

SUBJECT: Changing eligibility requirements for appellate and district court judges

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Smithee, Gutierrez, Hernandez, Neave, Rinaldi, Schofield

0 nays

3 absent — Farrar, Laubenberg, Murr

WITNESSES: For — George Christian, Texas Association of Defense Counsel, Texas Civil Justice League; Tom Phillips; (*Registered, but did not testify*: Lee Parsley, Texans for Lawsuit Reform; David Mintz, Texas Apartment Association)

Against — None

On — David Slayton, Office of Court Administration, Texas Judicial Council; Nathan Hecht, Supreme Court of Texas

BACKGROUND: Texas Constitution, Art. 5, sec. 2(b) establishes eligibility requirements to serve as chief justice or justice of the Texas Supreme Court. The eligibility qualifications require that a person be licensed to practice law in Texas; a citizen of the United States and Texas at the time of the election; 35 years of age or older; and a practicing lawyer or a lawyer and judge of a court of record together for at least 10 years. Sec. 4(a) applies the same qualifications to the Court of Criminal Appeals and sec. 6(a) applies the same qualifications to courts of appeals.

Art. 5, sec. 7 establishes requirements for a candidate for election as a state district judge. The eligibility qualifications require that a person be licensed to practice law in Texas; a citizen of the United States and Texas; a practicing lawyer or a judge of a court in Texas, or both combined, for four years; have resided in the district in which the person was elected for two years; and reside in the district during the person's term in office.

DIGEST: CSHJR 10 would amend the Texas Constitution to change the eligibility requirements to serve on the Texas Supreme Court, the Court of Criminal Appeals, courts of appeals, and for election as a district judge.

To serve as a chief justice or justice on the Texas Supreme Court and the courts of appeals or as a presiding judge or judge on the Court of Criminal Appeals, a person would be required to have been a practicing lawyer licensed in Texas for at least 10 consecutive years, or a practicing lawyer licensed in Texas and judge of a state court or county court established by the Legislature by statute for a combined total of at least 10 consecutive years. During that time, the person's license to practice law could not have been revoked, suspended, or subjected to a probated suspension. The Legislature by general law would be authorized to require additional qualifications to be eligible to serve as chief justice or justice of the Supreme Court.

The joint resolution would change from four to six the number of years preceding a district judge's election that the judge must have been a practicing lawyer or a judge of a court in Texas, or both combined. The Legislature by general law would be authorized to require additional qualifications to be eligible to serve as a district judge.

A temporary provision in the joint resolution states that the changes to the Constitution would take effect January 1, 2018, and would apply only to a justice or judge who was first elected for a term that began on or after that date or who was appointed on or after that date. The temporary provision would expire January 1, 2019.

The ballot proposal would be presented to voters at an election on November 7, 2017. The proposal would read: "The constitutional amendment changing the eligibility requirements for a justice of the supreme court, a judge of the court of criminal appeals, a justice of a court of appeals, and a district judge."

SUPPORTERS SAY: CSHJR 10 would ensure a higher quality judiciary in Texas by adding to existing eligibility requirements for appellate and trial court judges.

Requiring appellate court justices to have practiced law and been licensed in Texas for at least 10 consecutive years would avoid the situation where a lawyer could move to Texas and within only a few years win election to one of the state's highest courts. Increasing the length of time from four to six years that a district court candidate must have practiced law in Texas would ensure that judges had gained sufficient legal experience to preside over important trials.

The proposed constitutional amendment also would ensure that judicial candidates had not be subjected to disciplinary action for violating standards of ethical conduct for practicing law in Texas.

Concerns about granting the Legislature general law authority could be addressed by amending the bill to remove that language.

**OPPONENTS
SAY:**

CSHJR 10 would grant the Legislature new authority to enact future unspecified additional qualifications for judicial candidates by legislation instead of by amending the Constitution. This type of broad authority could lead to legislation that could pose unreasonable restrictions on candidates for judicial office without the additional qualifications being approved by voters.

NOTES:

The author plans to offer a floor amendment to strike language that would authorize the Legislature by general law to require additional qualifications for the judicial positions included in the joint resolution.

According to the Legislative Budget Board's fiscal note, CSHJR 10 would cost \$114,369 to publish the resolution.