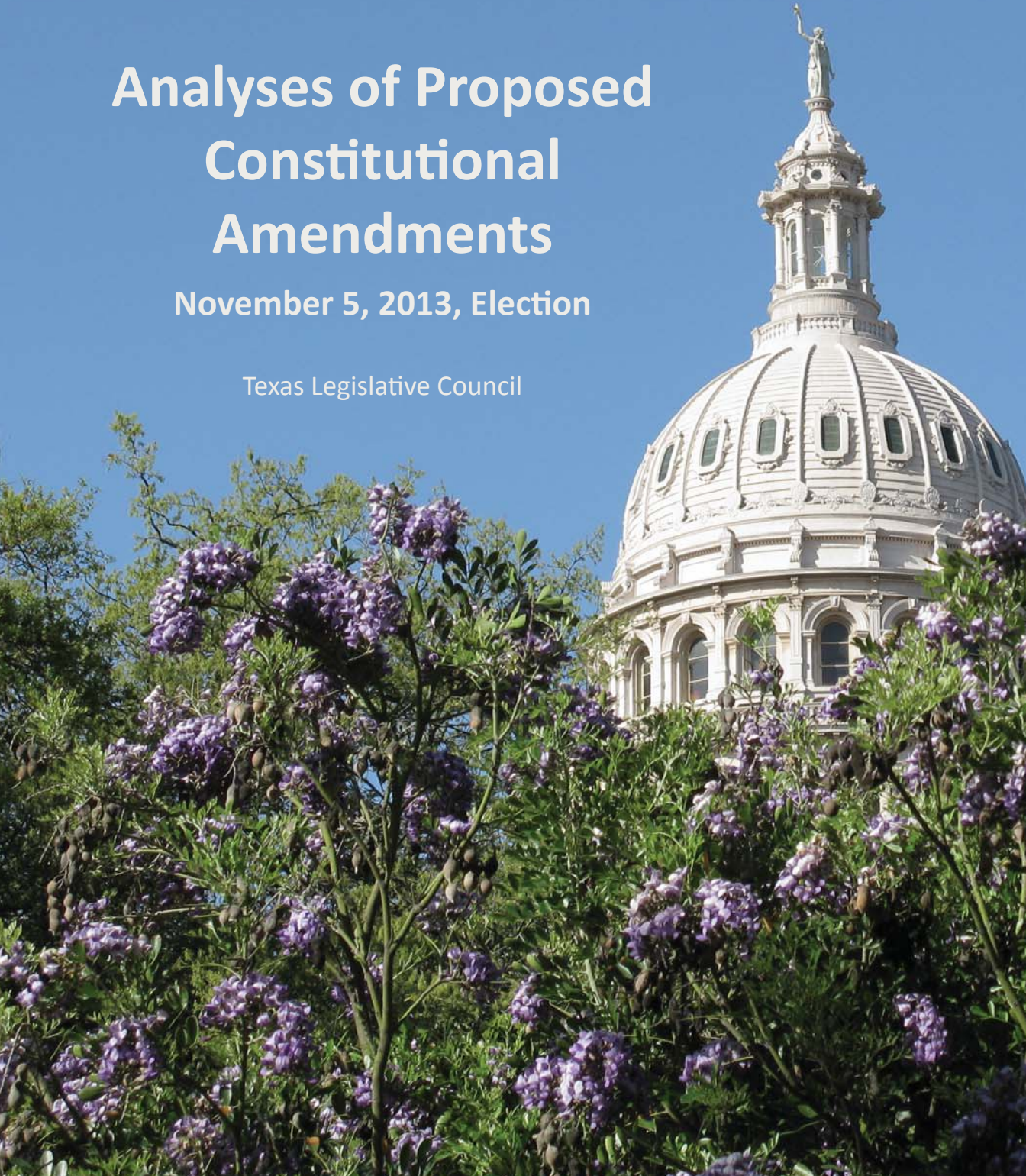


Analyses of Proposed Constitutional Amendments

November 5, 2013, Election

Texas Legislative Council



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November 5, 2013, Election

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of the
Texas Legislative Council

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Introduction

General Information

In the 2013 Regular Session, the 83rd Texas Legislature passed 10 joint resolutions proposing amendments to the state constitution, and these proposed amendments will be offered for approval by the voters of Texas on the November 5, 2013, 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.

From the adoption of the current Texas Constitution in 1876 through November 2011, the legislature has proposed 656 amendments to the constitution, of which 653 have gone before Texas voters. Of the amendments on the ballot, 474 have been approved by the electorate and 179 have been defeated. The other three amendments were never placed on the ballot, for reasons that are historically obscure. See the online publication *Amendments to the Texas Constitution Since 1876* for more information.

The *Analyses of Proposed Constitutional Amendments* contains, for each proposed amendment that will appear on the November 5, 2013, ballot, the ballot language, an analysis, and the text of the joint resolution proposing the amendment. The analysis includes background information and a summary of comments made during the legislative process about the proposed constitutional amendment by supporters and by opponents.

S.J.R. 1, approved by the 83rd Legislature at the 3rd Called Session, 2013, proposes an additional constitutional amendment that will appear on the November 4, 2014, ballot for voter approval. The ballot proposition for the 2014 proposed amendment, which will be analyzed

in a subsequent publication, will read as follows: "The constitutional amendment providing for the use and dedication of certain money transferred to the state highway fund to assist in the completion of transportation construction, maintenance, and rehabilitation projects, not to include toll roads."

Proposed Amendments

Amendment No. 1 (H.J.R. 62)

Wording of Ballot Proposition

The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a member of the armed services of the United States who is killed in action.

Analysis of Proposed Amendment

Section 1-b, Article VIII, Texas Constitution, provides various exemptions from property (or "ad valorem") taxation for residence homesteads and limitations on certain property taxes imposed on those homesteads. The constitutional amendment proposed by H.J.R. 62 authorizes the legislature to grant the surviving spouse of a member of the armed services of the United States who is killed in action a property tax exemption for all or part of the market value of the surviving spouse's residence homestead if the surviving spouse has not remarried since the service member's death. The amendment also authorizes the legislature to provide that, if a surviving spouse who qualifies for and receives such an exemption subsequently qualifies a different property as a residence homestead, the surviving spouse is entitled to a property tax exemption on the new homestead in an amount equal to the amount of the exemption received for the first homestead in the last year in which the surviving spouse received the exemption for that homestead if the surviving spouse has not remarried since the service member's death. The proposed amendment applies only to a tax year beginning on or after January 1, 2014.

Background

Section 1, Article VIII, Texas Constitution, provides that all real and tangible personal property shall be taxed in proportion to its value unless the property is exempt as required or permitted by the constitution. Section 1-b, Article VIII, Texas Constitution, provides various exemptions from property taxes for residence homesteads and limitations on certain property taxes imposed on those homesteads. Although Section 1-b

provides exemptions from property taxes on the residence homesteads of certain disabled veterans and the surviving spouses of those veterans, that section does not currently include an exemption from or other limitation on property taxes applicable to the residence homestead of the surviving spouse of a member of the armed services of the United States who is killed in action.

The proposed amendment authorizes the legislature to provide that the surviving spouse of a member of the armed services of the United States who is killed in action is entitled to an exemption from property taxation of all or part of the market value of the surviving spouse's residence homestead if the surviving spouse has not remarried since the death of the member of the armed services. In addition, the amendment authorizes the legislature to provide that the surviving spouse is entitled to an exemption from property taxation of a subsequently qualified residence homestead in an amount equal to the dollar amount of the exemption from property taxation of the first homestead for which the surviving spouse received an exemption in the last year in which the surviving spouse received the exemption for that homestead if the surviving spouse has not remarried since the death of the member of the armed services.

S.B. 163, Acts of the 83rd Legislature, Regular Session, 2013, is the enabling legislation for the proposed amendment. The bill adds Section 11.132 to the Tax Code. That section entitles the surviving spouse of a member of the armed services of the United States who is killed in action to an exemption from property taxation of the total appraised value of the surviving spouse's residence homestead if he or she has not remarried since the death of the member of the armed services. The section also entitles a surviving spouse who subsequently qualifies a different property as the person's residence homestead to an exemption from property taxation of the subsequently qualified homestead in an amount equal to the dollar amount of the exemption from property taxation of the first homestead for which the person received the exemption in the last year in which the person received the exemption for that homestead if he or she has not remarried. The surviving spouse is entitled to receive from the chief appraiser of the appraisal district in which the first property

for which the surviving spouse claimed the exemption was located a certificate providing the information necessary to determine the amount of the exemption to which he or she is entitled on the subsequently qualified homestead. The bill makes various conforming changes to the Tax Code relating to the administration of the exemption. The bill applies only to a tax year beginning on or after January 1, 2014, and takes effect only if the proposed amendment is approved by the voters.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. The surviving spouses of service members killed in action are as deserving of a residence homestead property tax exemption as the surviving spouses of totally disabled service members, who were extended such an exemption just two years ago. Existing benefits for military widows and widowers can be inadequate, particularly for a newly single parent having to adjust to the loss of a husband or wife and to an uncertain future.

Although the cost of the exemption would be borne in part by local governments with taxing jurisdiction, the local governmental entities contacted by the proponents of the legislation expressed no opposition to the exemption, which would have only a small effect on individual local governments given the relatively small number of surviving spouses who would be eligible and the amount of the average Texas homeowner's annual property tax bill. While the effect on local governments would be small, the tax exemption nevertheless would provide real and meaningful relief to a surviving spouse at a critical time of need as well as recognize the sacrifices borne by both the service member and the service member's family.

Comments by Opponents. No comments opposing the proposed amendment were made during the house and senate committee hearings or during debate on the amendment in the house and senate chambers.

However, questions were raised about efforts to determine the fiscal effect on local governments and whether the exemption would encourage surviving spouses who are residents of other states to move to Texas, further hindering the ability of local governments to generate sufficient revenue without raising property taxes. In addition, a concern was expressed that the proposed amendment excludes other deserving populations and adds to the complexity of a system of tax exemptions and other veteran benefits that are awarded based on the categorization of veterans into various classes. A review of other sources reveals that there is concern that if the legislature continues to expand the categories of property owners who receive property tax exemptions local governments may have to raise property taxes on other property owners in order to generate the same amount of revenue.

Text of H.J.R. 62

HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a member of the armed services of the United States who is killed in action.

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

SECTION 1. Section 1-b, Article VIII, Texas Constitution, is amended by adding Subsections (l) and (m) to read as follows:

(l) The legislature by general law may provide that the surviving spouse of a member of the armed services of the United States who is killed in action is entitled to an exemption from ad valorem taxation of all or part of the market value of the surviving spouse's residence homestead if the surviving spouse has not remarried since the death of the member of the armed services.

(m) The legislature by general law may provide that a surviving spouse who qualifies for and receives an exemption in accordance with Subsection (l) of this section and who subsequently qualifies a different property as the surviving spouse's residence homestead is entitled to an exemption from ad valorem taxation of the subsequently qualified homestead in an amount equal to the dollar amount of the exemption from ad valorem taxation of the first homestead for which the exemption was received in accordance with Subsection (l) of this section in the last year in which the surviving spouse received the exemption in accordance with that subsection for that homestead if the surviving spouse has not remarried since the death of the member of the armed services.

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 83rd Legislature, Regular Session, 2013, authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence

homestead of the surviving spouse of a member of the armed services of the United States who is killed in action.

(b) Sections 1-b(l) and (m), Article VIII, of this constitution take effect January 1, 2014, and apply only to a tax year beginning on or after that date.

(c) This temporary provision expires January 1, 2015.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2013. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a member of the armed services of the United States who is killed in action."

House Author: Chris Turner et al.

Senate Sponsor: Leticia Van de Putte et al.

Amendment No. 2 (H.J.R. 79)

Wording of Ballot Proposition

The constitutional amendment eliminating an obsolete requirement for a State Medical Education Board and a State Medical Education Fund, neither of which is operational.

Analysis of Proposed Amendment

H.J.R. 79 carries out a decades-old recommendation by the Sunset Advisory Commission and the Legislative Budget Board to repeal a now-obsolete constitutional provision added in 1952 that required the legislature to create a State Medical Education Board, establish a fund, and make appropriations to that fund to be used by that board to provide grants, loans, or scholarships directly to medical students who agree to practice medicine in rural areas of this state. The board was not created until 1973, and once created, was largely ineffective in serving its purpose of attracting physicians to serve in medically underserved communities. Due to its ineffectiveness, the board has not received state appropriations or issued new loans for more than 20 years, and the legislature has since enacted more effective methods of attracting physicians to serve in rural Texas. In an ongoing effort to remove unnecessary provisions from the Texas Constitution, H.J.R. 79 removes the requirement for the defunct medical education board and its related fund.

Background

In 1952, voters adopted H.J.R. 38 to amend the Texas Constitution to add Section 50a, Article III, to require the legislature to create the State Medical Education Board and a State Medical Education Fund for the purpose of providing grants, loans, or scholarships directly to medical students who agree to practice medicine in rural areas of this state. For reasons that are historically obscure, the legislature did not establish the board until 1973 with the passage of Chapter 348 (H.B. 683), Acts of the 63rd Legislature, Regular Session (Article 4498c, Vernon's Texas Civil Statutes), which created the board as the State Rural Medical Education Board.

By 1987, the Legislative Budget Board reported that only 11 percent of the medical education board's loan recipients were practicing in rural Texas counties and only 14 percent of those recipients were serving in medically underserved areas. In 1989, Chapter 1084 (S.B. 457), Acts of the 71st Legislature, Regular Session, removed "rural" from the board's name and, in response to a Sunset Advisory Commission recommendation, administratively attached the board to the Texas Higher Education Coordinating Board (THECB). According to the THECB, the medical education board's purpose at that time was servicing existing loans with the cooperation of the Office of the Attorney General (OAG), and when it was determined that all outstanding loans serviced by the medical education board were in default, those cases were turned over to the OAG for collection.

The medical education board has not received state appropriations or issued new loans since its administrative attachment to the THECB and currently has no appointees. In recent years, the legislature has created loan repayment programs administered by the THECB as its primary method of attracting physicians to serve in rural areas. Unlike the program for direct loans to medical students previously administered by the medical education board, the THECB's loan repayment programs target physicians who actually provide services in the desired areas. Loan repayment programs also eliminate the risk of loan default.

A related bill, H.B. 1061, Acts of the 83rd Legislature, Regular Session, 2013, which repealed the corresponding statutory authority for the State Medical Education Board in an ongoing effort to remove unnecessary provisions from Texas statutes, became effective on May 25, 2013.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. The proposed amendment would afford an opportunity to shrink state government by eliminating an obsolete governmental office, streamlining the Texas Higher Education Coordinating

Board (THECB), and simplifying an ever-expanding state constitution. The objectives and functions of the State Medical Education Board, which were never accomplished with any particular measure of efficiency before the board became obsolete, are now accomplished by other more effective means, and the Sunset Advisory Commission's recent review of the THECB, to which the medical education board has been administratively attached, provides further impetus to finally implementing the decades-old Sunset Advisory Commission recommendation to abolish the medical education board and its attendant fund.

Comments by Opponents. No comments opposing the proposed amendment were made during the house and senate committee hearings or during debate on the amendment in the house and senate chambers. A review of other sources also did not reveal any apparent opposition to the amendment.

Text of H.J.R. 79

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to eliminate an obsolete requirement for a State Medical Education Board and a State Medical Education Fund.

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

SECTION 1. Section 50a, Article III, Texas Constitution, is repealed.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2013. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment eliminating an obsolete requirement for a State Medical Education Board and a State Medical Education Fund, neither of which is operational."

House Author: Dan Branch et al.
Senate Sponsor: Brian Birdwell

Amendment No. 3 (H.J.R. 133)

Wording of Ballot Proposition

The constitutional amendment to authorize a political subdivision of this state to extend the number of days that aircraft parts that are exempt from ad valorem taxation due to their location in this state for a temporary period may be located in this state for purposes of qualifying for the tax exemption.

Analysis of Proposed Amendment

H.J.R. 133 proposes to amend Section 1-j, Article VIII, Texas Constitution, to authorize the governing body of a political subdivision (such as a municipality, county, or school district) to extend the date by which aircraft parts held by a business in Texas that are exempt from property taxation as "freeport goods" must be transported outside the state in order to retain tax-exempt status. Under the proposed amendment, a governing body could extend the date that such aircraft parts must be exported to not later than the 730th day (the second year) after the date the taxpayer acquired or imported the aircraft parts in this state instead of the 175th day as is currently required by law. The proposed amendment would authorize the legislature to provide the manner by which a governing body could extend the period. In addition, the proposed amendment provides that an extension would apply only to the exemption from property taxation by the political subdivision adopting the extension. The proposed amendment would apply only to a tax year beginning on or after January 1, 2014.

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 property (or "ad valorem") taxation not granted or authorized by the Texas Constitution is invalid. Neither the legislature nor a political subdivision of the state that imposes property taxes may exempt property from taxation without constitutional authority.

In 1989, to encourage manufacturing and other commercial activities in the state, the voters approved a constitutional amendment adding Section 1-j to Article VIII of the Texas Constitution, which created a "freeport exemption" to exempt from property taxation goods, wares, merchandise, other tangible personal property (including aircraft parts), and ores (other than oil, natural gas, and other petroleum products) if certain conditions are satisfied. To receive tax-exempt status, the property must be acquired in or imported into the state for export; detained in the state to be assembled, stored, manufactured, processed, or fabricated; and transported outside of the state within 175 days after the date of importation or acquisition.

H.J.R. 133 proposes to amend Section 1-j, Article VIII, Texas Constitution, to authorize the governing body of a political subdivision to extend the date by which aircraft parts that are exempt from property taxation as "freeport goods" must be transported outside the state in order to retain tax-exempt status. Under the proposed amendment, a governing body could extend the date by which such aircraft parts must be exported to not later than the 730th day (the second year) after the date the taxpayer acquired or imported the aircraft parts in this state instead of the 175th day as is currently required by law. The proposed amendment would authorize the legislature to provide the manner by which a governing body could extend the period of time. In addition, the proposed amendment provides that an extension would apply only to the exemption from property taxation by the political subdivision adopting the extension. The proposed amendment would apply only to a tax year beginning on or after January 1, 2014.

H.B. 3121, Acts of the 83rd Legislature, Regular Session, 2013, is the enabling legislation for H.J.R. 133. The bill takes effect only if the proposed constitutional amendment is approved by the voters. The bill amends Section 11.251, Tax Code, to statutorily permit the extension of time authorized by the proposed constitutional amendment. The bill requires that an extension made by the governing body of a political subdivision be made in the manner provided by law for official action. The bill also provides that the extension applies only to the exemption from property taxation by the political subdivision adopting the extension. In addition,

the bill provides that the extension applies to the tax year in which the extension is adopted if it is officially adopted before June 1 of the tax year, or the next tax year if the extension is adopted on or after June 1, and applies to each subsequent tax year after it is adopted. Finally, the bill makes various conforming changes to the Tax Code and provides that the new statutory provisions apply only to a tax year beginning on or after January 1, 2014.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. The current 175-day limit on how long certain tangible personal property may be held in a Texas business's inventory to qualify for a freeport tax exemption unfairly disqualifies aircraft parts, which generally are held in inventory for longer periods. Aircraft parts may not be needed by a customer for many months, so an inventory does not turn over very quickly. In addition, the raw materials for the parts may be in limited production, requiring Texas aircraft parts suppliers to purchase in bulk and maintain large inventories for long periods to have parts on hand when needed. If the parts are detained in Texas for more than 175 days after the date the suppliers acquire or import the parts, the parts do not qualify for the current exemption. This tax burden places Texas aircraft parts suppliers at a competitive disadvantage with suppliers located in other states where goods destined for out-of-state shipment are exempt from property taxation. Although the freeport exemption was authorized as a business incentive, the current time frame for turning around inventory is too short to meet the needs of the Texas aviation industry and may be a deterrent to business relocations to Texas or expansion of operations already in Texas.

Comments by Opponents. No comments opposing the proposed amendment were made during the house and senate committee hearings or during debate on the amendment in the house and senate chambers.

However, questions raised in the house floor debate about the cost of the amendment to local governments, as well as costs to the state when offsetting lost school district tax revenue through the school finance system, remain unanswered because the number of taxing units that would extend the freeport exemption period under the amendment and the taxable value of the parts that would become subject to the exemption cannot be predicted.

Text of H.J.R. 133

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to authorize a political subdivision of this state to extend the number of days that aircraft parts that are exempt from ad valorem taxation due to their location in this state for a temporary period may be located in this state for purposes of qualifying for the tax exemption.

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

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

(a) To promote economic development in the State, goods, wares, merchandise, other tangible personal property, and ores, other than oil, natural gas, and other petroleum products, are exempt from ad valorem taxation by a political subdivision of this State if:

(1) the property is acquired in or imported into this State to be forwarded outside this State, whether or not the intention to forward the property 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 in this State for assembling, storing, manufacturing, processing, or fabricating purposes by the person who acquired or imported the property; and

(3) the property is transported outside of this State not later than:
(A) 175 days after the date the person acquired or imported the property in this State; or

(B) if applicable, a later date established by the governing body of the political subdivision under Subsection (d) of this section.

(d) The governing body of a political subdivision, in the manner provided by law for official action, may extend the date by which aircraft parts exempted from ad valorem taxation under this section must be transported outside the State to a date not later than the 730th day after

the date the person acquired or imported the aircraft parts in this State. An extension adopted by official action under this subsection applies only to the exemption from ad valorem taxation by the political subdivision adopting the extension. The legislature by general law may provide the manner by which the governing body may extend the period of time as authorized by this subsection.

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 83rd Legislature, Regular Session, 2013, to authorize a political subdivision of this state to extend the number of days that aircraft parts that are exempt from ad valorem taxation due to their location in this state for a temporary period may be located in this state for purposes of qualifying for the tax exemption.

(b) The amendment to Section 1-j(a), Article VIII, of this constitution and the addition of Section 1-j(d), Article VIII, to this constitution take effect January 1, 2014, and apply only to a tax year that begins on or after that date.

(c) This temporary provision expires January 1, 2015.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2013. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to authorize a political subdivision of this state to extend the number of days that aircraft parts that are exempt from ad valorem taxation due to their location in this state for a temporary period may be located in this state for purposes of qualifying for the tax exemption."

House Author: Linda Harper-Brown et al.
Senate Sponsor: Bob Deuell et al.

Amendment No. 4 (H.J.R. 24)

Wording of Ballot Proposition

The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of part of the market value of the residence homestead of a partially disabled veteran or the surviving spouse of a partially disabled veteran if the residence homestead was donated to the disabled veteran by a charitable organization.

Analysis of Proposed Amendment

H.J.R. 24 proposes to permit the legislature to authorize a new exemption from property (or "ad valorem") taxation of a percentage of the market value of a partially disabled veteran's residence homestead equal to the percentage of the veteran's disability if the residence homestead was donated at no cost to the veteran by a charitable organization. The proposed amendment authorizes the legislature to provide additional eligibility requirements for the new exemption and to grant the surviving spouse of a partially disabled veteran, if the veteran died after qualifying for the new exemption, a property tax exemption for the same portion of the market value of the same property to which the disabled veteran's exemption applied if the surviving spouse has not remarried, the property was the residence homestead of the surviving spouse when the veteran died, and the property remains the residence homestead of the surviving spouse. The proposed amendment states that limitations and restrictions on certain other property tax exemptions for disabled veterans do not apply to the new exemption.

Background

Section 1, Article VIII, Texas Constitution, provides that taxation shall be equal and uniform and that all real and tangible personal property, unless exempt as required or permitted by the constitution, shall be taxed in proportion to the property's value. Section 1-b, Article VIII, Texas Constitution, provides various exemptions from taxation of residence homesteads and limitations on taxes imposed on those homesteads.

There are several provisions in Article VIII of the Texas Constitution that permit the authorization of property tax benefits for disabled veterans and their families. Section 1-b(i) of that article permits the legislature to provide an exemption from property taxation of all or part of the market value of the residence homestead of a 100 percent or totally disabled veteran. Sections 1-(b)(j) and (k) of that article permit the legislature to extend the exemption permitted for the residence homestead of a 100 percent or totally disabled veteran to the residence homestead of the surviving spouse of the veteran under certain circumstances. In addition, Section 2(b) of that article permits the legislature to authorize a partial exemption, in a specified amount based on specified disability groupings, for any property owned by a disabled veteran, as well as to provide certain property tax benefits for the families of those veterans.

H.J.R. 24 proposes to amend Section 1-b, Article VIII, Texas Constitution, to permit the legislature to authorize a new exemption from property taxation of a percentage of the market value of a partially disabled veteran's residence homestead equal to the percentage of disability of the veteran if the residence homestead was donated to the veteran by a charitable organization at no cost to the veteran. The proposed amendment would authorize the legislature to provide additional eligibility requirements for the new exemption.

The proposed amendment would also permit the legislature to authorize the surviving spouse of a partially disabled veteran who died after qualifying for the new exemption to receive an exemption from property taxation of the same portion of the market value of the same property to which the disabled veteran's exemption applied under certain circumstances. Additionally, the proposed amendment would have the effect of permitting the legislature to authorize an exemption from property taxation of a subsequent residence homestead of a qualified surviving spouse under certain circumstances.

H.B. 97, Acts of the 83rd Legislature, Regular Session, 2013, is the enabling legislation for H.J.R. 24. The bill adds Section 11.132 to the Tax Code. That section entitles a partially disabled veteran and the veteran's surviving spouse to the exemptions as specified and permitted to be

authorized by the proposed amendment. In addition, the bill addresses in more detail the manner in which the exemptions are administered and makes various conforming changes to the Tax Code relating to the administration of the exemptions. The bill applies only to a tax year beginning on or after January 1, 2014, and takes effect only if the proposed amendment is approved by the voters.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. The legislature has recognized the sacrifices made by 100 percent disabled veterans and their surviving spouses by granting a property tax exemption for the total appraised value of the veteran's residence homestead, but there is no corresponding exemption for veterans with only a partial disability. Because of the method used by the U.S. Department of Veterans Affairs to determine disability ratings, a veteran who otherwise would qualify for a 100 percent disability rating may find that rating lowered unexpectedly, with an attendant reduction in disability payments, for a variety of reasons, such as doing charitable work, despite suffering from a service-related condition or injury that limits employment opportunities. Basing a property tax exemption for disabled veterans on a 100 percent disability rating may lead to similarly situated disabled veterans, though equally deserving, not receiving the benefits of a tax exemption.

Many Texas home builders and charitable organizations honor disabled veterans by donating homes to those facing the challenge of transitioning from military service to civilian life, and there is growing interest in encouraging home donations statewide. However, the blessing of a donated home can become a burden if the recipient cannot pay the resulting property taxes because disability payments are insufficient and the veteran's service-related disability precludes earned income through gainful employment.

The proposed amendment would enable the recipient disabled veteran or surviving spouse to remain in the donated home with the ensuing freedom to pursue an education, find a suitable job, or start a business.

Comments by Opponents. No comments opposing the proposed amendment were made during the house and senate committee hearings or during debate on the amendment in the house and senate chambers.

However, a review of other sources indicated concern that singling out specific groups for property tax exemptions could erode local property tax bases and undermine uniformity in taxation.

Text of H.J.R. 24

HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of part of the market value of the residence homestead of a partially disabled veteran or the surviving spouse of a partially disabled veteran if the residence homestead was donated to the disabled veteran by a charitable organization.

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

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

(j) The legislature by general law may provide that the surviving spouse of a [~~100 percent or totally~~] disabled veteran who qualified for an exemption in accordance with Subsection (i) or (l) of this section from ad valorem taxation of all or part of the market value of the disabled veteran's residence homestead when the disabled veteran died is entitled to an exemption from ad valorem taxation of the same portion of the market value of the same property to which the disabled veteran's exemption applied if:

(1) the surviving spouse has not remarried since the death of the disabled veteran; and

(2) the property:

(A) was the residence homestead of the surviving spouse when the disabled veteran died; and

(B) remains the residence homestead of the surviving spouse.

(l) The legislature by general law may provide that a partially disabled veteran is entitled to an exemption from ad valorem taxation of a percentage of the market value of the disabled veteran's residence homestead that is equal to the percentage of disability of the disabled veteran if the residence homestead was donated to the disabled veteran by a charitable organization at no cost to the disabled veteran. The legislature by general law may provide additional eligibility requirements

for the exemption. For purposes of this subsection, "partially disabled veteran" means a disabled veteran as described by Section 2(b) of this article who is certified as having a disability rating of less than 100 percent. A limitation or restriction on a disabled veteran's entitlement to an exemption under Section 2(b) of this article, or on the amount of an exemption under Section 2(b), does not apply to an exemption under this subsection.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2013. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of part of the market value of the residence homestead of a partially disabled veteran or the surviving spouse of a partially disabled veteran if the residence homestead was donated to the disabled veteran by a charitable organization."

House Author: Charles Perry et al.

Senate Sponsor: Leticia Van de Putte et al.

Amendment No. 5 (S.J.R. 18)

Wording of Ballot Proposition

The constitutional amendment to authorize the making of a reverse mortgage loan for the purchase of homestead property and to amend lender disclosures and other requirements in connection with a reverse mortgage loan.

Analysis of Proposed Amendment

S.J.R. 18 would amend Section 50(k), Article XVI, Texas Constitution, to authorize advances under a reverse mortgage for the purchase of homestead property that the borrower will occupy as a principal residence and to expand the conditions under which a lender may require repayment of this type of reverse mortgage to include the borrower's failure to timely occupy the homestead property within the period specified in the loan agreement. The proposed amendment also would prohibit the making of a reverse mortgage unless both the prospective borrower and the prospective borrower's spouse receive counseling regarding the advisability and availability of reverse mortgages and other financial alternatives that is completed within a prescribed period before the closing date of the loan. In addition, the proposed amendment would replace the constitutionally required written notice provided by lenders to borrowers of a reverse mortgage with a separate written notice containing detailed language related to reverse mortgages, including the grounds for which the lender may foreclose the reverse mortgage.

Background

Before 1997, the Texas Constitution strictly limited the situations in which a person's homestead could be used to secure the person's debts. In that year the voters of the state adopted a constitutional amendment that allowed new types of loans that could be secured using a homestead as collateral and allowed the proceeds of those loans to be used for any purpose.

One type of loan authorized by that constitutional 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, sells the home, or permanently 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 accumulated in their homes into money that may be used for current expenses or other purposes. Because the 1997 amendment contained provisions relating to reverse mortgages that did not conform to federal law, reverse mortgages were not available in this state until after 1999.

When advances on a reverse mortgage were first authorized by the voters in 1997, the state constitution required those advances to be made in the form of a single lump-sum payment or in multiple payments of equal amounts at regular intervals. In 1999, the voters approved a constitutional amendment conforming state law on reverse mortgages to federal law and allowing a borrower to request that one or more of the regular advances be reduced in amount. The constitution was further amended in 2003 to allow a borrower to convert an existing home equity loan into a reverse mortgage and in 2005 to allow a borrower to receive advances on a reverse mortgage in the form of a line of credit, only at the times and in the amounts requested by the borrower. The 2005 constitutional amendment also prohibited borrowers from obtaining an advance on a reverse mortgage by using a credit card, debit card, or similar device to discourage the use of line of credit advances or other advances for frivolous purposes or in response to enticement.

The United States Department of Housing and Urban Development (HUD) administers the home equity conversion mortgage program, which is a reverse mortgage program. A traditional home equity conversion mortgage under the HUD program is typically used by borrowers 62 years of age or older to borrow against equity in a home they already own to supplement income and cover expenses. In 2009, the home equity conversion mortgage for purchase became available as an option under the HUD program. A home equity conversion mortgage for purchase

allows borrowers 62 years of age or older to purchase a new home, using money from the sale of the old home in combination with the proceeds from the home equity conversion mortgage. Home equity conversion mortgages for purchase are not offered in Texas because under current state law, borrowers are not permitted to use equity accumulated in their existing home and a reverse mortgage to finance the purchase of a new home. The proposed constitutional amendment would expressly permit this type of reverse mortgage.

In addition to authorizing the use of a reverse mortgage to finance the purchase of a new home, the proposed amendment expands the financial counseling requirement for all reverse mortgages by requiring that both the prospective borrower of a reverse mortgage and the borrower's spouse complete the counseling within a certain time before the reverse mortgage is closed.

The proposed amendment also replaces the constitutionally required written notice provided by lenders to borrowers of a reverse mortgage with a separate, detailed written notice that includes actions or inactions of the borrower that could result in a possible foreclosure of the reverse mortgage. The notice must be provided at least 12 days before the closing rather than at the closing.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. It is not uncommon for older homeowners to find themselves in the market for a new home, whether for purposes of downsizing to a more suitable residence, relocating to be closer to their grown children or to medical care, or simply lowering the cost of homeownership. To do so, Texas seniors currently must sell one home and purchase another, either by paying in cash or by taking out a new mortgage, in two separate transactions, with separate closing costs on each transaction.

The proposed amendment would add a reverse mortgage for purchase option to the reverse mortgage currently available to older homeowners, allowing Texas homeowners age 62 and older, who may be house-rich and income-poor, to sell one property and purchase another in a single transaction using the equity in an existing house to make a cash down payment on a less expensive residence. By combining the selling and buying of the two properties into one transaction and eliminating a set of fees, a homeowner could save several thousand dollars in closing fees.

The proposed amendment would also provide important safeguards for potential reverse mortgage borrowers by requiring detailed disclosures to be made at least 12 days before the closing, providing prospective borrowers with the time and relevant information needed to make informed decisions. In addition to describing a borrower's obligations, the required disclosures would include information regarding the consequences, including a possible foreclosure, of the borrower's failure to meet certain contractual obligations, such as payment of property taxes on the home. The disclosure regarding property taxes would be an important consideration for seniors who currently are eligible to defer unpaid property taxes in Texas in order to remain in their homes but may lose that opportunity when using a reverse mortgage.

Comments by Opponents. No comments opposing the proposed amendment were made during the house and senate committee hearings or during debate on the amendment in the house and senate chambers. A review of other sources also did not reveal any apparent opposition to the amendment.

Text of S.J.R. 18

SENATE JOINT RESOLUTION

proposing a constitutional amendment to authorize the making of a reverse mortgage loan for the purchase of homestead property and to amend certain requirements in connection with a reverse mortgage loan.

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

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

(k) "Reverse mortgage" means an extension of credit:

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

(2) that is made to a person who is or whose spouse is 62 years or older;

(3) that is made without recourse for personal liability against each owner and the spouse of each owner;

(4) under which advances are provided to a borrower:

(A) based on the equity in a borrower's homestead; or

(B) for the purchase of homestead property that the borrower will occupy as a principal residence;

(5) that does not permit the lender to reduce the amount or number of advances because of an adjustment in the interest rate if periodic advances are to be made;

(6) that requires no payment of principal or interest until:

(A) all borrowers have died;

(B) the homestead property securing the loan is sold or otherwise transferred;

(C) all borrowers cease occupying the homestead property for a period of longer than 12 consecutive months without prior written approval from the lender;

(C-1) if the extension of credit is used for the purchase of homestead property, the borrower fails to timely occupy the homestead property as the borrower's principal residence within a specified period after the date the extension of credit is made that is stipulated in the written agreement creating the lien on the property; or

(D) the borrower:

(i) defaults on an obligation specified in the loan documents to repair and maintain, pay taxes and assessments on, or insure the homestead property;

(ii) commits actual fraud in connection with the loan; or

(iii) fails to maintain the priority of the lender's lien on the homestead property, after the lender gives notice to the borrower, by promptly discharging any lien that has priority or may obtain priority over the lender's lien within 10 days after the date the borrower receives the notice, unless the borrower:

(a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to the lender;

(b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings so as to prevent the enforcement of the lien or forfeiture of any part of the homestead property; or

(c) secures from the holder of the lien an agreement satisfactory to the lender subordinating the lien to all amounts secured by the lender's lien on the homestead property;

(7) that provides that if the lender fails to make loan advances as required in the loan documents and if the lender fails to cure the default as required in the loan documents after notice from the borrower, the lender forfeits all principal and interest of the reverse mortgage, provided, however, that this subdivision does not apply when a governmental agency or instrumentality takes an assignment of the loan in order to cure the default;

(8) that is not made unless the prospective borrower and the spouse of the prospective borrower attest ~~[owner of the homestead~~

attests] in writing that the prospective borrower and the prospective borrower's spouse [owner] received counseling regarding the advisability and availability of reverse mortgages and other financial alternatives that was completed not earlier than the 180th day nor later than the 5th day before the date the extension of credit is closed;

(9) that is not closed before the 12th day after the date the lender provides to the prospective borrower the following written notice on a separate instrument, which the lender or originator and the borrower must sign for the notice to take effect:

"IMPORTANT NOTICE TO BORROWERS
RELATED TO YOUR REVERSE MORTGAGE

"UNDER THE TEXAS TAX CODE, CERTAIN ELDERLY PERSONS MAY DEFER THE COLLECTION OF PROPERTY TAXES ON THEIR RESIDENCE HOMESTEAD. BY RECEIVING THIS REVERSE MORTGAGE YOU MAY BE REQUIRED TO FORGO ANY PREVIOUSLY APPROVED DEFERRAL OF PROPERTY TAX COLLECTION AND YOU MAY BE REQUIRED TO PAY PROPERTY TAXES ON AN ANNUAL BASIS ON THIS PROPERTY.

"THE LENDER MAY FORECLOSE THE REVERSE MORTGAGE AND YOU MAY LOSE YOUR HOME IF:

"(A) YOU DO NOT PAY THE TAXES OR OTHER ASSESSMENTS ON THE HOME EVEN IF YOU ARE ELIGIBLE TO DEFER PAYMENT OF PROPERTY TAXES;

"(B) YOU DO NOT MAINTAIN AND PAY FOR PROPERTY INSURANCE ON THE HOME AS REQUIRED BY THE LOAN DOCUMENTS;

"(C) YOU FAIL TO MAINTAIN THE HOME IN A STATE OF GOOD CONDITION AND REPAIR;

"(D) YOU CEASE OCCUPYING THE HOME FOR A PERIOD LONGER THAN 12 CONSECUTIVE MONTHS WITHOUT THE PRIOR WRITTEN APPROVAL FROM THE LENDER OR, IF THE EXTENSION OF CREDIT IS USED FOR THE PURCHASE OF THE HOME, YOU FAIL TO TIMELY OCCUPY THE HOME AS YOUR PRINCIPAL RESIDENCE WITHIN A PERIOD OF TIME AFTER THE EXTENSION OF CREDIT IS MADE THAT IS STIPULATED IN THE WRITTEN AGREEMENT CREATING THE LIEN ON THE HOME;

"(E) YOU SELL THE HOME OR OTHERWISE TRANSFER THE HOME WITHOUT PAYING OFF THE LOAN;

"(F) ALL BORROWERS HAVE DIED AND THE LOAN IS NOT REPAID;

"(G) YOU COMMIT ACTUAL FRAUD IN CONNECTION WITH THE LOAN;
OR

"(H) YOU FAIL TO MAINTAIN THE PRIORITY OF THE LENDER'S LIEN ON THE HOME, AFTER THE LENDER GIVES NOTICE TO YOU, BY PROMPTLY DISCHARGING ANY LIEN THAT HAS PRIORITY OR MAY OBTAIN PRIORITY OVER THE LENDER'S LIEN WITHIN 10 DAYS AFTER THE DATE YOU RECEIVE THE NOTICE, UNLESS YOU:

"(1) AGREE IN WRITING TO THE PAYMENT OF THE OBLIGATION SECURED BY THE LIEN IN A MANNER ACCEPTABLE TO THE LENDER;

"(2) CONTEST IN GOOD FAITH THE LIEN BY, OR DEFEND AGAINST ENFORCEMENT OF THE LIEN IN, LEGAL PROCEEDINGS SO AS TO PREVENT THE ENFORCEMENT OF THE LIEN OR FORFEITURE OF ANY PART OF THE HOME; OR

"(3) SECURE FROM THE HOLDER OF THE LIEN AN AGREEMENT SATISFACTORY TO THE LENDER SUBORDINATING THE LIEN TO ALL AMOUNTS SECURED BY THE LENDER'S LIEN ON THE HOME.

"IF A GROUND FOR FORECLOSURE EXISTS, THE LENDER MAY NOT COMMENCE FORECLOSURE UNTIL THE LENDER GIVES YOU WRITTEN NOTICE BY MAIL THAT A GROUND FOR FORECLOSURE EXISTS AND GIVES YOU AN OPPORTUNITY TO REMEDY THE CONDITION CREATING THE GROUND FOR FORECLOSURE OR TO PAY THE REVERSE MORTGAGE DEBT WITHIN THE TIME PERMITTED BY SECTION 50(k)(10), ARTICLE XVI, OF THE TEXAS CONSTITUTION. THE LENDER MUST OBTAIN A COURT ORDER FOR FORECLOSURE EXCEPT THAT A COURT ORDER IS NOT REQUIRED IF THE FORECLOSURE OCCURS BECAUSE:

"(1) ALL BORROWERS HAVE DIED; OR

"(2) THE HOMESTEAD PROPERTY SECURING THE LOAN IS SOLD OR OTHERWISE TRANSFERRED."

"YOU SHOULD CONSULT WITH YOUR HOME COUNSELOR OR AN ATTORNEY IF YOU HAVE ANY CONCERNS ABOUT THESE OBLIGATIONS BEFORE YOU

CLOSE YOUR REVERSE MORTGAGE LOAN. TO LOCATE AN ATTORNEY IN YOUR AREA, YOU MAY WISH TO CONTACT THE STATE BAR OF TEXAS."

"THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS CONSTITUTION. YOUR RIGHTS ARE GOVERNED IN PART BY SECTION 50, ARTICLE XVI, OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE."

~~[that requires the lender, at the time the loan is made, to disclose to the borrower by written notice the specific provisions contained in Subdivision (6) of this subsection under which the borrower is required to repay the loan];~~

(10) that does not permit the lender to commence foreclosure until the lender gives notice to the borrower, in the manner provided for a notice by mail related to the foreclosure of liens under Subsection (a)(6) of this section, that a ground for foreclosure exists and gives the borrower at least 30 days, or at least 20 days in the event of a default under Subdivision (6)(D)(iii) of this subsection, to:

(A) remedy the condition creating the ground for foreclosure;

(B) pay the debt secured by the homestead property from proceeds of the sale of the homestead property by the borrower or from any other sources; or

(C) convey the homestead property to the lender by a deed in lieu of foreclosure; and

(11) that is secured by a lien that may be foreclosed upon only by a court order, if the foreclosure is for a ground other than a ground stated by Subdivision (6)(A) or (B) of this subsection.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2013. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to authorize the making of a reverse mortgage loan for the purchase of homestead property and to amend lender disclosures and other requirements in connection with a reverse mortgage loan."

Senate Author: John Carona
House Sponsor: Mike Villarreal

Amendment No. 6 (S.J.R. 1)

Wording of Ballot Proposition

The constitutional amendment providing for the creation of the State Water Implementation Fund for Texas and the State Water Implementation Revenue Fund for Texas to assist in the financing of priority projects in the state water plan to ensure the availability of adequate water resources.

Analysis of Proposed Amendment

S.J.R. 1 proposes to amend the Texas Constitution by creating the State Water Implementation Fund for Texas and the State Water Implementation Revenue Fund for Texas as special funds in the state treasury outside the general revenue fund to be administered, without further appropriation, by the Texas Water Development Board and used for the purpose of implementing the state water plan adopted by the board. The proposed amendment authorizes the transfer or deposit of state revenue into each fund but does not itself make a transfer or deposit of money into either fund.

The proposed amendment permits the legislature to authorize the Texas Water Development Board to enter into bond enhancement agreements payable from the State Water Implementation Fund for Texas to provide additional security for bonds used to finance state water plan projects. Repayment of an amount paid under a bond enhancement agreement may not cause general obligation bonds to be no longer self-supporting. The proposed amendment also permits the legislature to authorize the board to use the State Water Implementation Fund for Texas to finance water projects by direct loan. A bond enhancement or loan agreement is subject to the approval of the Legislative Budget Board.

The proposed amendment also permits the legislature to authorize the Texas Water Development Board, with the approval of the Legislative Budget Board, to issue bonds and enter into related credit agreements that are payable from the State Water Implementation Revenue Fund for Texas.

The proposed amendment requires the Texas Water Development Board to annually set aside from each fund amounts sufficient to make bond or bond enhancement agreement payments that become due from those funds during that year. It prohibits any dedication or appropriation of amounts in a fund from being modified in a way that would impair any outstanding obligation under a bond enhancement agreement secured by a pledge of those amounts unless provisions have been made for a full discharge of the bond or bond enhancement agreement.

The proposed amendment also provides that obligations payable from either fund are not considered general obligations of the state. The proposed amendment provides that money in the funds is dedicated by the Texas Constitution for purposes of the limit on spending from undedicated state tax revenues established under Section 22, Article VIII, of the constitution, and also provides that an appropriation from the economic stabilization fund (also known as the rainy day fund) to the State Water Implementation Fund for Texas is an appropriation of state tax revenues dedicated by the constitution for the purposes of that section.

H.B. 4, Acts of the 83rd Legislature, Regular Session, 2013, is the enabling legislation for S.J.R. 1. The bill addresses in more detail the manner in which the proposed water funds are administered, including the manner in which projects are prioritized for funding and the portion of the money disbursed from the fund that is to be applied for various purposes. In addition, H.B. 1025, Acts of the 83rd Legislature, Regular Session, 2013, appropriates \$2 billion out of the economic stabilization fund to the State Water Implementation Fund for Texas to be used by the Texas Water Development Board to finance projects in the state water plan in accordance with H.B. 4. Because S.J.R. 1 provides that an appropriation from the economic stabilization fund to the State Water Implementation Fund for Texas is an appropriation of state tax revenues dedicated by the constitution, the \$2 billion appropriation would not to be counted against the biennial state spending cap that is established under Chapter 316, Government Code, to ensure that the rate of growth

of certain appropriations does not exceed the rate of growth of the state's economy, as Section 22, Article VIII, of the constitution prohibits. The relevant provisions of H.B. 4 and H.B. 1025 are contingent on the approval by the voters of the constitutional amendment proposed by S.J.R. 1.

Background

The Texas Water Development Board is required to adopt a state water plan that provides for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare, further economic development, and protect the agricultural and natural resources of the state. According to the 2012 plan, 8.3 million acre-feet of additional water supply will be needed by 2060. The plan recommends 562 water management strategies and projects that, if implemented, would provide 9 million acre-feet of additional water supply. The cost of implementing the recommended water management strategies and projects is \$53 billion. Municipal water providers are expected to need nearly \$27 billion in state financial assistance to implement the strategies recommended in the plan. Among the recommendations of the plan is that the legislature develop a long-term, affordable, and sustainable method to provide financial assistance for the implementation of the plan. S.J.R. 1, together with H.B. 4 and H.B. 1025, seeks to accomplish that purpose by creating the State Water Implementation Fund for Texas and the State Water Implementation Revenue Fund for Texas to provide support for financial assistance provided by the board for projects included in the state water plan and by capitalizing the State Water Implementation Fund for Texas with money appropriated out of the economic stabilization fund.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. Ensuring an adequate water supply is vital to the public health and continued economic well-being of the state. The current ongoing drought, coupled with the water needs of the state's growing population, has raised the specter of critical shortages in the state's water supply, making it of paramount importance that the state invest in water infrastructure to ensure Texas' continued prosperity. If the state's growing water needs are not addressed, the state stands to suffer from the loss of over a million jobs, billions of dollars in lost income, reduced economic activity, and decreased tax revenues in the coming years.

The proposed amendment establishes the State Water Implementation Fund for Texas and the State Water Implementation Revenue Fund for Texas, which are to be capitalized by a one-time appropriation of \$2 billion from the economic stabilization fund, for the purpose of financing water projects included in the state water plan. Using money from the economic stabilization fund for water infrastructure is an appropriate use of the fund, which was created as a savings account from which the legislature can appropriate funds as necessary to respond to emergencies such as the current drought, and will provide a better return on investment than if the money were left in the fund. Such a use of money from the fund will neither harm the state's credit rating nor hinder the state's ability to respond to an emergency.

Comments by Opponents. The economic stabilization fund should not be used to capitalize the two funds to be created by the proposed amendment. Instead, such funding should come from the general revenue fund. Drawing down funds from the economic stabilization fund to capitalize the two funds may negatively affect the state's credit rating and leave the state inadequately equipped to respond to future emergencies. Furthermore, constitutionally dedicating the money used to capitalize the funds is merely an accounting gimmick designed to enable the legislature to avoid the constitutional limit on spending of undedicated state revenue.

These two new funds are unnecessary as there already exist two constitutionally dedicated water development funds as well as several financial assistance programs for water infrastructure administered by the Texas Water Development Board. Through the two new funds, the state would act like an investment bank, and it is not the state's role to be in the commercial investment banking business. Financing for local water projects should be provided not by the state but by the users benefiting from those projects. Instead of funding new projects and initiatives, the state should ease regulatory burdens that currently hinder the development of an adequate available water supply in the state.

Text of S.J.R. 1

SENATE JOINT RESOLUTION

proposing a constitutional amendment providing for the creation of the State Water Implementation Fund for Texas and the State Water Implementation Revenue Fund for Texas to assist in the financing of priority projects in the state water plan.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Sections 49-d-12 and 49-d-13 to read as follows:

Sec. 49-d-12. (a) The State Water Implementation Fund for Texas is created as a special fund in the state treasury outside the general revenue fund. Money in the State Water Implementation Fund for Texas shall be administered, without further appropriation, by the Texas Water Development Board or that board's successor in function and shall be used for the purpose of implementing the state water plan that is adopted as required by general law by the Texas Water Development Board or that board's successor in function. Separate accounts may be established in the State Water Implementation Fund for Texas as necessary to administer the fund or authorized projects.

(b) The legislature by general law may authorize the Texas Water Development Board or that board's successor in function to enter into bond enhancement agreements to provide additional security for general obligation bonds or revenue bonds of the Texas Water Development Board or that board's successor in function, the proceeds of which are used to finance state water plan projects. Bond enhancement agreements must be payable solely from the State Water Implementation Fund for Texas; provided, however, the bond enhancement agreements may not exceed an amount that can be fully supported by the State Water Implementation Fund for Texas. Any amount paid under a bond enhancement agreement may be repaid as provided by general law; provided, however, any repayment may not cause general obligation bonds that are issued under Sections 49-d-9 and 49-d-11 of this article and that are payable from the fund or account receiving the bond enhancement payment to be no longer self-supporting for purposes of Section 49-j(b) of this article.

Payments under a bond enhancement agreement entered into pursuant to this section may not be a constitutional state debt payable from general revenues of the state.

(c) The legislature by general law may authorize the Texas Water Development Board or that board's successor in function to use the State Water Implementation Fund for Texas to finance, including by direct loan, water projects included in the state water plan.

(d) The Texas Water Development Board or that board's successor in function shall provide written notice to the Legislative Budget Board or that board's successor in function before each bond enhancement agreement or loan agreement entered into pursuant to this section has been executed by the Texas Water Development Board or that board's successor in function and shall provide a copy of the proposed agreement to the Legislative Budget Board or that board's successor in function for approval. The proposed agreement shall be considered to be approved unless the Legislative Budget Board or that board's successor in function issues a written disapproval not later than the 21st day after the date on which the staff of that board receives the submission.

(e) The State Water Implementation Fund for Texas consists of:

(1) money transferred or deposited to the credit of the fund by general law, including money from any source transferred or deposited to the credit of the fund at the discretion of the Texas Water Development Board or that board's successor in function as authorized by general law;

(2) the proceeds of any fee or tax imposed by this state that by statute is dedicated for deposit to the credit of the fund;

(3) any other revenue that the legislature by statute dedicates for deposit to the credit of the fund;

(4) investment earnings and interest earned on amounts credited to the fund; and

(5) money transferred to the fund under a bond enhancement agreement from another fund or account to which money from the fund was transferred under a bond enhancement agreement, as authorized by general law.

(f) The legislature by general law shall provide for the manner in which the assets of the State Water Implementation Fund for Texas may be used, subject to the limitations provided by this section. The legislature by general law may provide for costs of investment of the State Water Implementation Fund for Texas to be paid from that fund.

(g) As provided by general law, each fiscal year the Texas Water Development Board or that board's successor in function shall set aside from amounts on deposit in the State Water Implementation Fund for Texas an amount that is sufficient to make payments under bond enhancement agreements that become due during that fiscal year.

(h) Any dedication or appropriation of amounts on deposit in the State Water Implementation Fund for Texas may not be modified so as to impair any outstanding obligation under a bond enhancement agreement secured by a pledge of those amounts unless provisions have been made for a full discharge of the bond enhancement agreement.

(i) Money in the State Water Implementation Fund for Texas is dedicated by this constitution for purposes of Section 22, Article VIII, of this constitution and an appropriation from the economic stabilization fund to the credit of the State Water Implementation Fund for Texas is an appropriation of state tax revenues dedicated by this constitution for the purposes of Section 22, Article VIII, of this constitution.

(j) This section being intended only to establish a basic framework and not to be a comprehensive treatment of the State Water Implementation Fund for Texas, there is hereby reposed in the legislature full power to implement and effectuate the design and objects of this section, including the power to delegate such duties, responsibilities, functions, and authority to the Texas Water Development Board or that board's successor in function as the legislature believes necessary.

Sec. 49-d-13. (a) The State Water Implementation Revenue Fund for Texas is created as a special fund in the state treasury outside the general revenue fund. Money in the State Water Implementation Revenue Fund for Texas shall be administered, without further appropriation, by the Texas Water Development Board or that board's successor in function and shall be used for the purpose of implementing the state water plan that is adopted as required by general law by the Texas Water Development Board or that board's successor in function. Separate accounts may be

established in the State Water Implementation Revenue Fund for Texas as necessary to administer the fund or authorized projects.

(b) The legislature by general law may authorize the Texas Water Development Board or that board's successor in function to issue bonds and enter into related credit agreements that are payable from all revenues available to the State Water Implementation Revenue Fund for Texas.

(c) The Texas Water Development Board or that board's successor in function shall provide written notice to the Legislative Budget Board or that board's successor in function before issuing a bond pursuant to this section or entering into a related credit agreement that is payable from revenue deposited to the credit of the State Water Implementation Revenue Fund for Texas and shall provide a copy of the proposed bond or agreement to the Legislative Budget Board or that board's successor in function for approval. The proposed bond or agreement shall be considered to be approved unless the Legislative Budget Board or that board's successor in function issues a written disapproval not later than the 21st day after the date on which the staff of that board receives the submission.

(d) The State Water Implementation Revenue Fund for Texas consists of:

(1) money transferred or deposited to the credit of the fund by general law, including money from any source transferred or deposited to the credit of the fund at the discretion of the Texas Water Development Board or that board's successor in function as authorized by general law;

(2) the proceeds of any fee or tax imposed by this state that by statute is dedicated for deposit to the credit of the fund;

(3) any other revenue that the legislature by statute dedicates for deposit to the credit of the fund;

(4) investment earnings and interest earned on amounts credited to the fund;

(5) the proceeds from the sale of bonds, including revenue bonds issued under this section by the Texas Water Development Board or that board's successor in function for the purpose of providing money for the fund; and

(6) money disbursed to the fund from the State Water Implementation Fund for Texas as authorized by general law.

(e) The legislature by general law shall provide for the manner in which the assets of the State Water Implementation Revenue Fund for Texas may be used, subject to the limitations provided by this section. The legislature by general law may provide for costs of investment of the State Water Implementation Revenue Fund for Texas to be paid from that fund.

(f) In each fiscal year in which amounts become due under the bonds or agreements authorized by this section, the Texas Water Development Board or that board's successor in function shall transfer from revenue deposited to the credit of the State Water Implementation Revenue Fund for Texas in that fiscal year an amount that is sufficient to pay:

(1) the principal of and interest on the bonds that mature or become due during the fiscal year; and

(2) any cost related to the bonds, including payments under related credit agreements that become due during that fiscal year.

(g) Any obligations authorized by general law to be issued by the Texas Water Development Board or that board's successor in function pursuant to this section shall be special obligations payable solely from amounts in the State Water Implementation Revenue Fund for Texas. Obligations issued by the Texas Water Development Board or that board's successor in function pursuant to this section may not be a constitutional state debt payable from the general revenue of the state.

(h) Any dedication or appropriation of revenue to the credit of the State Water Implementation Revenue Fund for Texas may not be modified so as to impair any outstanding bonds secured by a pledge of that revenue unless provisions have been made for a full discharge of those bonds.

(i) Money in the State Water Implementation Revenue Fund for Texas is dedicated by this constitution for purposes of Section 22, Article VIII, of this constitution.

(j) This section being intended only to establish a basic framework and not to be a comprehensive treatment of the State Water Implementation Revenue Fund for Texas, there is hereby reposed in the legislature full power to implement and effectuate the design and objects of this section, including the power to delegate such duties, responsibilities, functions,

and authority to the Texas Water Development Board or that board's successor in function as the legislature believes necessary.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2013. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment providing for the creation of the State Water Implementation Fund for Texas and the State Water Implementation Revenue Fund for Texas to assist in the financing of priority projects in the state water plan to ensure the availability of adequate water resources."

Senate Author: Tommy Williams

House Sponsor: Jim Pitts et al.

Amendment No. 7 (H.J.R. 87)

Wording of Ballot Proposition

The constitutional amendment authorizing a home-rule municipality to provide in its charter the procedure to fill a vacancy on its governing body for which the unexpired term is 12 months or less.

Analysis of Proposed Amendment

If the term of office for a member of the governing body of a municipality is more than two years and not more than four years, current Section 11(b), Article XI, Texas Constitution, prohibits the appointment of a person to fill a vacancy on the governing body and requires the vacancy to be filled by a majority vote of the qualified voters of the municipality at a special election called for that purpose within 120 days after the date the vacancy occurs, regardless of the number of months remaining in the member's vacated term. H.J.R. 87 creates an exception to current Section 11(b) that authorizes a home-rule municipality to provide by its charter or a charter amendment the procedure to fill a vacancy on the governing body for which the unexpired term is 12 months or less.

Background

In Texas, there are two types of municipalities: home-rule municipalities and general-law municipalities. Each municipality has a governing body. Under Section 5, Article XI, Texas Constitution, and Chapter 9, Local Government Code, a municipality with a population of more than 5,000 may adopt a charter and become a home-rule municipality. A municipal charter is a legal document that establishes a municipality and defines the organization, powers, functions, and procedures of the municipal government. A municipal charter or a charter amendment must be approved by the voters of the municipality. Generally, a home-rule municipality may adopt any form of government, but home-rule municipalities typically have mayor-council or council-manager governing bodies.

Municipalities that have not adopted a home-rule charter and municipalities with a population of 5,000 or less that do not qualify to adopt a home-rule charter under Section 4, Article XI, Texas Constitution, are governed only by general law. General-law municipalities operate under state laws that provide the express and implied powers and duties of the municipalities. By general law, these municipalities have aldermanic or commission forms of government. The members of the governing bodies are elected to serve one- to four-year terms of office.

The provisions of Section 11, Article XI, Texas Constitution, that are relevant to the proposed amendment to Section 11 were adopted in 1958 and have not been previously amended. Section 11(a) provides that a home-rule municipality may provide by charter or charter amendment, or a general-law municipality may provide by a majority vote of the qualified voters at an election, for a term of office of more than two years for its officers but not more than four years. Currently, Section 11(b) provides that a municipality that has terms of office of more than two years for the members of the governing body must elect the members by a majority vote of the qualified voters of the municipality and prohibits filling a vacancy on the governing body by appointment. Section 11(b) requires a special election to fill the vacancy not later than the 120th day after the date the vacancy occurs. Section 11(b) does not apply to a municipality that has terms of office of two years or less for the governing body.

The proposed amendment creates an exception that allows a municipality to which the current Section 11(b) applies to provide by charter or charter amendment a different procedure to fill a vacancy for an unexpired term of 12 months or less. This exception applies only to home-rule municipalities because general-law municipalities do not have charters. Therefore, the proposed amendment would allow a home-rule municipality with a governing body that has terms of office of more than two years to determine the procedure to fill a short-term vacancy on the governing body.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. Current constitutional provisions unduly burden a home-rule municipality that needs to fill a short-term vacancy on its governing body by requiring the municipality to conduct both a special election to fill the vacancy for the remainder of an unexpired term and a general election for a new term within a relatively short period. Such repetitive elections significantly increase costs to the municipality, candidates, and taxpayers and expend time that would be better spent directly serving the community.

The proposed amendment would allow a home-rule municipality to specify in its charter the procedure for filling a short-term vacancy on its governing body, including by appointment, while still requiring an election to fill a vacancy for an unexpired term of more than 12 months. Because any amendment to a municipal charter authorizing such an alternative to a special election would require approval of the municipality's voters, such a change would preserve democratic accountability.

Comments by Opponents. No comments opposing the proposed amendment were made during the house and senate committee hearings or during debate on the amendment in the house and senate chambers.

However, it has been observed that elections are critical in ensuring that governments are accountable to the citizens and that allowing municipal officials to make appointments to fill vacancies in municipal offices could make the government more vulnerable to corruption.

Text of H.J.R. 87

HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing a home-rule municipality to provide in its charter the procedure to fill a vacancy on its governing body for which the unexpired term is 12 months or less.

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

SECTION 1. Section 11, Article XI, Texas Constitution, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(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.

(c) Any[, 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 except that the municipality may provide by charter or charter amendment the procedure for filling a vacancy occurring on its governing body for an unexpired term of 12 months or less.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2013. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment authorizing a home-rule municipality to provide in its charter the procedure to fill a vacancy on its governing body for which the unexpired term is 12 months or less."

House Author: Sergio Muñoz, Jr.
Senate Sponsor: Juan Hinojosa

Amendment No. 8 (H.J.R. 147 and S.J.R. 54)

Wording of Ballot Proposition

The constitutional amendment repealing Section 7, Article IX, Texas Constitution, which relates to the creation of a hospital district in Hidalgo County.

Analysis of Proposed Amendment

H.J.R. 147 and S.J.R. 54 propose to repeal Section 7, Article IX, Texas Constitution, which permits the legislature to authorize the creation of a hospital district coextensive with Hidalgo County and limits the authorized property tax rate that the hospital district may impose to 10 cents per \$100 valuation on taxable property within the district. The repeal of this provision does not prevent Hidalgo County, or a defined area in Hidalgo County, from creating a hospital district under other constitutional or statutory authority applicable to the county or area in the county.

Background

In 1959, the legislature passed H.J.R. 39, Acts of the 56th Legislature, Regular Session, which added Section 7 to Article IX of the Texas Constitution, authorizing the legislature to provide for the creation of a hospital district coextensive with the boundaries of Hidalgo County and limiting the maximum rate of property tax allowed to be imposed by that district to 10 cents per \$100 valuation of taxable property in the district. The legislature also enacted legislation during the 1959 regular session (H.B. 985) that provided procedures for the creation and operation of a hospital district in Hidalgo County. Before 1959, the only areas of the state authorized by the state constitution to create hospital districts were counties with a population of 190,000 or more and Galveston County, or other counties specifically granted the authority to create a hospital district by the state constitution. As the population of Hidalgo County in 1959 was below the threshold established by the state constitution, a constitutional amendment was necessary to authorize the creation of a hospital district in Hidalgo County. Although the constitutional amendment adding Section 7 to Article IX was approved by the state's

voters in November 1960, and the bill authorizing the creation of a hospital district in Hidalgo County became law, a hospital district was never created in Hidalgo County.

In 1962, the state constitution was amended to add Section 9 to Article IX, authorizing the legislature to provide for the establishment of hospital districts in areas throughout the state to provide "medical and hospital care" for the districts' "needy inhabitants" and allowing a hospital district created under that section to levy a property tax to finance its operation at a rate not to exceed 75 cents per \$100 valuation of taxable property in the district. Section 7, Article IX, was not repealed when Section 9 was added to Article IX in 1962.

The proposed amendment repeals Section 7, Article IX, Texas Constitution, which applies only to Hidalgo County. The proposed amendment would not prevent the creation of a hospital district in Hidalgo County under the general constitutional authority for the creation of hospital districts.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. H.J.R. 147 and S.J.R. 54 would repeal a constitutional provision that has limited the feasibility of creating a hospital district in Hidalgo County by imposing a limitation on the property tax rate (10 cents per \$100 valuation) that a district created in that county may levy that is significantly lower than the limitation applicable to virtually all other hospital districts created throughout the state. Other county hospital districts authorized to levy a property tax at the rate of 75 cents per \$100 valuation generally operate with an average property tax rate between 20 and 40 cents per \$100 valuation. Repealing the provision is necessary because the current limitation on the property tax rate that a district created in Hidalgo County may levy, when applied to

the county's relatively small tax base, does not provide adequate funding to create and support a functional hospital district. As a result, Hidalgo County is the largest county in Texas, and one of the largest counties in the nation, without a hospital district.

By removing this restriction, the proposed amendment would facilitate the creation of a hospital district for the provision of health-related services to the community, which includes a high percentage of uninsured residents, and improve the region's ability to attract federal funds for emergency health care for the poor. Adoption of the proposed amendment would improve access to affordable health care in Hidalgo County, put the county on par with the rest of the state, and maintain local control in the county by requiring county voter approval of the creation of the district and adoption of the applicable tax rate. A hospital district in Hidalgo County also would provide an ongoing source of revenue to help fund the creation and operation of a planned University of Texas medical school in the Rio Grande Valley. The creation of a hospital district in the county and any applicable property tax rate adopted by the district would be subject to the approval of voters in the county.

Comments by Opponents. No comments opposing the proposed amendment were made during the house and senate committee hearings or during debate on the amendment in the house and senate chambers.

However, some concern has been expressed about the potential effect of the proposed amendment on the property tax rate in Hidalgo County. If the voters approve the repeal of the constitutional provision that limits the property tax rate that a Hidalgo County hospital district could levy, general law would allow Hidalgo County voters to approve a higher property tax rate for a district created in Hidalgo County.

Text of H.J.R. 147

HOUSE JOINT RESOLUTION

proposing a constitutional amendment repealing the constitutional provision authorizing the creation of a hospital district in Hidalgo County.

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

SECTION 1. Section 7, Article IX, Texas Constitution, is repealed.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2013. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment repealing Section 7, Article IX, Texas Constitution, which relates to the creation of a hospital district in Hidalgo County."

House Author: R. D. "Bobby" Guerra et al.
Senate Sponsor: Juan Hinojosa

Text of S.J.R. 54

SENATE JOINT RESOLUTION

proposing a constitutional amendment repealing the constitutional provision authorizing the creation of a hospital district in Hidalgo County.

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

SECTION 1. Section 7, Article IX, Texas Constitution, is repealed.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2013. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment repealing Section 7, Article IX, Texas Constitution, which relates to the creation of a hospital district in Hidalgo County."

Senate Author: Juan Hinojosa
House Sponsor: R. D. "Bobby" Guerra et al.

Amendment No. 9 (S.J.R. 42)

Wording of Ballot Proposition

The constitutional amendment relating to expanding the types of sanctions that may be assessed against a judge or justice following a formal proceeding instituted by the State Commission on Judicial Conduct.

Analysis of Proposed Amendment

Section 1-a(8), Article V, Texas Constitution, authorizes the State Commission on Judicial Conduct, following an investigation but without formal proceedings, to issue certain types of private or public sanctions against a judge or justice of a court established by the constitution or created by the legislature. In addition, that provision authorizes the commission to institute formal proceedings and, following those proceedings, issue an order of public censure against or recommend the removal or retirement of the judge or justice, sanctions that are primarily punitive in nature. S.J.R. 42 expands the sanctions available for assessment by the commission following a formal proceeding by authorizing the commission to issue an order of public admonition, warning, reprimand, or requirement that the judge or justice obtain additional training or education in addition to the currently authorized punitive sanctions.

The proposed amendment would apply only to a formal proceeding instituted by the commission on or after January 1, 2014.

Background

In 1965, Section 1-a, Article V, Texas Constitution, was amended to create the State Judicial Qualifications Commission. The amendment added Subdivision (8) to Section 1-a, which authorized the commission after an investigation to order a hearing before it concerning the removal or retirement of a judge or justice, or to request that the Texas Supreme Court appoint a master to hear the matter and report on the matter to the commission. The provision mandated that after the hearing or consideration of the record and report, and on finding good cause, the

commission recommend to the supreme court the removal or retirement of the judge or justice. In 1970, Section 1-a was amended to more specifically define the judges and justices subject to sanctions under that section, and Subdivision (8) of the section was amended to expand the sanctions available under the provision by allowing the commission to issue, in addition to the sanctions previously authorized, a private reprimand after an investigation but without a hearing or, after a hearing or consideration of the master's record and report, to issue an order of public censure.

A 1977 amendment to Subdivision (8) again broadened the available sanctions by authorizing the commission, after the investigation, to also issue a public reprimand without a hearing, to institute formal proceedings and order a formal hearing before the commission to consider the public censure of a judge or justice, in addition to the removal or retirement consideration, or to request appointment of a master, who would exercise the enforcement power granted a district judge, to hear the matter. In 1984, Section 1-a was amended to change the name of the commission to the State Commission on Judicial Conduct. In addition, Subdivision (8) was amended to further expand the sanctions authorized to be imposed without formal proceedings by allowing the commission to issue a public or private admonition or warning or a requirement that the judge or justice obtain additional training or education. Section 1-a was also amended to establish a review tribunal to review the commission's removal or retirement recommendations.

The proposed amendment expands the sanctions available for assessment by the commission following a formal proceeding by authorizing the commission to issue an order of public admonition, warning, reprimand, or requirement that the judge or justice obtain additional training or education in addition to the currently authorized punitive sanctions. The proposed amendment applies only to a formal proceeding instituted by the commission on or after January 1, 2014.

S.B. 209, Acts of the 83rd Legislature, Regular Session, 2013, is the enabling legislation necessary to conform statutory law to the changes made by the proposed amendment to Section 1-a(8), Article V, Texas Constitution. The bill amends Section 33.001(a)(7), Government Code, to

include in the definition of "formal proceedings" the proceedings ordered by the commission concerning a public sanction. The bill also amends Section 33.034, Government Code, to conform the review of a commission decision to which a judge or justice is entitled under that section to the changes in law made by the proposed amendment. The provisions of the bill related to the proposed amendment take effect only if the proposed amendment is approved by the voters.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. The Texas Constitution authorizes the State Commission on Judicial Conduct, following an investigation of a complaint filed against a judge or justice, to issue a private or public admonition, warning, reprimand, or requirement that the judge or justice obtain additional training. The commission's procedural rules describe such sanctions, which the commission generally considers in closed informal proceedings, as remedial in nature and meant to deter similar misconduct in the future. However, if the complaint alleges egregious misconduct and the commission institutes formal proceedings and orders a public hearing after its investigation of the complaint, the constitution currently limits the scope of such an open formal proceeding to consideration of matters concerning the more punitive measures of public censure, removal, or retirement of the judge or justice. This limitation on the range of sanctions available to the commission following a formal proceeding creates a disincentive to pursue cases of public importance in an open formal setting. In some instances, it may be appropriate for the commission to hear a case in an open formal proceeding because the facts warrant an extensive investigation or because the case is important to the public, but the commission may choose to hear the case in a closed proceeding to avoid having to dismiss the case if the judge's or justice's conduct does not warrant censure, removal, or retirement. The proposed amendment would allow the commission to use its full range

of sanctions following formal proceedings, remove a disincentive to the conduct of open proceedings, and better serve the commission in the administration of justice.

Comments by Opponents. No comments opposing the proposed amendment were made during the house and senate committee hearings or during debate on the amendment in the house and senate chambers. A review of other sources also did not reveal any apparent opposition to the amendment.

Text of S.J.R. 42

SENATE JOINT RESOLUTION

proposing a constitutional amendment relating to expanding the types of sanctions that may be assessed against a judge or justice following a formal proceeding instituted by the State Commission on Judicial Conduct.

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

SECTION 1. Subdivision (8), Section 1-a, Article V, Texas Constitution, is amended to read as follows:

(8) After such investigation as it deems necessary, the Commission may in its discretion issue a private or public admonition, warning, reprimand, or requirement that the person obtain additional training or education, or if the Commission determines that the situation merits such action, it may institute formal proceedings and order a formal hearing to be held before it concerning ~~the public censure, removal, or retirement of~~ a person holding an office or position specified in Subsection (6) of this Section, or it may in its discretion request the Supreme Court to appoint an active or retired District Judge or Justice of a Court of Appeals, or retired Judge or Justice of the Court of Criminal Appeals or the Supreme Court, as a Master to hear and take evidence in the ~~[any such]~~ matter, and to report thereon to the Commission. The Master shall have all the power of a District Judge in the enforcement of orders pertaining to witnesses, evidence, and procedure. If, after formal hearing, or after considering the record and report of a Master, the Commission finds good cause therefor, it shall issue an order of public admonition, warning, reprimand, censure, or requirement that the person holding an office or position specified in Subsection (6) of this Section obtain additional training or education, or it shall recommend to a review tribunal the removal or retirement, as the case may be, of the person ~~[in question holding an office or position specified in Subsection (6) of this Section]~~ and shall thereupon file with the tribunal the entire record before the Commission.

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 83rd Legislature, Regular Session, 2013, relating to the sanctions that may be assessed against a judge or justice following a formal proceeding instituted by the State Commission on Judicial Conduct.

(b) The amendment to Section 1-a(8), Article V, of this constitution takes effect January 1, 2014, and applies only to a formal proceeding instituted by the State Commission on Judicial Conduct on or after that date.

(c) This temporary provision expires January 1, 2016.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2013. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment relating to expanding the types of sanctions that may be assessed against a judge or justice following a formal proceeding instituted by the State Commission on Judicial Conduct."

Senate Author: Joan Huffman et al.
House Sponsor: Harold V. Dutton, Jr.