

SUBJECT: Longer period before automatic resignation for becoming a candidate

COMMITTEE: Elections — favorable, without amendment

VOTE: 6 ayes — Berman, Bohac, England, Anchia, Burnam, C. Howard

0 nays

1 absent — Farias

WITNESSES: For — Ed Johnson, Harris County Tax Office

Against — None

BACKGROUND: Texas Constitution, Art. 16., sec. 65(a) applies to district clerks, county clerks, county judges, judges of county courts of law, county criminal courts, county probate courts and county domestic relations courts, county treasurers, criminal district attorneys, county surveyors, inspectors of hides and animals, county commissioners, justices of the peace, sheriffs, assessors and collectors of taxes, district attorneys, county attorneys, public weighers, and constables.

Sec. 65(b) holds that if any of the above-named officers becomes a candidate in any general, special, or primary election for another office under state or federal law and the officer's unexpired term exceeds one year, such candidacy constitutes an automatic resignation, and the vacancy created shall be filled pursuant to law.

Under Election Code, sec. 172.023, an application for a place on the general primary election ballot must be filed no later than 6 p.m. on January 2 in the primary election year unless the filing deadline is extended due to withdrawal, death, or ineligibility. Election Code, sec. 41.007(a) states that the general primary election date is the first Tuesday in March in each even-numbered year.

DIGEST: HJR 91 would amend Art. 16, sec. 65(b) of the Texas Constitution to increase the length of the unexpired term of specified elected county or district officeholders that would prompt an automatic resignation of current office if the officeholder announced candidacy or became a

candidate in any general, special, or primary election for a state or federal office. The unexpired term would have to be longer than one year and 60 days, rather than one year, to prompt an automatic resignation.

The proposal would be presented to the voters at an election on Tuesday, November 6, 2007. The ballot proposal would read: “The constitutional amendment to change the length of the unexpired term that causes the automatic resignation of certain elected county or district officeholders if they become candidates for another office.”

**SUPPORTERS
SAY:**

HJR 91 would amend the Texas Constitution to assure that proposed changes in election law — HB 2017 by Giddings, et al. — did not require certain officials seeking other offices to resign sooner than necessary. Under the Texas Constitution, county and some district officeholders are required automatically to resign when they announce their candidacy for another office if more than one year remains in their term. Currently, affected candidates can file for another office on January 2 and not exceed one year on their unexpired term. Pending legislation (HB 2017 by Giddings), however, would move the general primary to the first Tuesday in February and push the filing deadline back to October 31, which would force elected officials seeking other offices to resign prior to the filing deadline.

HJR 91 would extend the one-year restriction by approximately two months for candidates holding other offices in order to comply with proposed changes to the filing deadline, and thus not force these candidates to resign sooner than practical. The intent of the Constitution is not to keep county elected officials from running for other offices but to ensure continuity in county government. HJR 91 would preserve that original purpose.

**OPPONENTS
SAY:**

HJR 91 would extend the time that county and some district office holders would be lame ducks. If the constitutional amendment were to conform with HB 2017, the affected elected officials would have to file for another office by Halloween. That would create a period greater than a year when these officials would be considered lame ducks. With the current filing deadline of January 2, the period between when an elected official has to declare candidacy and the general election is slightly longer than 10 months. Extending this period to more than a year could threaten an elected official’s effectiveness in the office currently held.

NOTES:

The author intends to offer a floor substitute that would change the time period in order to avoid an automatic resignation of an unexpired term from greater than one year and 60 days to greater than one year and 90 days. This change would conform with the filing deadline in HB 2017 as passed by the House.

HB 2017 by Giddings, et al., which would move the primary to the first Tuesday in February and the filing deadline to October 31, passed the House by 123-12 on April 13 and has been referred to the Senate State Affairs Committee.