

- SUBJECT:** Prohibiting prosecutor employees from seeking elected judicial office
- COMMITTEE:** Judicial Affairs — favorable, without amendment
- VOTE:** 8 ayes — Thompson, Capelo, Deshotel, Garcia, Hinojosa, Shields, Jim Solis, Uresti
1 nay — Hartnett
- WITNESSES:** For — None
Against — Robert L. Cole; Michael A. McDougal, Montgomery County District Attorney; Don Stricklin
- BACKGROUND:** Current law allows employees of prosecuting attorneys or city attorneys to run for elected judicial office while employed by those offices.
- DIGEST:** HB 762 would amend the Government Code and Local Government Code by prohibiting certain personnel employees from running for elected judicial office while employed by a prosecuting or city attorney's office.
- The bill would prohibit assistant prosecuting attorneys, investigators, secretaries, and other office personnel from running for elected judicial office while working for a prosecuting attorney. It would prohibit paid employees of a city attorney's office from running for elected judicial office.
- The bill would define "elected judicial office" as:
- ! chief justice or justice of the supreme court;
 - ! presiding judge or judge of the court of the criminal appeals;
 - ! chief justice or justice of a court of appeals;
 - ! judge of a statutory county court;
 - ! a county judge who performs judicial functions;
 - ! justice of the peace; or
 - ! municipal court judge.

The bill would authorize a prosecuting attorney or the governing body of city to grant a leave of absence for any of the affected personnel for purposes of running for elected judicial office.

HB 762 would take effect September 1, 1999.

**SUPPORTERS
SAY:**

HB 762 would mirror the prohibition against state employees running for elected judicial office while maintaining their taxpayer-funded employment. It would ensure that these employees were not derelict in executing their duties while pursuing their political careers at the taxpayers' expense.

The bill would prevent, for example, a district attorney or city attorney who had a political vendetta against a given judge from indirectly financing an assistant district attorney's campaign against that judge. In many cases, prosecuting attorneys who have been elected to judicial positions have been biased on the side of prosecutors. HB 762 would require that the assistant district attorney take an unpaid leave of absence during the political campaign to avoid potential conflicts of interest.

HB 762 would promote sound public policy. Assistant city and district attorneys who run for office while maintaining their employment create an appearance of ethical impropriety. While state elected officials may run for other positions while retaining their offices, public-sector employees — including assistant district and city attorneys and related personnel — should not be allowed to run because they are not directly accountable to the public as elected officials are.

**OPPONENTS
SAY:**

HB 762 unfairly would limit the ability of assistant district and city attorneys to seek public office. Officials holding similarly sensitive positions, such as judges, may run for public office without relinquishing their positions. District and county attorneys also may run for another office without resigning. This bill would create an uneven playing field.

There are ways to monitor the time of assistant district and city attorneys while they are at work. Special timesheets may be made to account for the time of employees who are running for an elected judicial office. In light of the alternatives, the outright prohibition proposed by HB 762 would be draconian.

Rural counties that have only a few attorneys would be hurt. Some counties have only about 25 attorneys, many of whom work in the district attorney's office. This bill would limit severely the pool of available attorney candidates in those counties.

The eligibility of assistant district and city attorneys and related personnel to stand for public office should be decided locally. In Harris County, assistant district attorneys may not run against an incumbent judge for a judicial position while on the county payroll. Other districts also impose some restrictions. Election eligibility should reflect local wishes. Ultimately, any candidates who abuse their position would have to answer to the voters.