

SUBJECT: Establishing procedure for declaring vacant constable positions dormant

COMMITTEE: Select Committee on Constitutional Revision — committee substitute recommended

VOTE: 4 ayes — Driver, Bailey, G. Lewis, Mowery
0 nays
3 absent — Puente, Dutton, Solomons

WITNESSES: For — Jim Allison, County Judges and Commissioners Association of Texas; Cary Boethel, Texas Association of Counties; Bill Bailey and Bruce Elfant, Justices of the Peace and Constables Association of Texas, 193 constables and deputy constables
Against — None
On — Jerry Beauchamp, Bexar County Constable Deputy

BACKGROUND: Texas Constitution, Art. 5, sec. 18 requires each county — except for Mills, Reagan and Roberts counties — to elect from one to eight constables, depending on the size of the county, for a four-year term. Constables are responsible for serving civil or criminal process such as citation, notice, warrant, subpoena in the county, and for attending justice court in the precinct or county.

County commissioners set constable salaries and the budget for the office. Constables are allowed to name deputy constables and reserve deputy constable. Local Government Code, sec. 86.0021 requires that constables be licensed under Occupations Code, ch. 1701 on or before the 270th day they take office.

In 1995, Texas voters approved an amendment to Art. 5, sec. 18, to abolish constable offices in Mills, Reagan, and Roberts counties.

Counties vary widely in how they utilize constables, with about 20 counties having no constables and urban counties having numerous constables actively employed in court and law enforcement affairs.

Under Art. 16, sec. 17 of the Constitution, all officers continue to perform their official duties until their successors are duly qualified.

DIGEST:

CSHJR 2 would allow a commissioners court to declare a constable's position dormant if no one had been elected or appointed to the office for more than seven years since the end of the term of the last person to hold the office. The previous officeholder would not continue to hold the office under Art. 16, sec. 17. No one could be elected or appointed constable unless the position was reinstated by a subsequent vote by the commissioners court or by a countywide election. The amendment would require commissioners to call a reinstatement election if they received a petition signed by at least 10 percent of the qualified voters in the previous constable's precinct. The constable's office would be reinstated if approved by a majority of the precinct's voters.

CSHJR 2 also would provide for the transfer of records from a dormant constable's office to the county clerk's office.

The proposal would be presented to the voters at an election on November 5, 2002. The ballot proposal would read: "The constitutional amendment authorizing the commissioners court of a county to declare the office of constable in a precinct dormant if the office has not been filled by election or appointment for a lengthy period and providing a procedure for the reinstatement of the office."

**SUPPORTERS
SAY:**

CSHJR 2 would represent an innovative compromise among county judges, county commissioners, constables, and other county officials to protect ongoing constables' offices while allowing counties to save money and avoid potential liability by declaring vacant constables' offices to be dormant. Allowing this contentious issue to be decided by Texas voters would eliminate the need for the Legislature to address this matter each session by asking voters to abolish constables' offices in individual counties.

Approval of the CSHJR 2 would prevent the constitutional ballot from being cluttered with amendments abolishing constables' offices in a handful of the 251 counties that still have the office. Statewide voters should not have to decide what essentially is a local issue.

Setting a seven-year limit would allow for at least two election cycles to pass before declaring the office dormant. CSHJR 2 would provide additional safeguards to allow county voters to decide whether to revive the office if it was necessary. Provisions to revive the office would offer a check and balance not previously allowed in abolition amendments.

Attorney General Opinion JC-0140 (November 10, 1999) suggests that a county could be liable if the commissioners were aware of prior torts committed by a holdover constable. Declaring the position dormant would clarify the legal issue and end this open-ended liability for the county.

Several West Texas constable positions have been vacant for years, including some that have not had an incumbent in decades. One county has not had a constable in 47 years. Constables have not been as important in many counties because of their smaller populations and lower crime rates. CSHJR 2 would grant the constitutional flexibility to allow these counties to make their own decisions about constable positions that have been vacant for several years while allowing counties that traditionally have been served by constables to continue those offices.

County voters would have recourse through the ballot box to address problems with any constables now holding office. Statewide voters should not have to arbitrate local disputes and personality conflicts between constables and county commissioners.

OPPONENTS
SAY:

CSHJR 2 would not address abuses of unqualified individuals holding constable offices or those unwilling to discharge their duty. Local voters and county commissioners should be given the opportunity to eliminate constable positions even if there was an incumbent. It also would not address the problem of an incumbent holding the office, often at a nominal salary, and effectively denying appointment of someone willing to be more active in fulfilling the duties.

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NOTES:

A related proposal, HJR 29 by D. Jones, which would permit county commissioners to call an election to abolish the office of constable, was heard by the Select Committee on Constitutional Revision on April 3 and left pending.

Twenty-three proposed constitutional amendments to abolish constable positions in specific counties have been filed. All were referred to the House County Affairs Committee, but none have not been set for consideration. HJR 30 by D. Jones, which would allow the Lubbock County commissioners court to call an election to abolish the constable position, was left pending following an April 11 hearing before the County Affairs Committee.

As originally filed, HJR 2 would have required that the constables' office be vacant for at least eight years, rather than seven as in the committee substitute, before the office could be declared dormant.