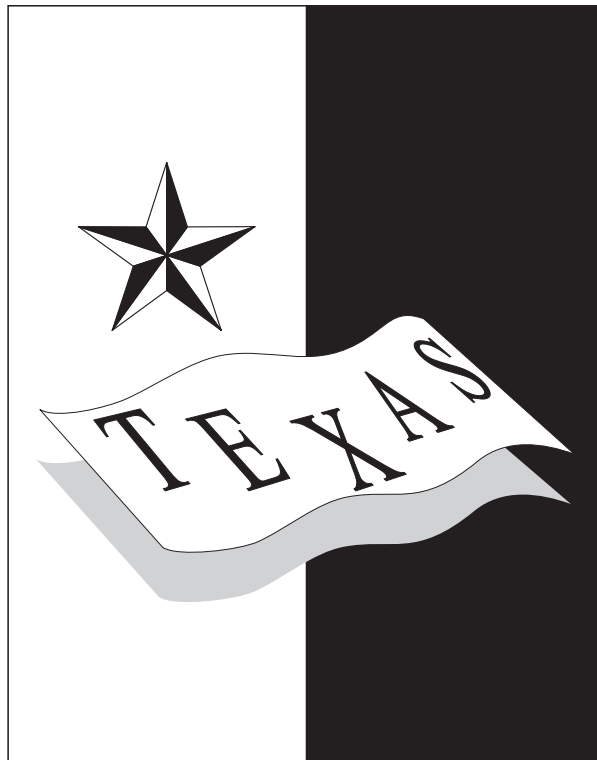


# Analyses of Proposed Constitutional Amendments

November 8, 2005, Election



Texas Legislative Council  
September 2005



# Analyses of Proposed Constitutional Amendments

November 8, 2005, Election

Prepared by the Staff  
of the  
Texas Legislative Council

Published by the  
Texas Legislative Council  
P. O. Box 12128  
Austin, Texas 78711-2128



Lieutenant Governor David Dewhurst, Joint Chair  
Speaker Tom Craddick, Joint Chair  
Mark Brown, Interim Executive Director  
September 2005

*The mission of the Texas Legislative Council is to provide professional, nonpartisan service and support to the Texas Legislature and legislative agencies. In every area of responsibility, we strive for quality and efficiency.*

Copies of this publication have been distributed in compliance with the state depository law (Subchapter G, Chapter 441, Government Code), and are available for public use through the Texas State Publications Depository Program at the Texas State Library and other state depository libraries. An online version of this publication can be found at <http://www.tlc.state.tx.us/pubslegref/pubslegref.html>.

Additional copies of this publication may be obtained from House Document Distribution:

In person: Room B.324, Robert E. Johnson, Sr., Legislative Office Building  
1501 N. Congress Avenue

By mail: P. O. Box 12128, Austin, TX 78711-2128

By phone: (512) 463-1144

By fax: (512) 463-2920

By online request form (legislative offices only):

<http://isntlnp1/FormsReq/MForms.nsf?opendatabase&login>

# Table of Contents

## Introduction

General Information .....	3
Table of Amendments Proposed and Adopted .....	4

## Proposed Amendments

<b>Amendment No. 1 (H.J.R. No. 54)</b> .....	9
Creating the Texas rail relocation and improvement fund and authorizing grants of money and issuance of obligations for financing the relocation, rehabilitation, and expansion of rail facilities	
<b>Amendment No. 2 (H.J.R. No. 6)</b> .....	17
Providing that marriage in this state consists only of the union of one man and one woman and prohibiting this state or a political subdivision of this state from creating or recognizing any legal status identical or similar to marriage	
<b>Amendment No. 3 (H.J.R. No. 80)</b> .....	23
Clarifying that certain economic development programs do not constitute a debt	
<b>Amendment No. 4 (S.J.R. No. 17)</b> .....	29
Authorizing the denial of bail to a criminal defendant who violates a condition of the defendant’s release pending trial	
<b>Amendment No. 5 (S.J.R. No. 21)</b> .....	33
Allowing the legislature to define rates of interest for commercial loans	

<b>Amendment No. 6 (H.J.R. No. 87)</b> .....	37
Including one additional public member and a constitutional county court judge in the membership of the State Commission on Judicial Conduct	
<b>Amendment No. 7 (S.J.R. No. 7)</b> .....	43
Authorizing line-of-credit advances under a reverse mortgage	
<b>Amendment No. 8 (S.J.R. No. 40)</b> .....	49
Providing for the clearing of land titles by relinquishing and releasing any state claim to sovereign ownership or title to interest in certain land in Upshur County and in Smith County	
<b>Amendment No. 9 (H.J.R. No. 79)</b> .....	55
Authorizing the legislature to provide for a six-year term for a board member of a regional mobility authority	

# **Introduction**





## General Information

In the 2005 regular session, the 79th Texas Legislature passed 9 joint resolutions proposing constitutional amendments. The proposed amendments will be offered for ratification on the November 8, 2005, 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 2005, the state's constitution has been amended 432 times, from a total of 609 proposed amendments, 606 of which were submitted to the voters for their approval. The 9 proposed amendments approved by the 79th Legislature brings the total number of amendments passed by the legislature to 618. 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, analyses of the propositions, and the text of the joint resolutions proposing the constitutional amendments that will appear on the November 8, 2005, 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.

**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 <sup>†</sup>	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	20 <sup>‡</sup>
1945	8	7	2003	22**	22

Total Proposed 609 — Total Adopted 432

## 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 appeared on the November 5, 2002, ballot and was also adopted.



## **Proposed Amendments**



# **Amendment No. 1 (H.J.R. No. 54)**

## **Wording of Ballot Proposition:**

The constitutional amendment creating the Texas rail relocation and improvement fund and authorizing grants of money and issuance of obligations for financing the relocation, rehabilitation, and expansion of rail facilities.

## **Analysis of Proposed Amendment:**

The proposed constitutional amendment would create the Texas rail relocation and improvement fund. The amendment would provide for the Texas Transportation Commission to issue and sell obligations to fund the relocation and improvement of privately and publicly owned passenger and freight rail facilities for the purposes of relieving congestion on public highways, enhancing public safety, improving air quality, and expanding economic opportunity. The obligations would be payable from the money in the Texas rail relocation and improvement fund. The amendment would also authorize the legislature to dedicate to the fund state money that is not otherwise dedicated by the constitution.

## **Background**

Replacing the regulatory scheme that had been in existence since the passage of the Interstate Commerce Act of 1887, the Staggers Rail Act of 1980 deregulated the railroad industry in the United States. After passage of the legislation, the railroad industry considerably improved its productivity and ability to compete for traffic with other modes of transportation. However, the industry has only been able to accomplish this by downsizing, gaining efficiencies, and keeping capital expenditures low. The financial viability of the railroad industry does not allow for enough profits to reinvest in the infrastructure necessary to meet the increased demand for freight transportation. As a result, the railroad industry's infrastructure is not sufficient to keep increased freight off of state highways.

If a rail relocation and improvement fund is created in Texas, the fund would be able to leverage assets to issue bonds. Estimates show that \$100 million per year could generate \$1 billion in bond proceeds. The proceeds would then be available for investment in the infrastructure needed to relocate or improve rail lines.

### **Arguments For:**

1. Traffic congestion on state highways has increased in recent years partially due to the inability of the railroad industry to meet the demand for freight transportation through the state. The ability to ship more goods using railroads would decrease the amount of trucks traveling on highways, thereby reducing congestion.

2. The relocation of rail lines would improve efficiency, encourage investment, and promote safety. Goods would be delivered much faster if freight rail lines were moved from congested urban areas. Right-of-way obtained by relocating railroads out of cities could be used for the placement of commuter rail lines or highways, each of which could provide economic opportunities for private investment along its corridors. Also, relocating railroad tracks that route train cars through populated urban areas would reduce the number of potentially fatal train accidents that occur in Texas each year.

3. Freight rail is more fuel-efficient per ton-mile than trucks and would help Texas comply with federal air quality standards. Also, relocating rail lines out of urban areas would reduce the amount of hazardous materials shipped through highly populated areas.

### **Arguments Against:**

1. The private sector should be responsible for the improvement and relocation of railroads. The railroad industry is not a state-regulated industry, and the state should play no part in the industry's investment decisions. It is not the state's responsibility to aid private companies in investing in and improving rail lines owned by the companies.

2. Borrowing does not create new money for the improvement of rail infrastructure, it only delays the time when payment is due. The debt



service on the bonds issued could cost the state \$87.5 million per year beginning in fiscal year 2007. The amounts needed to pay off the debt must be collected eventually.

3. The Texas Department of Transportation's primary duties involve planning and making policies for the location, construction, and maintenance of state highways. The authority of the agency over railroad issues is very limited. The Texas Department of Transportation should continue to use its resources to carry out its primary duties without using state resources to aid an industry over which it has little control.

**Text of H.J.R. No. 54:**

**HOUSE AUTHOR:** Ruth Jones  
McClendon et al.

**SENATE SPONSOR:** Todd Staples et al.

### HOUSE JOINT RESOLUTION

proposing a constitutional amendment creating the Texas rail relocation and improvement fund and authorizing grants of money and issuance of obligations for financing the relocation, construction, reconstruction, acquisition, improvement, rehabilitation, and expansion of certain rail facilities.

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

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

Sec. 49-o. (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 rail relocation and improvement fund.

(5) "Improvement" includes construction, reconstruction, acquisition, rehabilitation, and expansion.

(6) "Obligations" means bonds, notes, and other public securities.

(b) The Texas rail relocation and improvement fund is created in the state treasury. The fund shall be administered by the commission to provide a method of financing the relocation and improvement of privately and publicly owned passenger and freight rail facilities for the purposes of:

- (1) relieving congestion on public highways;
- (2) enhancing public safety;
- (3) improving air quality; or
- (4) expanding economic opportunity.

(b-1) The fund may also be used to provide a method of financing the construction of railroad underpasses and overpasses, if the construction is part of the relocation of a rail facility.

(c) 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.

(d) 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.

(e) 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 (f) of this section; and

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

(f) In addition to the dedication of specified sources or amounts of revenue, taxes, or money as provided by Subsection (d) 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 sufficient to pay the principal of and 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.

(g) 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.

(h) 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 (f) 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.

(i) 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. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2005. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment creating the Texas rail relocation and improvement fund and authorizing grants of money and issuance of obligations for financing the relocation, rehabilitation, and expansion of rail facilities.”



## **Amendment No. 2 (H.J.R. No. 6)**

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

The constitutional amendment providing that marriage in this state consists only of the union of one man and one woman and prohibiting this state or a political subdivision of this state from creating or recognizing any legal status identical or similar to marriage.

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

The proposed constitutional amendment would amend Article I, Texas Constitution, to declare that marriage in this state consists only of the union of one man and one woman, and to prohibit this state or a political subdivision of this state from creating or recognizing any legal status identical or similar to marriage. The joint resolution in which the constitutional amendment is proposed also includes a non-amendatory provision recognizing that persons may designate guardians, appoint agents, and use private contracts to adequately and properly appoint guardians and arrange rights relating to hospital visitation, property, and the entitlement to proceeds of life insurance policies, without the existence of any legal status identical or similar to marriage.

### **Background**

Current state law prohibits the issuance of a marriage license for the marriage of persons of the same sex. Section 2.001(b), Family Code. The Texas Legislature passed the Defense of Marriage Act (DOMA), Section 6.204, Family Code, in 2003. The DOMA declares that a same-sex marriage or a civil union is contrary to the public policy of this state and is void in this state. The DOMA further prohibits the state or an agency or political subdivision of the state from giving effect to a public act, record, or judicial proceeding that creates, recognizes, or validates a same-sex marriage or a civil union or to a right or claim to any legal protection, benefit, or responsibility asserted as a result of a same-sex marriage or a civil union. The DOMA defines “civil union” as any relationship status

other than marriage that is intended as an alternative to marriage or that applies primarily to cohabitating persons and that grants to the parties of the relationship legal protections, benefits, or responsibilities granted to the spouses of a marriage.

The DOMA was adopted in Texas as a response to court cases and legislative actions in a number of states on the issue of same-sex marriage and civil unions.

One of the first constitutional challenges to the prohibition of same-sex marriage in a state's marriage laws occurred in Hawaii in the 1990s. The plaintiffs in *Baehr v. Lewin*, same-sex couples who were denied marriage licenses, alleged that Hawaii's marriage laws were unconstitutional under the equal protection clause of the Hawaii Constitution. Before the case was finally decided, the Hawaii Legislature adopted a constitutional amendment declaring that the Hawaii Legislature may reserve marriage to opposite-sex couples. Hawaii voters approved the amendment in 1998.

In 1999, the California Legislature adopted legislation allowing same-sex couples who meet certain eligibility criteria to register with the state as domestic partners. Registered domestic partners in California have rights, benefits, protections, responsibilities, obligations, and duties prescribed by California's statutes that, in most instances, are the same as those granted to the spouses of a marriage. Other states, including Oregon, Washington, New Mexico, New York, and Rhode Island, offer domestic partner benefits to certain employees but do not establish a registry of domestic partners.

In 1999, the Vermont Supreme Court, in *Baker v. State*, held that under the Common Benefits Clause of the Vermont Constitution, the plaintiffs, same-sex couples who were denied marriage licenses, were entitled "to obtain the same benefits and protections afforded by Vermont law to married opposite-sex couples." In response to the court's decision, the Vermont Legislature created an alternative legal status to marriage for same-sex couples, called a civil union. Under Vermont law, the parties to a civil union are granted the same benefits, protections, and responsibilities as are granted under Vermont law to the spouses of a marriage. Civil unions became effective in Vermont in July 2000.



In 2003, the Massachusetts Supreme Judicial Court, in *Goodridge v. Department of Public Health*, considered a challenge to Massachusetts' marriage laws brought by same-sex couples who were denied marriage licenses. The court held in that case that "barring an individual from the protections, benefits, and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts Constitution." In accordance with the court's decision, the state of Massachusetts began granting marriage licenses to same-sex couples in May 2004. In response to the court's decision, the Massachusetts Legislature in 2004 preliminarily approved a constitutional amendment that would define marriage as a union between opposite-sex couples and establish a system of civil unions for same-sex couples with the same benefits, protections, and rights as those granted to the spouses of a marriage. If approved again by the Massachusetts Legislature, the proposed amendment will be submitted to Massachusetts voters in November 2006.

Same-sex marriage continues to be a rapidly developing issue in other states and around the world. In 2005, the Connecticut Legislature passed legislation authorizing same-sex couples to enter into civil unions and other jurisdictions, including Canada and Spain, have passed or are considering legislation extending marriage to include same-sex couples.

### **Arguments For:**

1. Adoption of the proposed amendment would prevent potential legal challenges to Texas' marriage statutes. The equal protection clause and other provisions of the Texas Constitution are similar to those in other state constitutions and could be interpreted by courts to permit same-sex marriage or to require the recognition of a legal status identical or similar to marriage. Citizens of Texas, rather than the courts, should define marriage in this state. Seventeen states have added a definition of traditional marriage to their constitutions, all approved by voters by substantial margins, and President Bush has endorsed a similar amendment to the U.S. Constitution.

2. The union of a man and a woman in the long-standing institution of traditional marriage promotes the welfare of children and the stability of society. The sanctity of marriage is fundamental to the strength of Texas families, and the state should ensure that the institution of traditional marriage cannot be undermined by a future court decision or statute of the Texas Legislature.

3. The proposed amendment would not discriminate against any person. Approval of the amendment by the voters would not prevent same-sex couples from pursuing their lifestyles. Approval of the amendment would only ensure that the union of same-sex couples is not sanctioned by the state.

### **Arguments Against:**

1. Amending the Texas Constitution is unnecessary and inappropriate. A constitutional prohibition is unnecessary because Texas law already prohibits same-sex marriages and prohibits the recognition by the state or its political subdivisions of a same-sex marriage, a civil union, or a right or claim asserted as a result of a same-sex marriage or a civil union. A constitutional prohibition is inappropriate because it limits future state legislators' flexibility to promote the health and safety of families in whatever form those families may take. Evidence of society's changing notion of what constitutes a family is seen in the decision of the United States Supreme Court less than 40 years ago to invalidate laws banning interracial marriage and in the greater frequency in recent years of divorce, remarriage, and single parenthood.

2. The language in the proposed amendment prohibiting the creation or recognition of "any legal status identical or similar to marriage" is vague and goes too far. While the state's DOMA statute narrowly defines a "civil union," the proposed amendment contains broader language that has the potential for being interpreted to nullify common law marriages or legal agreements, including powers of attorney and living wills, between unmarried persons.

3. If the purpose of the proposed amendment is to defend the sanctity of marriage, that purpose would be better served by state laws addressing the high incidences of divorce, adultery, and family violence that occur within traditional marriage between a man and a woman and that are more damaging to the institution of marriage, the welfare of children, and the stability of society, than same-sex marriages.

**Text of H.J.R. No. 6:**

**HOUSE AUTHOR:** Warren Chisum et al.

**SENATE SPONSOR:** Todd Staples et al.

### **HOUSE JOINT RESOLUTION**

proposing a constitutional amendment providing that marriage in this state consists only of the union of one man and one woman.

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

SECTION 1. Article I, Texas Constitution, is amended by adding Section 32 to read as follows:

Sec. 32. (a) Marriage in this state shall consist only of the union of one man and one woman.

(b) This state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage.

SECTION 2. This state recognizes that through the designation of guardians, the appointment of agents, and the use of private contracts, persons may adequately and properly appoint guardians and arrange rights relating to hospital visitation, property, and the entitlement to proceeds of life insurance policies without the existence of any legal status identical or similar to marriage.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2005. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment providing that marriage in this state consists only of the union of one man and one woman and prohibiting this state or a political subdivision of this state from creating or recognizing any legal status identical or similar to marriage."

## **Amendment No. 3 (H.J.R. No. 80)**

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

The constitutional amendment clarifying that certain economic development programs do not constitute a debt.

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

The proposed amendment amends Section 52-a, Article III, Texas Constitution, to provide that a program created or a loan or grant made as provided by that section, other than a program, loan, or grant secured by a pledge of ad valorem taxes or financed by the issuance of bonds or other obligations payable from ad valorem taxes, does not constitute or create a debt for the purpose of any provision of the Texas Constitution.

### **Background**

Section 52-a, Article III, Texas Constitution, authorizes the legislature to provide for the use of public money for economic development purposes. This provision is an exception to the general rule provided by Section 52, Article III, Texas Constitution, which prohibits the legislature from authorizing a political subdivision of the state to lend credit or grant public money to an individual, association, or corporation.

As authorized by Section 52-a, Article III, Texas Constitution, the legislature enacted Chapter 380, Local Government Code, to allow the governing body of a municipality to establish and administer a program “to promote state or local economic development and to stimulate business and commercial activity in the municipality,” including a program for making loans and grants of public money.

Recently, a state district court held that an agreement under Chapter 380, Local Government Code, in which a municipality agreed to rebate certain taxes to a developer over a period exceeding one year, created an unconstitutional debt. This holding could be interpreted as prohibiting municipalities from granting or promising public funds for economic development under a long-term agreement. House Joint Resolution No. 80 proposes a constitutional amendment that addresses this decision by

clarifying that an economic development program created or a loan or grant made under Section 52-a, Article III, Texas Constitution, is not an unconstitutional debt if the program, grant, or loan is not secured by a pledge of ad valorem taxes or financed by the issuance of bonds or other obligations payable from ad valorem taxes.

#### **Arguments For:**

1. Expressly affirming the legality of long-term economic development programs will have a positive effect on the economy of this state. Agreements between municipalities and private persons under Chapter 380, Local Government Code, provide a variety of economic development programs that attract new business, resulting in increased employment and tax revenue for the municipality and the state. Any uncertainty regarding the legality of these agreements is a disincentive for a business to enter into such an agreement in this state because the business cannot predict whether the municipality will be able to perform the municipality's obligations under the agreement. This uncertainty may result in a business locating in a state in which such agreements are more clearly authorized by law.

2. Economic development agreements between municipalities and private persons providing for the rebate of certain taxes are legal under current law; the proposed amendment merely clarifies the original intent of the legislature and the voters of this state in adding Section 52-a, Article III, to the constitution.

#### **Arguments Against:**

1. Adopting this amendment undermines the constitutional protections for taxpayers regarding the creation of public debt. If the constitution is amended to provide that any long-term economic development agreement that is not secured by a pledge of ad valorem taxes or financed by the issuance of bonds does not create debt, future governing bodies may be bound by agreements that they consider bad public policy, such as agreements that encourage the creation of low-paying jobs or agreements that reward development that would have taken place without the incentives, that were entered into without the constitutional requirements regarding the issuance of debt.

2. It is unnecessary to take the extreme step of amending the state constitution to address concerns raised by a single lower-court case. The recent district court ruling that an agreement under Chapter 380, Local Government Code, created an “unconstitutional debt,” applies only to the narrow circumstances of that case. This one-page ruling does not explain why the agreement created an unconstitutional debt, so it is unclear whether this proposed amendment would solve the problems created by the specific agreement at issue in the case. Furthermore, the district court’s ruling is subject to appeal.

**Text of H.J.R. No. 80:**

**HOUSE AUTHOR:** Mike Krusee

**SENATE SPONSOR:** Steve Ogden

### **HOUSE JOINT RESOLUTION**

proposing a constitutional amendment clarifying that certain economic development programs do not constitute a debt.

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

SECTION 1. Section 52-a, Article III, Texas Constitution, is amended to read as follows:

Sec. 52-a. Notwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of loans and grants of public money, other than money otherwise dedicated by this constitution to use for a different purpose, for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state. Any bonds or other obligations of a county, municipality, or other political subdivision of the state that are issued for the purpose of making loans or grants in connection with a program authorized by the legislature under this section and that are payable from ad valorem taxes must be approved by a vote of the majority of the registered voters of the county, municipality, or political subdivision voting on the issue. A program created or a loan or grant made as provided by this section that is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the political subdivision does not constitute or create a debt for the purpose of any provision of this constitution. An enabling law enacted by the legislature in anticipation of the adoption of this amendment is not void because of its anticipatory character.



SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2005. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment clarifying that certain economic development programs do not constitute a debt.”



## **Amendment No. 4 (S.J.R. No. 17)**

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

The constitutional amendment authorizing the denial of bail to a criminal defendant who violates a condition of the defendant's release pending trial.

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

The proposed amendment would permit a district judge to deny bail pending trial under the conditions described by Article I, Section 11b, of the Texas Constitution to a person accused of a felony who is released on bail and whose bail is subsequently revoked or forfeited for a violation of a condition of release.

Before the judge may deny bail, the judge must determine at a hearing held on the issue of setting or reinstating bail that the person violated a condition of release related to the safety of a victim of the alleged offense or the safety of the community.

### **Background**

Under current Article I, Section 11a, of the Texas Constitution, a district judge may deny bail pending trial to a person accused of a felony, other than a capital felony, if the person has two or more prior felony convictions, the felony was committed while on bail for a prior felony, or the felony involved the use of a deadly weapon and the person has a prior felony conviction. A district judge may also deny bail pending trial to a person accused of a violent or sexual offense committed while under the supervision of a criminal justice agency of the state or a political subdivision of the state for a prior felony. The proposed amendment would add to this list of persons who may be denied bail.

Before the judge may deny bail, the judge must determine at a hearing held on the issue of setting or reinstating bail that the person violated a condition of release related to the safety of a victim of the alleged offense or the safety of the community.

### **Arguments For:**

1. The amendment is necessary to protect victims and citizens from dangerous offenders. Under current law, a person accused of a felony who is released on bail pending trial may violate the conditions of release and subsequently have bail reinstated. This amendment ensures that if the person violates a condition of release related to the safety of a victim or the community, the person may be denied bail and precluded from the opportunity to commit additional acts that threaten the safety of a victim or the community.

2. The proposed amendment protects the public while also protecting the due process rights of the accused. Before a district judge may deny bail, a hearing must be held at which the judge determines that the person violated a condition of release related to the safety of a victim of the alleged offense or the safety of the community.

### **Arguments Against:**

1. The proposed amendment is unnecessary. Many defendants in criminal cases are under some form of supervision at the time they are charged with the commission of a new offense. Under current law, a parole panel or court may impose conditions on a person who is released on parole, mandatory supervision, or community supervision, including the condition that the person not commit an act that threatens the safety of a victim of the alleged offense or the safety of the community. If the person commits an act that threatens the safety of a victim or the community while on parole, mandatory supervision, or community supervision, the parole panel or court may order the person to be confined in prison or jail awaiting a revocation hearing. For a defendant who is not under some form of supervision at the time the defendant is charged with the commission of a new offense and who is released on bail, after forfeiture or revocation of that bail, a judge can set or reinstate bail with new conditions that better protect the victim and the community.

2. Innocent persons may be detained unnecessarily and unfairly. In the American system of justice, a person is innocent until proven guilty and may be convicted only on proof beyond a reasonable doubt. The proposed

amendment authorizes the denial of bail only on a determination by a judge that the person committed an act that threatened the safety of a victim of the alleged offense or the safety of the community. This standard does not provide an accused person with protection against a judge who may be biased and does not require proof of guilt beyond a reasonable doubt before the person is held in custody.

**Text of S.J.R. No. 17:**

**SENATE AUTHOR:** Todd Staples

**HOUSE SPONSOR:** Dan Gattis

### **SENATE JOINT RESOLUTION**

proposing a constitutional amendment authorizing the denial of bail to a criminal defendant who violates a condition of the defendant's release pending trial.

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

SECTION 1. Article I, Texas Constitution, is amended by adding Section 11b to read as follows:

Sec. 11b. VIOLATION OF CONDITION OF RELEASE PENDING TRIAL; DENIAL OF BAIL. Any person accused of a felony in this state who is released on bail pending trial and whose bail is subsequently revoked or forfeited for a violation of a condition of release may be denied bail pending trial on a determination by a district judge in this state, at a subsequent hearing to set or reinstate bail, that the person violated a condition of release related to the safety of a victim of the alleged offense or to the safety of the community.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 8, 2005. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment authorizing the denial of bail to a criminal defendant who violates a condition of the defendant's release pending trial."

# **Amendment No. 5 (S.J.R. No. 21)**

## **Wording of Ballot Proposition:**

The constitutional amendment allowing the legislature to define rates of interest for commercial loans.

## **Analysis of Proposed Amendment:**

The proposed constitutional amendment amends Section 11, Article XVI, Texas Constitution, to allow the legislature to exempt commercial loans from the maximum interest rate limits established under that section. The amendment defines a commercial loan as a loan made primarily for business, commercial, investment, agricultural, or similar purposes and not primarily for personal, family, or household purposes.

## **Background**

For more than a century the Texas Constitution has included a provision defining and prohibiting usury, the practice of charging an unfair interest rate for a loan of money. In its current form that provision allows the legislature to fix maximum rates of interest and provides that in the absence of legislation fixing maximum rates of interest the limit applicable to a contract for a loan is 10 percent a year.

In the Finance Code the legislature has established a complex system of determining the maximum interest rate that applies to a loan, with different limits applying to different types of loans. Commercial loans are currently permitted to bear interest at a rate that does not exceed a ceiling computed based on the interest rate being charged on certain United States government securities, with the minimum ceiling being 18 percent and the maximum ceiling being 24 percent, for a loan of less than \$250,000, or 28 percent, for a loan of \$250,000 or more. Steep penalties apply to violations of the usury limits.

Most states do not limit the amount of interest that may be charged on commercial loans between knowledgeable parties. The proposed amendment would allow the legislature to similarly exempt commercial loans in this state from state usury limits. The legislation to accomplish

this is contained in H.B. No. 955, Acts of the 79th Legislature, Regular Session, 2005. That legislation defines an exempt commercial loan as a commercial loan for \$7 million or more, if the loan is primarily secured by real property, or \$500,000 or more, if the loan is not primarily secured by real property. An exempt commercial loan would be permitted to bear any rate of interest to which the parties agree, without limit.

### **Arguments For:**

Usury laws are meant to protect naïve borrowers and borrowers in weaker bargaining positions from coercive and unscrupulous practices by lenders who are more sophisticated and have more bargaining power. In commercial transactions, however, both parties have the sophistication and bargaining power necessary to protect against those practices. Application of usury laws to commercial transactions limits the parties' ability to structure the transactions in flexible and imaginative ways that could benefit both parties. Furthermore, Texas usury laws place lenders in this state at a competitive disadvantage against out-of-state lenders. Most other states do not have the stringent restrictions on commercial lending that exist in Texas. Federal law that allows certain banks to apply the interest rate laws of the state where the banks are domiciled and contractual provisions that are used by other lenders to apply another state's law to the transaction result in many commercial loans being made to borrowers in this state by lenders from outside the state. Removal of the usury restrictions would allow Texas lenders to compete more equally with out-of-state lenders. (See footnote.)

### **Arguments Against:**

Not all commercial lenders and borrowers have equal sophistication and bargaining power. Although the legislature has adopted enabling legislation setting the minimum size of a loan to which the exemption applies, the minimum may not be high enough to ensure that only borrowers with adequate sophistication and bargaining power are included. Moreover, the legislature in the future could lower or altogether remove the minimum loan size. (See footnote.)



---

Footnote. The constitutional amendment operates in conjunction with its enabling statute, which was included in H.B. No. 955, Acts of the 79th Legislature, Regular Session, 2005. Under the enabling statute, only commercial loans of \$7 million or more that are primarily secured by real property and commercial loans of \$500,000 or more that are not primarily secured by real property, are exempted from maximum interest rate limits. Commercial loans in amounts smaller than those amounts would, under the enabling statute, remain subject to other currently existing statutes governing maximum permissible interest rates.

**Text of S.J.R. No. 21:**

**SENATE AUTHOR:** Kip Averitt

**HOUSE SPONSOR:** Dan Flynn

### **SENATE JOINT RESOLUTION**

proposing a constitutional amendment authorizing the legislature to define rates of interest for commercial loans.

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

SECTION 1. Section 11, Article XVI, Texas Constitution, is amended to read as follows:

Sec. 11. (a) The Legislature shall have authority to 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.

(b) Notwithstanding Subsection (a) of this section, the Legislature, with respect to commercial loans, may create exemptions from the maximum rates of interest. For purposes of this subsection, "commercial loan" means a loan made primarily for business, commercial, investment, agricultural, or similar purposes and not primarily for personal, family, or household purposes.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2005. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment allowing the legislature to define rates of interest for commercial loans."

# **Amendment No. 6 (H.J.R. No. 87)**

## **Wording of Ballot Proposition:**

The constitutional amendment to include one additional public member and a constitutional county court judge in the membership of the State Commission on Judicial Conduct.

## **Analysis of Proposed Amendment:**

Sections 1-a(2) and (5), Article V, Texas Constitution, currently specify the composition and requirements for proceedings of the State Commission on Judicial Conduct. The proposed constitutional amendment amends Section 1-a(2) to add one member to the commission who is a constitutional county court judge and one additional public member to the commission who is a citizen of at least 30 years of age, is not licensed to practice law, and does not hold a salaried public office or employment, for a total of 13 members. The proposed constitutional amendment also amends Section 1-a(2) to add the justice of the court of appeals, the district judge, and the members of the State Bar of Texas serving on the commission to the list of members who may not reside or hold a judgeship in the same court of appeals district as another member of the commission. The proposed constitutional amendment makes conforming changes to Section 1-a(5) to increase the number of members required for a quorum from six to seven and to require seven affirmative votes on recommendations for retirement, censure, suspension, or removal of certain judges.

## **Background**

The State Commission on Judicial Conduct is an independent agency created in 1965 by an amendment to the Texas Constitution. The commission is governed by Section 1-a, Article V, Texas Constitution; Chapter 33, Government Code; and the Procedural Rules for the Removal or Retirement of Judges. The commission is responsible for investigating allegations of judicial misconduct and judicial disability and for disciplining judges.

The commission is currently composed of 11 members, each of whom serves a six-year term. The professional and geographic qualifications for commission members are outlined in Section 1-a(2), Article V, Texas Constitution. The variety in membership is intended to provide a broad array of perspectives to the commission's work. Currently, four members of the public who sit on the commission are at least 30 years of age, are not licensed to practice law, and do not hold a salaried public office or employment. Although the commission has jurisdiction over most judges in Texas, including constitutional county court judges who perform judicial duties, constitutional county court judges are not currently represented in the membership of the commission.

House Joint Resolution No. 87, if adopted, will amend Section 1-a(2), Article V, Texas Constitution, to increase the membership of the commission by two members and to change the list of members who may not reside or hold a judgeship in the same court of appeals district as another member of the commission. House Joint Resolution No. 87, if adopted, will also amend Section 1-a(5), Article V, Texas Constitution, to increase the number of members required for a quorum from six to seven and to require an affirmative vote by at least seven members on recommendations for retirement, censure, suspension, or removal of certain judges.

### **Arguments For:**

1. Constitutional county court judges should be represented on the body charged with governing their conduct. A constitutional county court judge will have the greatest understanding of the duties and responsibilities of the position, as well as external pressures that may be present, and is the most qualified person to evaluate the appropriateness of the conduct of other constitutional county court judges.

2. Increasing the number of public members on the commission allows for greater public engagement with and oversight of the judiciary.

3. Increasing the membership of the commission brings more human resources to operate in the commission by allowing for wider distribution of the commission's workload and a potential decrease in the amount

of time necessary for the commission to resolve a complaint or issue sanctions. Additional members also provide for greater professional and geographic diversity on the commission, increasing the variety of perspectives on each issue and potentially increasing the fairness and integrity of the investigatory and disciplinary processes.

### **Arguments Against:**

1. The addition of a constitutional county court judge to the membership of the commission is unnecessary because the interests and perspectives of constitutional county court judges are fairly represented by the county court at law judge and other lower court judges already serving on the commission.

2. Four public members are sufficient to protect the interests of the public. Matters of judicial conduct may arise in highly technical areas, and trained members of the judiciary and legal profession are best suited to evaluate the conduct of judicial officials. Diluting the membership of the commission with additional public members lessens the ability of members who are legally trained to deal effectively with complaints, investigations, and other disciplinary matters.

3. The addition of two members may make the commission unwieldy and lessen the likelihood of reaching a decision on a complaint or disciplinary action in a timely manner. A larger deliberative body may require greater financial resources to operate while lessening the efficiency and effectiveness of the institution.

**Text of H.J.R. No. 87:**      **HOUSE AUTHOR:** David Farabee  
**SENATE SPONSOR:** Jon Lindsay

### HOUSE JOINT RESOLUTION

proposing a constitutional amendment relating to the membership of the State Commission on Judicial Conduct.

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

SECTION 1. Sections 1-a(2) and (5), Article V, Texas Constitution, are amended to read as follows:

(2) The State Commission on Judicial Conduct consists of thirteen (13) [~~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; (iv) five (5) [~~(iii) 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; and (viii) one (1) Judge of a Constitutional County Court; 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 that person's [~~his~~] respective class of membership, and provided that a Commissioner of class (i), (ii), (iii), (vii), or (viii) may not [~~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 court of appeals district [~~Supreme Judicial District~~] as another member of the Commission. Commissioners of classes (i), (ii), [~~and~~] (vii), and (viii) 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 (iv) [~~(iii)~~] 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.

(5) The Commission may hold its meetings, hearings and other proceedings at such times and places as it shall determine but shall meet at Austin at least once each year. It shall annually select one of its members as Chairman. A quorum shall consist of seven (7) [~~six (6)~~] members. Proceedings shall be by majority vote of those present, except that recommendations for retirement, censure, suspension, or removal of any person holding an office named in Paragraph A of Subsection (6) of this Section shall be by affirmative vote of at least seven (7) [~~six (6)~~] members.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2005. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to include one additional public member and a constitutional county court judge in the membership of the State Commission on Judicial Conduct."





# **Amendment No. 7 (S.J.R. No. 7)**

## **Wording of Ballot Proposition:**

The constitutional amendment authorizing line-of-credit advances under a reverse mortgage.

## **Analysis of Proposed Amendment:**

The proposed constitutional amendment amends Section 50, Article XVI, Texas Constitution, by providing that a reverse mortgage may be in the form of a line of credit, allowing repayment of a line-of-credit reverse mortgage and subsequent advance of amounts repaid, providing that advances on a reverse mortgage may not be obtained by credit card, debit card, preprinted solicitation check, or similar device, prohibiting transaction fees in connection with a reverse mortgage debit or advance made after the time the extension of credit is established, and prohibiting unilateral amendment of a reverse mortgage extension of credit by the creditor.

## **Background**

Before 1997 the state constitution strictly limited the purposes for which a person's homestead could be used to secure a debt. In that year the voters approved a constitutional amendment that allowed new types of loans secured by a homestead and allowed the proceeds of those loans to be used for any purpose.

One type of loan authorized by that amendment was a reverse mortgage. A reverse mortgage is a credit agreement under which a creditor provides money to a borrower in exchange for a lien on the borrower's home and the borrower is generally not required to repay the money or interest on the money until the borrower dies or moves out of the home. Reverse mortgages are restricted to borrowers 62 years of age or older and are usually used by those borrowers to convert the equity they have accumulated in their homes into money that may be used for current expenses.

The constitution provides numerous restrictions on reverse mortgages, including restrictions on the manner in which a creditor may make advances on the loan. As originally adopted in 1997, advances on a reverse mortgage were required to be made in a single lump-sum payment or in multiple payments of equal amounts at regular intervals. In 1999, the voters approved a constitutional amendment allowing a borrower to request that one or more of the regular advances be reduced in amount.

The proposed constitutional amendment would allow a borrower to receive advances on a reverse mortgage only at the times and in the amounts requested by the borrower. This would allow the borrower to receive money only when the need arises, rather than in a lump sum or according to a preset schedule, and consequently to avoid payment of interest on money received before the money was needed. The amendment also allows a borrower to repay amounts advanced and later have the repaid amounts advanced to meet needs that arise in the future.

All of the consumer protections originally applicable to a reverse mortgage apply to a line-of-credit reverse mortgage and the proposed amendment establishes additional protections. To discourage the use of line-of-credit advances for frivolous purposes or in response to creditor or seller pressure or enticement, the borrower may not obtain an advance by use of a credit card, debit card, preprinted solicitation check, or similar device. To protect the borrower from excessive fees and unexpected changes to the terms of the mortgage, the creditor is prohibited from charging a transaction fee in connection with an advance made after the time the extension of credit is established or unilaterally amending the reverse mortgage extension of credit.

### **Arguments For:**

1. Reverse mortgages are a popular means by which senior citizens tap the equity in their homes to pay the day-to-day expenses of retired life. Texas is the only state that does not allow some form of line-of-credit reverse mortgage. The proposed constitutional amendment would give a senior borrower the flexibility to receive money only when the money is

needed and to repay the money when the borrower is able, thus avoiding payment of interest on advances made in a lump sum or according to a preset schedule that may not conform to the borrower's needs.

2. The constitution already provides many provisions to protect reverse mortgage borrowers from rash decisions and unscrupulous creditors. The proposed amendment provides additional protections to limit impulsive use of advances, to limit the expenses of borrowing, and to prevent creditors from changing the terms of the reverse mortgage extension of credit. These combined protections provide more than adequate protection for senior borrowers.

### **Arguments Against:**

1. The ease of obtaining line-of-credit advances may result in a senior borrower accumulating a greater amount of debt than the borrower would under a lump-sum distribution or distributions according to a preset schedule. Because a borrower is not required to pay back any of the debt until the borrower dies or moves, the interest on the advances is also added to the debt against the homestead. These factors could combine to result in the rapid exhaustion of the equity in the borrower's home, leaving nothing for the borrower's future needs or the borrower's heirs.

2. Regardless of the existing and newly proposed protections, senior borrowers may be more susceptible to pressure or unscrupulous practices by creditors or sellers, losing the equity in their homes to frivolous impulses or deceptive practices.

**Text of S.J.R. No. 7:**

**SENATE AUTHOR:** John Carona

**HOUSE SPONSOR:** Scott Hochberg

### **SENATE JOINT RESOLUTION**

proposing a constitutional amendment authorizing line-of-credit advances under a reverse mortgage.

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

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

(p) The advances made on a reverse mortgage loan under which more than one advance is made must be made according to the terms established by the loan documents by one or more of the following methods:

(1) an initial advance at any time and future advances at regular intervals;

(2) an initial advance at any time and future advances at regular intervals in which the amounts advanced may be reduced, for one or more advances, at the request of the borrower; [~~or~~]

(3) an initial advance at any time and future advances at times and in amounts requested by the borrower until the credit limit established by the loan documents is reached;

(4) an initial advance at any time, future advances at times and in amounts requested by the borrower until the credit limit established by the loan documents is reached, and subsequent advances at times and in amounts requested by the borrower according to the terms established by the loan documents to the extent that the outstanding balance is repaid;  
or

(5) at any time by the lender, on behalf of the borrower, if the borrower fails to timely pay any of the following that the borrower is obligated to pay under the loan documents to the extent necessary to protect the lender's interest in or the value of the homestead property:

(A) taxes;

(B) insurance;

(C) costs of repairs or maintenance performed by a person or company that is not an employee of the lender or a person or company that directly or indirectly controls, is controlled by, or is under common control with the lender;

(D) assessments levied against the homestead property;  
and

(E) any lien that has, or may obtain, priority over the lender's lien as it is established in the loan documents.

SECTION 2. Section 50, Article XVI, Texas Constitution, is amended by adding Subsection (v) to read as follows:

(v) A reverse mortgage must provide that:

(1) the owner does not use a credit card, debit card, preprinted solicitation check, or similar device to obtain an advance;

(2) after the time the extension of credit is established, no transaction fee is charged or collected solely in connection with any debit or advance; and

(3) the lender or holder may not unilaterally amend the extension of credit.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2005. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing line-of-credit advances under a reverse mortgage."



# **Amendment No. 8 (S.J.R. No. 40)**

## **Wording of Ballot Proposition:**

The constitutional amendment providing for the clearing of land titles by relinquishing and releasing any state claim to sovereign ownership or title to interest in certain land in Upshur County and Smith County.

## **Analysis of Proposed Amendment:**

The proposed amendment would amend Article VII, Texas Constitution, by adding Section 2C to relinquish and release any claim of the state of sovereign ownership or title to an interest in approximately 4,600 acres of specifically described land in Upshur County, including mineral rights and surface rights, and nearly 1,000 acres of specifically described land in Smith County, including mineral rights and surface rights, except in certain narrowly described circumstances in which an interest owned by a governmental entity related to a public use is applicable.

## **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. A person who has located land the person believes to be vacant may file an application with the General Land Office to have that office determine whether a vacancy exists.

The tracts covered by the proposed amendment were the subject of vacancy applications in recent years. As a result, the status of approximately 4,600 acres of land held by about 1,600 individuals in Upshur County and nearly 1,000 acres of land held by about 220

individuals in Smith County was subject to dispute. The General Land Office ruled no vacancy existed regarding both the Upshur County tract and the Smith County tract. The General Land Office's ruling regarding the Upshur County tract was upheld by a district court, and the district court's decision was not appealed. Title companies insuring title to some properties located within that tract, however, continue to place exceptions in title opinions, which prevent those landowners from obtaining clear title to their property. The General Land Office's ruling regarding the Smith County tract is on appeal in the district court. Accordingly, clear title to the properties located in the Smith County tract remains unresolved. Furthermore, as in the case of the Upshur County tract, title companies insuring the properties located in the Smith County tract may continue to place exceptions in title opinions, which would prevent those landowners from obtaining clear title to their property.

In 1981, 1991, 1993, and 2001, 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. Based on the rulings of the General Land Office relating to both the Upshur County and the Smith County tracts and the district court ruling on the Upshur County tract, landowner titles are not considered defective in this situation. The proposed amendment, however, would similarly clear title to tracts of land in Upshur County and Smith County for which the status to title is unresolved by relinquishing and releasing any claim of the state of sovereign ownership or title to an interest in those tracts.

#### **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, and paid taxes on the land and in which the General Land Office, and in most cases, a district court, has already determined that the state has no interest.



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.

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. The issue relating to defective title has not been finally resolved regarding the Smith County tract. If the land at issue is vacant land, the land is dedicated to the permanent school fund. 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. Furthermore, simply releasing the state's interest without obtaining fair market value under the proposed amendment would provide a special benefit to a small group of landowners. There is no discernable reason to single these landowners out for special treatment.

3. The issue relating to defective title has been resolved regarding the Upshur County tract. The fact that title companies are continuing to place exceptions in title opinions is a private matter between those landowners and their title companies. Resolving this issue through the proposed amendment would provide a special benefit to a small group of landowners. There is no discernable reason to single these landowners out for special treatment.

**Text of S.J.R. No. 40:**

**SENATE AUTHOR:** Kevin Eltife

**HOUSE SPONSOR:** Bryan Hughes

### **SENATE JOINT RESOLUTION**

proposing a constitutional amendment clearing land titles by relinquishing and releasing any state claim to sovereign ownership or title to interest in certain land.

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

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

Sec. 2C. (a) Except as provided by Subsection (b) of this section, the State of Texas relinquishes and releases any claim of sovereign ownership or title to an interest in and to the tracts of land, including mineral rights, described as follows:

Tract 1:

The first tract of land is situated in Upshur County, Texas, about 14 miles South 30 degrees east from Gilmer, the county seat, and is bounded as follows: Bound on the North by the J. Manning Survey, A-314 the S.W. Beasley Survey A-66 and the David Meredith Survey A-315 and bound on the East by the M. Mann Survey, A-302 and by the M. Chandler Survey, A-84 and bound on the South by the G. W. Hooper Survey, A-657 and by the D. Ferguson Survey, A-158 and bound on the West by the J. R. Wadkins Survey, A-562 and the H. Alsop Survey, A-20, and by the W. Bratton Survey, A-57 and the G. H. Burroughs Survey, A-30 and the M. Tidwell Survey, A-498 of Upshur County, Texas.

Tract 2:

The second tract of land is situated in Smith County, Texas, north of Tyler and is bounded as follows: on the north and west by the S. Leeper A-559, the Frost Thorn Four League Grant A-3, A-9, A-7, A-19, and the H. Jacobs A-504 and on the south and east by the following surveys: John Carver A-247, A. Loverly A-609, J. Gimble A-408, R. Conner A-239, N.J. Blythe A-88, N.J. Blythe A-89, J. Choate A-195, Daniel Minor A-644,

William Keys A-527, James H. Thomas A-971, Seaborn Smith A-899, and Samuel Leeper A-559.

(b) This section does not apply to:

(1) any public right-of-way, including a public road right-of-way, or related interest owned by a governmental entity;

(2) any navigable waterway or related interest owned by a governmental entity; or

(3) any land owned by a governmental entity and reserved for public use, including a park, recreation area, wildlife area, scientific area, or historic site.

(c) This section is self-executing.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2005. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment providing for the clearing of land titles by relinquishing and releasing any state claim to sovereign ownership or title to interest in certain land in Upshur County and in Smith County.”



# **Amendment No. 9 (H.J.R. No. 79)**

## **Wording of Ballot Proposition:**

The constitutional amendment authorizing the legislature to provide for a six-year term for a board member of a regional mobility authority.

## **Analysis of Proposed Amendment:**

The proposed amendment would amend Section 30, Article XVI, Texas Constitution, to allow board members of a regional mobility authority to serve six-year staggered terms.

### **Background**

Senate Bill No. 342, enacted by the 77th Legislature, Regular Session, 2001, authorized the creation of regional mobility authorities and provided that an appointed board of directors would be an authority's governing body. House Bill No. 3588, enacted by the 78th Legislature, Regular Session, 2003, provided that the members of a regional mobility authority board of directors serve six-year staggered terms.

Section 30, Article XVI, Texas Constitution, provides that, unless the constitution specifies otherwise, the term of a public office may not exceed two years. Section 30a, Article XVI, Texas Constitution, authorizes the legislature to establish six-year staggered terms for state boards, but does not authorize six-year terms for local boards. Because the jurisdiction of a regional mobility authority extends only as far as the authority's boundaries, which would include only one or more counties, and because the powers of a regional mobility authority are not statewide, a regional mobility authority's board likely needs explicit constitutional authority for six-year staggered terms.

### **Arguments For:**

1. Six-year staggered terms will provide for consistency and stability in regional mobility authority leadership and make transportation projects of an authority more attractive to investment from capital markets.

2. Regional mobility authority transportation projects require years of planning and construction, and longer terms for regional mobility authority board members will ensure more experienced boards and greater continuity in the planning and construction of authority projects.

3. Authorizing six-year terms for regional mobility authority boards will maintain the institutional knowledge necessary to carry out the functions of an authority.

### **Arguments Against:**

1. A six-year term of office may decrease the accountability of the persons appointed to the board of directors of a regional mobility authority. A two-year term of office requires more frequent assessments of the board members' job performances.

2. Six-year terms of office may engender conflicts of interest by regional mobility authority board members and interfere with the ability of those board members to serve the public interest.

3. Six-year terms for regional mobility authority board members are not necessary to carry out the functions of the authority. The staff or employees of an authority will carry out those functions regardless of the length of directors' terms.

**Text of H.J.R. No. 79:**

**HOUSE AUTHOR:** Mike Krusee

**SENATE SPONSOR:** Todd Staples

### **HOUSE JOINT RESOLUTION**

proposing a constitutional amendment authorizing the legislature to provide for a six-year term for a board member of a regional mobility authority.

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

SECTION 1. Section 30, Article XVI, Texas Constitution, is amended by adding Subsection (e) to read as follows:

(e) The Legislature by general law may provide that members of the board of a regional mobility authority serve terms not to exceed six years, with no more than one-third of the members of the board to be appointed every two years.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2005. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing the legislature to provide for a six-year term for a board member of a regional mobility authority.”

