate
2-30 was elected.

2-31 (b) At the meeting of electors, the electors shall first
2-32 vote to affirm or deny the certification made under Subsection (a).
2-33 If a majority of electors vote to deny the certification that the
2-34 candidate is willing and able to serve, Subchapter D does not apply
2-35 to that meeting of electors with respect to the candidate for which
2-36 the certification was denied.

2-37 (c) If before the meeting of electors a candidate fails to
2-38 certify that the candidate is willing and able to serve as provided
2-39 by Subsection (a), the electors shall first vote on the issue of
2-40 whether each candidate is willing and able to serve in the position
2-41 for which the candidate was elected. If a majority of electors vote
2-42 that the candidate is not willing or able to serve in the position
2-43 for which the candidate was elected, Subchapter D does not apply to
2-44 that meeting of electors with respect to that candidate.

2-45 SECTION 8. Chapter 192, Election Code, is amended by adding
2-46 Subchapter D to read as follows:

2-47 SUBCHAPTER D. REQUIRED ACTION BY PRESIDENTIAL ELECTORS;
2-48 REPLACEMENT OF ELECTOR

2-49 Sec. 192.101. DESIGNATION OF STATE'S ELECTORS. Each
2-50 elector position in this state must be nominated in accordance with
2-51 political party rules or by an independent or write-in presidential
2-52 candidate, as applicable. Except as otherwise provided in Sections
2-53 192.103 and 192.104, this state's electors are the winning elector
2-54 nominees under the laws of this state.

2-55 Sec. 192.102. OATH. (a) Not later than the seventh day
2-56 before the meeting of electors, each elector nominee and alternate
2-57 elector nominee of a political party shall execute the following
2-58 oath: "If selected for the position of elector, I swear to serve and
2-59 to mark my ballots for president and vice president for the nominees
2-60 for those offices of the party that nominated me."

2-61 (b) Not later than the seventh day before the meeting of
2-62 electors, each elector nominee and alternate elector nominee of an
2-63 independent presidential candidate shall execute the following
2-64 oath: "If selected for the position of elector as a nominee of an
2-65 independent presidential candidate, I swear to serve and to mark my
2-66 ballots for that candidate and for that candidate's
2-67 vice-presidential running mate."

2-68 (c) The executed oaths must accompany the submission of the
2-69 corresponding names to the secretary of state.

3-1 Sec. 192.103. PRESIDING OFFICER; ELECTOR VACANCY. (a) The
3-2 secretary of state shall preside at the meeting of electors
3-3 described in Section 192.104.

3-4 (b) The position of an elector who is not present to vote or
3-5 who has failed to execute the oath under Section 192.102 is vacant.
3-6 The secretary of state shall fill a vacancy with a substitute
3-7 elector nominated in accordance with political party rules or named
3-8 by an independent or write-in candidate for president, as
3-9 applicable.

3-10 (c) To qualify as a substitute elector under Subsection (b),
3-11 an individual who has not executed the oath required under Section
3-12 192.102 shall execute the following oath: "I swear to serve and to
3-13 mark my ballots for president and vice president consistent with
3-14 the oath of the individual to whose elector position I have
3-15 succeeded."

3-16 Sec. 192.104. ELECTOR VOTING. (a) At the time designated
3-17 for elector voting and after all vacant positions have been filled
3-18 under Section 192.103, the secretary of state shall provide each
3-19 elector with a presidential and a vice-presidential ballot. The
3-20 elector shall mark the elector's presidential and
3-21 vice-presidential ballots with the elector's votes for the offices
3-22 of president and vice president, respectively, along with the
3-23 elector's signature and the elector's legibly printed name.

3-24 (b) Except as otherwise provided by law of this state other
3-25 than this subchapter, each elector shall present both completed
3-26 ballots to the secretary of state. The secretary of state shall
3-27 examine the ballots, read each vote publicly, and accept as cast all
3-28 ballots of electors whose votes are consistent with their oaths
3-29 executed under Section 192.102 or 192.103(c). Except as otherwise
3-30 provided by law, the secretary of state may not accept and may not
3-31 count either an elector's presidential or vice-presidential ballot
3-32 if the elector has not marked both ballots or has marked a ballot in
3-33 violation of the elector's oath.

3-34 (c) An elector who refuses to present a ballot, presents an
3-35 unmarked ballot, or presents a ballot marked in violation of the
3-36 elector's oath executed under Section 192.102 or 192.103(c) vacates
3-37 the office of elector, creating a vacant position to be filled under
3-38 Section 192.103.

3-39 (d) The secretary of state shall distribute ballots to and
3-40 collect ballots from a substitute elector and repeat the process
3-41 under this section of examining ballots, publicly reading the
3-42 votes, declaring and filling vacant positions as required, and
3-43 recording appropriately completed ballots from the substituted
3-44 electors, until all of this state's electoral votes have been cast
3-45 and recorded.

3-46 SECTION 9. The following provisions of the Election Code
3-47 are repealed:

- 3-48 (1) Sections 192.004(b), (c), and (d);
- 3-49 (2) Section 192.006(c); and
- 3-50 (3) Section 192.007.

3-51 SECTION 10. This Act takes effect immediately if it
3-52 receives a vote of two-thirds of all the members elected to each
3-53 house, as provided by Section 39, Article III, Texas Constitution.
3-54 If this Act does not receive the vote necessary for immediate
3-55 effect, this Act takes effect September 1, 2021.

3-56 * * * * *