SUBJECT: Prohibiting prosecutors or city attorneys as judicial candidates

COMMITTEE: Judicial Affairs — favorable, without amendment

VOTE: 7 ayes — Thompson, Capelo, Deshotel, Garcia, Hinojosa, Solis, Uresti

1 nay — Hartnett

1 absent — Talton

WITNESSES: For — None

Against — Margaret Harris; *Registered but did not testify:* Darryl Pool, Republican Party of Texas

On — Bruce Isaacks

BACKGROUND: State law requires elected or appointed officials to resign their offices when seeking another elected office. The resignation is considered effective once the elected or appointed official announces his or her candidacy for the other office or appoints a campaign treasurer. Paid city and state employees, such as teachers, police officers, deputy sheriffs, firefighters, or city and assistant prosecutors, are not required to resign their positions to seek elective office.

DIGEST: HB 3175 would prohibit an assistant prosecuting attorney, investigator, secretary, or other employee of a prosecuting attorney's office from being a candidate for a judicial office while working for the prosecuting attorney. It also would prohibit an employee of a city attorney's office from being a candidate for a judicial office while working for the city attorney.

The bill would define a candidate as one who has publicly announced for office, has filed an application for a place on the ballot, or has designated a campaign treasurer under Election Code, chapter 252. It would define a judicial office as:

- chief justice or justice of the Texas Supreme Court;
- presiding judge or judge of the Texas Court of Criminal Appeals;
- chief justice or justice of a court of appeals;
- district judge, including a criminal district judge;

- judge of a statutory county court;
- county judge who performs judicial functions;
- justice of the peace; or
- municipal court judge.

A prosecuting attorney or city council could grant an employee a leave of absence without pay for the purpose of being a judicial candidate.

The bill would take effect September 1, 2001, and would apply only to persons who announced their candidacy or became candidates on or after that date.

SUPPORTERS SAY:

Taxpayers should not have to continue to pay the salaries of employees in prosecuting attorney's and municipal attorney's offices who are running for office rather than meeting the responsibilities of those offices. Allowing them to remain on the payroll gives these employees an unfair advantage. It also can result in the election of judges who are biased in favor of prosecutors because they were once prosecutors themselves.

HB 3175 would mirror the prohibition against state employees running for elected judicial office while maintaining their taxpayer-funded employment. It would ensure that these employees were not derelict in executing their duties while pursuing their political careers at the taxpayers' expense.

The bill would prevent, for example, a district attorney or city attorney who had a political vendetta against a given judge from indirectly financing an assistant district attorney's campaign against that judge. It would require the assistant district attorney to take an unpaid leave of absence during the political campaign to avoid potential conflicts of interest.

Assistant city and district attorneys who run for office while maintaining their employment create an appearance of ethical impropriety. While state elected officials may run for other positions while retaining their offices, public-sector employees — including assistant district and city attorneys and related personnel — should not be allowed to run, because they are not directly accountable to the public as elected officials are.

OPPONENTS SAY:

HB 3175 unfairly would single out a class of government employees and prohibit them from running for judicial office. Similar restrictions would not

apply to teachers, firefighters, police officers, or deputy sheriffs.

The decision on whether assistant prosecutors, assistant city attorneys, or other employees can run for judicial office should remain with the local elected officials who hired them, not with the Legislature. In Harris County, for example, assistant district attorneys may not run against an incumbent judge for a judicial position while on the county payroll. Other districts also impose some restrictions. Ultimately, any candidates who abuse their position must answer to the voters.

Ways exist to monitor the time of assistant district attorneys and city attorneys while they are at work. Special timesheets can be made to account for the time of employees who are running for judicial offices. In light of the alternatives, the outright prohibition proposed by HB 3175 would be excessive. Also, making a candidate take a leave of absence could result in a loss of seniority.

This bill could hurt rural counties that have only a few attorneys. Some counties have only about 25 attorneys, many of whom work in the district attorney's office. This bill would limit severely the pool of available judicial candidates in those counties.

NOTES:

A similar bill in the 76th Legislature, HB 762 by Dutton, was defeated in the House by 95-46.