

BILL ANALYSIS

C.S.H.B. 957
By: Swinford
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Section 19, Article III, Texas Constitution, also known as the "resign to run" provision, provides: "No judge of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a lucrative office under the United States, or this State, or any foreign government shall during the term for which he is elected or appointed, be eligible to the Legislature."

The plain wording of that constitutional provision bars specific public servants from being eligible for the legislature if the term of the public office they previously assumed coincides with any candidacy for, or assumption of, legislative office. Texas courts have issued a series of confusing and conflicting rulings, going outside the plain wording of that constitutional provision to legislate, from the bench, exceptions to the application of that constitutional provision. Some court rulings are cited as permissive "loopholes" that allow eligibility even though such loopholes are not within the plain wording of that constitutional provision or implied therein.

C.S.H.B. 957 gives effect to the plain language of Section 19, Article III, Texas Constitution by codifying that language in the Government Code.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 957 amends the Government Code to establish that 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 is ineligible to serve in the legislature during the term for which the person is elected or appointed. The bill provides that such ineligibility applies to the entire term to which the office holder was elected or appointed and is not affected by the office holder's resignation or removal from office before the end of the term. The bill provides that an office is lucrative if the office holder is entitled to receive any salary, fee, or other compensation, no matter how small. The bill prohibits a person who is ineligible to serve in the legislature under these restrictions from filing an application for a place on the ballot as a candidate for the legislature for a legislative term during which the ineligibility applies for any portion of the term. The bill makes an application filed in violation of that prohibition invalid. The bill provides that the term "office" does not include a notary public or a position in the armed forces reserve of the United States or the state military forces, other than a position included in the governor's military staff.

C.S.H.B. 957 prohibits a member of the legislature, during the term for which the member is elected, from being simultaneously employed in any position under the United States, the State of Texas, a Texas political subdivision, or any foreign government.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 957 differs from the original by removing entitlement to reimbursement as creating a circumstance in which an office is lucrative.

C.S.H.B. 957 differs from the original by making exclusions from the term "office" applicable to the substitute's provisions regarding the ineligibility of a person to hold another office, rather than to provisions regarding a prohibition on public employment by a legislator as in the original. The substitute specifies that the term "office" does not include the state military forces, other than a position included in the governor's military staff, rather than specifying that the term does not include a position in the armed forces reserve of Texas, as in the original.