

**SUBJECT:** Residency eligibility to be a candidate for or to hold public office

**COMMITTEE:** Elections — favorable, without amendment

**VOTE:** 4 ayes — Denny, Bohac, Anchia, Anderson  
3 nays — Hughes, J. Jones, T. Smith

**WITNESSES:** For — David Siebold  
Against — John Cowman; Terry Davis; Alynnette Farley  
On — Elizabeth Winn, Secretary of State

**BACKGROUND:** Texas Constitution, Art. 16, sec. 14 states that all civil officers shall reside within the state, and all district or county officers within their districts or counties, and shall keep their offices at such places as may be required by law; and failure to comply with this condition shall vacate the office so held.

Election Code, sec. 1.015, defines "residence" as a domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence. A residence is determined in accordance with common law rules, as enunciated by the courts of the state, except as otherwise provided by the Election Code. A person does not lose his or her residence by leaving home to go to another place for temporary purposes. A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home.

Section 141.001(a)(5) establishes that to be eligible to be a candidate for, or elected or appointed to, a public elective office in this state, a person must have resided continuously in the state for 12 months and in the territory from which the office is elected for six months.

Tax Code, sec. 11.13(j), defines "residence homestead" to mean a structure (including a mobile home) or a separately secured and occupied portion of a structure (together with the land, not to exceed 20 acres, and

improvements used in the residential occupancy of the structure, if the structure and the land and improvements had identical ownership) that:

- is owned by one or more individuals, either directly or through a beneficial interest in a qualifying trust;
- is designed or adapted for human residence;
- is used as a residence; and
- is occupied as his principal residence by an owner or, for property owned through a beneficial interest in a qualifying trust, by a trustor of the trust who qualifies for exemption.

DIGEST:

HB 2030 would add to the Government Code sec. 601.009, addressing residency qualification for public office. The bill would apply to each public office established under state law, including an office of a political subdivision, for the purposes of determining whether a person satisfied any requirement of law that the person was or had been a resident in order to be eligible to hold or to be elected to office.

A person would be a resident of a territory at any time or for any period only if the person maintained his or her principal, regular place of residence in that territory at that time or throughout that period. A person's stated intent to reside at a place other than the individual's principal, regular place of residence would not determine residency.

If a person maintained more than one place of residence, the person's principal, regular place of residence would be the place of residence at which the person was known to really live.

A person would not be a resident of a territory if:

- the person received a residence homestead exemption from ad valorem taxes for a residence outside the territory, unless before the specified time or period, the person took action necessary to cancel the exemption and applied for a residence homestead exemption from ad valorem taxes for a residence in the territory;
- the person was registered to vote at a residence outside the territory, unless before the specified time or period the person took the action necessary to change his or her voter registration to the location of a residence in the territory; or

- the person identified the address of a residence outside the territory at a specified time or period as the person's principal residence address on:
  - a tax return, application, notice, or other document related to taxes that the person filed with or delivered to a governmental entity; or
  - an application, report, or other document the person submitted to a governmental entity or political party in accordance with law in connection with the person's status as a candidate for public office or as a public official.

The bill would take effect September 1, 2005 and would apply to the determination of a person's residency only for a time or period that occurred on or after that date.

**SUPPORTERS  
SAY:**

CSHB 2030 would ensure that an elected official represented the territory in which the person actually lived. The bill would set out qualifications and standards for determining whether a candidate or officer holder could be considered a resident or not and would encompass state and local elections. The legislation would define two important factors in deciding residency: physical conduct and intent. When those two elements coincided, residency would be fixed.

To be considered a resident of a territory, a person would have to maintain a principal, regular place of residence in that territory at a specific time or throughout a particular period. A stated intention to live at a place would not constitute a determination of residence. Under the bill, if a person had more than one place of residence, the person's principal residence would be where the person was "known to really live." In the past, case law has determined residency. This bill would allow instead for a written statutory standard.

This legislation would be applicable to multiple levels of government. It would be designed not to conflict with the Election Code and would apply to several other statutes in the Water Code, Election Code, and other codes affecting elected officials.

**OPPONENTS  
SAY:**

No one-size-fits-all pattern fits the residency issue. CSHB 2030 would not improve or change the way courts have determined residency in Texas for more than 150 years. The courts view the issue of residency with respect

to office holders and candidates on a case by case basis and examine the issue as a matter of both presence and intent. The provision of the bill that would declare, "The person's stated intent to reside at a place other than the individual's principal, regular place of residence does not determine whether the person resides at that other place," would pose constitutional problems. Federal courts have rejected attempts to fix residency regardless of intent. Over the years, Texas courts have rejected using homestead or homestead exemptions in deciding residency. Homestead may or may not be determinative of where a person resides.

Previous Legislatures have attempted to define "residency" in statute with respect to candidates and public office holders and have failed. CSHB 2030 would serve only to muddy the legal waters.

**OTHER  
OPPONENTS  
SAY:**

The provision in CSHB 2030 related to receiving a homestead exemption could favor someone who did not have a homestead and thus, who would not be held to that standard. Because that measure of the bill would not treat prospective candidates or office holders on an equal basis, it could raise discrimination issues.