

- SUBJECT:** Requirements for temporary justices of the peace
- COMMITTEE:** Judicial Affairs — favorable, without amendment
- VOTE:** 7 ayes — Thompson, Hartnett, Alonzo, Goodman, Nixon, Solis, Zbranek
0 nays
2 absent — Duncan, Willis
- SENATE VOTE:** On final passage, April 3 — 30-0
- WITNESSES:** *(On House companion, HB 1740 by Gutierrez)*

For — Sandy Prindle and Donna Smith, Texas Justice of the Peace Association; George B. Allen, Texas Apartment Association

Against — None
- BACKGROUND:** A county judge is authorized to appoint a temporary justice of the peace when the judge is unable to perform official duties because of illness, injury or other disability. The county judge may appoint any qualified person to be a temporary justice of the peace, but no definition of qualified person is given.
- DIGEST:** SB 780 would allow appointment of temporary justices of the peace in cases of absence or recusal. A temporary justice would not be allowed to make personnel decisions or significant changes to the office of the justice of the peace.

SB 780 would define a qualified person as someone who has served as a justice of the peace for at least four and a one half years and has not been convicted of a crime involving moral turpitude. A qualified person may reside in another county. If the county judge were unable to find a qualified person, the judge could appoint a qualified voter to serve as justice of the peace.

The bill would take effect September 1, 1995

**SUPPORTERS
SAY:**

SB 780 would help to address a number of problems for both urban and rural counties relating to the appointment of temporary justices of the peace. First, it would define qualified person as a person who has been a justice of the peace for more than one term, but also allows for a substitute appointment if an experience justice of the peace could not be found to fill the post.

In 51 rural counties, there is often only one justice of the peace for the county. If the justice of the peace is ever absent from the county, the duties fall to the county judge. This bill would allow the county judge to appoint a retired justice of the peace to serve for the absent judge. There are also an even larger number of counties where there are two justices of the peace. Currently, these justices may not leave the county together at the same time to attend educational programs or to go to the annual convention of justices of the peace.

In many urban counties, when a justice of the peace is absent, another active judge cannot handle the caseload for the absent judge as well as that judge's current caseload. This bill would solve urban county problems as well by allowing retired judges to fill the spots temporarily.

It is envisioned that retired justices of the peace, who have served more than one term, would notify counties they would be on call any time the justice of the peace is absent.

The recusal language added to the bill is intended to prevent a situation that occurred in one county where a justice of the peace had to be recused from the case because he had an interest in the case. The duty then fell to the county judge, who also had an interest in the case. Under SB 780, a temporary justice without an interest could be appointed.

This bill would also add that a temporary justice of the peace could not make personnel changes or significant changes in office procedure for the absent justice.

**OPPONENTS
SAY:**

This bill would set up a two-tiered system of who may be selected by a county judge to fill in as a temporary justices of the peace. The judge could appoint someone who had served more than one term as a justice of

the peace or, if such a person was unavailable, any qualified voter. There would be no middle ground between these two extremes: the temporary justice of the peace could either have more qualifications than even the sitting justice or be just any voter. Certainly a justice of the peace who has served for less than a term or someone else with judicial or legal experience would be a better fallback choice than just any qualified voter.

NOTES: HB 1740 by Gutierrez, the companion bill to SB 780, was reported favorably by the House Judicial Affairs Committee.