

**SUBJECT:** Replacement of justices on Supreme Court after disqualification or recusal

**COMMITTEE:** Judicial Affairs — favorable, without amendment

**VOTE:** 6 ayes — Thompson, Hartnett, Duncan, Nixon, Solis, Zbranek  
0 nays  
3 absent — Alonzo, Goodman, Willis

**SENATE VOTE:** On final passage, April 11 — 31-0

**WITNESSES:** None

**BACKGROUND:** Justices for the Texas Supreme Court and the Texas Court of Criminal Appeals may be disqualified from hearing certain cases. In the Court of Criminal Appeals, if a judge is disqualified, the governor may commission a qualified person to serve in the judge's place for the duration of the disqualification. The governor may commission a replacement Supreme Court justice only if a majority of the justices are disqualified or if the disqualification causes an even number of justices so that a majority decision may not be reached. There is also no provision for the recusal of justices of the Supreme Court. Judges may recuse, or voluntarily disqualify themselves, for conflict of interest or other reasons.

**DIGEST:** SB 1384 would allow the chief justice of the Texas Supreme Court to certify to the governor any vacancy of a justice for reason of recusal or disqualification. The governor would then have to commission an active appellate or district judge who is qualified to serve on the supreme court to sit for the recused or disqualified justice.

The bill would take immediate effect if approved by two-thirds of the membership of each house.

**SUPPORTERS SAY:** SB 1384 would allow the Supreme Court to have the same flexibility in temporarily replacing recused or disqualified justices that is allowed the Court of Criminal Appeals. Allowing justices to be temporarily replaced

for the duration of their absence would permit the court to issue more full opinions.

Additionally, this legislation would ensure that any replacement justice is an active appellate or district court judge, thus ensuring that only the most qualified people can be selected.

The bill would not mandate that a justice be replaced by the governor, but would leave it up to the chief justice to determine whether another judge should be commissioned to replace an absent member of the court.

**OPPONENTS  
SAY:**

There is no pressing need for this legislation. Most of the recusals of justices are for one case only, and if one vote would make a difference, another judge can be commissioned to replace the recused justice.