

**SUBJECT:** Ineligibility for running for and serving in the Legislature

**COMMITTEE:** State Affairs — committee substitute recommended

**VOTE:** 13 ayes — Solomons, Menendez, Cook, Craddick, Farabee, Gallego, Harless, Hilderbran, Jones, Lucio, Maldonado, Swinford, S. Turner

1 nay — Oliveira

1 absent — Geren

**WITNESSES:** For — None

Against — None

**BACKGROUND:** Art. 3, sec. 19 of the Texas Constitution prohibits a judge of any court, the secretary of state, the attorney general, a clerk of any court of record, or any person holding a lucrative office under the United States, this state, or any foreign government from being eligible to serve in the Legislature during the term for which the person was elected or appointed to the other position. Art. 16, sec. 40(d) prohibits a member of the Legislature from holding any other state or federal office or position of profit, except as a notary public, while sec. 40(a) generally prohibits dual officeholding, with some exceptions such as serving in the military.

In *Wentworth v. Meyer*, 839 S.W.2d 766 (Tex. 1992), the Texas Supreme Court determined that Art. 3, sec. 19 did not make now-Sen. Jeff Wentworth ineligible to run for the state Senate, even though he had been appointed to the board of regents of the Texas State University System for a term that overlapped the legislative term by 21 days. In Letter Opinion No. 95-69, the attorney general determined that “Article III, section 19, as interpreted in *Wentworth*, does not disqualify the holder of a lucrative office from running for the Legislature even though the term of the lucrative office overlaps the legislative term, if the officeholder resigns from the lucrative office before filing for the Legislature.”

**DIGEST:** CSHB 957 would add sec. 307.001 to the Government Code, making a judge of any court, the secretary of state, the attorney general, the clerk of any court of record, or any other person holding a lucrative office under

the United States, the state of Texas, a Texas political subdivision, or any foreign government ineligible to serve in the Legislature during the term for which the person was elected or appointed to that office.

Ineligibility would apply to the entire term to which the officeholder was elected or appointed and would not be affected by the officeholder's resignation or removal from office before the end of the term. An ineligible person would be prohibited from filing an application for a place on the ballot as a candidate, and such an application would be invalid

An office would be considered lucrative if the officeholder is entitled to receive any salary, fee, or other compensation, not matter how small. The bill would clarify that the term "office" would not include a notary public or a position in the armed forces reserve of the U.S. or the state military forces, other than a position on the governor's military staff.

The bill also would prohibit a member of the Legislature, during any term for which the member was elected, from being simultaneously employed in any position under the United States, this state, a political subdivision of this state, or any foreign government.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

Texas Constitution, Art. 3, sec. 19, already prohibits a judge of any court, secretary of state, attorney general, clerk of any court of record, or any person holding a lucrative office from being eligible for the Legislature during their term. CSHB 957 would clearly define and clarify the disqualifications for legislative office in terms of dual office-holding , and specific public officeholders would be deemed ineligible for the Legislature if the term of the public office that they held coincided with a legislative term.

The bill would help clear up ambiguity about ineligibility to run for or serve in the Legislature. Although these prohibitions are in the Texas Constitution, there needs to be a clear statutory prohibition. Texas courts have issued confusing and conflicting rulings. Some court rulings have allowed eligibility even though no such loophole exists in the constitutional provision.

OPPONENTS  
SAY:

The provisions of CSHB 957 are unnecessary because the legislative ineligibility provisions and prohibitions against dual officeholding already are in the Texas Constitution. These provisions are self-executing and do not require any legislative action to take effect. Putting these restrictions in statute in a manner that conflicts with the constitutional interpretation by the courts would not add clarity, but only create more confusion for those trying to determine their eligibility to run for the Legislature. If the constitutional provision is not clear, it would be better to amend the Constitution.

NOTES:

The substitute differs from the filed version by removing entitlement for reimbursement when defining that an office is lucrative. The substitute also specified that the term “office” did not include the state military forces, other than a position on the governor’s military staff.