

BILL ANALYSIS

C.S.H.J.R. 119
By: Homer
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Sections 18 and 19, Article III, Texas Constitution, attempt to prevent undue influence in the legislature. Section 18 is adapted from the U.S. Constitution to decrease bias in creating new offices and increasing emoluments. Section 19 is adapted from an act of the British Parliament to prevent undue influence from the executive branch in the legislature.

Section 19 has been the subject of debate and several long-running legal actions. The decision rendered in *Wills v. Potts* (1967) prevented a city council member from becoming a candidate for the senate, but the decisions in *Wentworth v. Myer* held that constitutional and statutory provisions that restrict the right to hold public office must be strictly construed against ineligibility. The most recent episode in the resulting confusion about the application of Section 19 emerged in 2008 in *Brimer v. Davis*.

C.S.H.J.R. 119 proposes an amendment to the Texas Constitution to create an automatic legislative vacancy if a member of the legislature becomes a candidate, in a general or primary election, for an office other than the member's current office. The resolution specifies that a nonlegislative office holder is not eligible for service in the legislature unless that person, simultaneous to becoming a legislative candidate in a general or special election, resigns the office currently held. The resolution provides that the constitutional provision making a legislator ineligible for any civil office of profit either created or having had its emoluments increased during the legislator's term of office applies specifically to an appointed civil office of profit.

RULEMAKING AUTHORITY

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

ANALYSIS

C.S.H.J.R. 119 proposes an amendment to the Texas Constitution to specify that if a member of the legislature announces the member's candidacy, or in fact becomes a candidate, in any general or primary election for any office of profit or trust under the laws of the state or the United States other than the office then held, at any time when the unexpired term of the office then held exceeds one year, that announcement or candidacy constitutes an automatic resignation of the office then held. The resolution requires the vacancy created by the automatic resignation to be filled in the manner provided by the constitutional provision for filling vacant legislative offices.

C.S.H.J.R. 119 specifies that the secretary of state, the attorney general, a judge of any court, a clerk of any court of record, or another person holding a lucrative office under the United States, the state, or any foreign government is not, during the term for which the person is elected or appointed, eligible to serve in the legislature unless, at the time the person announced the person's candidacy, or in fact became a candidate, in any general or primary election for the legislature, the person resigned the office then held.

C.S.H.J.R. 119 amends constitutional provisions that make a legislator, during the term for which the legislator was elected, ineligible for any civil office of profit under the state which shall have been created, or the emoluments of which may have been increased, during such term, to limit that specific ineligibility to an appointed civil office or profit.

C.S.H.J.R. 119 sets forth the required language for the ballot.

ELECTION DATE

The constitutional amendment proposed by this joint resolution will be submitted to the voters at an election to be held November 3, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.J.R. 119 differs from the original by limiting the candidacy and candidacy announcement provisions to a general or primary election and making them inapplicable to a special election, whereas the original applies such provisions to all three types of elections. The substitute thus removes provisions in the original under which a legislator's candidacy or candidacy announcement for another office, in a special election, constitutes an automatic resignation of legislative office and removes provisions in the original providing that specified officeholders seeking legislative office in a special election are ineligible for such office unless, before the candidacy or candidacy announcement, they resign the existing office. The substitute differs from the original by making conforming changes in the required ballot language to refer, in that ballot language, only to a general or primary election.