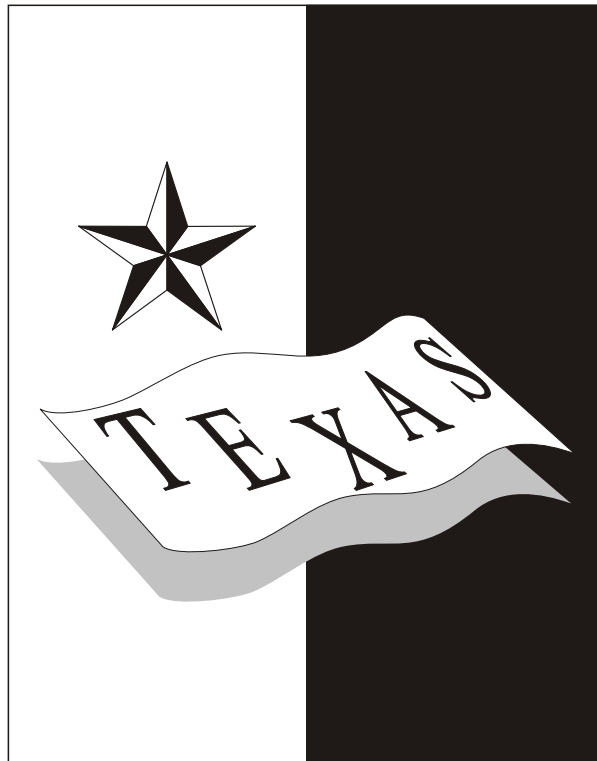


Analysis of Proposed Constitutional Amendment

November 5, 2002, Election



Texas Legislative Council
September 2002

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Authorizing a commissioners court of a county to declare the office of constable in certain precincts dormant and providing a procedure for reinstatement of the office	

Introduction

General Information

In the 2001 regular session, the 77th Texas Legislature passed 20 joint resolutions proposing constitutional amendments. Nineteen of these proposed amendments were offered for ratification on the November 6, 2001, election ballot, and the final proposed amendment is being 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 2002, the state's constitution has been amended 409 times, from a total of 587 proposed amendments, 583 of which were submitted to the voters for their approval. The remaining proposed amendment 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 the joint resolution proposing the constitutional amendment that will appear on the November 5, 2002, ballot. The analysis includes background information and arguments for and against the proposed constitutional amendment.

Table
1876 Constitution Amendments Proposed and Adopted

year proposed	number proposed	number adopted	year proposed	number proposed	number adopted
1879	1	1	1947	9	9
1881	2	0	1949	10	2
1883	5**	5	1951	7	3
1887	6	0	1953	11	11
1889	2	2	1955	9	9
1891	5	5	1957	12	10
1893	2	2	1959	4	4
1895	2	1	1961	14	10
1897	5	1	1963	7	4
1899	1	0	1965	27	20
1901	1	1	1967	20	13
1903	3	3	1969	16	9
1905	3	2	1971	18	12
1907	9	1	1973	9	6
1909	4	4	1975	12 [†]	3
1911	5	4	1977	15	11
1913	8*	0	1978	1	1
1915	7	0	1979	12	9
1917	3	3	1981	10	8
1919	13	3	1982	3	3
1921	5**	1	1983	19	16
1923	2***	1	1985	17**	17
1925	4	4	1986	1	1
1927	8**	4	1987	28**	20
1929	7**	5	1989	21**	19
1931	9	9	1990	1	1
1933	12	4	1991	15	12
1935	13	10	1993	19**	14
1937	7	6	1995	14	11
1939	4	3	1997	15	13
1941	5	1	1999	17	13
1943	3**	3	2001	20	19‡
1945	8	7			

Total Proposed 587 — Total Adopted 409

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.
- ‡ Nineteen of the amendments approved by the 77th Legislature during the 2001 regular session appeared on the November 6, 2001, ballot and were adopted. The remaining amendment will appear on the November 5, 2002, ballot.

Proposed Amendment

Amendment No. 1 (H.J.R. No. 2)

Wording of Ballot Proposition:

The constitutional amendment authorizing the commissioners court of a county to declare the office of constable in a precinct to be dormant if the office has not been filled by election or appointment for a lengthy period and providing a procedure for the reinstatement of the office.

Analysis of Proposed Amendment:

The proposed constitutional amendment amends Section 18, Article V, Texas Constitution, by authorizing the commissioners court of a county to declare the office of constable in a precinct dormant if the office has not been filled by election or appointment for at least seven consecutive years since the term of the last officeholder ended. The commissioners court may reinstate a dormant office of constable by vote of the commissioners court or by calling an election in the precinct to reinstate the office. The commissioners court is required to call an election in the precinct to reinstate the office if the commissioners court receives a petition signed by at least 10 percent of the qualified voters of the precinct.

Background

Section 18, Article V, Texas Constitution, requires each county, excluding Mills County, Reagan County, and Roberts County, to elect from one to eight constables, depending on the population of the county, for a four-year term. The office of constable was abolished in the counties of Mills, Reagan, and Roberts by constitutional amendment in 1995. Section 17, Article XVI, Texas Constitution, requires all officers, including constables, to continue to perform their official duties until their successor is qualified. Although commissioners courts are delegated the responsibility of appointing a constable when a vacancy occurs, Texas Attorney General John Cornyn in Op. Tex. Att’y Gen. No. JC-0140 (1999) concluded that a commissioners court has no enforceable duty to fill a vacancy in the office of constable.

The proposed constitutional amendment would authorize the commissioners court of a county to declare the office of constable in a precinct dormant if the office has not been filled by election or appointment for at least seven consecutive years after the end of the term of the last person to hold the office. The previous officeholder would not continue to hold office under Section 17, Article XVI, Texas Constitution. If the commissioners court declares the office dormant, no person could hold the office of constable in that precinct unless the office of constable in that precinct was reinstated by vote of the commissioners court or by an election called in that precinct by the commissioners court. The commissioners court is required to call an election in the precinct to reinstate the office if the commissioners court receives a petition signed by at least 10 percent of the qualified voters of the precinct.

The proposed constitutional amendment requires that all records of a dormant office of constable be transferred to the county clerk.

Arguments For:

1. The proposed amendment would permit each county, acting through its commissioners court, to determine the need for an office of constable on a local basis. Allowing the commissioners court of the county to declare an office of constable in a precinct dormant would eliminate the need for the state legislature to address, in individual counties, an issue that is primarily a matter of local concern.

2. The proposed amendment is careful to provide for the elimination of a constable's office only when the office is clearly not needed. Counties that have found the office of constable unnecessary in certain precincts would be permitted to save money by declaring an office of constable in a precinct dormant only if the office has not been filled by election or appointment for at least seven consecutive years. Safeguards are provided to ensure that the office of constable is eliminated with due discretion and to ensure that the office may be reinstated. The seven-year period allows for at least two election cycles to pass before the office may be declared dormant. In addition, the office may be reinstated by action of the commissioners court or by the qualified voters in the precinct.

Arguments Against:

1. The office of constable is an elective office. By permitting the elimination of the office, the proposed amendment removes from the voters of the county a measure of control over certain affairs of county government.

2. The proposed amendment is not broad enough because it does not address the issue of abolishing the office of constable in other appropriate circumstances. For example, there may be cases in which a precinct has an elected constable, but there is not a sufficient workload to justify the office. Local voters and county commissioners should be provided the authority to eliminate the office of an incumbent constable in a precinct if the commissioners court determines that the most cost-efficient and effective manner of addressing the needs of the county would be to eliminate the office.

Text of H.J.R. No. 2:

HOUSE AUTHOR: Warren Chisum et al.

SENATE SPONSOR: Frank Madla

HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing a commissioners court of a county to declare the office of constable in certain precincts dormant and providing a procedure for reinstatement of the office.

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

SECTION 1. Section 18, Article V, Texas Constitution, is amended by adding Subsection (h) to read as follows:

(h) The commissioners court of a county may declare the office of constable in a precinct dormant if at least seven consecutive years have passed since the end of the term of the person who was last elected or appointed to the office and during that period of time no person was elected to fill that office, or during that period a person was elected to that office, but the person failed to meet the qualifications of that office or failed to assume the duties of that office. If an office of constable is declared dormant, the office may not be filled by election or appointment and the previous officeholder does not continue to hold the office under Subsection (a) of this section or Section 17, Article XVI, of this constitution. The records of an office of constable declared dormant are transferred to the county clerk of the county. The commissioners court may reinstate an office of constable declared dormant by vote of the commissioners court or by calling an election in the precinct to reinstate the office. The commissioners court shall call an election to reinstate the office if the commissioners court receives a petition signed by at least 10 percent of the qualified voters of the precinct. If an election is called under this subsection, the commissioners court shall order the ballot for the election to be printed to permit voting for or against the proposition: "Reinstating the office of Constable of Precinct No. ____ that was previously declared dormant." The office of constable is reinstated if a majority of the voters of the precinct voting on the question at the election approve the reinstatement.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2002. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing the commissioners court of a county to declare the office of constable in a precinct to be dormant if the office has not been filled by election or appointment for a lengthy period and providing a procedure for the reinstatement of the office.”

