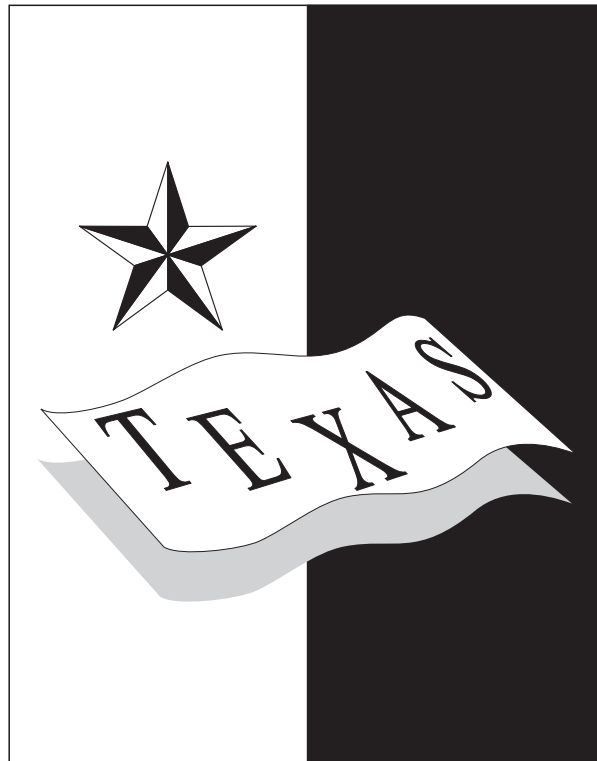


# Analyses of Proposed Constitutional Amendments

November 6, 2001, Election



Texas Legislative Council  
September 2001

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November 6, 2001, Election

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Lieutenant Governor Bill Ratliff, Chairman  
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# **Introduction**





## General Information

In the 2001 regular session, the 77th Texas Legislature passed 20 joint resolutions proposing constitutional amendments. Nineteen of these proposed amendments will be offered for ratification on the November 6, 2001, election ballot, and the final proposed amendment will be offered for ratification on the November 5, 2002, election ballot.

The Texas Constitution provides that the legislature, by a two-thirds vote of all members of each house, may propose amendments revising the constitution and that proposed amendments must then be submitted for approval to the qualified voters of the state. A proposed amendment becomes a part of the constitution if a majority of the votes cast in an election on the proposition are cast in its favor. An amendment approved by voters is effective on the date of the official canvass of returns showing adoption. The date of canvass, by law, is not earlier than the 15th or later than the 30th day after election day. An amendment may provide for a later effective date.

Since adoption in 1876 and through September 2001, the state's constitution has been amended 390 times, from a total of 567 proposed amendments, 564 of which were submitted to the voters for their approval. The 20 proposed amendments approved by the 77th Legislature brings the total number of amendments passed by the legislature to 587. The following table lists the years in which constitutional amendments have been proposed by the Texas Legislature, the number of amendments proposed, and the number of those adopted. The year of the vote is not reflected in the table.

The remaining section of this publication contains the ballot language, an analysis of the proposition, and the text of each joint resolution proposing constitutional amendments that will appear on the November 6, 2001, ballot. The analyses include background information and arguments for and against each proposed constitutional amendment. The propositions are presented in the order in which they will appear on the election ballot.

The proposed constitutional amendment that will appear on the November 5, 2002, ballot will be analyzed in a subsequent publication.

**Table**  
**1876 Constitution Amendments Proposed and Adopted**

| year proposed | number proposed | number adopted | year proposed | number proposed | number adopted |
|---------------|-----------------|----------------|---------------|-----------------|----------------|
| 1879          | 1               | 1              | 1945          | 8               | 7              |
| 1881          | 2               | 0              | 1947          | 9               | 9              |
| 1883          | 5**             | 5              | 1949          | 10              | 2              |
| 1887          | 6               | 0              | 1951          | 7               | 3              |
| 1889          | 2               | 2              | 1953          | 11              | 11             |
| 1891          | 5               | 5              | 1955          | 9               | 9              |
| 1893          | 2               | 2              | 1957          | 12              | 10             |
| 1895          | 2               | 1              | 1959          | 4               | 4              |
| 1897          | 5               | 1              | 1961          | 14              | 10             |
| 1899          | 1               | 0              | 1963          | 7               | 4              |
| 1901          | 1               | 1              | 1965          | 27              | 20             |
| 1903          | 3               | 3              | 1967          | 20              | 13             |
| 1905          | 3               | 2              | 1969          | 16              | 9              |
| 1907          | 9               | 1              | 1971          | 18              | 12             |
| 1909          | 4               | 4              | 1973          | 9               | 6              |
| 1911          | 5               | 4              | 1975          | 12 <sup>†</sup> | 3              |
| 1913          | 8*              | 0              | 1977          | 15              | 11             |
| 1915          | 7               | 0              | 1978          | 1               | 1              |
| 1917          | 3               | 3              | 1979          | 12              | 9              |
| 1919          | 13              | 3              | 1981          | 10              | 8              |
| 1921          | 5**             | 1              | 1982          | 3               | 3              |
| 1923          | 2***            | 1              | 1983          | 19              | 16             |
| 1925          | 4               | 4              | 1985          | 17**            | 17             |
| 1927          | 8**             | 4              | 1986          | 1               | 1              |
| 1929          | 7**             | 5              | 1987          | 28**            | 20             |
| 1931          | 9               | 9              | 1989          | 21**            | 19             |
| 1933          | 12              | 4              | 1990          | 1               | 1              |
| 1935          | 13              | 10             | 1991          | 15              | 12             |
| 1937          | 7               | 6              | 1993          | 19**            | 14             |
| 1939          | 4               | 3              | 1995          | 14              | 11             |
| 1941          | 5               | 1              | 1997          | 15              | 13             |
| 1943          | 3**             | 3              | 1999          | 17              | 13             |

Total Proposed 567 — Total Adopted 390

## Notes

- \* There were eight joint resolutions, but one of them was a U.S. constitutional amendment ratification. Seven joint resolutions proposing amendments were approved by the legislature, but only six proposals were actually submitted on the ballot. The unsubmitted proposal included two amendments.
- \*\* Total reflects two amendments that were included in one joint resolution.
- \*\*\* Two joint resolutions were approved by the legislature, but only one proposal was actually submitted on the ballot.
- † Total reflects eight amendments that would have provided for an entire new Texas Constitution and that were included in one joint resolution.



## **Proposed Amendments**



# **Amendment No. 1 (H.J.R. No. 52)**

## **Wording of Ballot Proposition:**

The constitutional amendment providing for clearing of land titles by the release of a state claim of its interest to the owners of certain land in Bastrop County.

## **Analysis of Proposed Amendment:**

The proposed amendment would amend Section 2A, Article VII, Texas Constitution, by relinquishing and releasing any claim of the state of sovereign ownership or title to an interest in Tracts 2-5, 13, 15-17, 19-20, 23-26, 29-32, and 34-37, in the A. P. Nance Survey, Bastrop County.

## **Background**

If sovereign land is sold or disposed of to private persons without a patent issued from the state or the Republic of Texas conveying the legal title, the legal title to the land remains vested with the sovereign entity. Under the Texas Constitution, land that is not included in a patented survey or dedicated for another purpose is dedicated to the permanent school fund. A person may not receive a patent on land dedicated to the fund unless the General Land Office and the School Land Board, which manage the fund for the benefit of educational programs, receive fair market value for the land. Land that is not included in a patented survey is known as a vacancy.

The tracts covered by the proposed amendment are part of a vacancy identified in 1925 as part of the A. P. Nance Survey. Although the land was surveyed, a patent was not issued for the land by the General Land Office. Some owners of property adjoining the vacancy purchased portions of the vacancy, and others have occupied, fenced, and paid taxes on portions of the vacancy. In 1999, the General Land Office resurveyed the A. P. Nance Survey and identified persons occupying land dedicated to the permanent school fund. While several title insurance companies have



since paid the fair market value of portions of the land included in the vacancy, the status of 127 acres of land held by 20 individuals who are not covered by title insurance remains unresolved.

In 1981, 1991, and 1993, voters approved constitutional amendments that remedied title defects for certain landowners in other areas of the state. Those amendments allowed the General Land Office to issue patents to qualified applicants whose land titles were defective. The proposed amendment would clear title to tracts of land in the A. P. Nance Survey for which the status is unresolved by relinquishing and releasing any claim of the state of sovereign ownership or title to an interest, other than a mineral interest, in those tracts. The proposed amendment would confirm title to each tract in the holder of record title to the tract and would require the General Land Office to issue a patent to the holder of record title to one of the tracts without charging a filing fee or patent fee. A patent issued under the proposed amendment would be required to reserve all mineral interest in the land to the state. The proposed amendment would cancel any outstanding land award or land payment obligation owed to the state for the tracts covered by the amendment. Any payment related to an outstanding land award or land payment obligation made before the effective date of the amendment would not be refunded.

### **Arguments For:**

1. The proposed amendment is necessary to resolve inequity by clearing the title to land held by persons and their successors who in good faith purchased, occupied, or paid taxes on the land.
2. The proposed amendment would save taxpayers money because the cost of litigating the title with each landowner is potentially far greater than the cost to the state and counties of putting the proposed amendment on the ballot. The tracts at stake do not currently have mineral leases and do not produce income for the permanent school fund. On the other hand, Bastrop County will benefit if the land is placed back on the tax roll.
3. The proposed amendment is limited to specific land and would have no impact on any other land dispute involving the state.

### **Arguments Against:**

1. Instead of requiring voters to judge land title disputes affecting relatively few landowners, an ongoing mechanism should be established to settle disputes involving the state without the expense of a constitutional amendment election.
2. Even in cases where permanent school fund land is held in good faith, it is in the public interest for the state to obtain the land's fair market value before releasing its interest in the land.
3. The proposed amendment would provide a special benefit to a small group of landowners. There is no discernible reason to single these landowners out for special treatment.

**Text of H.J.R. No. 52: HOUSE AUTHOR:** Robert L. Cook  
**SENATE SPONSOR:** Kenneth Armbrister

### HOUSE JOINT RESOLUTION

proposing a constitutional amendment clearing land titles by relinquishing and releasing any claim of sovereign ownership or title to an interest in certain lands in Bastrop County.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2A, Article VII, Texas Constitution, is amended to read as follows:

Sec. 2A. (a) The State of Texas hereby relinquishes and releases any claim of sovereign ownership or title to an undivided one-third interest in and to the lands and minerals within the Shelby, Frazier, and McCormick League (now located in Fort Bend and Austin counties) arising out of the interest in that league originally granted under the Mexican Colonization Law of 1823 to John McCormick on or about July 24, 1824, and subsequently voided by the governing body of Austin's Original Colony on or about December 15, 1830.

(b) The State of Texas relinquishes and releases any claim of sovereign ownership or title to an interest in and to the lands, excluding the minerals, in Tracts 2-5, 13, 15-17, 19-20, 23-26, 29-32, and 34-37, in the A. P. Nance Survey, Bastrop County, as said tracts are:

(1) shown on Bastrop County Rolled Sketch No. 4, recorded in the General Land Office on December 15, 1999; and

(2) further described by the field notes prepared by a licensed state land surveyor of Travis County in September through November 1999 and May 2000.

(c) Title [~~and title~~] to such interest in the lands and minerals described by Subsection (a) is confirmed to the owners of the remaining interests in such lands and minerals. Title to the lands, excluding the minerals, described by Subsection (b) is confirmed to the holder of record title to each tract. Any outstanding land award or land payment obligation owed

to the state for lands described by Subsection (b) is canceled, and any funds previously paid related to an outstanding land award or land payment obligation may not be refunded.

(d) The General Land Office shall issue a patent to the holder of record title to each tract described by Subsection (b). The patent shall be issued in the same manner as other patents except that no filing fee or patent fee may be required.

(e) A patent issued under Subsection (d) shall include a provision reserving all mineral interest in the land to the state.

(f) This section is self-executing.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to provide for voting for or against the proposition: “The constitutional amendment providing for clearing of land titles by the release of a state claim of its interest to the owners of certain land in Bastrop County.”



## **Amendment No. 2 (S.J.R. No. 37)**

### **Wording of Ballot Proposition:**

The constitutional amendment authorizing the issuance of state general obligation bonds and notes to provide financial assistance to counties for roadway projects to serve border colonias.

### **Analysis of Proposed Amendment:**

The proposed amendment would add Section 49-1 to Article III of the Texas Constitution and permit the legislature to authorize the governor to authorize the Texas Public Finance Authority to issue state general obligation bonds or notes in an amount not to exceed \$175 million to provide financial assistance to counties for projects to provide access roads to connect border colonias with public roads. The proposed amendment would authorize the bond proceeds to be used for the road projects, for acquiring materials to maintain the roads, for related projects such as road drainage projects, for costs of administering the projects, and for payments under a related credit agreement.

The proposed Section 49-1(b) would provide that the Texas Transportation Commission may, in consultation with the governor, determine what constitutes a border colonia for purposes of selecting eligible counties and projects.

The enabling legislation for Senate Joint Resolution No. 37, Senate Bill No. 1296, would provide that the Texas Transportation Commission in cooperation with the office of the governor, the secretary of state, and the Texas A&M University Center for Housing and Urban Development would administer a program to distribute the proceeds of the bonds. Senate Bill No. 1296 would require the Texas Transportation Commission, in cooperation with the office of the governor, to (1) define by rule “border colonia”; (2) establish by rule criteria for selecting which areas and which colonia access roadway projects are eligible for assistance; (3) determine the counties and the colonia access roadway projects that

are to receive financial assistance and the amount of assistance to be given to a county or project; (4) establish by rule minimum road standards a county's colonia access roadway proposal must meet to be awarded a grant; (5) establish by rule grant application procedures; and (6) establish by rule financial reporting requirements for counties that receive assistance.

### **Background**

Before legislative reform of certain unscrupulous development practices began in 1989, many neighborhoods in the Texas-Mexico border region, known as colonias, were built and continue to be occupied despite pervasive substandard housing conditions, inadequate infrastructure, and lack of basic services. Roadway improvement projects can help alleviate the poor conditions of these neighborhoods.

Senate Bill No. 1296, enacted by the 77th Legislature, to take effect only if the constitutional amendment proposed by Senate Joint Resolution No. 37 is approved by the voters, would provide for the Texas Public Finance Authority to issue general obligation bonds in an aggregate amount authorized by the governor of \$175 million or less.

It is necessary to seek voter approval to issue the bonds, either by submitting an amendment to the Texas Constitution that authorizes the bonds or by following a procedure prescribed by Section 49, Article III, Texas Constitution, because Section 49 prohibits generally the creation of state debt. The issuance of general obligation bonds by the state, in any amount, creates state debt. The voters have previously approved constitutional amendments authorizing the issuance of general obligation bonds for purposes such as purchasing land for resale to veterans, making home mortgage loans to veterans, various water development projects, building correctional facilities, and issuing student loans.

Under the proposed amendment, the bonds would be issued by the Texas Public Finance Authority, which is an already existing public authority governed by a board appointed by the governor with the advice and consent of the senate.

### **Arguments For:**

1. Adequate access roadways are necessary to alleviate poor conditions in certain colonias in the border region of the state. In some instances, access roadways are necessary to allow emergency vehicles, postal vehicles, and school buses access to colonias.

2. Adequate roadways would be helpful in the economic development of certain colonias in the border region of the state.

3. Improved living conditions and economic development in certain colonias in the border region of the state would promote the health and safety of the residents of those colonias.

4. Counties in the border region are unable to provide adequate roadway projects for colonias without financial assistance.

### **Arguments Against:**

1. Roadway projects in colonias are properly the function of counties and should be supported by county taxes.

2. Roadway projects in colonias should be supported by the developers of the colonias.

3. Counties can finance roadway construction projects by other means without support from state general obligation bonds.

4. Colonia-like developments with inadequate roads are not limited to the border region, so this state assistance program should not be limited to the border region.



**Text of S.J.R. No. 37: SENATE AUTHOR:** Eddie Lucio, Jr., et al.  
**HOUSE SPONSOR:** Ismael “Kino” Flores

### SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing the issuance of general obligation bonds or notes to provide financial assistance to counties for roadway projects to serve border colonias.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article III, Texas Constitution, is amended by adding Section 49-1 to read as follows:

Sec. 49-1. (a) To fund financial assistance to counties for roadways to serve border colonias, the legislature by general law may authorize the governor to authorize the Texas Public Finance Authority or its successor to issue general obligation bonds or notes of the State of Texas in an aggregate amount not to exceed \$175 million and to enter into related credit agreements. Except as provided by Subsection (c) of this section, the proceeds from the sale of the bonds and notes may be used only to provide financial assistance to counties for projects to provide access roads to connect border colonias with public roads. Projects may include the construction of colonia access roads, the acquisition of materials used in maintaining colonia access roads, and projects related to the construction of colonia access roads, such as projects for the drainage of the roads.

(b) The Texas Transportation Commission may, in its discretion and in consultation with the office of the governor, determine what constitutes a border colonia for purposes of selecting the counties and projects that may receive assistance under this section.

(c) A portion of the proceeds from the sale of the bonds and notes and a portion of the interest earned on the bonds and notes may be used to pay:

(1) the costs of administering projects authorized under this section; and

(2) all or part of a payment owed or to be owed under a credit agreement.

(d) The bonds and notes authorized under this section constitute a general obligation of the state. While any of the bonds or notes or interest on the bonds or notes is outstanding and unpaid, there is appropriated out of the general revenue fund in each fiscal year an amount sufficient to pay the principal of and interest on the bonds and notes that mature or become due during the fiscal year, including an amount sufficient to make payments under a related credit agreement.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing the issuance of state general obligation bonds and notes to provide financial assistance to counties for roadway projects to serve border colonias.”



## **Amendment No. 3 (S.J.R. No. 47)**

### **Wording of Ballot Proposition:**

The constitutional amendment to authorize the legislature to exempt from ad valorem taxation raw cocoa and green coffee that is held in Harris County.

### **Analysis of Proposed Amendment:**

The proposed amendment would amend Article VIII, Texas Constitution, by adding Section 1-n to authorize the legislature by general law to exempt from ad valorem taxation raw cocoa and green coffee that is held in Harris County. The proposed amendment would authorize the legislature to impose additional requirements for qualification for an exemption.

### **Background**

Section 1, Article VIII, Texas Constitution, provides that all real property and tangible personal property, unless exempt as required or permitted by the constitution, shall be taxed according to its value. Any exemption from ad valorem taxation not authorized by the Texas Constitution is void; neither the legislature nor a local government imposing ad valorem taxes may exempt any property from ad valorem taxation without constitutional authority. A business's inventory of raw cocoa or green coffee is tangible personal property. Because the Texas Constitution does not currently require or permit an exemption for that property, it is subject to ad valorem taxation.

Currently, there are only three coffee exchange ports recognized by the New York Board of Trade in the United States: New York, Miami, and New Orleans. Commodities held at a designated exchange port may be traded at the New York Board of Trade. The Greater Houston Coffee Association has sought to make Harris County a coffee exchange port, but the New York Board of Trade will not consider the association's application unless both green coffee and raw cocoa are exempted from ad

valorem taxation. Since the constitution does not currently permit coffee and cocoa to be exempted from ad valorem taxation by statute, a constitutional amendment is necessary.

The proposed amendment would authorize the legislature by general law to exempt from ad valorem taxation raw cocoa and green coffee that is held in Harris County and would authorize the legislature to impose additional requirements for qualification for an exemption. Concurrently with proposing the constitutional amendment, the 77th Legislature enacted Senate Bill No. 1574 as the enabling legislation for the amendment. The bill would amend the Tax Code by adding Section 11.33 to provide that a person is entitled to an exemption from taxation of raw cocoa and green coffee that the person holds in Harris County. Under Section 11.33, Tax Code, once the exemption was allowed, the person would not be required to continue to claim it in subsequent years in order to receive it, but the chief appraiser may require the person to file a new application in a subsequent year to confirm the cocoa's or coffee's current qualification for the exemption. If the constitutional amendment is approved by the voters, the exemption provided by Section 11.33 will become available beginning January 1, 2002.

### **Arguments For:**

1. The ad valorem taxation of raw cocoa and green coffee held in Harris County would put cocoa and coffee importers in this state at a competitive disadvantage with cocoa and coffee importers in other states, where business inventories, including inventories of bulk cocoa and coffee, are not subject to taxation. Exempting cocoa and coffee would remove that disadvantage.

2. The exemption from ad valorem taxation of raw cocoa and green coffee held in Harris County would remove a barrier to the designation of Harris County as a coffee exchange port by the New York Board of Trade. Miami has experienced substantial increases in coffee storage since being designated as a coffee exchange port. The designation of Harris County as a coffee exchange port would greatly increase cocoa and coffee storage and exchange in the county. In addition, an increase

in cocoa and coffee imports would encourage related economic activity, such as cocoa and coffee processing. The exemption would create new businesses and jobs in the cocoa and coffee industry in this state.

3. The exemption from ad valorem taxation of raw cocoa and green coffee held in Harris County would generate for the state and for local governments more tax revenue than it costs. The total local tax imposed on raw coffee stored at the Port of Houston in 2000 was less than \$300,000. If Harris County is designated as a coffee exchange port, cocoa and coffee storage is certain to increase, creating a need for additional warehouses and other facilities that will be subject to ad valorem taxation by local governments and encouraging related economic activity, such as cocoa and coffee processing, thereby generating more state and local sales tax revenue and state franchise tax revenue. The additional tax revenue would more than offset the loss in revenue from the ad valorem taxation of the raw cocoa and green coffee itself.

#### **Arguments Against:**

1. It is immaterial that other states provide an ad valorem tax exemption for raw cocoa and green coffee while this state does not. Texas should not feel obligated to conform its laws to the desires of a private trade association, such as the New York Board of Trade, located in another state.

2. It is unfair to create such a narrow tax exemption. The exemption would apply to only two types of property—raw cocoa and green coffee—and only if the cocoa and coffee are held in Harris County. Holders of other types of business inventory in Harris County would not benefit from the exemption, nor would holders of an inventory of raw cocoa or green coffee held elsewhere in Texas. The law should treat holders of all types of business inventory throughout this state equally and uniformly and should give all Texas ports equal opportunity to compete with Harris County as commodity centers.

3. Any anticipation of an increase in economic activity, jobs, or ad valorem, sales, or franchise tax collection resulting from the exemption is purely speculative. It is uncertain whether an exemption from ad

valorem taxation for raw cocoa and green coffee held in Harris County would result in the designation of Harris County as a coffee exchange port by the New York Board of Trade, and even if it did there is no guarantee that it would increase cocoa and coffee storage in Harris County or generate related economic activity. The only certainty is that school districts and other local governments in Harris County would no longer be able to impose taxes on that property. If the exemption did not result in the construction or expansion of taxable facilities such as warehouses with a value sufficient to offset the tax revenue loss, local governments might be compelled to increase taxes on other property owners.

**Text of S.J.R. No. 47: SENATE AUTHOR:** Mario Gallegos, Jr.  
**HOUSE SPONSOR:** Joe E. Moreno

**SENATE JOINT RESOLUTION**

proposing a constitutional amendment to authorize the legislature to exempt from ad valorem taxation raw cocoa and green coffee that is held in Harris County.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article VIII, Texas Constitution, is amended by adding Section 1-n to read as follows:

Sec. 1-n. (a) The legislature by general law may exempt from ad valorem taxation raw cocoa and green coffee that is held in Harris County.

(b) The legislature may impose additional requirements for qualification for an exemption under this section.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to authorize the legislature to exempt from ad valorem taxation raw cocoa and green coffee that is held in Harris County."





# **Amendment No. 4 (H.J.R. No. 1)**

## **Wording of Ballot Proposition:**

The constitutional amendment providing for a four-year term of office for the fire fighters' pension commissioner.

## **Analysis of Proposed Amendment:**

The proposed amendment would amend Section 67, Article XVI, Texas Constitution, to require a four-year term of office for the fire fighters' pension commissioner if the legislature provides for the office.

## **Background**

The office of the fire fighters' pension commissioner was established by the legislature in the Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes). The commissioner is appointed by the governor, with the advice and consent of the senate, for a two-year term. The Texas Local Fire Fighters Retirement Act provides for the commissioner to help fire departments administer local pension plans. Under the Texas Statewide Emergency Services Retirement Act (Article 6243e.3, Vernon's Texas Civil Statutes), the commissioner administers a statewide retirement plan for certain volunteer fire fighters and emergency medical services personnel.

Section 30, Article XVI, Texas Constitution, provides that, unless the constitution specifies otherwise, the term of a public office may not exceed two years. The Texas Constitution establishes a term of office longer than two years for more than 25 different public offices. The fire fighters' pension commissioner is not among them. The proposed amendment would establish a four-year term of office for the commissioner.

### **Arguments For:**

1. The fire fighters' pension commissioner is appointed by the governor at the start of the governor's term of office. A governor usually chooses the same person to serve two successive two-year terms as commissioner during the governor's four-year term. Thus, the same person typically is subject to a time-consuming appointment and confirmation process twice during a governor's tenure. A four-year term of office would reduce the time and expense of confirmation.

2. A four-year term of office for the fire fighters' pension commissioner might ensure greater continuity in the administration of pension plans for fire fighters and emergency medical services personnel.

### **Arguments Against:**

1. The Texas Constitution does not specifically establish terms of office for the majority of public officials. Instead, those officials are subject to the general constitutional rule that limits the length of their terms to not more than two years. No compelling reason exists to extend the fire fighters' pension commissioner's term of office to four years while keeping two-year terms for other public officials.

2. A four-year term of office for the fire fighters' pension commissioner might decrease the accountability of that office. More frequent appointments and confirmations require more frequent assessments of the commissioner's job performance.

**Text of H.J.R. No. 1: HOUSE AUTHOR:** Brian McCall et al.  
**SENATE SPONSOR:** Judith Zaffirini

### **HOUSE JOINT RESOLUTION**

proposing a constitutional amendment providing for a four-year term of office for the fire fighters' pension commissioner.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 67, Article XVI, Texas Constitution, is amended by adding Subsection (g) to read as follows:

(g) If the legislature provides for a fire fighters' pension commissioner, the term of office for that position is four years.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment providing for a four-year term of office for the fire fighters' pension commissioner."



## **Amendment No. 5 (S.J.R. No. 32)**

### **Wording of Ballot Proposition:**

The constitutional amendment authorizing municipalities to donate outdated or surplus firefighting equipment or supplies to underdeveloped countries.

### **Analysis of Proposed Amendment:**

The proposed amendment would add Section 52h, Article III, Texas Constitution, to create an additional exception to the general constitutional prohibition against a county, city, town, or other political subdivision of the state granting a thing of value to any individual, association, or corporation.

### **Background**

Sections 51 and 52, Article III, Texas Constitution, are intended to prevent certain abuses of public funds and other public property by prohibiting the state and local governments from giving away funds and items of value to other entities unless a public purpose of the donating government is served. Section 51 applies to the state. Section 52 applies to municipalities and other local governments.

The determination of whether outdated or surplus firefighting equipment or supplies have any value and whether a municipality's donation of that property to an underdeveloped country serves a public purpose involves a factual question that raises the possibility that the donation violates Section 52, Article III. To avoid uncertainty about whether a donation of that type is allowed under the constitution, an exception to Section 52, Article III, is needed. Senate Joint Resolution No. 32 would create that exception.

### **Arguments For:**

1. Outdated or surplus firefighting equipment or supplies normally have little, if any, value, and the cost incurred in selling the property may exceed the revenue generated by the sale. Consequently, a cost-effective way to dispose of the property is to donate it to an underdeveloped country in which the property may still be of great assistance to fire departments that are not as advanced and that have a recognizable need.

2. The donations authorized by the proposed amendment would create goodwill between this state and the country to which the equipment or supplies are donated. That goodwill could lead to economic benefits to this state by strengthening trade relations with foreign countries.

### **Arguments Against:**

1. The proposed amendment should have authorized the donating municipality to offer the equipment or supplies to fire departments in this state or bordering states before donating the property to a foreign country. It is possible that certain fire departments in this state and bordering states have a need for the property.

2. The donating municipality might incur some costs in making the donation, such as the cost of delivering the equipment or supplies and the cost of assessing the condition of the property and the needs of the donee regarding the property. The proposed amendment should have contained provisions to ensure that the donating municipality recovers those costs from the donee.

**Text of S.J.R. No. 32: SENATE AUTHOR:** Royce West  
**HOUSE SPONSOR:** Jim Solis

**SENATE JOINT RESOLUTION**

proposing a constitutional amendment authorizing municipalities to donate outdated or surplus firefighting equipment or supplies to underdeveloped countries.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article III, Texas Constitution, is amended by adding Section 52h to read as follows:

Sec. 52h. A municipality may donate to an underdeveloped country outdated or surplus equipment, supplies, or other materials used in fighting fires.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing municipalities to donate outdated or surplus firefighting equipment or supplies to underdeveloped countries."





## **Amendment No. 6 (H.J.R. No. 45)**

### **Wording of Ballot Proposition:**

The constitutional amendment requiring the governor to call a special session for the appointment of presidential electors under certain circumstances.

### **Analysis of Proposed Amendment:**

The proposed amendment would amend Section 8, Article IV, Texas Constitution, to require the governor to convene the legislature in special session to appoint presidential electors if the governor determines that a reasonable likelihood exists that a final determination of the appointment of electors will not occur before the legal deadline to conclusively determine the appointment.

### **Background**

In the 2000 presidential election in Florida, the outcome of the presidential race through the use of punch-card voting systems was subject to protracted and varied legal challenges to the point that concerns arose as to missing the legal deadlines for a final determination of the appointment of presidential electors and thereby potentially losing state control over the appointment process. In an effort to avoid a similar controversy in Texas in future presidential elections, the legislature proposes a specific constitutional amendment to provide for a special legislative session as a sure method of retaining state control over the appointment of electors if it appears that challenges may delay a final determination on the appointment until after the legal deadline for the state to make that determination.

### **Argument For:**

The presidential electoral process is too important to risk a controversy like the one that arose in Florida. The specific solution of a special legislative session to appoint electors if the legal deadline for a final determination is looming is necessary to maintain the integrity of the state's role in determining its electors.

### **Argument Against:**

Current state and federal laws provide adequate procedures and deadlines for the state's appointment of electors without the need for a specific constitutional amendment, especially with the passage of legislation by the 77th Legislature at its regular session in 2001 to phase out the use of punch-card voting systems in this state. The punch-card system of voting was at the center of the Florida election controversy, and it is highly unlikely that a similar controversy would occur in Texas in the future.





## **Amendment No. 7 (H.J.R. No. 82)**

### **Wording of Ballot Proposition:**

The constitutional amendment authorizing the Veterans' Land Board to issue up to \$500 million in general obligation bonds payable from the general revenues of the state for veterans' housing assistance and to use assets in certain veterans' land and veterans' housing assistance funds to provide for veterans cemeteries.

### **Analysis of Proposed Amendment:**

The proposed amendment would allow the Veterans' Land Board to issue general obligation bonds that would be payable from the general revenues of the state and use the proceeds derived from the sale of the bonds to provide home mortgage loans to Texas veterans. The principal amount of outstanding bonds authorized by the proposed amendment could not at any one time exceed \$500 million. The proposed amendment would provide that before the proceeds from the sale of the bonds are loaned, the proceeds shall be deposited in or used to benefit and augment a constitutionally created fund known as the Veterans' Housing Assistance Fund II.

The voters have previously approved amendments to the Texas Constitution that authorize the issuance of general obligation bonds for the purpose of making home mortgage loans to Texas veterans. The bonds authorized by the proposed amendment are in addition to the bonds previously authorized by the voters for this purpose, and the proposed amendment would provide that the bonds shall be repaid from the same sources and in the same manner as previous bonds issued for this purpose in connection with the Veterans' Housing Assistance Fund II.

The proposed amendment would also allow the Veterans' Land Board to use excess assets in the Veterans' Land Fund, the Veterans' Housing Assistance Fund, and the Veterans' Housing Assistance Fund II to plan and design, operate, maintain, enlarge, or improve veterans cemeteries.

## **Background**

Section 49, Article III, Texas Constitution, prohibits generally the creation of state debt. The issuance of general obligation bonds by the state, in any amount, creates state debt, so it is necessary to seek voter approval to issue the bonds by either submitting an amendment to the Texas Constitution that authorizes the bonds or following a procedure prescribed by Section 49, Article III. The voters have previously approved constitutional amendments authorizing the issuance of general obligation bonds for the purposes of purchasing land for resale to veterans and making home mortgage loans to veterans.

House Joint Resolution No. 82 seeks voter approval for the issuance of an additional \$500 million in general obligation bonds for the purpose of making home mortgage loans to veterans. The bonds would be issued by the Veterans' Land Board under the veterans' housing assistance program. The Veterans' Land Board is a constitutionally created board composed of the commissioner of the General Land Office and two citizen members appointed by the governor. The veterans' housing assistance program, under which home mortgage loans are made to veterans, is governed by Chapter 162, Natural Resources Code, which was enacted in 1983. The Internet website for the Veterans' Land Board is part of the website of the General Land Office; the URL for the site is <http://www.glo.state.tx.us/vlb/>.

As of May 27, 1999, the Veterans' Land Board had \$615,000,000 in authorized but unissued bonds for the purpose of providing funds for the Veterans' Housing Assistance Fund II, with \$385,000,000 in bonds having been previously issued for that purpose as of that date. Before May 1999, the amount of a home mortgage loan to a veteran could not exceed \$45,000. In 1999, the legislature enacted Senate Bill No. 1509, which raised the \$45,000 ceiling to the maximum amount allowable for a similar home mortgage loan obtained through the United States Department of Veterans Affairs. Because the ceiling on the amount of a loan has been substantially raised, there is now greater demand for loans under the veterans' housing assistance program.

Home mortgage loans are made under the veterans' housing assistance program to Texas veterans. The term "veteran" is defined for purposes of the program by Section 162.001(8), Natural Resources Code, which provides:

(8) "Veteran" means a person who:

(A)(i) served not less than 90 continuous days, unless sooner discharged by reason of a service-connected disability, on active duty in the Army, Navy, Air Force, Coast Guard, United States Public Health Service (as constituted under 42 U.S.C. Section 201 et seq.), or Marine Corps of the United States after September 16, 1940, and who on the date of filing a loan application has not been dishonorably discharged from the branch of the service in which the person served;

(ii) has at least 20 years of active or reserve military service as computed when determining the person's eligibility to receive retired pay under applicable federal law; or

(iii) has enlisted or received an appointment in the Texas National Guard, who has completed all initial active duty training required as a condition of the enlistment or appointment, and who on the date of filing the person's loan application has not been dishonorably discharged from the Texas National Guard;

(B) at the time of the person's enlistment, induction, commissioning, appointment, or drafting was a bona fide resident of this state or has resided in this state at least five years immediately before the date of filing an application for a loan; and

(C) at the time of the person's application for a loan under this chapter is a bona fide resident of this state. The term includes the unmarried surviving spouse of a veteran who died or who is identified as missing in action if the deceased or missing veteran meets the requirements



in this section, with the exception that the deceased or missing veteran need not have served 90 continuous days under Paragraph (A)(i) of this subdivision, and if the deceased or missing veteran was a bona fide resident of the state at time of enlistment, induction, commissioning, appointment, or drafting.

House Joint Resolution No. 82 also would allow the Veterans' Land Board to use excess assets in the Veterans' Land Fund, the Veterans' Housing Assistance Fund, and the Veterans' Housing Assistance Fund II to plan and design, operate, maintain, enlarge, or improve veterans cemeteries. The constitution currently allows the Veterans' Land Board to determine whether there are excess assets in any of the three funds and to either transfer excess assets between the funds or use the excess assets to secure revenue bonds. (Revenue bonds are bonds that are not payable from the general revenues of the state but are instead payable *only* from an identified revenue stream such as loan repayments.) The proposed amendment would also allow the Veterans' Land Board to use the excess assets for purposes related to veterans cemeteries.

House Bill No. 310 is the enabling legislation for the portion of the proposed amendment that concerns veterans cemeteries. House Bill No. 310 defines "veterans cemetery" to mean "a burial ground operated solely for the burial of veterans and their eligible relatives." Under House Bill No. 310, the Veterans' Land Board, together with the chairman of the Texas Veterans Commission and two representatives of the veterans community selected by the chairman of the Texas Veterans Commission, would (1) establish the guidelines for determining the location and size of the cemeteries and for determining eligibility for burial in the cemeteries; and (2) select up to seven locations across the state for the cemeteries.

House Bill No. 310 would limit the amount of excess assets in the Veterans' Land Fund, the Veterans' Housing Assistance Fund, and the Veterans' Housing Assistance Fund II that could be used for veterans cemetery purposes to not more than \$7 million each state fiscal year. House Bill No. 310 would also prohibit the money from being spent to acquire land for the cemeteries.

House Bill No. 310 is contingent on voter approval of House Joint Resolution No. 82, and closes with the statement that House Bill No. 310 will not require an appropriation from the general revenue fund of the state.

**Arguments For:**

1. Voter approval of H.J.R. No. 82 would allow the Veterans' Land Board to meet the increasing demand for loans under the veterans' housing assistance program that resulted from the ceiling on the amount that could be loaned being raised from \$45,000 in 1999. The proposed amendment would also allow the Veterans' Land Board the flexibility to use excess funds to provide for veterans cemeteries, with the amount of excess funds that could be used limited by the enabling legislation. Veterans have sacrificed to serve their country and deserve benefit programs such as this.

2. There is very little risk to the state in issuing these general obligation bonds because it is very probable that the bonds would be repaid not by the taxpayers but by the home mortgage loan repayments made by the veterans themselves.

**Argument Against:**

The proposed amendment would increase state debt, and a significant downturn in the housing market coupled with a recession would expose the taxpayers to some risk. While veterans deserve benefit programs, there are already many state and federal benefits for which veterans are eligible, so it is not necessary to increase state debt at this time to augment this particular benefit program.

**Text of H.J.R. No. 82: HOUSE AUTHOR:** David Counts et al.  
**SENATE SPONSOR:** Carlos Truan

### HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing the Veterans' Land Board to issue additional general obligation bonds and to use certain assets in certain funds to provide for veterans cemeteries.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 49-b, Article III, Texas Constitution, is amended by amending Subsection (s) and adding Subsection (w) to read as follows:

(s) If the Board determines that assets from the Veterans' Land Fund, the Veterans' Housing Assistance Fund, or the Veterans' Housing Assistance Fund II are not required for the purposes of the fund, the Board may:

(1) transfer the assets to another of those funds;

(2) ~~or~~ use the assets to secure revenue bonds issued by the Board; or

(3) use the assets to plan and design, operate, maintain, enlarge, or improve veterans cemeteries [under this section].

(w) In addition to the general obligation bonds authorized to be issued and to be sold by the Veterans' Land Board by previous constitutional amendments, the Veterans' Land Board may provide for, issue, and sell general obligation bonds of the state to provide home mortgage loans to veterans of the state. The principal amount of outstanding bonds authorized by this subsection may not at any one time exceed \$500 million. The bond proceeds shall be deposited in or used to benefit and augment the Veterans' Housing Assistance Fund II and shall be administered and invested as provided by law. Payments of principal and interest on the bonds, including payments made under a bond enhancement agreement with respect to principal of or interest on the

bonds, shall be made from the sources and in the manner provided by this section for general obligation bonds issued for the benefit of the Veterans' Housing Assistance Fund II.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing the Veterans' Land Board to issue up to \$500 million in general obligation bonds payable from the general revenues of the state for veterans' housing assistance and to use assets in certain veterans' land and veterans' housing assistance funds to provide for veterans cemeteries."



## **Amendment No. 8 (H.J.R. No. 97)**

### **Wording of Ballot Proposition:**

The constitutional amendment authorizing the issuance of up to \$850 million in bonds payable from the general revenues of the state for construction and repair projects and for the purchase of needed equipment.

### **Analysis of Proposed Amendment:**

The proposed amendment would allow the legislature to authorize the Texas Public Finance Authority to issue up to \$850 million in general obligation bonds, and to enter into related credit agreements, that would be payable from the general revenues of the state. Under the proposed amendment and its enabling legislation, House Bill No. 3064, the proceeds derived from the sale of the bonds could be used in accordance with the legislative appropriations of the proceeds to pay for certain construction or repair projects or for the purchase of certain needed equipment. To be eligible for bond funding, a construction or repair project or an equipment purchase would have to be authorized by the legislature by general law or in the General Appropriations Act. In addition, a construction or repair project would have to be administered by or for one of the following state agencies, and an equipment purchase would have to be made by or for one of the following state agencies: the General Services Commission, the Texas Youth Commission, the Texas Department of Criminal Justice, the Texas Department of Mental Health and Mental Retardation, the Parks and Wildlife Department, the adjutant general's department, the Texas School for the Deaf, the Department of Agriculture, the Department of Public Safety of the State of Texas, the State Preservation Board, the Texas Department of Health, the Texas Historical Commission, or the Texas School for the Blind and Visually Impaired.

### **Background**

It is necessary to seek voter approval to issue the bonds, by either submitting an amendment to the Texas Constitution that authorizes the bonds or following a procedure prescribed by Section 49, Article III,

Texas Constitution, because Section 49, Article III, prohibits generally the creation of state debt. The issuance of general obligation bonds by the state, in any amount, creates state debt. The voters have previously approved constitutional amendments authorizing the issuance of general obligation bonds for purposes such as purchasing land for resale to veterans, making home mortgage loans to veterans, various water development projects, building correctional facilities, and issuing student loans.

Under the proposed amendment, the bonds would be issued by the Texas Public Finance Authority, which is an existing public authority governed by a board appointed by the governor with the advice and consent of the senate. Under Chapter 1232, Government Code, the Texas Public Finance Authority issues obligations such as bonds and notes to finance the acquisition of buildings and equipment by state agencies.

House Joint Resolution No. 97 seeks voter approval for the legislature to authorize the issuance of up to \$850 million in general obligation bonds for the purposes previously described. If the voters approve the constitutional amendment proposed by House Joint Resolution No. 97, the \$850 million in general obligation bonds will not automatically be issued. Under House Joint Resolution No. 97 and its related enabling legislation, House Bill No. 3064, the legislature must first authorize the construction or repair project or the equipment purchase before the bonds may be issued. The proceeds from the sale of the bonds must then be spent in accordance with the legislature's appropriation of the proceeds.

The 77th Legislature has authorized a number of construction projects, repair projects, and equipment purchases in the General Appropriations Act for the state fiscal biennium beginning September 1, 2001, that, contingent on voter approval of House Joint Resolution No. 97, would be paid for from the proceeds of general obligation bonds. These projects and the authorized amount of bonds for the projects include the following: (1) \$33,900,000, for the Texas Department of Health, for interim repairs and for construction of the Texas Center for Infectious Disease and the South Texas Healthcare Center; (2) \$5,134,000, for campus construction and renovation projects at the Texas School for the Blind and Visually Impaired, and \$7,085,000, for campus construction and renovation projects

at the Texas School for the Deaf; (3) \$80,000,000, for the Texas Department of Criminal Justice, for the repair and rehabilitation of buildings and facilities and for the expansion of the Western Regional Medical Facility at the Montford Psychiatric Facility; (4) \$18,500,000, for the purchase of cameras by the Department of Public Safety to implement the bill prohibiting racial profiling, Senate Bill No. 1074; (5) \$10,792,136, for the Texas Youth Commission, for the repair or replacement of utilities, roads, and roofs, for the repair or rehabilitation of buildings, and for the construction of an education building at the Evins Regional Juvenile Center; (6) \$36,680,000, for the Parks and Wildlife Department, for infrastructure repair, maintenance, and other projects; (7) \$35,000,000, for the Texas Department of Mental Health and Mental Retardation, for construction and repair projects and equipment acquisitions; (8) \$31,500,000, for the agencies listed in House Joint Resolution No. 97, for equipment acquisitions; (9) \$16,484,500, for the General Services Commission, for construction and repair projects and equipment acquisitions; (10) \$3,038,252, for the adjutant general's department, for construction and repair projects and equipment acquisitions; and (11) \$45,000, for the Department of Agriculture, for construction and repair projects and equipment acquisitions.

The General Appropriations Act provides that if the voters approve House Joint Resolution No. 97, the general revenue appropriation to the General Services Commission for deferred maintenance is reduced by \$14,900,000. Section 10.87 of the General Appropriations Act also provides that agencies listed in House Joint Resolution No. 97 shall report to the Legislative Budget Board the same or similar information reported to the Bond Review Board to obtain approval of the issuance of the bonds.

Contingent on voter approval of House Joint Resolution No. 97, the General Appropriations Act also makes an appropriation of \$819,700 for the fiscal year beginning September 1, 2001, and \$14,510,875 for the fiscal year beginning September 1, 2002, to the Texas Public Finance Authority for debt service payments on the bonds that become due during those fiscal years.



### **Arguments For:**

1. Construction and major repair projects and major equipment purchases are appropriate expenditures for long-term financing. In the same way that people ordinarily finance the purchase of a house and businesses ordinarily finance the purchase of expensive equipment or a factory that will be used for many years, state government may legitimately finance projects and major equipment purchases that will benefit the state for many years.

2. Financing capital expenditures in the same way that people and businesses do is not the same thing as financing ordinary operating expenses in the way that the federal government did during much of the second half of the 20th century. There are ample controls to ensure that the state is not traveling down that path. The voters are being asked to approve an exception to the prohibition on state debt that is limited both in amount and in the purpose for which the money can be spent. There are ample legislative controls both as to the projects and purchases that may be approved for financing and as to the expenditure of the bond proceeds to ensure that the bond money would be properly spent on capital projects and purchases that would continue to benefit the state as the bonds are being paid.

### **Argument Against:**

Texas has traditionally been a pay-as-you-go state, and the voters should be cautious in approving any extra state debt. Even if construction and major repair projects and major equipment purchases are appropriate for long-term financing, the proposed amendment would not limit the repair projects and equipment purchases to major repair projects and major equipment purchases. A limitation of that type is needed because the useful life of some repair projects and equipment purchases does not justify the creation of long-term debt that would be paid off after the state is no longer deriving a benefit from the project or purchase.

**Text of H.J.R. No. 97:** HOUSE AUTHOR: Robert Junell et al.  
SENATE SPONSOR: Rodney Ellis

### HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing the issuance of general obligation bonds for construction and repair projects and for the purchase of needed equipment.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article III, Texas Constitution, is amended by adding Section 50-f to read as follows:

Sec. 50-f. (a) The legislature by general law may authorize the Texas Public Finance Authority to provide for, issue, and sell general obligation bonds of the State of Texas in an amount not to exceed \$850 million and to enter into related credit agreements. The bonds shall be executed in the form, on the terms, and in the denominations, bear interest, and be issued in installments as prescribed by the Texas Public Finance Authority.

(b) Proceeds from the sale of the bonds shall be deposited in a separate fund or account within the state treasury created by the comptroller for this purpose. Money in the separate fund or account may be used only to pay for:

(1) construction and repair projects authorized by the legislature by general law or the General Appropriations Act and administered by or on behalf of the General Services Commission, the Texas Youth Commission, the Texas Department of Criminal Justice, the Texas Department of Mental Health and Mental Retardation, the Parks and Wildlife Department, the adjutant general's department, the Texas School for the Deaf, the Department of Agriculture, the Department of Public Safety of the State of Texas, the State Preservation Board, the Texas Department of Health, the Texas Historical Commission, or the Texas School for the Blind and Visually Impaired; or

(2) the purchase, as authorized by the legislature by general law or the General Appropriations Act, of needed equipment by or on behalf of a state agency listed in Subdivision (1) of this subsection.

(c) The maximum net effective interest rate to be borne by bonds issued under this section may be set by general law.

(d) While any of the bonds or interest on the bonds authorized by this section is outstanding and unpaid, from the first money coming into the state treasury in each fiscal year not otherwise appropriated by this constitution, an amount sufficient to pay the principal and interest on bonds that mature or become due during the fiscal year and to make payments that become due under a related credit agreement during the fiscal year is appropriated, less the amount in the sinking fund at the close of the previous fiscal year.

(e) Bonds issued under this section, after approval by the attorney general, registration by the comptroller of public accounts, and delivery to the purchasers, are incontestable and are general obligations of the State of Texas under this constitution.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing the issuance of up to \$850 million in bonds payable from the general revenues of the state for construction and repair projects and for the purchase of needed equipment.”

## **Amendment No. 9 (H.J.R. No. 47)**

### **Wording of Ballot Proposition:**

The constitutional amendment authorizing the filling of a vacancy in the legislature without an election if a candidate is running unopposed in an election to fill the vacancy.

### **Analysis of Proposed Amendment:**

The proposed amendment would amend Section 13, Article III, Texas Constitution, to allow the legislature to provide by general law for the cancellation of a special election to fill a vacancy in the legislature when only one person qualifies and declares a candidacy in the election to fill the vacancy.

### **Background**

In 1995, the Texas Election Code was amended to allow local governments to cancel the election usually held to elect the members of its governing body if only one person would appear on the ballot for each office and no person had filed to run in the election as a write-in candidate. The rationale for this change was that if only one person could receive votes for an office, the results of the election would be known without having to incur the expense and time involved in holding an election. The result was a significant savings in election expenses for local governments, especially those with small populations that frequently only had one person qualify to be on the ballot for an office.

The application of this election cancellation procedure is limited by several provisions of the Texas Constitution that either expressly or impliedly require that certain officers be chosen at an election or to receive a majority of the votes cast at an election. In the case of a vacancy to the Texas Legislature, the constitution requires that the governor issue a “writ of election” to fill the vacancy—seeming to indicate that an election must be held. The constitutional amendment would authorize the legislature to dispose of the election requirement in the case of an election to fill a vacancy in which only one candidate has qualified and declared a candidacy.

House Bill No. 831, enacted by the 77th Legislature, Regular Session, 2001, contingent on the adoption of the constitutional amendment proposed by House Joint Resolution No. 47, would allow for the cancellation of a special election to fill a vacancy by the secretary of state in the same fashion that a local election may be canceled under the Texas Election Code. The bill would also require a declaration of a write-in candidacy before the election of a person running as a write-in candidate in a special election to fill a vacancy in the legislature. This is a necessary component in the determination of how many qualified and declared candidates are running for an office.

#### **Argument For:**

A special election to fill a vacancy in the legislature is frequently held on a date on which no other election is being held. This results in a significant election expense to counties holding the election to elect a single state officer. If only one person has qualified to be on the ballot or declared a write-in candidacy, that person should be certified as elected without having to hold a meaningless election at taxpayer expense.

#### **Argument Against:**

Though there usually is a special election to fill a vacancy in the legislature once a year somewhere in the state, it is rare that only one person qualifies or declares a candidacy for such a vacancy. Thus, very few elections would ever be canceled under this amendment. Since they require an election to be held in the entire state, constitutional amendments should address important issues that involve meaningful change. Frequent constitutional amendments involving minor or trivial issues will likely result in voter fatigue and divert attention from more important constitutional amendments requiring voter approval.

**Text of H.J.R. No. 47: HOUSE AUTHOR:** Jerry Madden et al.  
**SENATE SPONSOR:** Florence Shapiro

### **HOUSE JOINT RESOLUTION**

proposing a constitutional amendment authorizing the cancellation of an election to fill a vacancy in the legislature when a candidate is running unopposed.

**BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

**SECTION 1.** Section 13, Article III, Texas Constitution, is amended to read as follows:

Sec. 13. (a) When vacancies occur in either House, the Governor, or the person exercising the power of the Governor, shall issue writs of election to fill such vacancies; and should the Governor fail to issue a writ of election to fill any such vacancy within twenty days after it occurs, the returning officer of the district in which such vacancy may have happened, shall be authorized to order an election for that purpose.

(b) The legislature may provide by general law for the filling of a vacancy in the legislature without an election if only one person qualifies and declares a candidacy in an election to fill the vacancy.

**SECTION 2.** This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing the filling of a vacancy in the legislature without an election if a candidate is running unopposed in an election to fill the vacancy.”



## **Amendment No. 10 (S.J.R. No. 6)**

### **Wording of Ballot Proposition:**

The constitutional amendment to promote equal tax treatment for products produced, acquired, and distributed in the State of Texas by authorizing the legislature to exempt from ad valorem taxation tangible personal property held at certain locations only temporarily for assembling, manufacturing, processing, or other commercial purposes.

### **Analysis of Proposed Amendment:**

The proposed amendment would amend Article VIII, Texas Constitution, by adding Section 1-n to authorize the legislature to exempt from ad valorem taxation goods, wares, merchandise, and other tangible personal property (other than oil, natural gas, and other petroleum products) that are imported into or acquired in Texas for assembling, storing, manufacturing, processing, or fabricating purposes and that are transported outside this state or to another location in this state within 270 days after importation or acquisition.

### **Background**

Section 1, Article VIII, Texas Constitution, provides that all real property and tangible personal property, unless exempt as required or permitted by the constitution, shall be taxed according to its value. Any exemption from ad valorem taxation not granted or authorized by the Texas Constitution is void. Neither the legislature nor a local government that imposes ad valorem taxes may exempt any property from ad valorem taxation without constitutional authority.

In 1989, to encourage manufacturing and similar commercial activities in Texas, the voters approved Section 1-j, Article VIII, Texas Constitution, which created a “freeport exemption” that exempts goods, wares, merchandise, and other tangible personal property (other than oil, natural gas, and other petroleum products) from ad valorem taxation, but only if the goods, wares, merchandise, or other tangible personal property are



exported from Texas within 175 days after their importation or acquisition. Senate Joint Resolution No. 6, if adopted, will amend Article VIII, Texas Constitution, by adding Section 1-n to authorize the legislature to exempt from ad valorem taxation the same types of tangible personal property as the existing freeport exemption if the property is imported into or acquired in Texas for assembling, storing, manufacturing, processing, or fabricating purposes at a location not owned or controlled by the owner of the tangible personal property and transported outside this state or to another location in this state within 270 days after importation or acquisition. The proposed amendment, by allowing the exempt property to be held at a single location for up to 270 days and to be transported to a site within Texas as well as outside the state, would permit the legislature to enact an exemption substantially broader than the existing freeport exemption. On the other hand, the exemption would apply only to goods being held at a site not owned or controlled by the owner of the goods, such as a commercial warehouse or similar storage facility, or to goods being assembled, manufactured, or processed for hire by a business that does not own the goods.

The amendment specifies that a taxing unit could override any exemption from taxation enacted by the legislature under added Section 1-n, Article VIII, Texas Constitution, and continue taxing the exempt property. Before acting to tax the property, the governing body of the taxing unit would have to hold a public hearing at which members of the public are entitled to speak for or against the taxation of the exempt property.

A special provision specifically states that the exemption would apply to aircraft and aircraft parts in this state for the repair or maintenance of aircraft operated by a certificated air carrier.

The proposed amendment would also clarify that an owner of “freeport goods” eligible to receive the exemption from taxation created by Section 1-j, Article VIII, Texas Constitution, could apply for an exemption under Section 1-n of that article instead. The amendment also specifies that the owner of the property would not be entitled to both exemptions.

The 77th Legislature, Regular Session, 2001, did not enact enabling legislation in anticipation of the proposed amendment. Senate Bill No. 174 and House Bill No. 438, which proposed exemptions to implement the proposed constitutional amendment, were considered by the legislature but were not enacted. Accordingly, even if the amendment is approved by the voters, goods, wares, merchandise, and other tangible personal property that are imported into or acquired in Texas for assembling, storing, manufacturing, processing, or fabricating purposes and that are transported outside this state or to another location in this state within 270 days after importation or acquisition will continue to be taxed until future legislation provides otherwise, unless the property is already exempt under the existing freeport exemption.

### **Arguments For:**

1. The exemption of personal property at a temporary location in the state would encourage economic development by providing incentives for manufacturers and other industries that do business in or out of this state. Tax incentives have been an important part of Texas' successful effort to attract major industrial, technological, and transportation facilities in recent years. The proposed exemption would be a valuable addition to Texas' arsenal in the battle to diversify the state's economy and continue the state's economic recovery, and its adoption at this time would send a strong signal that Texas remains committed to maintaining a favorable business climate. Since almost every other state exempts business inventories from property taxes, Texas should adopt this exemption to compete with those other states in retaining or attracting industry. The proposed exemption would help place the state on a level playing field with other states in this regard.

2. Any tax exemption enacted under the proposed amendment might be superseded by local taxing jurisdictions, allowing local elected officials to determine for themselves whether the benefits of the tax relief will exceed the lost tax revenues. The local option provision would allow local officials to make use of the available tax incentive in the future. The tax base of hard-pressed school districts and other local governments would remain subject to local control.

3. The exemption authority is narrowly drawn and would not affect any business inventory that remains in the state for more than 270 days or any land, buildings, fixtures, equipment, vehicles, or other property. Accordingly, fear of massive tax increases for other taxpayers is unwarranted. In many cases, because of the exemption capital improvements such as new warehouses would be added to the tax base and would offset the tax revenues lost as a result of the exemption. The exclusion of petroleum products from the proposed exemption would protect those taxing jurisdictions that are heavily reliant on the oil and gas industry from losing large portions of their tax base.

### **Arguments Against:**

1. Exemptions from property taxes shift the burden to other taxpayers. An exemption enacted under the proposed amendment would result in an increase in property taxes for homeowners, other Texas businesses, and other property owners. Moreover, the proposed tax relief is not necessary to attract industry. The overall tax burden on manufacturing and similar activities is not excessive. While Texas may be unique in subjecting most business inventories to ad valorem taxes, Texas' overall tax structure, being free of income taxes, is also unique, so the comparison with other states with respect to property taxes alone is misleading. Those taxing jurisdictions in Texas that wish to grant property tax relief to attract new industry can do so under the liberal tax abatement laws in Texas.

2. The local option provision of the proposed amendment would result in inconsistent and unfair tax treatment from one taxing jurisdiction to the next. On the other hand, taxing jurisdictions would be under continuous pressure not to deny the exemption from businesses threatening to relocate or forego proposed expansions if the exemption is not retained, so the so-called "local option" in many cases would be scarcely an option at all.

3. The provisions authorizing tax relief to aircraft and property used in maintaining or repairing aircraft are unfairly aimed at a special-interest group. There is no justification for singling out the airline industry for this tax break. It should be extended to the repair and maintenance of all similar property, such as ships, motor vehicles, and railroad rolling stock, or not be included at all.

**Text of S.J.R. No. 6:** SENATE AUTHOR: Robert L. Duncan et al.  
HOUSE SPONSOR: Pete P. Gallego

### SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to exempt from ad valorem taxation tangible personal property held at certain locations only temporarily for assembling, manufacturing, processing, or other commercial purposes.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article VIII, Texas Constitution, is amended by adding Section 1-n to read as follows:

Sec. 1-n. (a) To promote economic development in this state, the legislature by general law may exempt from ad valorem taxation goods, wares, merchandise, other tangible personal property, and ores, other than oil, natural gas, and other petroleum products, if:

(1) the property is acquired in or imported into this state to be forwarded to another location in this state or outside this state, whether or not the intention to forward the property to another location in this state or outside this state is formed or the destination to which the property is forwarded is specified when the property is acquired in or imported into this state;

(2) the property is detained at a location in this state that is not owned or under the control of the property owner for assembling, storing, manufacturing, processing, or fabricating purposes by the person who acquired or imported the property; and

(3) the property is transported to another location in this state or outside this state not later than 270 days after the date the person acquired the property in or imported the property into this state.

(b) For purposes of this section:

(1) tangible personal property includes aircraft and aircraft parts;

(2) property imported into this state includes property brought into this state;

(3) property forwarded to another location in this state or outside this state includes property transported to another location in this state or outside this state or to be affixed to an aircraft to be transported to another location in this state or outside this state; and

(4) property detained at a location in this state for assembling, storing, manufacturing, processing, or fabricating purposes includes property, aircraft, or aircraft parts brought into this state or acquired in this state and used by the person who acquired the property, aircraft, or aircraft parts in this state or who brought the property, aircraft, or aircraft parts into this state for the purpose of repair or maintenance of aircraft operated by a certificated air carrier.

(c) A property owner who is eligible to receive the exemption authorized by Section 1-j of this article may apply for the exemption authorized by the legislature under this section in the manner provided by general law, subject to the provisions of Subsection (d) of this section. A property owner who receives the exemption authorized by the legislature under this section is not entitled to receive the exemption authorized by Section 1-j of this article for the same property.

(d) The governing body of a political subdivision that imposes ad valorem taxes may provide for the taxation of property exempt under a law adopted under Subsection (a) of this section and not exempt from ad valorem taxation by any other law. Before acting to tax the exempt property, the governing body of the political subdivision must conduct a public hearing at which members of the public are permitted to speak for or against the taxation of the property.

(e) This section takes effect January 1, 2002. This subsection expires January 1, 2003.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment to promote equal tax treatment for products

produced, acquired, and distributed in the State of Texas by authorizing the legislature to exempt from ad valorem taxation tangible personal property held at certain locations only temporarily for assembling, manufacturing, processing, or other commercial purposes.”



# **Amendment No. 11 (H.J.R. No. 85)**

## **Wording of Ballot Proposition:**

The constitutional amendment to allow current and retired public school teachers and retired public school administrators to receive compensation for serving on the governing bodies of school districts, cities, towns, or other local governmental districts, including water districts.

## **Analysis of Proposed Amendment:**

The proposed amendment would amend Section 40, Article XVI, Texas Constitution, to permit current and retired public school teachers and retired public school administrators to receive compensation for serving on the governing bodies of school districts, cities, towns, or other local governmental districts, including water districts.

## **Background**

Section 40, Article XVI, Texas Constitution, prohibits a person from holding more than one civil office of emolument at a time. A civil office of emolument is a public office for which the person who holds the office receives compensation. The general rule in Section 40 against dual officeholding was amended in 1972 by the addition of a provision that permits state employees or other persons who receive all or part of their compensation directly or indirectly from state funds to serve as members of the governing bodies of school districts, cities, towns, and other local governmental districts if the persons do not receive a salary for serving on the governing bodies.

In addition to Section 40, the common-law doctrine of incompatibility prohibits certain dual officeholding: a person may not hold two offices where one might impose its policies on the other or subject the other to control in some other way, and an officer may not hold employment subordinate to the officer's office. For example, under the doctrine of incompatibility, a member of the board of trustees of a school district may not be a teacher in that district, because the board controls many aspects of the employer-employee relationship and teachers are subordinate to the board.



The Texas attorney general ruled in 1999 that Section 40 does not prohibit a public school teacher from serving as a county commissioner and receiving a salary for that service, because a county is not a “local governmental district” within the meaning of Section 40. Earlier attorney general opinions have stated that a person who receives retirement benefits from the Teacher Retirement System of Texas does not hold a civil office of emolument, but neither the attorney general nor the courts have ever discussed whether a retired teacher or retired school administrator receives all or part of the person’s “compensation” from the state.

In 1999, the voters decisively rejected a more broadly written proposed amendment of Section 40 that would have removed the language that prohibits a state employee or other person receiving compensation directly or indirectly from the state from receiving a salary for serving on the governing body of a local government.

### **Arguments For:**

1. The proposed amendment would increase the pool of qualified candidates for local governing body positions. Active and retired teachers and retired school administrators would be more willing to contribute their time and talents to local governing bodies if they were compensated for their state and local service. An increase in the number of qualified candidates would improve the quality of the local governing bodies.

2. Service on many governing bodies of local governmental districts is part-time. Active public school teachers would be as able to serve as would any other person who holds a full-time job.

3. Many people who have been elected to serve on governing bodies of local governmental districts have been unaware of the prohibitions against dual officeholding and have had to repay the salary they received for service on the governing body.

4. Public school teachers and administrators may already receive salaries for serving as members of the commissioners court of a county and should be permitted to receive salaries for serving on other local governing bodies.

### **Arguments Against:**

1. Taxpayers expect public school teachers to make a total commitment to their jobs. Local government positions are often very time-consuming, complex endeavors. Encouraging a person to divide time between a position on a local governing body and a teaching position would result in a decrease in the quality of performance of both positions.

2. The amendment is ambiguous as to whether it overrules the common-law doctrine of incompatibility. A teacher who serves on the board of trustees of the school district that employs the teacher would face significant conflicts of interest; the amendment should be more carefully worded to prohibit an interpretation that would allow such service.

3. By including retired school teachers and retired school administrators, the amendment creates possible confusion. If retired teachers and administrators do not receive compensation from the state, there is no reason to mention them. However, a standard rule of statutory and constitutional construction is that every part of a provision is to be given effect, and the inclusion of retired teachers and administrators would suggest that other persons receiving retirement benefits from a state retirement system, such as retired state employees, may not receive compensation for serving as members of local governing bodies.

4. If Section 40, Article XVI, Texas Constitution, is to be amended at all, the prohibition against receiving salary for service on a local governing body should be removed for all persons who receive compensation directly or indirectly from the state, not just teachers. If it is acceptable for a public school employee to receive a salary for serving on a local governing body, it should also be acceptable for a state employee to do the same.

**Text of H.J.R. No. 85: HOUSE AUTHOR:** Fred M. Bosse  
**SENATE SPONSOR:** Jon Lindsay

### **HOUSE JOINT RESOLUTION**

proposing a constitutional amendment to allow current and retired public school teachers and retired public school administrators to receive compensation for serving on the governing bodies of school districts, cities, towns, or other local governmental districts, including water districts.

**BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

SECTION 1. Section 40, Article XVI, Texas Constitution, is amended to read as follows:

Sec. 40. (a) No person shall hold or exercise at the same time, more than one civil office of emolument, except that of Justice of the Peace, County Commissioner, Notary Public and Postmaster, Officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States and enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, and retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and the officers and directors of soil and water conservation districts, unless otherwise specially provided herein. Provided, that nothing in this Constitution shall be construed to prohibit an officer or enlisted man of the National Guard, and the National Guard Reserve, or an officer in the Officers Reserve Corps of the United States, or an enlisted man in the Organized Reserves of the United States, or retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and officers of the State soil and water conservation districts, from holding at the same time any other office or position of honor, trust or profit,

under this State or the United States, or from voting at any election, general, special or primary in this State when otherwise qualified.

(b) State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts. ~~Such[; provided, however, that such]~~ State employees or other individuals may not receive a [shall receive no] salary for serving as members of such governing bodies, except that a schoolteacher, retired schoolteacher, or retired school administrator may receive compensation for serving as a member of a governing body of a school district, city, town, or local governmental district, including a water district created under Section 59, Article XVI, or Section 52, Article III.

(c) It is further provided that a nonelective State officer may hold other nonelective offices under the State or the United States, if the other office is of benefit to the State of Texas or is required by the State or Federal law, and there is no conflict with the original office for which he receives salary or compensation.

(d) No member of the Legislature of this State may hold any other office or position of profit under this State, or the United States, except as a notary public if qualified by law.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to allow current and retired public school teachers and retired public school administrators to receive compensation for serving on the governing bodies of school districts, cities, towns, or other local governmental districts, including water districts."



## **Amendment No. 12 (H.J.R. No. 75)**

### **Wording of Ballot Proposition:**

The constitutional amendment to eliminate obsolete, archaic, redundant, and unnecessary provisions and to clarify, update, and harmonize certain provisions of the Texas Constitution.

### **Analysis of Proposed Amendment:**

The proposed amendment would amend 30 sections of the current constitution and repeal or transfer several other sections. The changes are intended to improve the organization, consistency, and clarity of the constitution. Most of the changes would have no substantive effect, such as those removing obsolete, redundant, or executed provisions, updating terminology, or moving provisions to more appropriate locations in the constitution. Some substantive changes would be made to resolve inconsistencies, eliminate legal uncertainty, or avoid outdated, impractical, or other unwanted consequences.

### **Background**

The current Texas Constitution was adopted in 1876. It has been amended 390 times. These amendments have almost without exception been intended primarily to make specific changes in law. As a result of the many substantive amendments over the years, inconsistent terminology has crept into the constitution, duplicative and conflicting provisions have resulted, and the overall organization has been neglected. In addition, after so many years, some provisions have become obsolete, outdated, or superseded by developments in federal law, and a number of temporary or transitional provisions added by some of the amendments remain in the text of the constitution though they no longer serve any purpose.

Efforts to revise the 1876 constitution have been unsuccessful. In 1973, a constitutional revision commission recommended a general revision to the legislature. Subsequently, the legislature convened in a constitutional convention in 1974, but failed to propose a constitutional

revision to the voters. In 1975, the legislature proposed eight separate propositions to revise various articles of the constitution, but all eight were rejected by the voters. In 1999, a complete substantive revision of the constitution was introduced in both houses of the legislature, but was not reported from committee. The revision was reintroduced in the house of representatives during the 2001 regular session of the legislature as House Joint Resolution No. 69, but the measure died without a house vote after being reported from committee as a far less comprehensive revision.

However, more modest legislative efforts to address constitutional reform have achieved some success in recent years. In 1997, the voters approved Constitutional Amendment No. 4, a modest clean-up amendment that renumbered a number of sections with duplicate numbering, eliminated several obsolete and executed provisions, and corrected several provisions governing eligibility to vote that had been superseded by federal law. In 1999, the voters approved Amendment No. 3, a much more extensive amendment that eliminated many unnecessary or executed provisions, updated terminology, corrected numbering and cross-references, and made other technical corrections. The amendment was intended to have little or no substantive legal effect.

The constitutional amendment proposed by House Joint Resolution No. 75 continues this recent effort by the legislature to streamline and modernize the constitution by amending individual sections rather than revising the entire document. Most of the changes proposed by this amendment would have no legal effect and may be considered clean-up or cosmetic in nature. For example, the amendment would transfer many provisions from their current location in the constitution to a more appropriate place, making them easier to locate and understand in context. In addition, a number of provisions that are unnecessary, redundant, executed, invalid under federal law, or superseded by later amendments would be removed. Several changes would simply update or correct inconsistent or outdated words and phrases.

However, the proposed amendment differs from the 1997 and 1999 amendments in that it proposes a number of clearly intended, however minor, substantive or potentially substantive changes to the constitution.

Many older provisions of the constitution are unclear in some respect or may have consequences today that are impractical, unintended, or no longer compelling. A number of similar administrative or technical provisions differ from one another in minor respects without a compelling reason. Some provisions reflect policies that, because of subsequent legal developments or other changed circumstances, are no longer as important or appropriate as when they were adopted. The proposed amendment would make changes to a number of those provisions.

Some of the proposed amendments would make minor procedural changes. For example, the amendment would eliminate the requirement that local public officials, when taking office, file the sworn statement required by Section 1, Article XVI, with the secretary of state and instead would require that statement to be retained in the official records of the office.

The amendment would also eliminate certain provisions that have lost their original significance. For example, Section 9, Article VII, establishing several permanent funds, would be repealed and the funds abolished because the corpus of the funds has become insignificant. Similarly, a provision in Section 11, Article XVI, requiring a de novo appeal of certain administrative actions involving permits issued to lenders would be eliminated because it is inconsistent with modern administrative procedure and no longer serves an important due process purpose.

Some of the changes would conform older provisions to actual practice or to subsequent legal or practical developments. For example, the requirements in Section 25, Article III, that senate districts be drawn based on qualified electors and that a county be limited to one senator would be eliminated in light of the development and enforcement in recent decades of the federal one-person, one-vote requirement, the discriminatory effect of using qualified voters for reapportionment, and the impracticability of developing accurate data of the exact number and location of qualified electors.

Still other changes would eliminate uncertainty or lack of clarity in the law. For example, Section 23, Article XVI, states that elections to approve local stock laws are limited to property owners. It is unclear whether this particular restriction on who may vote is valid under the



federal constitution. The amendment would end the uncertainty by eliminating the restriction and following the more modern practice of allowing all eligible voters to participate in such an election.

Some of the proposed changes would create a single provision to replace multiple similar but not necessarily identical provisions. For example, proposed Section 5b, Article V, which consolidates separate existing provisions applicable to the sessions of the supreme court and court of criminal appeals, would extend to the court of criminal appeals the authority to sit anywhere in the state at its discretion, a right that was granted to the supreme court by a 1997 amendment.

The following is a list of the sections of the Texas Constitution that would be added, amended, or repealed by the proposed constitutional amendment and a brief discussion of each proposed change.

Art. III, Sec. 25: [SENATORIAL DISTRICTS] Obsolete provisions requiring that senate districts be established according to the number of qualified electors and prohibiting a county from having more than one senator are eliminated. These provisions have not been followed in recent decades, since they conflict with the one-person, one-vote requirement of the United States Constitution and with Section 2 of the Voting Rights Act of 1965. Two federal district court decisions in redistricting litigation have held that the use of qualified electors would violate federal law. See Terrazas v. Clements, 581 F. Supp. 1319 (N.D. Tex. 1983); Kilgarlin v. Martin, No. 63-H-390 (S.D. Tex. 1965) (summary judgment). Redistricting according to qualified electors (persons eligible to register to vote) would discriminate against communities with large numbers of noncitizens and children. In addition, there is no accurate, up-to-date source of such information available for use in drawing senate districts. The Kilgarlin court also held

that limiting a large urban county to one senator would violate the federal constitution. There is some possibility that the one-senator provision could be applied to prohibit the division of counties with less population than required for a single district, but the provision has never been applied in that manner. Deleting the one-senator limitation would eliminate the uncertainty as to this secondary possible application.

Art. III, Sec. 28: [REAPPORTIONMENT OF LEGISLATIVE DISTRICTS] An obsolete cross-reference is removed, a reference to the Legislative Redistricting Board as a “commission” is corrected, and the 1951 effective date of the section is eliminated as executed.

Art. III, Sec. 56: [LOCAL AND SPECIAL LAWS PROHIBITED] Minor stylistic revisions are made to conform to other sections of the constitution. The prohibition against local and special laws that relieve a person from any public duty or service imposed by general law is transferred to this section from Section 43, Article XVI. The authority to enact local fence laws is transferred to this section from Section 22, Article XVI.

Art. III, Sec. 59: [WORKERS’ COMPENSATION FOR STATE EMPLOYEES] The obsolete term “workmen’s compensation” is revised as “workers’ compensation.”

Art. III, Sec. 60: [WORKERS’ COMPENSATION FOR EMPLOYEES OF POLITICAL SUBDIVISIONS] The obsolete term “workman’s compensation” is revised as “workers’ compensation.” An unnecessary reference to counties is eliminated.

- Art. III, Sec. 61: [WORKERS' COMPENSATION FOR MUNICIPAL EMPLOYEES] This section authorizing laws to enable cities and towns to provide workers' compensation insurance to their employees is repealed because it is unnecessary. The 1962 amendment to Section 60, Article III, authorized such laws for all political subdivisions, including cities and towns.
- Art. III, Sec. 63: [CONSOLIDATION OF FUNCTIONS OF POLITICAL SUBDIVISIONS IN CERTAIN COUNTIES] This section authorizing laws to provide for consolidating governmental functions of political subdivisions in a county having a population of 1.2 million or more is repealed because it is unnecessary. Section 64, Article III, adopted in 1968, provides the same authority for all counties.
- Art. V, Sec. 1-a: [JUDICIAL QUALIFICATIONS AND CONDUCT] A transition provision applicable only to the then-current terms of judges in office in 1984 and a provision changing the name of the State Judicial Qualifications Commission to the State Commission on Judicial Conduct are eliminated because they are executed.
- Art. V, Sec. 2: [SUPREME COURT] A provision stating that a supreme court justice serves until a successor takes office is eliminated as unnecessary because Section 17, Article XVI, requires all public officers in this state to serve until a successor takes office. A provision providing for the filling of a vacancy on the supreme court is removed from this section because Section 28, Article V, provides for the filling of those vacancies in the

same manner. An executed transition provision applicable only to the terms of justices in office in 1980 is eliminated.

Art. V, Sec. 3: [JURISDICTION OF SUPREME COURT] The provision governing the appointment and compensation of the clerk of the supreme court is removed from this section, because that provision is not related to the other provisions of this section. The substance of the removed provision is transferred to a new Section 5a, Article V, which consolidates similar provisions for the clerks of all the appellate courts.

Art. V, Sec. 3a: [SESSIONS OF SUPREME COURT] This section, providing for the terms of the supreme court and authorizing the court to determine when and where it may sit, is repealed. The substance of the section is transferred to a new Section 5b, Article V, which consolidates similar provisions for both the supreme court and court of criminal appeals.

Art. V, Sec. 4: [COURT OF CRIMINAL APPEALS] A provision providing for the filling of a vacancy on the court of criminal appeals is removed from this section because Section 28, Article V, provides for the filling of those vacancies in the same manner.

Art. V, Sec. 5: [COURT OF CRIMINAL APPEALS JURISDICTION, TERMS OF COURT, AND CLERK] A provision governing the sessions of the court of criminal appeals is deleted, and the substance of the provision is transferred to new Section 5b, Article V. The new Section 5b includes new authority for the court of criminal appeals to sit anywhere in the state to be

consistent with the current authority of the supreme court. A provision governing the appointment and compensation of the clerk of the court of criminal appeals is deleted, and the substance of the provision is transferred to new Section 5a, Article V, which will govern the clerks of all the state appellate courts. An executed transition provision related to the term of the particular clerk serving at the time of a previous amendment to Section 5 is deleted.

Art. V, Sec. 5a:

[CLERKS OF APPELLATE COURTS] A new section is added that consolidates current provisions for the appointment, term, and compensation of a clerk for each appellate court. The substance of the section is derived from portions of Sections 3, 5, and 6, Article V.

Art. V, Sec. 5b:

[SESSIONS OF SUPREME COURT AND COURT OF CRIMINAL APPEALS] A new section is added that provides a single rule for the sessions of the supreme court and court of criminal appeals. The new section, derived from current Section 3a and a portion of Section 5, Article V, extends to the court of criminal appeals the authority to sit anywhere in the state. That authority was granted to the supreme court in 1997 by an amendment to Section 3a, Article V.

Art. V, Sec. 6:

[COURTS OF APPEALS] A provision governing the appointment and compensation of a clerk for each court of appeals is eliminated. The substance of that provision is transferred to a new Section 5a, Article V, which consolidates similar provisions for the clerks of all the appellate courts.

- Art. V, Sec. 11: [DISQUALIFICATION OF JUDGES; EXCHANGE OF DISTRICTS] An obsolete reference to the court of civil appeals is corrected to refer to the court of appeals. Masculine pronouns are replaced by gender-neutral language.
- Art. V, Sec. 13: [GRAND AND PETIT JURIES] An obsolete provision stating that a grand or petit jury in district court consists of 12 “men” is revised to state that such a jury consists of 12 “persons.” The practice of restricting jury service to males was abolished in 1954 by an amendment to Section 19, Article XVI.
- Art. V, Sec. 14: [QUALIFICATIONS OF JURORS] A new section is added that consolidates without substantive change provisions governing the qualifications of grand and petit jurors. The new section is derived from portions of Sections 2 and 19, Article XVI. The new section places those provisions in a more appropriate part of the constitution.
- Art. V, Sec. 17: [COUNTY COURT TERMS, PROSECUTIONS, JURIES] An obsolete provision stating that a county court jury consists of six “men” is revised to state that such a jury consists of six “persons.” The practice of restricting jury service to males was abolished in 1954 by an amendment to Section 19, Article XVI.
- Art. V, Sec. 18: [CONSTABLES, JUSTICES OF THE PEACE, AND COUNTY COMMISSIONERS] A provision authorizing the abolition of the office of constable in Reagan and Roberts counties and providing for the transfer of the duties of constable to the sheriff is eliminated because it

was executed in 1995. A statement confirming the abolition of constables in those counties and the transfer of constable duties to the sheriff is added to an existing provision for Mills County.

Art. V, Sec. 27: [TRANSFER OF CASES PENDING ON ADOPTION OF CONSTITUTION] This section authorizing the transfer to the appropriate trial courts of cases pending in the district courts when the constitution was adopted in 1876 is repealed because it is executed.

Art. V, Sec. 28: [JUDICIAL VACANCIES] This section is amended to provide a single provision governing the filling of vacancies in the appellate and district courts. A reference to a vacancy in the office of chief justice is added to clarify that that office is covered by this section. In addition, a provision is added stating that a justice or judge elected to fill such a vacancy serves only for the remainder of the vacant term, consistent with Section 27, Article XVI. The changes to this section incorporate the substance of the overlapping vacancy provisions in Sections 2 and 4, Article V, which are eliminated. Also, an obsolete reference to the court of civil appeals is corrected to refer to the court of appeals.

Art. V, Sec. 29: [COUNTY COURTS] References to a commissioners court are made consistent with the terminology of other sections of the constitution. A statement that prosecutions in county court are commenced as provided by law is eliminated because Section 17, Article V, contains a more specific provision governing the commencement of such a prosecution. A provision governing the composition of a county

court jury is eliminated because Section 17, Article V, contains a similar requirement.

Art. VI, Sec. 1: [PERSONS DISQUALIFIED FROM VOTING] A provision requiring the legislature to exclude persons convicted of certain crimes from the right to vote is added. The provision is transferred without substantive change from Section 2, Article XVI.

Art. VI, Sec. 2: [QUALIFIED VOTERS] This section defining who is eligible to vote is amended to clarify that persons convicted of certain crimes and disqualified from voting under a law enacted as required by Section 1, Article VI, are not qualified to vote. A provision requiring the legislature to enact laws protecting the right to vote is added. The provision is transferred without substantive change from Section 2, Article XVI.

Art. VII, Sec. 4A: [PATENTS FOR CERTAIN PUBLIC FREE SCHOOL LANDS HELD FOR AT LEAST 50 YEARS] This expired section is repealed. The section allowed certain individuals to apply for clear title to land held under color of title that was in fact state land dedicated to the public free school fund. The section required a person to apply for a patent to the land before January 1, 1993.

Art. VII, Sec. 6: [COUNTY SCHOOL LANDS] A provision preserving any preexisting right of “settlers” on county school land to purchase their property is eliminated. The practice of granting state land to counties to establish a local trust for the public schools has long been discontinued. Eliminating this obsolete provision could not legally abridge any existing contractual right, and the general



savings provision proposed by the constitutional amendment expressly preserves any outstanding rights that might be claimed under this section. In addition, a reference to a commissioners court is made consistent with the terminology of other sections of the constitution.

Art. VII, Sec. 9:

[PERMANENT FUNDS FOR ASYLUMS] This section designating certain land granted to benefit certain state asylums before 1876 as permanent funds to support those asylums is repealed. The value of the property in the funds is insufficient to provide a useful revenue stream for any of the intended purposes, and no distributions have been made from those funds in recent years. The funds are being maintained for no significant purpose.

Art. VII, Sec. 9a:

[TRANSITION FOR DISPOSITION OF PERMANENT FUNDS FOR ASYLUMS] This temporary transition provision provides for the disposition of the property and money in the asylum funds that are to be abolished on the repeal of Section 9, Article VII. The property is to be sold and the proceeds used for public education. The remaining money in the funds is transferred to the state schools for the blind and visually impaired and for the deaf. Any outstanding income would be deposited in the general revenue fund.

Art. VIII, Sec. 1-a:

[STATE AD VALOREM TAXES; COUNTY TAX FOR ROADS AND FLOOD CONTROL] A statement prohibiting state ad valorem taxes is removed from this section because it is redundant. Section 1-e, Article VIII, includes an identical prohibition of state ad valorem taxes.

- Art. VIII, Sec. 1-e: [STATE AD VALOREM TAXES] A transition provision governing state ad valorem taxes imposed before the prohibition of those taxes in 1982 is eliminated because it is no longer necessary. In the unlikely event that any such tax is collected in the future, the revenue would be deposited to the general revenue fund as required by general law.
- Art. VIII, Sec. 14: [COUNTY TAX ASSESSOR-COLLECTOR] This section is amended to provide a single section governing the designation of a tax assessor-collector in a county. Currently, three different sections govern the assignment of the duties of county tax assessor-collector. The amendment of this section incorporates the substance of Sections 16 and 16a, Article VIII, which are repealed. The consolidation of these three sections into one section makes no substantive change in law.
- Art. VIII, Sec. 16: [COUNTY TAX ASSESSOR-COLLECTOR IN CERTAIN COUNTIES] This section providing for the sheriff to serve as county tax assessor-collector in a county with a population of 10,000 or less is repealed. The substance of the section is transferred to Section 14, Article VIII.
- Art. VIII, Sec. 16a: [COUNTY TAX ASSESSOR-COLLECTOR IN CERTAIN COUNTIES] This section permitting the voters of a county with a population of less than 10,000 to provide for an elected county tax assessor-collector separate from the office of sheriff is repealed. The substance of the section is transferred to Section 14, Article VIII.
- Art. IX, Sec. 14: [COUNTY POOR HOUSE AND FARM] This section authorizing a county to establish a facility

for employing and caring for the indigent is transferred from its current location as Section 8, Article XVI. Article IX, which governs counties, is a more appropriate location for this section than Article XVI.

Art. XI, Sec. 7: [COASTAL COUNTY AND CITY TAXES FOR SEA WALLS, BREAKERS, SANITATION] A provision purporting to limit certain tax elections in coastal counties and cities to resident taxpayers is amended to provide that any qualified voter may participate in the election. It is unconstitutional in most circumstances to restrict the right to vote to taxpayers. See Phoenix v. Kolodziejewski, 399 U.S. 204, 90 S. Ct. 1990 (1970); Hill v. Stone, 421 U.S. 289, 95 S. Ct. 1637 (1975).

Art. XI, Sec. 11: [TERMS OF OFFICERS OF HOME-RULE CITIES] A provision setting out circumstances in which a city officer serving a term of office that exceeds two years automatically resigns from office if the person becomes a candidate or announces the person's candidacy for another elective office is replaced with a reference to an identical provision for county officers serving four-year terms. The cross-reference ensures that the application of this "resign-to-run" rule will be identical for both city and county officers to whom it applies.

Art. XVI, Sec. 1: [OATH OF OFFICE] Two current provisions (one for elected officers, one for appointed officers) providing for the oath of office are consolidated into a single provision for all public officers. The wording of the oath is not changed. Two current provisions requiring public officers to sign a sworn statement that they have not

made a payment or promise to secure election or appointment are consolidated into a single provision applicable to all public officers, with minor wording changes in the statement. The requirement that state officers file the statement with the secretary of state is retained, but for local officers that requirement is replaced with a requirement that the statement be retained in the official records of the office. The requirement to retain the statement in the official records of the office also applies to state officers.

Art. XVI, Sec. 2:

[EXCLUSION FROM PUBLIC OFFICE, JURIES, AND SUFFRAGE; PROTECTION OF RIGHT OF SUFFRAGE] Portions requiring the legislature to exclude persons convicted of certain crimes from juries and the right to vote are eliminated from this section and moved to more appropriate locations. The provision governing jurors is incorporated in new Section 14, Article V. The provision governing the qualification to vote is moved to Section 1(b), Article VI. A provision requiring the legislature to enact laws protecting the right to vote is eliminated from this section and transferred without substantive change to Section 2, Article VI.

Art. XVI, Sec. 8:

[COUNTY POOR HOUSE AND FARM] This section authorizing a county to establish a facility for employing and caring for the indigent is transferred from Article XVI (miscellaneous provisions) to a more appropriate location as Section 14, Article IX, which governs counties.

Art. XVI, Sec. 11:

[REGULATION OF LOANS AND LENDERS] A provision authorizing the legislature to classify loans and lenders and to license and regulate

lenders is eliminated because it is unnecessary. That authority is clearly within the general legislative power granted by Section 1, Article II. A provision requiring a de novo judicial appeal of certain administrative actions involving permits issued to lenders is also eliminated. That requirement is inconsistent with modern administrative procedure and no longer serves an important due process purpose.

Art. XVI, Sec. 19:

[QUALIFICATIONS OF JURORS] This section is repealed. The provision authorizing the legislature to set juror qualifications would be included in the proposed new Section 14, Article V. The provisions extending the right to serve on juries to women is incorporated into Sections 13 and 17, Article V, where the obsolete provisions restricting jury service to men are revised to allow any person to serve on a jury.

Art. XVI, Sec. 22:

[LOCAL FENCE LAWS] This section authorizing local fence laws is repealed. The substance of this section is transferred to Section 56, Article III, the section governing local laws generally.

Art. XVI, Sec. 23:

[REGULATION OF LIVESTOCK] A provision requiring that a local or special law for the inspection of livestock and hides or the regulation of brands be submitted to the landowners (“freeholders”) of the affected area is revised to provide that the law must be approved by the qualified voters instead. Limiting the right to vote to property owners is unconstitutional under the United States Constitution in most cases. See Kramer v. Union Free School District, 395 U.S. 621, 89 S. Ct. 1886 (1969). It is not clear whether the

restriction to landowners is valid in this particular context, but the amendment would eliminate the uncertainty by allowing all qualified voters to vote in the election.

Art. XVI, Sec. 43: [EXEMPTIONS FROM PUBLIC DUTY OR SERVICE] This section prohibiting special laws exempting persons from a public duty or service imposed by general law is repealed. The substance of this section is transferred to Section 56, Article III.

Art. XVI, Sec. 56: [APPROPRIATIONS FOR PROMOTING TEXAS] This section authorizing the legislature to appropriate money for developing and disseminating promotional information about Texas under certain conditions is repealed. The appropriation of money for those purposes will be governed by general law, which allows the legislature to appropriate money for any public purpose authorized by preexisting law.

Art. XVI, Sec. 65A: [FORT BEND COUNTY CRIMINAL DISTRICT ATTORNEY] This section stating that notwithstanding Section 65, Article XVI, the election and term of a district attorney serving only Fort Bend County are governed by the law applicable to criminal district attorneys is repealed. Section 65 no longer specifies the terms of county and district offices, so this section superseding that section is unnecessary. The repeal is not intended to change the terms of the affected district attorney.

In addition to the specific changes described above, the proposed constitutional amendment contains a transition provision stating that the changes do not affect vested rights and providing that the revision of any section of the constitution by this amendment does not revive a provision that has previously been impliedly repealed.

### **Argument For:**

The Texas Constitution has functioned well for 125 years. However, until 1997 no effort was made to systematically update it. This proposed amendment, together with the clean-up amendments approved by the voters in 1997 and 1999, would eliminate most of the obsolete, redundant, inconsistent, and ineffective provisions from the constitution. Eliminating such provisions and reorganizing, rewording, consolidating, modernizing, and clarifying other provisions as proposed would make the Texas Constitution clearer to the reader and more effective as a governing charter for the state.

### **Argument Against:**

This is the third amendment proposed since 1997 to clean up and modernize the Texas Constitution. Yet even after three rounds of revision, the constitution would remain a cumbersome, disorganized document with many archaic provisions that need to be overhauled and numerous petty details that would be more appropriately included in statute. The modest changes proposed by this constitutional amendment do not address the need to thoroughly reorganize and update the constitution. In addition, such piecemeal revision of the constitution is confusing to the voters.

**Text of H.J.R. No. 75: HOUSE AUTHOR:** Anna Mowery et al.  
**SENATE SPONSOR:** Florence Shapiro

### HOUSE JOINT RESOLUTION

proposing a constitutional amendment to eliminate obsolete, archaic, redundant, and unnecessary provisions and to clarify, update, and harmonize certain provisions of the Texas Constitution.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

#### ARTICLE 1. CHANGES TO ARTICLE III

SECTION 1.01. Section 25, Article III, Texas Constitution, is amended to read as follows:

Sec. 25. The State shall be divided into Senatorial Districts of contiguous territory, [~~according to the number of qualified electors, as nearly as may be,~~] and each district shall be entitled to elect one Senator[; ~~and no single county shall be entitled to more than one Senator~~].

SECTION 1.02. Section 28, Article III, Texas Constitution, is amended to read as follows:

Sec. 28. The Legislature shall, at its first regular session after the publication of each United States decennial census, apportion the state into senatorial and representative districts, agreeable to the provisions of Sections 25 and[;] 26[~~,—and—26-a~~] of this Article. In the event the Legislature shall at any such first regular session following the publication of a United States decennial census, fail to make such apportionment, same shall be done by the Legislative Redistricting Board of Texas, which is hereby created, and shall be composed of five (5) members, as follows: The Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts and the Commissioner of the General Land Office, a majority of whom shall constitute a quorum. Said Board shall assemble in the City of Austin within ninety (90) days after the final adjournment of such regular session. The Board shall, within sixty (60) days after assembling, apportion the state into senatorial and representative districts, or into



senatorial or representative districts, as the failure of action of such Legislature may make necessary. Such apportionment shall be in writing and signed by three (3) or more of the members of the Board duly acknowledged as the act and deed of such Board, and, when so executed and filed with the Secretary of State, shall have force and effect of law. Such apportionment shall become effective at the next succeeding statewide general election. The Supreme Court of Texas shall have jurisdiction to compel such Board [~~Commission~~] to perform its duties in accordance with the provisions of this section by writ of mandamus or other extraordinary writs conformable to the usages of law. The Legislature shall provide necessary funds for clerical and technical aid and for other expenses incidental to the work of the Board, and the Lieutenant Governor and the Speaker of the House of Representatives shall be entitled to receive per diem and travel expense during the Board's session in the same manner and amount as they would receive while attending a special session of the Legislature. [~~This amendment shall become effective January 1, 1951.~~]

SECTION 1.03. Section 56, Article III, Texas Constitution, is amended to read as follows:

Sec. 56. (a) The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing:

- (1) the [~~The~~] creation, extension or impairing of liens;
- (2) regulating [~~Regulating~~] the affairs of counties, cities, towns, wards or school districts;
- (3) changing [~~Changing~~] the names of persons or places;
- (4) changing [~~Changing~~] the venue in civil or criminal cases;
- (5) authorizing [~~Authorizing~~] the laying out, opening, altering or maintaining of roads, highways, streets or alleys;
- (6) relating [~~Relating~~] to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State;
- (7) vacating [~~Vacating~~] roads, town plats, streets or alleys;

(8) relating [~~Relating~~] to cemeteries, grave-yards or public grounds not of the State;

(9) authorizing [~~Authorizing~~] the adoption or legitimation of children;

(10) locating [~~Locating~~] or changing county seats;

(11) incorporating [~~Incorporating~~] cities, towns or villages, or changing their charters;

(12) for [~~For~~] the opening and conducting of elections, or fixing or changing the places of voting;

(13) granting [~~Granting~~] divorces;

(14) creating [~~Creating~~] offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts;

(15) changing [~~Changing~~] the law of descent or succession;

(16) regulating [~~Regulating~~] the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, justices of the peace, sheriffs, commissioners, arbitrators or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate;

(17) regulating [~~Regulating~~] the fees, or extending the powers and duties of aldermen, justices of the peace, magistrates or constables;

(18) regulating [~~Regulating~~] the management of public schools, the building or repairing of school houses, and the raising of money for such purposes;

(19) fixing [~~Fixing~~] the rate of interest;

(20) affecting [~~Affecting~~] the estates of minors, or persons under disability;

(21) remitting [~~Remitting~~] fines, penalties and forfeitures, and refunding moneys legally paid into the treasury;

(22) exempting [~~Exempting~~] property from taxation;

(23) regulating [~~Regulating~~] labor, trade, mining and manufacturing;

(24) declaring [~~Declaring~~] any named person of age;

(25) extending [~~Extending~~] the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties, or his securities from liability;

(26) giving [~~Giving~~] effect to informal or invalid wills or deeds;

(27) summoning [~~Summoning~~] or empanelling grand or petit juries;

(28) for [~~För~~] limitation of civil or criminal actions;

(29) for [~~För~~] incorporating railroads or other works of internal improvements; or

(30) relieving or discharging any person or set of persons from the performance of any public duty or service imposed by general law.

(b) In addition to those laws described by Subsection (a) of this section [~~;~~ ~~And~~] in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing:

(1) special laws for the preservation of the game and fish of this State in certain localities; and

(2) fence laws applicable to any subdivision of this State or counties as may be needed to meet the wants of the people.

SECTION 1.04. Section 59, Article III, Texas Constitution, is amended to read as follows:

Sec. 59. The Legislature shall have power to pass such laws as may be necessary to provide for Workers' [~~Workmen's~~] Compensation Insurance for such State employees, as in its judgment is necessary or required; and to provide for the payment of all costs, charges, and premiums on such policies of insurance; providing the State shall never be required to purchase insurance for any employee.

SECTION 1.05. Section 60, Article III, Texas Constitution, is amended to read as follows:

Sec. 60. The Legislature shall have the power to pass such laws as may be necessary to enable all counties, cities, towns, villages, and other political subdivisions of this State to provide Workers' [Workman's] Compensation Insurance, including the right of a political subdivision to provide its own insurance risk, for all employees of the [~~county or~~] political subdivision as in its judgment is necessary or required; and the Legislature shall provide suitable laws for the administration of such insurance in the counties, cities, towns, villages, or other political subdivisions of this State and for the payment of the costs, charges and premiums on such policies of insurance and the benefits to be paid thereunder.

SECTION 1.06. Sections 61 and 63, Article III, Texas Constitution, are repealed.

## ARTICLE 2. CHANGES TO ARTICLE V

SECTION 2.01. Sections 1-a(1) and (2), Article V, Texas Constitution, are amended to read as follows:

(1) Subject to the further provisions of this Section, the Legislature shall provide for the retirement and compensation of Justices and Judges of the Appellate Courts and District and Criminal District Courts on account of length of service, age and disability, and for their reassignment to active duty where and when needed. The office of every such Justice and Judge shall become vacant when the incumbent reaches the age of seventy-five (75) years or such earlier age, not less than seventy (70) years, as the Legislature may prescribe[; ~~but, in the case of an incumbent whose term of office includes the effective date of this Amendment, this provision shall not prevent him from serving the remainder of said term nor be applicable to him before his period or periods of judicial service shall have reached a total of ten (10) years~~].

(2) The [~~name of the State Judicial Qualifications Commission is changed to the~~] State Commission on Judicial Conduct[~~. The Commission~~] consists of eleven (11) members, to wit: (i) one (1) Justice of a Court of

Appeals; (ii) one (1) District Judge; (iii) two (2) members of the State Bar, who have respectively practiced as such for over ten (10) consecutive years next preceding their selection; (iiii) four (4) citizens, at least thirty (30) years of age, not licensed to practice law nor holding any salaried public office or employment; (v) one (1) Justice of the Peace; (vi) one (1) Judge of a Municipal Court; and, (vii) one (1) Judge of a County Court at Law; provided that no person shall be or remain a member of the Commission, who does not maintain physical residence within this State, or who resides in, or holds a judgeship within or for, the same Supreme Judicial District as another member of the Commission, or who shall have ceased to retain the qualifications above specified for his respective class of membership, except that the Justice of the Peace and the Judges of a Municipal Court and or a County Court at Law shall be selected at large without regard to whether they reside or hold a judgeship in the same Supreme Judicial District as another member of the Commission. Commissioners of classes (i), (ii), and (vii) above shall be chosen by the Supreme Court with advice and consent of the Senate, those of class (iii) by the Board of Directors of the State Bar under regulations to be prescribed by the Supreme Court with advice and consent of the Senate, those of class (iiii) by appointment of the Governor with advice and consent of the Senate, and the commissioners of classes (v) and (vi) by appointment of the Supreme Court as provided by law, with the advice and consent of the Senate.

SECTION 2.02. Section 2, Article V, Texas Constitution, is amended to read as follows:

Sec. 2. (a) The Supreme Court shall consist of the Chief Justice and eight Justices, any five of whom shall constitute a quorum, and the concurrence of five shall be necessary to a decision of a case; provided, that when the business of the court may require, the court may sit in sections as designated by the court to hear argument of causes and to consider applications for writs of error or other preliminary matters.

(b) No person shall be eligible to serve in the office of Chief Justice or Justice of the Supreme Court unless the person is licensed to practice law in this state and is, at the time of election, a citizen of the United

States and of this state, and has attained the age of thirty-five years, and has been a practicing lawyer, or a lawyer and judge of a court of record together at least ten years.

(c) Said Justices shall be elected (three of them each two years) by the qualified voters of the state at a general election; shall hold their offices six years~~[-or until their successors are elected and qualified]~~; and shall each receive such compensation as shall be provided by law. ~~[In case of a vacancy in the office of the Chief Justice or any Justice of the Supreme Court, the Governor shall fill the vacancy until the next general election for state officers, and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the state. The Justices of the Supreme Court who may be in office at the time this amendment takes effect shall continue in office until the expiration of their term of office under the present Constitution, and until their successors are elected and qualified.]~~

SECTION 2.03. Section 3, Article V, Texas Constitution, is amended to read as follows:

Sec. 3. (a) The Supreme Court shall exercise the judicial power of the state except as otherwise provided in this Constitution. Its jurisdiction shall be coextensive with the limits of the State and its determinations shall be final except in criminal law matters. Its appellate jurisdiction shall be final and shall extend to all cases except in criminal law matters and as otherwise provided in this Constitution or by law. The Supreme Court and the Justices thereof shall have power to issue writs of habeas corpus, as may be prescribed by law, and under such regulations as may be prescribed by law, the said courts and the Justices thereof may issue the writs of mandamus, procedendo, certiorari and such other writs, as may be necessary to enforce its jurisdiction. The Legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State.

(b) The Supreme Court shall also have power, upon affidavit or otherwise as by the court may be determined, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction.

~~[The Supreme Court shall appoint a clerk, who shall give bond in such manner as is now or may hereafter, be required by law, and he may hold his office for four years and shall be subject to removal by said court for good cause entered of record on the minutes of said court who shall receive such compensation as the Legislature may provide.]~~

SECTION 2.04. Section 4, Article V, Texas Constitution, is amended to read as follows:

Sec. 4. (a) The Court of Criminal Appeals shall consist of eight Judges and one Presiding Judge. The Judges shall have the same qualifications and receive the same salaries as the Associate Justices of the Supreme Court, and the Presiding Judge shall have the same qualifications and receive the same salary as the Chief Justice of the Supreme Court. The Presiding Judge and the Judges shall be elected by the qualified voters of the state at a general election and shall hold their offices for a term of six years. ~~[In case of a vacancy in the office of a Judge of the Court of Criminal Appeals, the Governor shall, with the advice and consent of the Senate, fill said vacancy by appointment until the next succeeding general election.]~~

(b) For the purpose of hearing cases, the Court of Criminal Appeals may sit in panels of three Judges, the designation thereof to be under rules established by the court. In a panel of three Judges, two Judges shall constitute a quorum and the concurrence of two Judges shall be necessary for a decision. The Presiding Judge, under rules established by the court, shall convene the court en banc for the transaction of all other business and may convene the court en banc for the purpose of hearing cases. The court must sit en banc during proceedings involving capital punishment and other cases as required by law. When convened en banc, five Judges shall constitute a quorum and the concurrence of five Judges shall be necessary for a decision. The Court of Criminal Appeals may appoint Commissioners in aid of the Court of Criminal Appeals as provided by law.

SECTION 2.05. Section 5, Article V, Texas Constitution, is amended to read as follows:

Sec. 5. (a) The Court of Criminal Appeals shall have final appellate jurisdiction coextensive with the limits of the state, and its determinations shall be final, in all criminal cases of whatever grade, with such exceptions and under such regulations as may be provided in this Constitution or as prescribed by law.

(b) The appeal of all cases in which the death penalty has been assessed shall be to the Court of Criminal Appeals. The appeal of all other criminal cases shall be to the Courts of Appeal as prescribed by law. In addition, the Court of Criminal Appeals may, on its own motion, review a decision of a Court of Appeals in a criminal case as provided by law. Discretionary review by the Court of Criminal Appeals is not a matter of right, but of sound judicial discretion.

(c) Subject to such regulations as may be prescribed by law, the Court of Criminal Appeals and the Judges thereof shall have the power to issue the writ of habeas corpus, and, in criminal law matters, the writs of mandamus, procedendo, prohibition, and certiorari. The Court and the Judges thereof shall have the power to issue such other writs as may be necessary to protect its jurisdiction or enforce its judgments. The court shall have the power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction.

~~[The Court of Criminal Appeals may sit for the transaction of business at any time during the year and each term shall begin and end with each calendar year. The Court of Criminal Appeals shall appoint a clerk of the court who shall give bond in such manner as is now or may hereafter be required by law, and who shall hold his office for a term of four years unless sooner removed by the court for good cause entered of record on the minutes of said court.]~~

~~[The Clerk of the Court of Criminal Appeals who may be in office at the time when this Amendment takes effect shall continue in office for the term of his appointment.]~~

SECTION 2.06. Article V, Texas Constitution, is amended by adding Sections 5a and 5b to read as follows:



Sec. 5a. The Supreme Court, Court of Criminal Appeals, and each Court of Appeals shall each appoint a clerk of the court, who shall give bond in the manner required by law, may hold office for four years subject to removal by the appointing court for good cause entered of record on the minutes of the court, and shall receive such compensation as the legislature may provide.

Sec. 5b. The Supreme Court and the Court of Criminal Appeals may sit at any time during the year at the seat of government or, at the court's discretion, at any other location in this state for the transaction of business, and each term of either court shall begin and end with each calendar year.

SECTION 2.07. Section 6, Article V, Texas Constitution, is amended to read as follows:

Sec. 6. (a) The state shall be divided into courts of appeals districts, with each district having a Chief Justice, two or more other Justices, and such other officials as may be provided by law. The Justices shall have the qualifications prescribed for Justices of the Supreme Court. The Court of Appeals may sit in sections as authorized by law. The concurrence of a majority of the judges sitting in a section is necessary to decide a case. Said Court of Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error. Said courts shall have such other jurisdiction, original and appellate, as may be prescribed by law.

(b) Each of said Courts of Appeals shall hold its sessions at a place in its district to be designated by the Legislature, and at such time as may be prescribed by law. Said Justices shall be elected by the qualified voters of their respective districts at a general election, for a term of six years and shall receive for their services the sum provided by law[. ~~Each Court of Appeals shall appoint a clerk in the same manner as the clerk of the Supreme Court which clerk shall receive such compensation as may be fixed by law].~~

(c) All constitutional and statutory references to the Courts of Civil Appeals shall be construed to mean the Courts of Appeals.

SECTION 2.08. Section 11, Article V, Texas Constitution, is amended to read as follows:

Sec. 11. No judge shall sit in any case wherein the judge [he] may be interested, or where either of the parties may be connected with the judge [him], either by affinity or consanguinity, within such a degree as may be prescribed by law, or when the judge [he] shall have been counsel in the case. When the Supreme Court, the Court of Criminal Appeals, the Court of ~~[Civil]~~ Appeals, or any member of any of those courts [either,] shall be thus disqualified to hear and determine any case or cases in said court, the same shall be certified to the Governor of the State, who shall immediately commission the requisite number of persons learned in the law for the trial and determination of such cause or causes. When a judge of the District Court is disqualified by any of the causes above stated, the parties may, by consent, appoint a proper person to try said case; or upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending, in such manner as may be prescribed by law.

And the District Judges may exchange districts, or hold courts for each other when they may deem it expedient, and shall do so when required by law. This disqualification of judges of inferior tribunals shall be remedied and vacancies in their offices filled as may be prescribed by law.

SECTION 2.09. Section 13, Article V, Texas Constitution, is amended to read as follows:

Sec. 13. Grand and petit juries in the District Courts shall be composed of twelve persons [men]; but nine members of a grand jury shall be a quorum to transact business and present bills. In trials of civil cases, and in trials of criminal cases below the grade of felony in the District Courts, nine members of the jury, concurring, may render a verdict, but when the verdict shall be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it. When, pending the trial of any case, one or more jurors not exceeding three, may die, or

be disabled from sitting, the remainder of the jury shall have the power to render the verdict; provided, that the Legislature may change or modify the rule authorizing less than the whole number of the jury to render a verdict.

SECTION 2.10. Article V, Texas Constitution, is amended by adding Section 14 to read as follows:

Sec. 14. (a) The legislature shall prescribe by law the qualifications of grand jurors and petit jurors.

(b) The legislature shall enact laws to exclude from serving on juries persons who have been convicted of bribery, perjury, forgery, or other high crimes.

SECTION 2.11. Section 17, Article V, Texas Constitution, is amended to read as follows:

Sec. 17. The County Court shall hold terms as provided by law. Prosecutions may be commenced in said court by information filed by the county attorney, or by affidavit, as may be provided by law. Grand juries empaneled in the District Courts shall inquire into misdemeanors, and all indictments therefor returned into the District Courts shall forthwith be certified to the County Courts or other inferior courts, having jurisdiction to try them for trial; and if such indictment be quashed in the County, or other inferior court, the person charged, shall not be discharged if there is probable cause of guilt, but may be held by such court or magistrate to answer an information or affidavit. A jury in the County Court shall consist of six persons [~~men~~]; but no jury shall be empaneled to try a civil case unless demanded by one of the parties, who shall pay such jury fee therefor, in advance, as may be prescribed by law, unless the party [~~he~~] makes affidavit that the party [~~he~~] is unable to pay the jury fee [~~same~~].

SECTION 2.12. Sections 18(e), (f), and (g), Article V, Texas Constitution, are amended to read as follows:

(e) The office of Constable is abolished in Mills County, Reagan County, and Roberts County [~~is abolished~~]. The powers, duties, and records of the office are transferred to the County Sheriff.

(f) ~~[The office of Constable in Reagan County and the office of Constable in Roberts County are abolished. The functions of the office are transferred to the County Sheriff. However, the office of Constable is abolished under this subsection only if, at the statewide election at which the constitutional amendment providing for the abolition is submitted to the voters, a majority of the voters of Reagan County or Roberts County, as applicable, voting on the question at that election favor the amendment.~~

~~[(g)]~~ The Legislature by general law may prescribe the qualifications of constables.

SECTION 2.13. Section 28, Article V, Texas Constitution, is amended to read as follows:

Sec. 28. ~~(a) A vacancy [VACANCIES IN OFFICES OF JUDGES OF SUPERIOR COURTS TO BE FILLED BY THE GOVERNOR. Vacancies]~~ in the office of Chief Justice, Justice, or Judge [judges] of the Supreme Court, the Court of Criminal Appeals, the Court of [Civil] Appeals, or [and] the District Courts shall be filled by the Governor until the next succeeding General Election for state officers, and at that election the voters shall fill the vacancy for the unexpired term.

~~(b) A vacancy [; and vacancies]~~ in the office of County Judge or Justice [and Justices] of the Peace shall be filled by the Commissioners Court until the next succeeding General Election.

SECTION 2.14. Section 29, Article V, Texas Constitution, is amended to read as follows:

Sec. 29. The County Court shall hold at least four terms for both civil and criminal business annually, as may be provided by the Legislature, or by the Commissioners [~~Commissioners~~<sup>2</sup>] Court of the county under authority of law, and such other terms each year as may be fixed by the Commissioners [~~Commissioners~~<sup>2</sup>] Court; provided, the Commissioners [~~Commissioners~~<sup>2</sup>] Court of any county having fixed the times and number of terms of the County Court, shall not change the same again until the expiration of one year. Said court shall dispose of probate business either in term time or vacation, under such regulation as may be prescribed by law. ~~[Prosecutions may be commenced in said courts in such manner~~

as is or may be provided by law, and a jury therein shall consist of six men.] Until otherwise provided, the terms of the County Court shall be held on the first Mondays in February, May, August and November, and may remain in session three weeks.

SECTION 2.15. Sections 3a and 27, Article V, Texas Constitution, are repealed.

### ARTICLE 3. CHANGES TO ARTICLE VI

SECTION 3.01. Section 1, Article VI, Texas Constitution, is amended to read as follows:

Sec. 1. (a) The following classes of persons shall not be allowed to vote in this State~~[-to wit]:~~:

(1) persons ~~[First: Persons]~~ under 18 years of age; ~~[-]~~

(2) ~~[Second: All]~~ persons who have been determined mentally incompetent by a court, subject to such exceptions as the Legislature may make; and ~~[-]~~

(3) ~~[Third: All]~~ persons convicted of any felony, subject to such exceptions as the Legislature may make.

(b) The legislature shall enact laws to exclude from the right of suffrage persons who have been convicted of bribery, perjury, forgery, or other high crimes.

SECTION 3.02. Section 2, Article VI, Texas Constitution, is amended to read as follows:

Sec. 2. (a) Every person subject to none of the ~~[foregoing]~~ disqualifications provided by Section 1 of this article or by a law enacted under that section who is ~~[shall be]~~ a citizen of the United States and who is a resident of this state shall be deemed a qualified voter; provided, however, that before offering to vote at an election a voter shall have registered, but such requirement for registration shall not be considered a qualification of a voter within the meaning of the term “qualified voter” as used in any other Article of this Constitution in respect to any matter except qualification and eligibility to vote at an election.

(b) The Legislature may authorize absentee voting.

(c) The privilege of free suffrage shall be protected by laws regulating elections and prohibiting under adequate penalties all undue influence in elections from power, bribery, tumult, or other improper practice.

#### ARTICLE 4. CHANGES TO ARTICLE VII

SECTION 4.01. Section 6, Article VII, Texas Constitution, is amended to read as follows:

Sec. 6. All lands heretofore, or hereafter granted to the several counties of this State for educational purposes, are of right the property of said counties respectively, to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the Commissioners [~~Commissioners<sup>2</sup>~~] Court of the county. [~~Actual settlers residing on said lands, shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers.~~] Said lands, and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon, and other revenue, except the principal shall be available fund.

SECTION 4.02. Article VII, Texas Constitution, is amended by adding Section 9-a to read as follows:

Sec. 9-a. TEMPORARY PROVISION. (a) All land and other property set apart under former Section 9 of this article to provide a permanent fund described by former Section 9 and constituting such a fund on the date former Section 9 of this article is repealed shall be sold by the General Land Office as soon as practicable after that date and the proceeds shall be deposited to the credit of the general revenue fund to be appropriated for the benefit of education.

(b) All money remaining in the permanent funds established under former Section 9 of this article on the date that section is repealed shall be transferred on that date to the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf, in equal shares. All outstanding income accrued to the benefit of those permanent funds before that date that are collected after that date and before this section expires shall be deposited to the credit of the general revenue fund.

(c) This section expires January 1, 2005.

SECTION 4.03. Sections 4A and 9, Article VII, Texas Constitution, are repealed.

#### ARTICLE 5. CHANGES TO ARTICLE VIII

SECTION 5.01. Section 1-a, Article VIII, Texas Constitution, is amended to read as follows:

Sec. 1-a. [~~No State ad valorem tax shall be levied upon any property within this State.~~] The several counties of the State are authorized to levy ad valorem taxes upon all property within their respective boundaries for county purposes, except the first Three Thousand Dollars (\$3,000) value of residential homesteads of married or unmarried adults, [~~male or female,~~] including those living alone, not to exceed thirty cents (30¢) on each One Hundred Dollars (\$100) valuation, in addition to all other ad valorem taxes authorized by the Constitution of this State, provided the revenue derived therefrom shall be used for construction and maintenance of Farm to Market Roads or for Flood Control, except as herein otherwise provided.

SECTION 5.02. Section 1-e, Article VIII, Texas Constitution, is amended to read as follows:

Sec. 1-e. [~~±~~] No State ad valorem taxes shall be levied upon any property within this State.

[~~2. All receipts from previously authorized State ad valorem taxes that are collected on or after the effective date of the 1982 amendment to this section shall be deposited to the credit of the general fund of the county collecting the taxes and may be expended for county purposes. Receipts from taxes collected before that date shall be distributed by the~~

~~legislature among institutions eligible to receive distributions under prior law. Those receipts and receipts distributed under prior law may be expended for the purposes provided under prior law or for repair and renovation of existing permanent improvements.]~~

SECTION 5.03. Section 14, Article VIII, Texas Constitution, is amended to read as follows:

Sec. 14. (a) The qualified voters of each county shall elect an assessor-collector of taxes for the county, except as otherwise provided by this section.

(b) In any county having a population of less than 10,000 inhabitants, as determined by the most recent decennial census of the United States, the sheriff of the county, in addition to that officer's other duties, shall be the assessor-collector of taxes, except that the commissioners court of such a county may submit to the qualified voters of the county at an election the question of electing an assessor-collector of taxes as a county officer separate from the office of sheriff. If a majority of the voters voting in such an election approve of electing an assessor-collector of taxes for the county, then such official shall be elected at the next general election for the constitutional term of office as is provided for other tax assessor-collectors in this state.

~~(c) An assessor-collector of taxes [Except as provided in Section 16 of this Article, there shall be elected by the qualified voters of each county, an Assessor and Collector of Taxes, who] shall hold [his] office for four years [and until his successor is elected and qualified]; and [such Assessor and Collector of Taxes] shall perform all the duties with respect to assessing property for the purpose of taxation and of collecting taxes, as may be prescribed by the Legislature.~~

SECTION 5.04. Sections 16 and 16a, Article VIII, Texas Constitution, are repealed.

## ARTICLE 6. CHANGES TO ARTICLE IX

SECTION 6.01. Section 8, Article XVI, Texas Constitution, is redesignated as Section 14, Article IX, Texas Constitution, and amended to read as follows:



Sec. ~~14~~ [8]. Each county in the State may provide, in such manner as may be prescribed by law, a Manual Labor Poor House and Farm, for taking care of, managing, employing and supplying the wants of its indigent and poor inhabitants.

#### ARTICLE 7. CHANGES TO ARTICLE XI

SECTION 7.01. Section 7, Article XI, Texas Constitution, is amended to read as follows:

Sec. 7. All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized upon a vote of the majority of the qualified voters [~~resident property taxpayers~~] voting thereon at an election called for such purpose to levy and collect such tax for construction of sea walls, breakwaters, or sanitary purposes, as may now or may hereafter be authorized by law, and may create a debt for such works and issue bonds in evidence thereof. But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund; and the condemnation of the right of way for the erection of such works shall be fully provided for.

SECTION 7.02. Section 11, Article XI, Texas Constitution, is amended to read as follows:

Sec. 11. (a) A Home Rule City may provide by charter or charter amendment, and a city, town or village operating under the general laws may provide by majority vote of the qualified voters voting at an election called for that purpose, for a longer term of office than two (2) years for its officers, either elective or appointive, or both, but not to exceed four (4) years; provided, however, that tenure under Civil Service shall not be affected hereby; provided [-

[Provided], however, that [~~if any of~~] such officers, elective or appointive, are subject to Section 65(b), Article XVI, of this constitution, providing for automatic resignation in certain circumstances, in the same manner as a county or district officer to which that section applies [~~shall~~

~~announce their candidacy, or shall in fact become a candidate, in any general, special or primary election, for any office of profit or trust under the laws of this State or the United States other than the office then held, at any time when the unexpired term of the office then held shall exceed one (1) year, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled].~~

(b) A municipality so providing a term exceeding two (2) years but not exceeding four (4) years for any of its non-civil service officers must elect all of the members of its governing body by majority vote of the qualified voters in such municipality, and any vacancy or vacancies occurring on such governing body shall not be filled by appointment but must be filled by majority vote of the qualified voters at a special election called for such purpose within one hundred and twenty (120) days after such vacancy or vacancies occur.

#### ARTICLE 8. CHANGES TO ARTICLE XVI

SECTION 8.01. Section 1, Article XVI, Texas Constitution, is amended to read as follows:

Sec. 1. (a) ~~All [Members of the Legislature, and all other]~~ and appointed officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation:

“I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.”

(b) ~~All [Each member of the Legislature and all other]~~ or appointed officers, before taking the Oath or Affirmation of office prescribed by this section and entering upon the duties of office, shall subscribe to the following statement:

“I, \_\_\_\_\_, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or

promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.”

~~(c) [The Secretary of State, and all other appointed officers, before entering upon the duties of their offices, shall take the following Oath or Affirmation:~~

~~["I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.”~~

~~(d) The Secretary of State, and all other appointed officers, before taking the Oath or Affirmation of office prescribed by this section and entering upon the duties of office, shall subscribe to the following statement:~~

~~["I, \_\_\_\_\_, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, or promised to pay, contributed, or promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or confirmation thereof, so help me God.”~~

~~(e) Members of the Legislature, the Secretary of State, and all other elected and appointed state officers shall file the signed statement required by Subsection (b) of this section with the Secretary of State before taking the Oath or Affirmation of office prescribed by Subsection (a) of this section. All~~

~~(f) The Secretary of State and all other [appointed] officers shall retain [file] the signed statement required by Subsection (b) [(d)] of this section with the official records of the office [Secretary of State before taking the Oath or Affirmation of office prescribed by Subsection (c) of this section].~~

SECTION 8.02. Section 2, Article XVI, Texas Constitution, is amended to read as follows:

Sec. 2. Laws shall be made to exclude from office persons who have been [~~-, serving on juries, and from the right of suffrage, those who may have been or shall hereafter be~~] convicted of bribery, perjury, forgery, or other high crimes. [~~The privilege of free suffrage shall be protected by laws regulating elections and prohibiting under adequate penalties all undue influence therein from power, bribery, tumult or other improper practice.~~]

SECTION 8.03. Section 11, Article XVI, Texas Constitution, is amended to read as follows:

Sec. 11. The Legislature shall have authority to [~~classify loans and lenders, license and regulate lenders,~~] define interest and fix maximum rates of interest; provided, however, in the absence of legislation fixing maximum rates of interest all contracts for a greater rate of interest than ten per centum (10%) per annum shall be deemed usurious; provided, further, that in contracts where no rate of interest is agreed upon, the rate shall not exceed six per centum (6%) per annum. [~~Should any regulatory agency, acting under the provisions of this Section, cancel or refuse to grant any permit under any law passed by the Legislature; then such applicant or holder shall have the right of appeal to the courts and granted a trial de novo as that term is used in appealing from the justice of peace court to the county court.~~]

SECTION 8.04. Section 23, Article XVI, Texas Constitution, is amended to read as follows:

Sec. 23. The Legislature may pass laws for the regulation of live stock and the protection of stock raisers in the stock raising portion of the State, and exempt from the operation of such laws other portions, sections, or counties; and shall have power to pass general and special laws for the inspection of cattle, stock and hides and for the regulation of brands; provided, that any local law thus passed shall be submitted to the qualified voters [~~freeholders~~] of the section to be affected thereby, and approved by them, before it shall go into effect.

SECTION 8.05. Sections 19, 22, 43, 56, and 65A, Article XVI, Texas Constitution, are repealed.

ARTICLE 9. TEMPORARY TRANSITION PROVISION; ELECTION

SECTION 9.01. The following temporary provision is added to the Texas Constitution:

TEMPORARY TRANSITION PROVISION. (a) This section applies to the amendments to this constitution proposed by H.J.R. No. 75, 77th Legislature, Regular Session, 2001.

(b) The reenactment of any provision of this constitution for purposes of amendment does not revive a provision that may have been impliedly repealed by the adoption of a later amendment.

(c) The amendment of any provision of this constitution does not affect vested rights.

SECTION 9.02. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment to eliminate obsolete, archaic, redundant, and unnecessary provisions and to clarify, update, and harmonize certain provisions of the Texas Constitution.”

## **Amendment No. 13 (S.J.R. No. 2)**

### **Wording of Ballot Proposition:**

The constitutional amendment authorizing the legislature to authorize the board of trustees of an independent school district to donate certain surplus district property of historical significance in order to preserve the property.

### **Analysis of Proposed Amendment:**

The proposed amendment would add Section 4B to Article VII, Texas Constitution, to authorize the legislature to enact a general law under which the board of trustees of an independent school district may donate district real property and improvements formerly used as a school campus for the purpose of preserving the improvements. The amendment would provide that a law enacted under Section 4B would have to require the board of trustees, before making a donation under the law, to determine that:

- (1) the improvements have historical significance;
- (2) the transfer will further the preservation of the improvements; and
- (3) at the time of the transfer, the district does not need the real property or improvements for educational purposes.

The 77th Legislature passed Senate Bill No. 116 to add Section 11.1541 to the Education Code to authorize the board of trustees of a school district to donate historically significant real property and improvements to a nonprofit organization in the manner required by proposed Section 4B, Article VII, Texas Constitution. Under Section 11.1541, Education Code, to be eligible to receive a donation, a nonprofit organization must be exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, which applies to organizations “organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes.” Senate Bill No. 116 was

signed by the governor on May 18, 2001, and will take effect January 1, 2002, if the constitutional amendment proposed by Senate Joint Resolution No. 2 is approved by the voters.

### **Background**

There are a number of rural school districts in this state that own old country school buildings, including one-room schoolhouses. In some cases, the use of the buildings for school purposes became unnecessary as a result of school district consolidation, and the buildings were donated to the school districts. Many of the buildings have never been used by the districts for educational purposes but have served instead as the meeting places for community clubs, which have dues-paying members, rent out the buildings for events such as weddings or reunions, and pay for building maintenance and insurance. Some of the buildings have historical markers. Under Section 11.154, Education Code, the board of trustees of an independent school district may, by resolution, authorize the sale of any property, other than minerals, held in trust for public school purposes. Section 45.082, Education Code, authorizes the board of trustees of a district to sell real property that the board has determined is not required for the current educational needs of the district and to issue revenue bonds payable from the proceeds of the sale. With that authorization, the board of trustees of a school district may sell historic school buildings and the real property on which the buildings are located without any assurance that the buildings will be preserved. However, under current law, a school district does not have authority to donate school buildings or the real property on which the buildings are located in order to preserve the buildings, and because of Section 52, Article III, Texas Constitution, the legislature may not grant that authority. Under that constitutional provision, unless a specified exception applies, the legislature may not authorize a political subdivision of the state, including a school district, to grant public money or a thing of value, such as a school building, “in aid of, or to any individual, association or corporation . . . .”

### **Arguments For:**

1. The historic schoolhouses in this state should be preserved. The proposed constitutional amendment would provide a method to ensure preservation of those schoolhouses. The purpose of any donation of school district real property and improvements under the proposed amendment must be preservation of those improvements. In addition, a law enacted under the proposed amendment would have to provide for the board of trustees of the district to determine, before making a donation, that the improvements have historical significance.

2. The proposed constitutional amendment would lead to better use of real property and improvements. The proposed amendment would provide for donation of real property and improvements only if, at the time of the transfer, the school district does not need the real property or improvements for educational purposes.

### **Arguments Against:**

1. Although the proposed constitutional amendment would provide for donation of school district real property and improvements only if, at the time of the transfer, the district does not need the real property or improvements for educational purposes, the district perhaps could use the real property or improvements for a school district purpose other than an educational purpose or perhaps may need the real property and improvements for educational purposes in the future.

2. The proposed constitutional amendment does not specify the type of entity to which the donation of school district real property or improvements must be made. Therefore, the legislature could enact a law permitting the board of trustees of the district to donate the school district's real property and improvements to any type of entity, including a private entity. That private entity could use the former school district property to earn money even though the district itself would not be compensated for the transfer of the property or improvements.



**Text of S.J.R. No. 2: SENATE AUTHOR:** Jeff Wentworth  
**HOUSE SPONSOR:** Harvey Hilderbran

### **SENATE JOINT RESOLUTION**

proposing a constitutional amendment authorizing the legislature to authorize the board of trustees of an independent school district to donate certain surplus district property of historical significance in order to preserve the property.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article VII, Texas Constitution, is amended by adding Section 4B to read as follows:

Sec. 4B. (a) The legislature by general law may authorize the board of trustees of an independent school district to donate district real property and improvements formerly used as a school campus for the purpose of preserving the improvements.

(b) A law enacted under this section must provide that before the board of trustees may make the donation, the board must determine that:

(1) the improvements have historical significance;

(2) the transfer will further the preservation of the improvements; and

(3) at the time of the transfer, the district does not need the real property or improvements for educational purposes.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing the legislature to authorize the board of trustees of an independent school district to donate certain surplus district property of historical significance in order to preserve the property."

# **Amendment No. 14 (H.J.R. No. 44)**

## **Wording of Ballot Proposition:**

The constitutional amendment to authorize the legislature to authorize taxing units other than school districts to exempt from ad valorem taxation travel trailers that are not held or used for the production of income.

## **Analysis of Proposed Amendment:**

The proposed amendment would amend Section 1, Article VIII, Texas Constitution, to authorize the legislature to authorize a taxing unit, other than a school district, to exempt travel trailers, as defined by the legislature, from ad valorem taxes if the travel trailers are not held or used for the production of income and are registered in compliance with the vehicle registration laws of this state.

## **Background**

Section 1, Article VIII, Texas Constitution, provides that all real property and tangible personal property, unless exempt as required or permitted by the constitution, shall be taxed according to its value. Any exemption from ad valorem taxation not granted or authorized by the Texas Constitution is void. Neither the legislature nor a local government that imposes ad valorem taxes may exempt any property from ad valorem taxation without constitutional authority.

Section 1, Article VIII, requires the legislature to exempt from ad valorem taxation household goods and personal effects not held or used for the production of income. That section also authorizes the legislature to exempt certain other personal property from ad valorem taxes, including personal property homesteads (personal property exempt by law from seizure to satisfy debt), leased motor vehicles, and all other tangible personal property not held or used for the production of income, other than structures used or occupied as residential dwellings. Under these provisions and other applicable law, travel trailers may fall into any of several categories. A travel trailer that has been permanently attached to

the land may be treated as real property. If used as the owner's primary residence, such a trailer may qualify for exemptions and other tax relief applicable to residence homesteads. Otherwise, the travel trailer that constitutes real property is fully taxable. Travel trailers not attached to the land constitute tangible personal property and, if not used for income, are exempt from taxation unless a particular taxing unit elects to tax them under Section 11.14, Tax Code. Two recent opinions of the attorney general addressing the ad valorem tax status of travel trailers illustrate the complexity of applying the tax laws to travel trailers and the potential for inconsistency or misunderstanding by local taxing officials. See Op. Tex. Att'y Gen. Nos. JC-150 (1999), JC-282 (2000).

House Joint Resolution No. 44, if adopted, will amend Section 1, Article VIII, Texas Constitution, to authorize the legislature to authorize a taxing unit, other than a school district, to exempt from ad valorem taxation any travel trailer, as defined by the legislature, that is registered in this state in compliance with the laws relating to the registration of vehicles and is not held or used for the production of income.

House Bill No. 2076, enacted by the 77th Legislature, Regular Session, 2001, is the enabling legislation to implement the exemption authorized by the constitutional amendment proposed by House Joint Resolution No. 44. The bill, which takes effect only if the proposed amendment is adopted, would add a new Section 11.142, Tax Code, to authorize the governing body of a taxing unit, other than a school district, to exempt travel trailers, as defined by Section 11.142, from taxation if the travel trailers are registered in compliance with the vehicle registration laws of this state and are not held or used for the production of income. Section 11.142 would take effect January 1, 2002, and apply only to taxes imposed in 2002 and subsequent years. If the amendment is approved by the voters, travel trailers not otherwise exempt from taxation will continue to be taxed by each taxing unit in this state until the taxing unit elects to exempt those trailers.

### **Arguments For:**

1. Texas is one of only a few states in which local governments impose ad valorem taxes on personal property used for personal use, such as travel trailers. Approval of the amendment would allow taxing units to provide travel trailers with the same tax treatment as other noncommercial personal property, including motor vehicles, and provide consumers with a financial benefit in purchasing a travel trailer. The exemption would apply equally to all travel trailers, regardless of whether they have been affixed to the land, and so would bring consistency to the taxation of travel trailers in taxing units that adopt the exemption. Approval of the amendment would also promote tourism and economic development in this state.

2. Imposition of the ad valorem tax on travel trailers amounts to “double taxation” because the purchaser of a travel trailer is also required to pay sales and use taxes and annual vehicle registration fees on the trailer. Approval of the amendment would eliminate the double tax that persons who purchase travel trailers for personal use are now required to pay.

3. Most travel trailers that are purchased in this state are used for personal use. Any shortfall in ad valorem tax revenue resulting from the elimination of ad valorem taxes on travel trailers registered as motor vehicles would be offset by an increase in sales tax revenues and registration fees brought about by consumers who purchase and register their travel trailers. Travel trailers that are not appropriately registered or are used for business purposes or the production of income would continue to be subject to ad valorem taxation.

### **Arguments Against:**

1. Any exemption from ad valorem taxation erodes the property tax base of cities, counties, and other local governments. If the proposed amendment is adopted, the new exemption will result in higher property taxes for other property owners, including persons who own and reside in manufactured homes, and other homeowners, and persons who purchase travel trailers for business purposes.

2. Because individual local taxing units may elect not to exempt travel trailers from taxation and continue to impose property taxes on travel trailers, the proposed amendment would not bring consistency to the ad valorem taxation of travel trailers in this state.

3. The owner of a travel trailer that is used for residential purposes should not be treated differently from the owner of a manufactured home who resides in the home, and the owner of the travel trailer should be required to pay property taxes on the trailer as is the owner of the manufactured home. The proposed exemption of travel trailers would create a property tax break for a small group of persons who will no longer pay their fair share of taxes.

**Text of H.J.R. No. 44: HOUSE AUTHOR:** Ismael “Kino” Flores  
**SENATE SPONSOR:** Eddie Lucio, Jr.

### **HOUSE JOINT RESOLUTION**

proposing a constitutional amendment authorizing the legislature to authorize taxing units other than school districts to exempt certain travel trailers from ad valorem taxation.

**BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

**SECTION 1.** Section 1, Article VIII, Texas Constitution, is amended by amending Subsection (d) and adding Subsections (j) and (j-1) to read as follows:

(d) The Legislature by general law shall exempt from ad valorem taxation household goods not held or used for the production of income and personal effects not held or used for the production of income. The Legislature by general law may exempt from ad valorem taxation:

(1) all or part of the personal property homestead of a family or single adult, “personal property homestead” meaning that personal property exempt by law from forced sale for debt;

(2) subject to Subsections (e), ~~[and]~~ (g), and (j) of this section, all other tangible personal property, except structures which are personal property and are used or occupied as residential dwellings and except property held or used for the production of income; and

(3) subject to Subsection (e) of this section, a leased motor vehicle that is not held primarily for the production of income by the lessee and that otherwise qualifies under general law for exemption.

(j) The Legislature by general law may authorize a taxing unit, other than a school district, to exempt from ad valorem taxation by the taxing unit, a travel trailer, as defined by the Legislature, regardless of whether the travel trailer is real or personal property, that:

(1) on January 1 of the applicable tax year is registered in this state in compliance with the laws of this state relating to the registration of vehicles; and

(2) is not held or used for the production of income.

(j-1) Subsection (j) of this section and this subsection take effect January 1, 2002. This subsection expires January 1, 2004.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment to authorize the legislature to authorize taxing units other than school districts to exempt from ad valorem taxation travel trailers that are not held or used for the production of income.”

## **Amendment No. 15 (S.J.R. No. 16)**

### **Wording of Ballot Proposition:**

The constitutional amendment creating the Texas Mobility Fund and authorizing grants and loans of money and issuance of obligations for financing the construction, reconstruction, acquisition, operation, and expansion of state highways, turnpikes, toll roads, toll bridges, and other mobility projects.

### **Analysis of Proposed Amendment:**

The proposed constitutional amendment would create the Texas Mobility Fund as a separate fund in the state treasury. Money in the fund may be used to finance the construction, reconstruction, acquisition, and expansion of state highways, including costs of design and right-of-way acquisition. Money in the fund may also be used for state participation in constructing and providing publicly owned toll roads. The legislature may dedicate a source or amount of state revenue to the fund, other than motor vehicle registration fees, taxes on motor fuels and lubricants, and other money otherwise dedicated by the constitution.

The amendment authorizes the Texas Transportation Commission to issue and sell bonds and to pledge the money in the Texas Mobility Fund to the payment of the bonds. The proceeds of sale of the bonds must be deposited in the fund and may be used, in addition to the purposes authorized for other money in the fund, for costs related to issuance and administration of the bonds. The legislature may authorize the Texas Transportation Commission to guarantee payment of the bonds by pledging the full faith and credit of the state if dedicated revenue is insufficient to pay the bonds. If the commission takes this action, payment of the bonds will be guaranteed by the general revenue of the state. The legislature may not change a dedication of revenue to the fund unless the legislature dedicates to the fund another source or amount of revenue of equal or greater value and the commission exercises this authority to guarantee the bonds.



The amendment also allows the Texas Department of Transportation to spend, grant, or loan state money for the acquisition, construction, maintenance, or operation of turnpikes, toll roads, and toll bridges and removes a requirement that money from the state highway fund used for the costs of these facilities be repaid to the state highway fund.

### **Background**

Texas currently finances roads through what has been commonly called a “pay-as-you-go” approach, meaning that roads are not built until the necessary money is available. The major sources of this money are motor vehicle registration fees and taxes on motor fuels and lubricants, most of which have been dedicated to road- and traffic-related uses since 1946, and money provided by the federal government.

Until recently, this method of financing roads has been sufficient to meet the state’s transportation needs. However, many of the roads built after the initial dedication of registration fees and motor fuel and lubricant taxes have aged to the point that they need repair or replacement. The population of the state, and consequently the number of vehicles on the roads and amount of miles traveled, has increased dramatically. Trade-related traffic resulting from the North American Free Trade Agreement has caused a significant increase in the use of the state’s highways. According to the Texas Department of Transportation, the state has only 36 percent of the money needed to keep up with the growth in need of transportation facilities.

The proposed amendment is designed to allow transportation projects to be begun and completed earlier than would be possible under the current approach. The state would borrow the money needed to begin the projects immediately by selling bonds, and then repay the bonds as the revenue for that purpose becomes available later. To speed up the construction of toll roads, the amendment would remove existing limitations on use of state money for toll road purposes.

The legislature has enacted two bills to carry out the authority granted by the proposed amendment, contingent on the approval of the amendment by the voters. Senate Bill No. 4 would provide for the operation of the Texas Mobility Fund and the issuance of highway bonds. Senate Bill

No. 342 would provide for state participation in toll projects. Although the proposed amendment would allow the legislature to dedicate a source or amount of revenue to the Texas Mobility Fund, the legislature has not yet provided for such a dedication.

### **Arguments For:**

1. Population growth and increased traffic from international trade have created a transportation crisis in this state. New roads are needed now. Waiting for money to be available under a pay-as-you-go approach will only allow the problem to worsen. By borrowing money in the form of bonds, the state may begin to address these problems sooner. The state borrows money to pay for its major capital projects other than road building, and there is no reason for this public need to be treated differently. Even though the legislature has not dedicated money to the Texas Mobility Fund, having this financing mechanism in place now would allow the legislature at its next session to concentrate on providing the funding.

2. Allowing state money to support the building of toll roads would accelerate the building of those roads and provide an additional means of responding to the state's transportation crisis. Roads that might not be built if construction were to be supported solely by available state money would become feasible if supported in part by tolls paid by the users of those roads. Requiring that the cost of roads be shared by the users of the roads would ensure that the roads are built where the need is greatest.

### **Arguments Against:**

1. Bonds do not create any new money for road construction—they only delay the time when payment is due. Bonds also have additional costs for interest and expenses of issuance and administration that increase the total amount required to be paid to provide the financed roads. Although the amendment would create the Texas Mobility Fund now, the legislature's failure to dedicate any money to the fund would mean that new roads would not be financed now but after the legislature reconvenes and takes further action. Other methods of providing immediate road construction money, such as increasing taxes on gasoline, are preferable to borrowing money for this purpose.

2. Using state funds to build toll roads is unfair to state residents, who would be required to provide the tax revenue used for this purpose and then be required to pay again in the form of a toll when they use the road. If a toll road cannot be supported from tolls alone, it is questionable whether the road is really needed.

**Text of S.J.R. No. 16: SENATE AUTHOR:** Florence Shapiro  
**HOUSE SPONSOR:** Kim Brimer et al.

### SENATE JOINT RESOLUTION

proposing a constitutional amendment creating the Texas Mobility Fund and authorizing grants and loans of money and issuance of obligations for financing the construction, reconstruction, acquisition, operation, and expansion of state highways, turnpikes, toll roads, toll bridges, and other mobility projects.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article III, Texas Constitution, is amended by adding Section 49-k to read as follows:

Sec. 49-k. (a) In this section:

(1) “Commission” means the Texas Transportation Commission or its successor.

(2) “Comptroller” means the comptroller of public accounts of the State of Texas.

(3) “Department” means the Texas Department of Transportation or its successor.

(4) “Fund” means the Texas Mobility Fund.

(5) “Obligations” means bonds, notes, and other public securities.

(b) The Texas Mobility Fund is created in the state treasury and shall be administered by the commission as a revolving fund to provide a method of financing the construction, reconstruction, acquisition, and expansion of state highways, including costs of any necessary design and costs of acquisition of rights-of-way, as determined by the commission in accordance with standards and procedures established by law.

(c) Money in the fund may also be used to provide participation by the state in the payment of a portion of the costs of constructing and providing publicly owned toll roads and other public transportation

projects in accordance with the procedures, standards, and limitations established by law.

(d) The commission may issue and sell obligations of the state and enter into related credit agreements that are payable from and secured by a pledge of and a lien on all or part of the money on deposit in the fund in an aggregate principal amount that can be repaid when due from money on deposit in the fund, as that aggregate amount is projected by the comptroller in accordance with procedures established by law. The proceeds of the obligations must be deposited in the fund and used for one or more specific purposes authorized by law, including:

(1) refunding obligations and related credit agreements authorized by this section;

(2) creating reserves for payment of the obligations and related credit agreements;

(3) paying the costs of issuance; and

(4) paying interest on the obligations and related credit agreements for a period not longer than the maximum period established by law.

(e) The legislature by law may dedicate to the fund one or more specific sources or portions, or a specific amount, of the revenue, including taxes, and other money of the state that are not otherwise dedicated by this constitution. The legislature may not dedicate money from the collection of motor vehicle registration fees and taxes on motor fuels and lubricants dedicated by Section 7-a, Article VIII, of this constitution, but it may dedicate money received from other sources that are allocated to the same costs as those dedicated taxes and fees.

(f) Money dedicated as provided by this section is appropriated when received by the state, shall be deposited in the fund, and may be used as provided by this section and law enacted under this section without further appropriation. While money in the fund is pledged to the payment of any outstanding obligations or related credit agreements, the dedication of a specific source or portion of revenue, taxes, or other money made as provided by this section may not be reduced, rescinded, or repealed unless:

(1) the legislature by law dedicates a substitute or different source that is projected by the comptroller to be of a value equal to or greater than the source or amount being reduced, rescinded, or repealed and authorizes the commission to implement the authority granted by Subsection (g) of this section; and

(2) the commission implements the authority granted by the legislature pursuant to Subsection (g) of this section.

(g) In addition to the dedication of specified sources or amounts of revenue, taxes, or money as provided by Subsection (e) of this section, the legislature may by law authorize the commission to guarantee the payment of any obligations and credit agreements issued and executed by the commission under the authority of this section by pledging the full faith and credit of the state to that payment if dedicated revenue is insufficient for that purpose. If that authority is granted and is implemented by the commission, while any of the bonds, notes, other obligations, or credit agreements are outstanding and unpaid, and for any fiscal year during which the dedicated revenue, taxes, and money are insufficient to make all payments when due, there is appropriated, and there shall be deposited in the fund, out of the first money coming into the state treasury in each fiscal year that is not otherwise appropriated by this constitution, an amount that is sufficient to pay the principal of the obligations and agreements and the interest on the obligations and agreements that become due during that fiscal year, minus any amount in the fund that is available for that payment in accordance with applicable law.

(h) Proceedings authorizing obligations and related credit agreements to be issued and executed under the authority of this section shall be submitted to the attorney general for approval as to their legality. If the attorney general finds that they will be issued in accordance with this section and applicable law, the attorney general shall approve them, and, after payment by the purchasers of the obligations in accordance with the terms of sale and after execution and delivery of the related credit agreements, the obligations and related credit agreements are incontestable for any cause.

(i) Obligations and credit agreements issued or executed under the authority of this section may not be included in the computation required by Section 49-j, Article III, of this constitution, except that if money has been dedicated to the fund without specification of its source or the authority granted by Subsection (g) of this section has been implemented, the obligations and credit agreements shall be included to the extent the comptroller projects that general funds of the state, if any, will be required to pay amounts due on or on account of the obligations and credit agreements.

(j) The collection and deposit of the amounts required by this section, applicable law, and contract to be applied to the payment of obligations and credit agreements issued, executed, and secured under the authority of this section may be enforced by mandamus against the commission, the department, and the comptroller in a district court of Travis County, and the sovereign immunity of the state is waived for that purpose.

SECTION 2. Section 52-b, Article III, Texas Constitution, is amended to read as follows:

Sec. 52-b. The Legislature shall have no power or authority to in any manner lend the credit of the State or grant any public money to, or assume any indebtedness, present or future, bonded or otherwise, of any individual, person, firm, partnership, association, corporation, public corporation, public agency, or political subdivision of the State, or anyone else, which is now or hereafter authorized to construct, maintain or operate toll roads and turnpikes within this State except that the Legislature may authorize the Texas Department of Transportation to expend, grant, or loan money, from any source available, for the acquisition, construction, maintenance, or operation [eosts] of turnpikes, toll roads, and [œr] toll bridges [~~of the Texas Turnpike Authority, or successor agency, provided that any monies expended out of the state highway fund shall be repaid to the fund from tolls or other turnpike revenue~~].

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment creating the Texas Mobility Fund and

authorizing grants and loans of money and issuance of obligations for financing the construction, reconstruction, acquisition, operation, and expansion of state highways, turnpikes, toll roads, toll bridges, and other mobility projects.”





## **Amendment No. 16 (H.J.R. No. 5)**

### **Wording of Ballot Proposition:**

The constitutional amendment prescribing requirements for imposing a lien for work and material used in the construction, repair, or renovation of improvements on residential homestead property and including the conversion and refinance of a personal property lien secured by a manufactured home to a lien on real property as a debt on homestead property protected from a forced sale.

### **Analysis of Proposed Amendment:**

The proposed constitutional amendment would amend Section 50, Article XVI, Texas Constitution, by decreasing the period during which the owner or the owner's spouse may execute a contract for work and materials used in the construction, repair, or renovation of improvements on residential homestead property from 12 days to five days after the owner makes a written application for any extension of credit for the work or materials. In addition, the amendment would add to the types of property considered as homestead property protected from a forced sale of all debts except those enumerated under Section 50, Article XVI, Texas Constitution, and would enumerate as an additional type of debt for which a homestead may be subject to a forced sale the refinance and conversion of a personal property lien secured by a manufactured home to a lien on real property.

### **Background**

Section 50, Article XVI, Texas Constitution, currently enumerates seven types of debt for which a residential homestead may be subject to a forced sale. One type of debt includes the construction of improvements on homestead property. One of the requirements for imposing a lien for work and material used in the construction, repair, or renovation of improvements on residential homestead property prohibits the owner or the owner's spouse from executing a contract for the work and materials

for 12 days after the owner makes a written application for any extension of credit for the work or materials. The proposed amendment would decrease this waiting period to five days.

In addition, the proposed amendment would permit a personal property lien secured by a manufactured home to be refinanced and converted to a real property lien if the manufactured home is affixed to that real property, and would permit the owner to designate the property as homestead property protected from a forced sale under Section 50, Article XVI, Texas Constitution. Further, the proposed amendment would add an eighth type of debt for which a homestead may be subject to a forced sale: the debt resulting from the refinance and conversion of the personal property lien secured by the manufactured home to a lien on real property.

In 1999, the Texas Legislature enacted Section 62.003, Property Code, as added by Section 1, Chapter 742, Acts of the 76th Legislature, Regular Session, providing for the conversion of a personal property manufactured home lien to a purchase money lien on real property by operation of law. The intent of the legislature was to provide the homestead protection under Section 50, Article XVI, Texas Constitution, by statute. On March 27, 2001, Texas Attorney General John Cornyn in Opinion No. JC-0357 ruled that “Section 62.003 of the Property Code, which converts a personal property lien on a manufactured home to a purchase money lien on real property when the manufactured home is converted to real property, does not create a valid purchase money lien on homestead property under article XVI, section 50 of the Texas Constitution.” This portion of the proposed amendment was adopted in direct response to the concerns expressed in that attorney general opinion.

### **Arguments For:**

1. The proposed amendment would permit home improvement work to be completed in a more timely manner. Extensions of credit are often approved sooner than 12 days. The full 12-day period is not necessary to protect the owners because other protections are provided. Section 50, Article XVI, Texas Constitution, requires that the contract may be executed by the owner and the owner’s spouse only at the office of a third-party lender making the extension of credit, an attorney, or a title company.

2. The proposed amendment would offer manufactured home owners who also own the real property on which their homes are affixed the homestead protection currently reserved solely for homes built on real property. The rationale for discriminating between these two types of property owners seems unfair. Simply because one category of homeowner is required to purchase a home through a personal property loan before affixing the home to the real property, that owner is precluded from creating homestead property in that situation and taking advantage of the homestead protections offered by the state constitution.

### **Arguments Against:**

1. The proposed amendment decreasing the period during which the owner or the owner's spouse may execute a contract for work and materials used in the construction, repair, or renovation of improvements on residential homestead property from 12 to five days after the owner makes a written application for any extension of credit for the work or materials is unnecessary. The fact that some extensions of credit may be approved sooner is irrelevant. The 12-day period was not chosen because that was the average time for an extension of credit to be approved. The 12-day period was chosen as an appropriate period for the owners to consider their decision to have the work done on their property. Accordingly, there is no reason to revise this period.

2. The proposed amendment may appear to offer manufactured home owners greater protections, but in fact it would offer neither home owners nor their lenders greater protections. First, assuming a home owner defaulted on the loan, the lender would foreclose on the manufactured home and the real property. Under current law, the home owner would have two separate loans and could choose which loan to default under. The owner would lose only the home or the real property, not both. Second, if the owner defaulted, again the lender would foreclose. Although the manufactured home is "affixed" to the property, the home could be made mobile. A less-than-honest owner could remove the manufactured home and thus remove a substantial part of the lender's collateral securing the loan. For both home owners and lenders, current law offers greater legal protections.

**Text of H.J.R. No. 5:   HOUSE AUTHOR:** Burt R. Solomons  
**SENATE SPONSOR:** Eliot Shapleigh

**HOUSE JOINT RESOLUTION**

proposing a constitutional amendment prescribing requirements for imposing a lien for work and material used in the construction, repair, or renovation of improvements on residential homestead property and including the conversion and refinance of a personal property lien secured by a manufactured home to a lien on real property as a debt on homestead property protected from a forced sale.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 50(a), Article XVI, Texas Constitution, is amended to read as follows:

(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money thereof, or a part of such purchase money;

(2) the taxes due thereon;

(3) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(4) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(5) work and material used in constructing new improvements thereon, if contracted for in writing, or work and material used to repair or renovate existing improvements thereon if:

(A) the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead;

(B) the contract for the work and material is not executed by the owner or the owner's spouse before the fifth [~~12th~~] day after the owner makes written application for any extension of credit for the work and material, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

(C) the contract for the work and material expressly provides that the owner may rescind the contract without penalty or charge within three days after the execution of the contract by all parties, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing; and

(D) the contract for the work and material is executed by the owner and the owner's spouse only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company;

(6) an extension of credit that:

(A) is secured by a voluntary lien on the homestead created under a written agreement with the consent of each owner and each owner's spouse;

(B) is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made;

(C) is without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud;

(D) is secured by a lien that may be foreclosed upon only by a court order;

(E) does not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit;

(F) is not a form of open-end account that may be debited from time to time or under which credit may be extended from time to time;

(G) is payable in advance without penalty or other charge;

(H) is not secured by any additional real or personal property other than the homestead;

(I) is not secured by homestead property designated for agricultural use as provided by statutes governing property tax, unless such homestead property is used primarily for the production of milk;

(J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead;

(K) is the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsections (a)(1)-(a)(5) of this section;

(L) is scheduled to be repaid in substantially equal successive monthly installments beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment;

(M) is closed not before:

(i) the 12th day after the later of the date that the owner of the homestead submits an application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by Subsection (g) of this section; and

(ii) the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property;

(N) is closed only at the office of the lender, an attorney at law, or a title company;

(O) permits a lender to contract for and receive any fixed or variable rate of interest authorized under statute;

(P) is made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area:

(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States;

(ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans;

(iii) a person licensed to make regulated loans, as provided by statute of this state;

(iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase; or

(v) a person who is related to the homestead property owner within the second degree of affinity or consanguinity; and



(Q) is made on the condition that:

(i) the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender;

(ii) the owner of the homestead not assign wages as security for the extension of credit;

(iii) the owner of the homestead not sign any instrument in which blanks are left to be filled in;

(iv) the owner of the homestead not sign a confession of judgment or power of attorney to the lender or to a third person to confess judgment or to appear for the owner in a judicial proceeding;

(v) the lender, at the time the extension of credit is made, provide the owner of the homestead a copy of all documents signed by the owner related to the extension of credit;

(vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

(vii) within a reasonable time after termination and full payment of the extension of credit, the lender cancel and return the promissory note to the owner of the homestead and give the owner, in recordable form, a release of the lien securing the extension of credit or a copy of an endorsement and assignment of the lien to a lender that is refinancing the extension of credit;

(viii) the owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge;

(ix) the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made; and

(x) the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension

of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit within a reasonable time after the lender or holder is notified by the borrower of the lender's failure to comply; [øø]

(7) a reverse mortgage; or

(8) the conversion and refinance of a personal property lien secured by a manufactured home to a lien on real property, including the refinance of the purchase price of the manufactured home, the cost of installing the manufactured home on the real property, and the refinance of the purchase price of the real property.

SECTION 2. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 77th Legislature, Regular Session, 2001:

(1) prescribing requirements for imposing a lien for work and material used in the construction, repair, or renovation of improvements on residential homestead property; and

(2) including the conversion and refinance of a personal property lien secured by a manufactured home to a lien on real property as a debt on homestead property subject to a forced sale.

(b) The constitutional amendment takes effect January 1, 2002.

(c) This temporary provision expires January 2, 2002.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment prescribing requirements for imposing a lien for work and material used in the construction, repair, or renovation of improvements on residential homestead property and including the conversion and refinance of a personal property lien secured by a manufactured home to a lien on real property as a debt on homestead property protected from a forced sale."



# **Amendment No. 17 (H.J.R. No. 53)**

## **Wording of Ballot Proposition:**

The constitutional amendment authorizing the legislature to settle land title disputes between the state and a private party.

## **Analysis of Proposed Amendment:**

The proposed amendment would add Section 2B, Article VII, Texas Constitution, authorizing the legislature to release under certain circumstances the state's interest, other than a mineral interest, in surveyed, unsold, permanent school fund land claimed by a person under color of title.

## **Background**

If sovereign land is sold or disposed of to private persons without a patent issued from the state or the Republic of Texas conveying the legal title, the legal title to the land remains vested with the sovereign entity. Under the Texas Constitution, land that is not included in a patented survey or dedicated for another purpose is dedicated to the permanent school fund. A person may not receive a patent on land dedicated to the fund unless the General Land Office and the School Land Board, which manage the fund for the benefit of educational programs, receive fair market value for the land. In numerous cases, inaccurate surveys or dishonest sellers have caused persons to purchase or occupy land dedicated to the fund. In the absence of a constitutional amendment to release the state's claim to the land, the only way to clear title to the land purchased or otherwise obtained in good faith but later discovered to be dedicated to the fund is to purchase the land from the state at the fair market value.

In 1981, 1991, and 1993, voters approved constitutional amendments that remedied title defects for certain landowners in certain areas of the state. Those amendments allowed the General Land Office to issue patents to qualified applicants whose land titles were defective. A similar amendment to clear title to certain land in Bastrop County is proposed on

the same ballot on which this proposed amendment will appear. The amendment proposed here would eliminate the need for the Bastrop County amendment and other constitutional amendments in many similar situations by allowing the legislature to clear title to certain permanent school fund land by releasing the state's interest, other than a mineral interest, in the land. Enabling legislation that will take effect only on passage of this proposed amendment would allow the General Land Office to consider whether an application for a patent on a tract of land meets the criteria established in this proposed amendment and, if the School Land Board unanimously approves the release of the state's interest, would allow the board to approve the tract for a patent that releases all or part of the state's interest in the tract, other than a mineral interest.

The proposed amendment and the enabling legislation would allow the state's interest in permanent school fund land to be released only if the land is held by a person under color of title for which a patent may not be obtained under law in effect before January 1, 2002. The person holding the land under color of title must also hold the land under a chain of title that originated on or before January 1, 1952, must have acquired the land without actual knowledge that title to the land was vested in the state, and must have a deed to the land recorded in the appropriate county. In addition, the person must have paid all taxes assessed on the land and any interest and penalties associated with a period of tax delinquency. The state's interest in beach land, submerged or filled land, islands, or land that has been determined to be state-owned by judicial decree may not be released under the proposed amendment or the enabling legislation, and the proposed amendment and the enabling legislation may not be used to resolve boundary disputes or change the mineral reservation in an existing patent.

#### **Arguments For:**

1. The General Land Office has estimated that as many as 1,000 claims involving permanent school fund land remain unresolved. A mechanism for settling these disputes is necessary to resolve inequities, clear title to land held by innocent parties, and avoid the cost to the state

of settling each dispute in court. However, the voters should not be required to judge each individual dispute. Because the School Land Board manages and sells state land held in trust for the benefit of education programs, the board has the appropriate experience and expertise and is the proper forum for evaluating claims to public land managed by the board and protecting the public interest.

2. The proposed amendment and its enabling legislation would provide a permanent mechanism to settle certain title disputes involving permanent school fund land without the expense of putting a constitutional amendment on the ballot to cover each individual case and without the delay that may occur because each constitutional amendment must be approved by the legislature, which meets for only 140 days every two years. The enabling legislation would place the responsibility for settling those disputes on the School Land Board, as is appropriate, and would require the board's unanimous consent to release the state's interest in land, which would further ensure that the public interest is protected.

#### **Argument Against:**

The question of whether the state should release its interest in a particular tract of land should be left for the legislature and the voters to decide on a case-by-case basis. Some of the land at stake could be very valuable, and it is essential that the state's interests be protected by the legislative process involved in the approval of a proposed constitutional amendment and by the ability of voters to accept or reject a particular amendment.

**Text of H.J.R. No. 53: HOUSE AUTHOR:** Robert L. Cook  
**SENATE SPONSOR:** Kenneth Armbrister

### HOUSE JOINT RESOLUTION

proposing a constitutional amendment granting the legislature authority to release the state's interest in land that is held by a person in good faith under color of title.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article VII, Texas Constitution, is amended by adding Section 2B to read as follows:

Sec. 2B. (a) The legislature by law may provide for the release of all or part of the state's interest in land, excluding mineral rights, if:

(1) the land is surveyed, unsold, permanent school fund land according to the records of the General Land Office;

(2) the land is not patentable under the law in effect before January 1, 2002; and

(3) the person claiming title to the land:

(A) holds the land under color of title;

(B) holds the land under a chain of title that originated on or before January 1, 1952;

(C) acquired the land without actual knowledge that title to the land was vested in the State of Texas;

(D) has a deed to the land recorded in the appropriate county; and

(E) has paid all taxes assessed on the land and any interest and penalties associated with any period of tax delinquency.

(b) This section does not apply to:

(1) beach land, submerged or filled land, or islands; or

(2) land that has been determined to be state-owned by judicial decree.

(c) This section may not be used to:

(1) resolve boundary disputes; or

(2) change the mineral reservation in an existing patent.

(d) This section takes effect January 1, 2002. This subsection expires January 2, 2002.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing the legislature to settle land title disputes between the state and a private party.”





## **Amendment No. 18 (S.J.R. No. 49)**

### **Wording of Ballot Proposition:**

The constitutional amendment to promote uniformity in the collection, deposit, reporting, and remitting of civil and criminal fees.

### **Analysis of Proposed Amendment:**

The proposed amendment would add a new Section 46 to Article III, Texas Constitution, that would define “fee” to mean a fee in a criminal or civil matter all or a portion of which is required to be collected by local officers, clerks, or other local personnel and remitted to the comptroller of public accounts for deposit in the manner provided for in the law imposing the fee. It would provide that if the legislature enacts a program to consolidate and standardize the collection, deposit, reporting, and remitting of fees, as defined by the new section, any subsequent fee adopted by the legislature is valid only if it conforms to the program. The legislature is not required to adopt a comprehensive program in relation to fees, but, if it does, future legislatures are bound to adopt fees that conform to the comprehensive program.

Additionally, a fee, subject to the comprehensive program, may not take effect before January 1 after the regular session of the legislature adopting the fee unless the fee is passed on final consideration in each house of the legislature by a record vote of two-thirds of all the members of that house.

### **Background**

The legislature has increasingly turned to fees in both criminal and civil matters handled by district, county, municipal, and justice of the peace courts as a way of funding certain state programs. Currently, over 35 different fees have been imposed that cities and counties collect and then remit to the comptroller of public accounts for deposit in various funds. Examples of these funds are the children’s trust fund, Section 118.022, Local Government Code (added by Chapter 149, Acts of the

70th Legislature, Regular Session, 1987), the breath alcohol testing account, Article 102.016, Code of Criminal Procedure (added by Chapter 5, Acts of the 72nd Legislature, 1st Called Session, 1991), and the fugitive apprehension account, Article 102.019, Code of Criminal Procedure (added by Chapter 1100, Acts of the 75th Legislature, Regular Session, 1997). Most of the fees are payable on a quarterly basis, but others are due on the 10th of the month, the 15th of the month, or the 30th of the month. Recordkeeping for each of the fees is also not uniform, and the cities and counties are required to use different reporting forms for different fees.

In 1997, the 75th Legislature adopted a consolidated court cost, Article 102.075, Code of Criminal Procedure (added by Chapter 1100, Acts of the 75th Legislature, Regular Session, 1997), which rolled eight different court costs into one lump-sum amount. The comptroller of public accounts was responsible for allocating the amounts collected according to a statutorily determined percentage to each of the funds. The consolidated court cost, while simplifying matters significantly, did not apply to all existing criminal fees or to any civil fees.

The proposed amendment would not require the legislature to adopt a comprehensive program for the collection, deposit, reporting, and remitting of all civil and criminal fees used to fund state programs. It would require, however, that if the legislature does adopt a comprehensive program, then any subsequent civil or criminal fee adopted by the legislature must conform to that program. The 77th Legislature, Regular Session, 2001, considered Senate Bill No. 1378, which would have created a comprehensive program for the collection, deposit, reporting, and remitting of civil and criminal fees used to fund state programs, but did not enact it.

Additionally, the proposed amendment would provide that a fee in a criminal or civil matter all or a portion of which is required to be collected by local officers, clerks, or other local personnel and remitted to the comptroller of public accounts for deposit in the manner provided for in the law imposing the fee may not take effect before January 1 after the regular session of the legislature adopting the fee unless the fee is passed on final consideration in each house of the legislature by a record vote of

two-thirds of all the members of that house. The fees adopted by the legislature since 1987 have generally become effective on September 1 after the regular session of the legislature adopting the fee.

### **Arguments For:**

1. The collection, deposit, reporting, and remitting of a fee in a criminal or civil matter all or a portion of which is remitted to the comptroller of public accounts by cities and counties has become a time-consuming and burdensome task, particularly for those governmental entities with limited resources and manual systems. Fee consolidation and simplified collection and reporting by courts could lead to significant savings in time and money. If the legislature does enact a comprehensive program in relation to these fees to simplify the burden and cost for cities and counties, the cities and counties should be able to rely on that program. The proposed constitutional amendment would ensure that any comprehensive program relating to these fees would remain uniform, because it would invalidate any fee that departed from the legislatively adopted program.

2. A comprehensive plan in relation to the collection, deposit, reporting, and remitting of fees in a criminal or civil matter all or a portion of which are remitted to the comptroller of public accounts makes sense only if it is, indeed, comprehensive. The persons desiring to fund certain state programs through the imposition of fees are focused primarily on the merit of the programs they desire funded and generally do not have the long-term interest of the cities and counties in mind in keeping the collection, deposit, reporting, and remitting of all fees uniform. Cities and counties interested in a comprehensive program for fees find themselves in an awkward position if they oppose fees to fund programs solely because the fees create an extra administrative burden for them. The only way to ensure that future legislatures honor the intent of a comprehensive plan to cover all of these types of fees for all state programs funded by the fees, independent of the debate on the merit of the state program being funded, is through a constitutional amendment.

3. The proposed amendment would provide that a fee in a criminal or civil matter all or a portion of which is required to be collected by local officers, clerks, or other local personnel and remitted to the comptroller of public accounts for deposit in the manner provided for in the law imposing the fee may not take effect before January 1 after the regular session of the legislature adopting the fee unless the fee is finally passed by a record vote of two-thirds of all the members of each house of the legislature. This is necessary because it allows the cities and counties sufficient time to implement the new fee into their collection and reporting procedures, including possible changes in reporting forms or computer programs. Often, after a new fee is adopted, the cities and counties must wait for the comptroller of public accounts to issue instructions in relation to the fee or adopt reporting forms. If they must begin collecting the fee by September 1, as has been traditional, they have often only a matter of a few weeks for implementation. The proposed constitutional amendment providing January 1 as the effective date for these fees, unless there is a special two-thirds vote of the legislature, is both reasonable and necessary.

#### **Arguments Against:**

1. The collection, deposit, reporting, and remitting of a fee in a criminal or civil matter all or a portion of which is remitted to the comptroller of public accounts by cities and counties has become a time-consuming and burdensome task, particularly for those governmental entities with limited resources and manual systems. The solution to the problem is simple enough: new legislation to combine and streamline the procedures in relation to these fees. The 77th Legislature, Regular Session, 2001, considered Senate Bill No. 1378, which would have created a comprehensive program for the collection, deposit, reporting, and remitting of civil and criminal fees used to fund state programs. The legislature simply failed to enact it. The solution to the problem is readily available to the legislature, and it is not necessary to amend the constitution to solve the problem.

2. The proposed constitutional amendment would not require the legislature to adopt a comprehensive program. It would only provide that if the legislature does so, it cannot then add new fees that do not

conform to the program. The amendment is unnecessary in that the legislature can decide, on its own, that any future fees should be made a part of any comprehensive program that it may, on its own, enact. If the legislature decides to depart from the comprehensive program for any particular reason, its discretion should not be hampered by the constitution.

3. The proposed amendment would provide that a fee subject to the comprehensive program may not take effect before January 1 after the regular session of the legislature adopting the fee unless the fee is finally passed by a record vote of two-thirds of all the members of each house of the legislature. This is not necessary. The effective date for all of the fees imposed by the legislature since 1987 has generally been September 1 following the regular session of the legislature enacting the fee. This has worked successfully in the past. Additionally, the delay in implementation results in loss of revenue for the state program being funded by the newly adopted fee. The implementation date of the fee is a matter for the legislature to decide on a case-by-case basis for each fee.

**Text of S.J.R. No. 49: SENATE AUTHOR:** Kenneth Armbrister  
**HOUSE SPONSOR:** Senfronia Thompson

### SENATE JOINT RESOLUTION

proposing a constitutional amendment to promote uniformity in the collection, deposit, reporting, and remitting of civil and criminal fees.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article III, Texas Constitution, is amended by adding Section 46 to read as follows:

Sec. 46. (a) In this section, "fee" means a fee in a criminal or civil matter all or a portion of which is required to be collected by local officers, clerks, or other local personnel and remitted to the comptroller of public accounts for deposit in the manner provided for in the law imposing the fee.

(b) This section applies only if the legislature enacts by law a program to consolidate and standardize the collection, deposit, reporting, and remitting of fees.

(c) A fee imposed by the legislature after the enactment of the program described by Subsection (b) of this section is valid only if the requirements relating to its collection, deposit, reporting, and remitting conform to the program.

(d) A fee to which this section applies may take effect on a date before the next January 1 after the regular session at which the bill adopting the fee was enacted only if the bill is passed by a record vote of two-thirds of all the members elected to each house of the legislature on final consideration in each house.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to promote uniformity in the collection, deposit, reporting, and remitting of civil and criminal fees."

# **Amendment No. 19 (H.J.R. No. 81)**

## **Wording of Ballot Proposition:**

The constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board in an amount not to exceed \$2 billion.

## **Analysis of Proposed Amendment:**

The proposed amendment would add Section 49-d-9 to Article III of the Texas Constitution to allow the Texas Water Development Board to issue additional general obligation bonds for one or more accounts of the Texas Water Development Fund II in an amount not to exceed \$2 billion. Of the bonds issued under Section 49-d-9, \$50 million would be used for the water infrastructure fund. Section 49-d-8, Article III, Texas Constitution, would apply to the bonds authorized by Section 49-d-9, except that the limitation in Section 49-d-8 on the amount of bonds that may be issued for one or more accounts of the Texas Water Development Fund II would not apply to the bonds authorized by Section 49-d-9. A limitation on the percentage of state participation in any single project imposed by Article III of the Texas Constitution would not apply to a project funded with the proceeds of bonds issued under Section 49-d-9.

## **Background**

Water has played a crucial historical role in the economic development of Texas. The state's ability to meet increasing demands for water while continuing to protect water quality, preserve the environment, and provide recreational opportunities will determine the state's economic well-being. The Texas Water Development Board funds new water management strategies and projects through the Texas Water Development Fund II. This fund authorizes the board to issue bonds for a number of different types of water projects, including water supply projects, water quality enhancement projects, flood control projects, state participation in water and wastewater facilities, and economically distressed areas projects. However, the board has exercised most of its bonding authority under



current law. This constitutional amendment would authorize the board to issue additional general obligation bonds in an amount not to exceed \$2 billion for the Texas Water Development Fund II. The Texas Water Development Fund II is governed by Subchapter L, Chapter 17, Water Code. The water infrastructure fund was created under Subchapter O, Chapter 15, Water Code, which was added by Senate Bill No. 2, Acts of the 77th Legislature, Regular Session, 2001.

### **Arguments For:**

1. An adequate, clean, and controlled water supply has been a key ingredient in making Texas a good place to live and work and in providing a growing and varied economy. The authorization of additional funding is needed to allow the state and local governments to continue to provide an adequate, clean, and controlled water supply to benefit the state's people and economy.

2. Although the Texas Water Development Board still has approximately \$490 million remaining in its bond authorization, it soon will need additional bonding authority. Waiting two more years to seek voter approval for additional authorization would jeopardize the board's ability to finance projects to help meet Texas' future water needs.

3. The proposed bonding authority of \$2 billion is not excessive in comparison to the state's total water needs. The regional water planning groups created under Senate Bill No. 1, Acts of the 75th Legislature, Regular Session, 1997, have proposed construction of \$17 billion in water supply projects alone, not counting money needed for water treatment and storage projects, and some studies project that in the next 50 years the state will need to spend \$180 billion on water and sewer projects.

### **Arguments Against:**

1. At a time when the state is facing increasing needs for services in all areas and state revenues are being strained to meet all of these needs, the approval of an additional amount of bonds for financing water projects does not appear to be practical or necessary.

2. The authorization of an additional amount of bonds is premature. The Texas Water Development Board still has \$490 million remaining in its bond authorization. That amount should be sufficient through the next biennium. If additional authorization is needed at that time, the 78th Legislature, which will meet in 2003, can propose an amendment to increase the board's bonding authority.

3. The proposed amendment assumes that all projects proposed by local communities and regional water planning groups are needed. Many proposed projects may not be cost-effective or may present potential environmental problems. The projects should be studied further before additional bonds are authorized.

**Text of H.J.R. No. 81: HOUSE AUTHOR:** David Counts  
**SENATE SPONSOR:** J. E. “Buster” Brown

### HOUSE JOINT RESOLUTION

proposing a constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article III, Texas Constitution, is amended by adding Section 49-d-9 to read as follows:

Sec. 49-d-9. (a) The Texas Water Development Board may issue additional general obligation bonds, at its determination, for one or more accounts of the Texas Water Development Fund II, in an amount not to exceed \$2 billion. Of the additional general obligation bonds authorized to be issued, \$50 million of those bonds shall be used for the water infrastructure fund as provided by law.

(b) Section 49-d-8 of this article applies to the bonds authorized by this section. The limitation in Section 49-d-8 of this article that the Texas Water Development Board may not issue bonds in excess of the aggregate principal amount of previously authorized bonds does not apply to the bonds authorized by and issued under this section.

(c) A limitation on the percentage of state participation in any single project imposed by this article does not apply to a project funded with the proceeds of bonds issued under the authority of Section 49-d-8 of this article or this section.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2001. The ballot shall be printed to provide for voting for or against the proposition: “The constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board in an amount not to exceed \$2 billion.”