

SUBJECT: Allowing elected or appointed officers to decline remuneration for serving

COMMITTEE: State Affairs — favorably, without amendment

VOTE: 12 ayes — Seidlits, Alvarado, Black, Bosse, Carter, Craddick, Danburg,  
Hilbert, B. Hunter, D. Jones, McCall, Ramsay

0 nays

3 absent — S. Turner, Hochberg, Wolens

WITNESSES: None

DIGEST: HB 736 would allow anyone who has been elected or appointed to an office to decline remuneration (salary, expenses, longevity pay or fees) by filing a declination-of-remuneration form with the secretary of state. The bill would apply to persons who have received a certificate of election or who have been appointed or nominated to a position but not confirmed.

The form would become effective as of the date it was filed. A declination filed after a person had qualified for office could be revoked at any time, but a declination filed before the person had qualified could not be revoked during the term of office. A person could decline either all remuneration associated with the office or only certain kinds.

HB 736 would take immediate effect if approved by two-thirds of the membership of each house.

SUPPORTERS SAY: HB 736 would allow elected or appointed officials who prefer to serve without pay to decline payment for serving in an office. There is no justifiable reason to pay public servants who have no desire to receive compensation.

Current law deters some potential appointees from serving in more than one position, out of fear of running afoul of dual-payment prohibitions for receiving compensation for both positions. These people, who could be of great benefit to the state, should not be limited to holding a single position when they would be willing to serve without compensation.

The bills' provision on the timing of revoking the decision to decline remuneration was included to ensure that if someone files a form and campaigns for an office on their promise to decline pay, they could not revoke that promise once they were elected or appointed.

OPPONENTS  
SAY:

HB 736 could be interpreted as allowing the holder of a lucrative office to run for the Legislature without first having to resign the office. Art. 3, sec. 19, of the Texas Constitution prohibits an official serving in a "lucrative" office from running for the Legislature if the terms of the offices overlap. The Texas Supreme Court has held that any position that entails compensation, other than reimbursement for previously incurred expenses, constitutes a "lucrative" office (*Dawkins v. Meyer*). The Supreme Court has also held that in order to satisfy Art. 3, sec. 19, an officeholder must resign prior to running for the Legislature (*Wentworth v. Meyer*). A court could determine that officeholders who decline compensation under HB 736 could retain their office and still run for the Legislature. (If elected, however, Art. 16, sec. 40, would require them to resign before *serving* as a member of the Legislature.)

HB 736 could allow a wealthy candidate for state office to promise to decline the office's salary, gaining a possible unfair advantage with voters over candidates without an independent income.