

- SUBJECT:** Filling temporary vacancies caused by military service of public officers
- COMMITTEE:** Elections — committee substitute recommended
- VOTE:** 6 ayes — Denny, Howard, Bohac, Coleman, Harper-Brown, Uresti
0 nays
1 absent — Deshotel
- WITNESSES:** For — *(Registered, but did not testify:)* Jeane Brunson, County and District Clerks Association of Texas; Molly Beth Malcolm, Texas Democratic Party
Against — None
On — Elizabeth Hanshaw Winn, Secretary of State; Rebecca Klein;
(Registered, but did not testify:) Jesse Lewis, Republican Party of Texas
- BACKGROUND:** Texas Constitution, Art. 3, sec. 13 requires the governor to call an election to fill a vacancy in either house of the Legislature. Sec. 12 stipulates that all vacancies in state or district offices, except for members of the Legislature, (unless otherwise provided by law) shall be filled by appointment of the governor.
Art. 3, secs. 6 and 7 set forth the qualifications for state senator and representative.
- DIGEST:** CSHJR 84 would add sec. 72 to Art. 16 of the Constitution to stipulate that elected or appointed officers of the state or any political subdivision who entered active duty in the U.S. armed forces because they were called to duty, drafted, or activated, would not have to vacate their offices. The responsible authority would be authorized to appoint a replacement to serve as a temporary acting officer if the elected or appointed officer would be on active duty for longer than 30 days.
For a legislator, the state political party's executive committee would appoint a temporary acting Senator or Representative who:

- was a member of the same political party as the member temporarily being replaced; and
- met the qualifications for senator or representative as set forth in the Texas Constitution.

For an officer who was not a member of the Legislature, the authority empowered to fill the vacancy would appoint a temporary acting officer. If the vacancy normally would be filled by special election, the governor could appoint a temporary acting officer for a state or district office, and the governing body of a political subdivision could appoint a temporary acting officer for its local office.

The officer temporarily being replaced could recommend an appropriate replacement. The relevant authority would appoint the temporary officer to begin service on the date the officeholder being replaced entered active duty or, if there was not a specific date, no later than 30 days after the officeholder entered active duty.

A temporary officer would have all the powers, privileges, and duties of the office and would be entitled to the same compensation as the officeholder who temporarily was being replaced. The temporary officer would be required to perform all the duties of the office for the duration of the officeholder's active service or the term of office, whichever was shorter.

The proposal would be presented to the voters at an election on Tuesday, November 4, 2003. The ballot proposal would read: "The constitutional amendment authorizing the appointment of a temporary replacement officer to fill a vacancy created when a public officer enters active duty in the United States armed forces."

**SUPPORTERS
SAY:**

Current law is not clear on whether active military duty of an officeholder constitutes a formal vacancy in office, and clear processes do not exist in current law to deal with these temporary vacancies. CSHJR 84 would settle this issue by stipulating that a call to active military duty would not create a vacancy for an elected or appointed office of the state or a political subdivision. The resolution would allow for the needs of constituents to continue being served without the necessity of an election during an

officeholder's temporary absence. It also would provide for a transition back into public office for the officeholder upon the completion of military service.

Members of the Texas Legislature traditionally have been well represented in the armed forces during wartime. Eighteen legislators were on active duty during World War II, as were eight members during the Korean War and one legislator during Desert Storm. Currently, there are three legislators who are members of the armed forces reserves. Untold numbers of other officers at the state and local levels also serve, or have served, in the armed forces, some of whom could be called to active duty at any time.

Public officials who are members of the military have sworn to serve the constituents they represent in office and to defend the American people in time of war. This resolution would establish a process to allow them to honor both obligations as they intended and as they deserve.

The procedures established by CSHJR 48 especially would be helpful to smaller governing bodies, such as the three-member Public Utility Commission (PUC). One of the commissioners is a member of the armed forces, subject to call into active duty. A vacancy on the PUC for a lengthy time could create a bottleneck for some issues before the commission because it might be impossible to obtain a majority vote.

**OPPONENTS
SAY:**

Thirty days probably would not be long enough for the appropriate authority to make an appointment to an office. The proposal should set the more practical time period of 60 days.

NOTES:

The committee substitute modified the original version by authorizing the relevant authority to appoint a replacement if the elected or appointed officer would be on active duty for longer than 30 days. It would authorize, rather than require, the appropriate authority to appoint a temporary officer. The substitute added the requirement that the temporary acting legislator must be of the same political party as a senator or representative being temporarily replaced.