

HOUSE BILL REPORT

EHJR 4227

*As Passed House
February 11, 1992*

Brief Description: Amending the Constitution to revise procedures for filling vacancies in the state legislature and county elective offices.

Sponsor(s): Representatives Anderson, Miller, R. Fisher, Brough and Ferguson.

Brief History:

Reported by House Committee on:
State Government, January 15, 1992, DPA;
Passed House, February 11, 1992, 94-0.

**HOUSE COMMITTEE ON
STATE GOVERNMENT**

Majority Report: *Do pass as amended.* Signed by 10 members: Representatives Anderson, Chair; Pruitt, Vice Chair; McLean, Ranking Minority Member; Bowman, Assistant Ranking Minority Member; Chandler; R. Fisher; Grant; Moyer; O'Brien; and Sheldon.

Staff: Kenneth Hirst (786-7105).

Background:

CONSTITUTION:

The state's constitution sets out the criteria and procedures to be used for appointing persons to fill vacancies in partisan county and state legislative offices. In each case, the person appointed must be from the same county district or state legislative district and must be of the same political party as the person whose office has been vacated.

Single County Offices. For a vacancy in a partisan county office and for a vacancy in a state legislative office the district for which lies entirely within one county, the requirements are the same. The county's council or board of county commissioners appoints the person to fill the vacancy and the person appointed must be one of three persons nominated by the county central committee of the political party of the person whose office has been vacated.

Multi-County Legislative Offices. The state central committee of the political party must select the three nominees for an appointment to fill a vacancy in a state legislative office from a multi-county district. For such a vacancy, the appointment is made by a joint action of the boards of county commissioners or county councils of the counties making up the district.

If the appointing authority fails to make the appointment within 60 days after the vacancy occurs, the governor must make the appointment, from the same list of nominees, within the next 30 days.

STATUTE:

If there are two or more vacancies on a board of county commissioners such that the board cannot take official actions, the governor must, under statutory authority, make a sufficient number of appointments to the board to create a two member board.

ATTORNEY GENERAL OPINIONS:

In a 1941 opinion, the attorney general (AG) determined that the "joint action" of county boards required by the constitution for filling a multi-county legislative office is a joint session of the boards of commissioners during which a majority vote controls the appointment.

In 1985, the attorney general advised that not more than three votes may be cast from any one county in filling a vacancy in a multi-county legislative district. The AG further concluded that, absent any county charter provisions to the contrary, the three votes of the county with a legislative body of more than three persons should be fractionalized so that the votes of each of the members of that legislative body would have equal weight. The AG also advised that a member of a county legislative authority is eligible to be appointed to fill a vacancy in the state Senate only if the member has resigned that membership and has not arranged for the appointment before resigning.

Summary of Bill: The state's constitution is amended. The provisions of the constitution for filling vacancies in county partisan elective offices and in the state Legislature are expanded to include filling a vacancy in any elective office in the executive or legislative branch of county government, whether the office is partisan or nonpartisan. Procedures are established for filling a county partisan elective office or state legislative office vacated by a person who was an independent. A person appointed under this provision of the constitution must be a

resident of the county or district represented by the office. A member of the county's legislative authority is eligible to be appointed to fill a vacancy to the same extent as another person if the member does not vote in an action to fill the vacancy.

Multi-County Legislative Districts. When a joint session is conducted by counties to fill a vacancy in a state legislative office from a multi-county district, a proportional voting method prescribed by the Legislature must be used. This voting method must ensure that the cumulative voting weight of each county's legislative authority is proportional to the county's portion of the total number of votes cast for the vacated position in the last election conducted for the vacated office.

Nominations. A political party must submit its list of nominees for filling a vacancy in a partisan office by a deadline established by the Legislature by statute. If the vacant office to be filled is a nonpartisan office, if it is a partisan office but the person who vacated it was elected as an independent, or if it is a partisan office but the political party fails to make its nominations in a timely manner, any person legally qualified to run for and hold the office may be appointed to fill the vacancy.

Constitutional Deadlines. The deadlines established by the constitution for one or more county legislative authorities to fill a vacancy, and for the governor to fill the vacancy if the counties fail to do so in a timely manner, are removed. The Legislature must establish these deadlines by statute.

Creating Working Majorities. The statutory authority of the governor to make a sufficient number of appointments to a county's legislative authority to establish a majority of filled positions on the authority is made a part of the constitution. It is also expressly applied to any form of county legislative authority. Such appointments must be made within the time prescribed by the Legislature by statute. When filling a vacancy for this purpose, the governor may appoint any person who is legally qualified to run for and hold the vacated office.

"Home Rule" Exemption. These requirements do not apply to a county that has adopted and operates under a "Home Rule" charter to the extent the requirements are inconsistent with the county's charter.

Fiscal Note: Not requested.

Effective Date: The bill takes effect if ratified by the voters at the November general election.

Testimony For: None.

Testimony Against: None.

Witnesses: None.