

- SUBJECT:** Filing vacancies for governor and lieutenant governor
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 12 ayes — Wolens, Bailey, Brimer, Counts, Danburg, Hilbert, Hunter, D. Jones, Longoria, Marchant, McCall, Merritt
- 0 nays
- 3 absent — S. Turner, Alvarado, Craddick
- WITNESSES:** For — Bill Stouffer, Common Cause; Charles Baird; Bill Brannon
- Against — None
- BACKGROUND:** Art. 4, secs. 3a and 16 of the Texas Constitution provide for the succession of the governor. If the governor is unable to fulfill the duties of the office, the lieutenant governor acts as governor until another person fills the office, the disability from performing the role of governor is removed, or until after the next general election. Under Art. 4, sec. 17, if the lieutenant governor becomes unable to serve while there is a vacancy in the office of the governor, the president of the Senate administers the government until superceded by a governor or lieutenant governor.
- Under Art. 3, sec. 9, if the office of lieutenant governor becomes vacant, the president pro tempore of the Senate must convene the Committee of the Whole Senate within 30 days to elect one of its members to perform the duties of lieutenant governor in addition to that senator's duties as Senator until the next general election.
- DIGEST:** CSHJR 44 would provide that the lieutenant governor is required to forfeit that office when filling a permanent vacancy in the office of governor. When the governor was absent from the state or temporarily unable to serve or disqualified, the lieutenant governor would exercise the powers of governor until the governor resumed the duties of the office. CSHJR 44 would make other corrective and cleanup changes, including making the succession language gender neutral.

The proposal would be presented to the voters at an election on November 2, 1999. The ballot proposal would read: "The constitutional amendment to revise the provisions for filling of a vacancy in the office of governor or lieutenant governor."

**SUPPORTERS
SAY:**

HJR 44 would clarify beyond question that the lieutenant governor cannot hold both offices when filling a vacancy in the governorship. While the generally understood practice of succession for the office of governor has been that the lieutenant governor would resign that office to fill a non-temporary vacancy in the office of governor, that procedure is not clearly delineated in the Constitution. Under the Constitution as it currently reads, the lieutenant governor could "exercise the powers and authority " of the office of governor until the next general election without relinquishing the office of lieutenant governor. Other general constitutional provision banning dual officeholding would not necessarily apply since the Constitution makes a specific exception otherwise.

Also, because the Constitution says the lieutenant governor, not the *former* lieutenant governor, "shall act as governor," there could be a question about whether a lieutenant governor who resigns the office would be entitled to serve as governor. HJR 44 would clear up the ambiguities about all these issues.

This amendment would ensure the certainty of succession that should be established in the Constitution. While precedent establishes one line of succession, historical precedents could always be overturned by a court examining the language of the Constitution if such succession were challenged.

The succession of a senator to the office of lieutenant governor would remain exactly as it is under the current constitution allowing a member of the Senate to be elected by his or her fellow senators. There is no conflict of interest having a senator represent one district and hold a state office simultaneously, as the speaker of the House currently acts in those two roles.

**OPPONENTS
SAY:**

This amendment is unnecessary. When past vacancies have occurred, there has been no question as to the ability of the lieutenant governor to resign and fill the vacancy, nor has there been any question that the lieutenant governor should resign when there is a permanent vacancy. There was no question

when Lt. Gov. Allan Shivers became governor on the death of Gov. Beauford Jester in 1949 or when Lt. Gov. William P. Hobby became governor after the impeachment and removal of Gov. James Ferguson in 1917 that the lieutenant governor somehow could hold both offices at the same time. In case there is any doubt, Art. 16, sec. 40 of the Constitution prohibits a person from holding or exercising more than one office, which should prevent dual officeholding by the lieutenant governor.

**OTHER
OPPONENTS
SAY:**

The original version of HJR 44 would have required the senator elected by the Senate to fill a vacancy for lieutenant governor to resign his or her seat in the Senate. That requirement should be included in this legislation to prevent the potential conflict of interest that could occur when one person serves one particular district and presides at the same time over the Senate as a whole.

NOTES:

The original version of HJR 44 would have required a senator elected by the Senate to fill a vacancy for lieutenant governor to cease to be a senator. The committee substitute made other conforming changes.