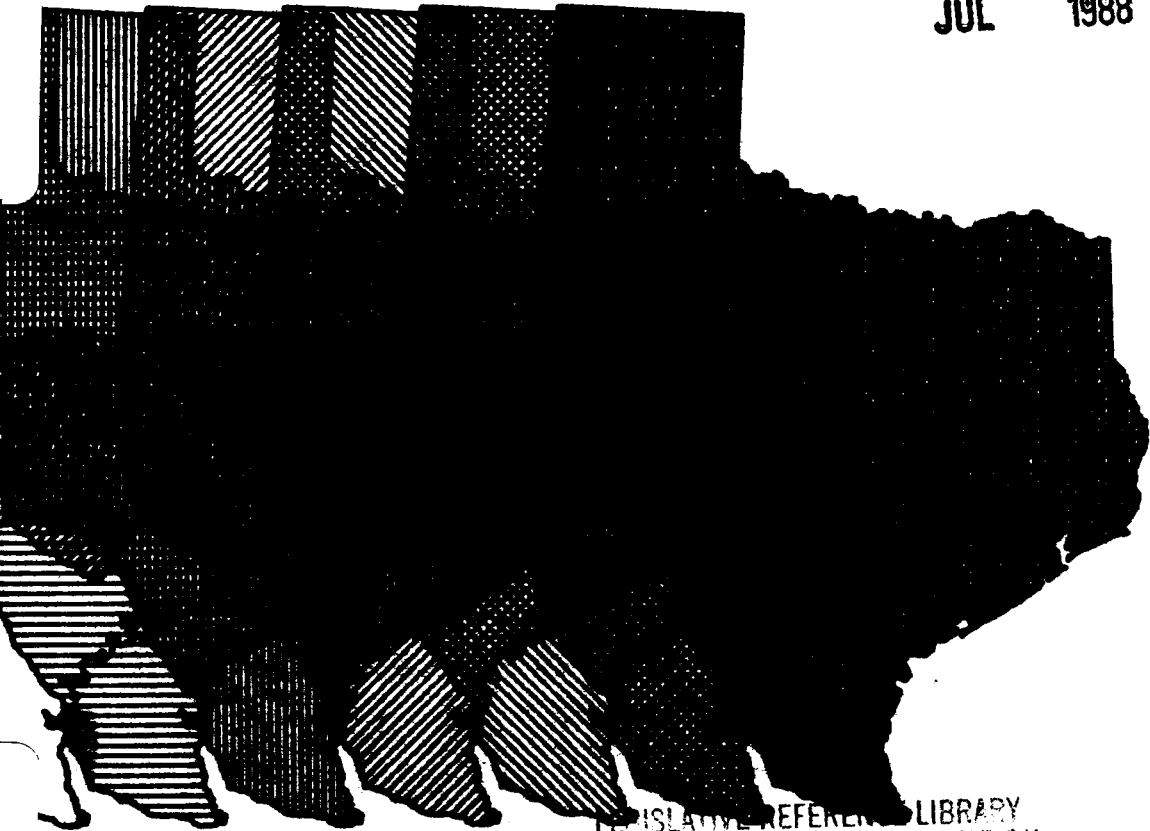


Analyses of Proposed Constitutional Amendments

Appearing on the November 8, 1988, Ballot

JUL 1988



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**Analyses of Proposed
Constitutional Amendments
Appearing on the
November 8, 1988, Ballot**

Prepared by the Staff
of the
Texas Legislative Council

TEXAS LEGISLATIVE COUNCIL

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INTRODUCTION

GENERAL BACKGROUND

In the 1987 regular session, the 70th Texas Legislature passed 23 joint resolutions proposing 24 constitutional amendments. Of those, 23 proposed amendments appeared on the November 3, 1987, ballot, and one will be on the November 8, 1988, election ballot. In the 1987 second called session, the legislature passed four joint resolutions proposing four constitutional amendments. Two appeared on the 1987 ballot and two will be on the 1988 ballot.

Of the 25 total proposed amendments on the 1987 ballot, Texas voters ratified 17. The 1987 election also included two referenda. See Table 1 for the 1987 election results.

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. An amendment becomes a part of the constitution if a majority of the votes cast for it in an election are cast in its favor. An amendment approved by voters is effective on the date of the official canvass of returns showing adoption. The date of canvass, by law, is not earlier than the 15th or later than the 30th day after election day. An amendment may provide for a later effective date.

Since adoption in 1876 and through 1987, the state's constitution has been amended 304 times, from a total of 462 amendments submitted to the voters for their approval. The three amendments on the 1988 general election ballot bring the total number of amendments submitted to 465. Table 2 lists the years in which constitutional amendments have been proposed by the Texas Legislature, the number of amendments proposed, and the number of those adopted. The year of the vote is not reflected in the table.

TABLE 1
RESULTS OF 1987 ELECTION

Amendment No. 1

Subject: Grain Warehouse Fund

For: 1,162,195

Against: 948,051

Amendment No. 2

Subject: Rural Fire Prevention Districts

For: 1,010,704

Against: 1,098,623

Amendment No. 3

Subject: Homestead Exemption to School Tax

For: 1,858,769

Against: 338,387

Amendment No. 4

Subject: Economic Development

For: 1,089,136

Against: 1,019,428

Amendment No. 5

Subject: Turnpike Authority Bonds

For: 951,130

Against: 1,111,903

Amendment No. 6

Subject: State Financing Private Business

For: 986,500

Against: 1,121,792

Amendment No. 7

Subject: Public Facilities Bonds

For: 827,235

Against: 1,251,876

Amendment No. 8

Subject: Bonds for Prisons and Mental Hospitals

For: 1,389,479

Against: 725,482

Amendment No. 9

Subject: Eligibility of Legislators for State Office

For: 977,464

Against: 1,112,888

Amendment No. 10

Subject: Exemption of Personal Property from Property Tax

For: 1,066,476

Against: 1,014,318

Amendment No. 11

Subject: "Free Port" Property Tax Exemption

For: 993,889

Against: 1,043,986

Amendment No. 12

Subject: Community Property and Surviving Spouse

For: 1,823,183

Against: 328,391

Amendment No. 13

Subject: Special Districts for Emergency Services

For: 1,339,654

Against: 743,806

Amendment No. 14

Subject: Appeal of Criminal Cases by State

For: 1,417,545

Against: 668,786

Amendment No. 15

Subject: Abolition of Certain County Offices

For: 1,324,009

Against: 582,472

Amendment No. 16

Subject: Justice of the Peace Courts

For: 1,366,576

Against: 693,717

Amendment No. 17

Subject: Municipal Governmental Functions

For: 1,083,139

Against: 904,989

Amendment No. 18

Subject: Jail Districts

For: 1,134,209

Against: 903,072

Amendment No. 19

Subject: Superconducting Super Collider

For: 1,347,362

Against: 754,445

Amendment No. 20

Subject: Taxation of Offshore Drilling Equipment

For: 1,032,013

Against: 1,026,768

Amendment No. 21

Subject: Appointments of House Speaker

For: 857,837

Against: 1,140,646

Amendment No. 22

Subject: Governmental Appointments

For: 1,287,090

Against: 806,419

Amendment No. 23

Subject: Water Development Bonds

For: 1,348,322

Against: 755,791

Amendment No. 24

Subject: County Government Work for Other Entities

For: 1,005,039

Against: 1,036,342

Amendment No. 25

Subject: Amarillo Hospital District

For: 1,358,338

Against: 541,344

Referenda

Proposition No. 1

Subject: Appointment of State Board of Education

For: 1,032,458

Against: 1,137,305

Proposition No. 2

Subject: Pari-mutuel Wagering

For: 1,276,350

Against: 966,889

NOTE: Vote total from official canvass of returns
conducted on December 1, 1987.

TABLE 2
1876 CONSTITUTION
AMENDMENTS PROPOSED AND ADOPTED

year proposed	number proposed	number adopted	year proposed	number proposed	number adopted
1879	1	1	1937	7	6
1881	2	0	1939	4	3
1883	5	5	1941	5	1
1887	6	0	1943	3**	3
1889	2	2	1945	8	7
1891	5	5	1947	9	9
1893	2	2	1949	10	2
1895	2	1	1951	7	3
1897	5	1	1953	11	11
1899	1	0	1955	9	9
1901	1	1	1957	12	10
1903	3	3	1959	4	4
1905	3	2	1961	14	10
1907	9	1	1963	7	4
1909	4	4	1965	27	20
1911	5	4	1967	20	13
1913	8*	0	1969	16	9
1915	7	0	1971	18	12
1917	3	3	1973	9	6
1919	13	3	1975	12††	3
1921	5**	1	1977	15	11
1923	2†	1	1978	1	1
1925	4	4	1979	12	9
1927	8**	4	1981	10	8
1929	7**	5	1982	3	3
1931	9	9	1983	19	16
1933	12	4	1985	17**	17
1935	13	10	1986	1	1
			1987	28**	17(a)
<u>TOTAL PROPOSED 465</u>			<u>TOTAL ADOPTED 304</u>		

NOTES

- * Eight resolutions were approved by the legislature, but only six were actually submitted on the ballot; one proposal that included two amendments was not submitted to the voters.
- ** Total reflects two amendments that were included in one joint resolution.
- † Two resolutions were approved by the legislature, but only one was actually submitted on the ballot.
- †† Total reflects eight amendments that would have provided for an entire new Texas Constitution and that were included in one joint resolution.
- (a) Twenty-five of the 28 proposed amendments appeared on the 1987 general election ballot, and 17 were adopted. The remaining three will be submitted to the voters on November 8, 1988.

WORDING OF BALLOT PROPOSITIONS

Amendment No. 1

"The constitutional amendment and/or clarification providing that federal reimbursement of state highway dedicated funds are themselves dedicated for the purpose of acquiring rights-of-way and constructing, maintaining, and policing public roadways."

Amendment No. 2

"The constitutional amendment establishing an economic stabilization fund in the state treasury to be used to offset unforeseen shortfalls in revenue."

Amendment No. 3

"The constitutional amendment to provide for the investment of the permanent university fund, the permanent school fund, and public employee retirement systems in the Texas growth fund created by the amendment, which will directly create, retain, and expand job opportunity and economic growth in Texas."

ANALYSES
OF
PROPOSED AMENDMENTS

AMENDMENT NO. 1

Senate Joint Resolution 8, 70th Legislature, 2nd Called Session, proposing a constitutional amendment relating to the dedication of certain funds for highway purposes. (SENATE AUTHOR: John Montford; HOUSE SPONSOR: Gibson D. "Gib" Lewis)

The proposed amendment to Article VIII of the Texas Constitution would add Section 7-b, which would dedicate, or set aside, for the purposes of acquiring rights-of-way and constructing, maintaining, and policing public roadways, all money that is received from the federal government as reimbursement for state money that is dedicated and spent for those purposes.

BACKGROUND

Article VIII, Section 7-a, of the Texas Constitution was adopted by the voters in 1946. That provision, in pertinent part, dedicates proceeds from motor vehicle registration fees and taxes on motor fuels and lubricants for the purposes of acquiring rights-of-way and constructing, maintaining, and policing public roadways. (The dedication does not apply to taxes on the production of motor fuels or lubricants nor to property taxes on real estate used for the production, and one-fourth of the proceeds from motor fuel taxes are alternatively dedicated to the support of public schools.) The result of that dedication for highway and highway policing purposes and, to a much lesser degree, the dedication by statute of other fees for those purposes has been the consistent availability of state money to finance the construction, maintenance, and improvement of the state highway system. Under the federal program of aid for public highways, states are required to pay almost all costs of planning, land acquisition, and construction on a highway project. If a project meets federal aid specifications, the state is then reimbursed from federal money for a major portion of its expenses (generally 90 percent of all costs of an interstate highway). The reimbursements have traditionally been used in Texas to replenish the dedicated pool of state money.

The state fiscal crisis of 1986 and 1987 resulted in inquiries as to whether the federal reimbursements could be used for purposes other than highways and policing of highways. Sources in the federal government apparently were divided in their opinion of permissible uses under the federal law. Whether the dedication of Article VIII, Section 7-a, of the Texas Constitution would be interpreted to incorporate federal expense reimbursements also is not certain.

The state General Appropriations Act estimates the amounts of federal highway aid (almost all of which is federal reimbursements) to be received in the most recent and current fiscal years to exceed \$900 million in each of those years.

ARGUMENTS

FOR:

1. The state highway system is an achievement of which the state can be justifiably proud. The system has been financed primarily with the combination of state taxes and fees and federal reimbursements, and adoption of this amendment will retain the status quo and maintain the quality of transportation projects and services that Texans have come to expect.

2. Projected state population growth may result in greater demand for new transportation facilities and necessitate more maintenance and improvements on existing ones than ever before. During times of relatively small population growth and economic stagnation, the quality of highways and degree of transportation mobility can be a major factor in influencing an area's future population growth or economic health. In either circumstance, a large, assured source of funding for highways and transportation services, such as is provided by this amendment, is needed.

3. If federal reimbursements of state highway expenditures are not required to be dedicated to highway and highway policing purposes, the dedicated pool of state money could easily be spent each year, and the availability of unrestricted money would be unforeseen from one fiscal biennium to another. This would cripple the process of planning transportation projects, which because of their size, cost, and time for completion require long-range budgeting.

AGAINST:

1. Major state taxes and fees are already constitutionally set aside for highways and the policing of highways. Federal reimbursements have traditionally been made available for these purposes as well, and there is no reason to believe that the legislature will ignore or abandon the state's history of commitment to its highway program. This amendment would seemingly tie the hands of the legislature, however, by restricting its ability to set fiscal priorities.

2. Constitutional dedications of money do not guarantee that money will be appropriated for the designated purpose; they only prevent it from being used for other purposes.

3. The federal government typically restricts the use of money it grants or rebates to the states. If the federal government does not restrict states' use of federal highway aid, the state should enjoy the unusual discretion to leave it unrestricted.

AMENDMENT NO. 2

House Joint Resolution 2, 70th Legislature, Regular Session, proposing a constitutional amendment relating to the establishment of an economic stabilization fund in the state treasury. (HOUSE AUTHOR: Stan Schlueter; SENATE SPONSOR: John Leedom)

The proposed amendment to Article III of the Texas Constitution would establish in the state treasury a "rainy day" fund to be called the economic stabilization fund and to be used primarily to prevent or eliminate temporary cash deficiencies in the state's general revenues. The fund would consist of:

- (1) 50 percent of any unencumbered and unused general revenue remaining from the previous fiscal biennium;
- (2) 75 percent of any amount of state revenues from oil or gas production taxes that is in excess of the amount received in the 1987 fiscal year;
- (3) interest and investment income credited to the fund; and
- (4) additional amounts as appropriated to the fund by the legislature.

The proposed constitutional amendment would authorize the comptroller to adjust the amounts transferred into the fund so that the total fund amount in each biennium would not exceed 10 percent of all amounts that were deposited into the general revenue fund in the preceding biennium, excluding investment and interest income and amounts borrowed from other funds. Amounts borrowed from the economic stabilization fund to avert a deficiency in general revenues would be returned to the fund from that source. In addition, the legislature could appropriate money from the economic stabilization fund for other purposes in certain circumstances and by votes of extraordinary majorities.

BACKGROUND

Despite the prohibition against incurring state debt in Article III, Section 49, of the Texas Constitution, the state has experienced frequent deficits throughout its history. In 1942, voters added Section 49a to the Texas Constitution requiring that appropriations for a given fiscal biennium be limited to amounts certified by the state comptroller as within expected, available state revenues for that biennium. Nevertheless, the pay-as-you-go intent of this amendment did not remedy the problem of cash deficiencies when state revenues fell below the amounts expected.

The rapid decline of Texas' oil-based economy highlighted the state's ongoing funding problems by bringing large, unexpected cash deficiencies to the state in the 1986-87 fiscal biennium. In 1986, cash reserves in the general revenue fund fell below the amount that had been estimated for that time by the comptroller in 1985. Because appropriations made by the 69th Legislature did not anticipate the

reduction in state revenue, an impending cash shortage was apparent by the fall of 1986. To avert the shortage, the governor called a third special session and the legislature enacted a new appropriations bill for the remainder of the biennium. The bill was passed with reduced amounts for programs that had been authorized to receive more funds under the previous act, creating financial hardship for some recipients of state revenue.

The proposed establishment of an economic stabilization fund is an effort to create a cash reserve for the state in the event that actual revenues received by the state for a biennium are less than the amount previously anticipated by the comptroller for that biennium. The fund would be derived primarily from half of any undedicated revenue left over from the preceding fiscal biennium and from oil and gas production taxes in excess of certain amounts.

ARGUMENTS

FOR:

1. The proposed constitutional amendment would have the effect of an enforced savings plan by requiring the state to put aside specific revenue amounts against unexpected shortages. The fund would allow the state government to act with more fiscal responsibility and, in times of economic uncertainty, give the state a financial cushion against unexpected downturns.

2. Article III, Section 49a, of the Texas Constitution embodies a pay-as-you-go financial philosophy by requiring the comptroller to certify that proposed appropriations are within expected revenue limits. However, since no one can predict with certainty the state's economic condition two years in the future, the comptroller's estimate of expected revenues is inherently inaccurate. An unanticipated revenue shortage undermines the intent of Section 49a. An economic stabilization fund would provide a cushion against the event that the comptroller overestimates the state's future income and cash revenues cannot meet appropriated purposes.

AGAINST:

1. The establishment of an economic stabilization fund would be too little, too late to alleviate the state's financial woes. In a major or prolonged recession, it is likely that no unencumbered funds would remain at the close of a fiscal biennium and that revenues from oil and gas production taxes would not increase. Under those circumstances, unless the legislature appropriated money to the economic stabilization fund, there would be no money in the fund to help avert a revenue shortage.

2. The proposed constitutional amendment would solve cash flow problems in general revenue at the expense of the availability of general revenues for future appropriations. To divert money from general revenue to an economic stabilization fund would reduce the amount that may be appropriated by the legislature in the usual manner. In times of economic crisis, the legislature needs greater flexibility to divide up a shrinking budget. Instead, an economic stabilization fund should be taken from money not otherwise available for general appropriations, such as funds dedicated for special purposes.

AMENDMENT NO. 3

House Joint Resolution 5, 70th Legislature, 2nd Called Session, proposing a constitutional amendment relating to the establishment of the Texas growth fund and the investment of certain state funds in businesses in the state. (HOUSE AUTHOR: Stan Schlueter; SENATE SPONSOR: Chet Edwards)

The proposed amendment adds Section 70 to Article XVI of the Texas Constitution, and creates the Texas growth fund to be a source of investments, including venture capital investments, for businesses in the state. The proposed amendment also adds Section 11b to Article VII of the Texas Constitution, authorizing money in the permanent university fund to be invested in any prudent investment, including the Texas growth fund, and adds Subsection (d) to Section 5 of that article, making the same authorization for money in the permanent school fund.

BACKGROUND

In recent years persons seeking to start new businesses, and existing businesses seeking to develop new or improved products or otherwise to expand, have found it difficult to acquire financing for their proposed projects. The general decline in the state's economy together with the related problems suffered by financial institutions in the state are major reasons that capital is difficult to acquire, especially for ventures whose greater potential for return is coupled with greater investment risk.

The proposed amendment is designed to provide an alternate source of capital for businesses having difficulty obtaining financing from traditional sources of investment. The amendment creates the Texas growth fund to provide a pool of money from which those businesses may receive financing. Money in the Texas growth fund comes from investments made by the governing boards of the permanent university fund, the permanent school fund, the Teacher Retirement System of Texas, the Employees Retirement System of Texas, and any other pension system created by state law. Not more than one percent of the value of the assets of any of these funds may be placed in the Texas growth fund. The Texas growth fund is managed by a board of directors consisting of four appointees of the governor and representatives of the funds and retirement systems permitted to invest in the Texas growth fund.

The board of directors is to invest the money in the Texas growth fund in investments related to creating, retaining, or expanding employment opportunity and economic growth in the state. Not more than 10 percent of the investment of the Texas growth fund may be venture capital investments, which have potential

for substantial return and usually also involve greater risk. At least 75 percent of those investments must be matched at least equally by investments from sources other than the Texas growth fund. The remainder of Texas growth fund money will be invested in more conventional investments in businesses in the state.

Profits from investments of the Texas growth fund are distributed to the funds and systems that invested in the Texas growth fund in proportion to the amount of their investments.

The Texas growth fund is to be phased out 10 years after it is created. If the legislature wishes it may then create the Texas growth fund II to operate in the same manner as the Texas growth fund for an additional 10-year period.

There is no related enabling legislation.

ARGUMENTS

FOR:

1. Many new ideas go to waste, and beneficial new products and methods are never developed, because financing for the ideas, products, and methods cannot be obtained from traditional sources. The state is obligated to its citizens to prevent the loss of these potential enhancements to the quality of life.

2. The proposed amendment would foster the recovery of the state's economy by increasing the number of enterprises operating in the state. This would decrease unemployment and increase state tax revenue.

3. In the past the state has been dependent on the oil industry, and the decline of that industry has had a severe effect on the state. The proposed amendment would support development of businesses in many different areas, and this diversification of the state's economy would protect the state from rising or falling on the fortunes of a single industry.

AGAINST:

1. Adequate private sources of financing exist for worthy ventures. It is not necessary or desirable for the state to invest in ventures that experienced private investors have examined and rejected.

2. Money to be used for the proposed investments is held by the state for the benefit of its students and retired employees. The state is obligated to protect those persons' contributions and not to make risky investments.

3. The development of private business is not a proper purpose of state government. Financially aiding that development contravenes the long-standing state policy against use of public funds to benefit private entities.

APPENDIX
Text of Resolutions Proposing Amendments

AMENDMENT NO. 1

SENATE AUTHOR: John Montford
HOUSE SPONSOR: Gibson D. "Gib" Lewis

S.J.R. No. 8
(70th Leg., 2nd C.S.)

SENATE JOINT RESOLUTION

proposing a constitutional amendment relating to the dedication of certain funds for highway purposes and amending Section 2, H.J.R. 2, Acts of the 70th Legislature, Regular Session, 1987, relating to date of election.

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

SECTION 1. Article VIII of the Texas Constitution is amended and/or clarified by adding Section 7-b to read as follows:

Sec. 7-b. All revenues received from the federal government as reimbursement for state expenditures of funds that are themselves dedicated for acquiring rights-of-way and constructing, maintaining, and policing public roadways are also constitutionally dedicated and shall be used only for those purposes.

SECTION 2. This proposed constitutional amendment and/or clarification shall be submitted to the voters at an election to be held on November 8, 1988. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment and/or clarification providing that federal reimbursement of state highway dedicated funds are themselves dedicated for the purpose of acquiring rights-of-way and constructing, maintaining, and policing public roadways."

SECTION 3. Section 2, H.J.R. 2, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

Sec. 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 8, 1988 [~~3, 1987~~]. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment establishing an economic stabilization fund in the state treasury to be used to offset unforeseen shortfalls in revenue."

AMENDMENT NO. 2

HOUSE AUTHOR: Stan Schlueter
SENATE SPONSOR: John Leedom

H.J.R. No. 2
(70th Leg., R.S.)

A JOINT RESOLUTION

proposing a constitutional amendment relating to the establishment of an economic stabilization fund in the state treasury.

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

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

Sec. 49-g. (a) The economic stabilization fund is established as a special fund in the state treasury.

(b) The comptroller shall, not later than the 90th day of each biennium, transfer to the economic stabilization fund one-half of any unencumbered positive balance of general revenues on the last day of the preceding biennium. If necessary, the comptroller shall reduce the amount transferred in proportion to the other amounts prescribed by this section to prevent the amount in the fund from exceeding the limit in effect for that biennium under Subsection (g) of this section.

(c) Not later than the 90th day of each fiscal year, the comptroller of public accounts shall transfer from general revenue to the economic stabilization fund the amounts prescribed by Subsections (d) and (e) of this section. However, if necessary, the comptroller shall reduce proportionately the amounts transferred to prevent the amount in the fund from exceeding the limit in effect for that biennium under Subsection (g) of this section.

(d) If in the preceding year the state received from oil production taxes a net amount greater than the net amount of oil production taxes received by the state in the fiscal year ending August 31, 1987, the comptroller shall transfer to the economic stabilization fund an amount equal to 75 percent of the difference between those amounts. The comptroller shall retain the remaining 25 percent of the difference as general revenue. In computing the net amount of oil production taxes received, the comptroller may not consider refunds paid as a result of oil overcharge litigation.

(e) If in the preceding year the state received from gas production taxes a net amount greater than the net amount of gas production taxes received by the state in the fiscal year ending August 31, 1987, the comptroller shall transfer to the economic stabilization fund an amount equal to 75 percent of the difference between those amounts. The comptroller shall retain the remaining 25 percent of

the difference as general revenue. For the purposes of this subsection, the comptroller shall adjust his computation of revenues to reflect only 12 months of collection.

(f) The legislature may appropriate additional amounts to the economic stabilization fund.

(g) During each fiscal biennium, the amount in the economic stabilization fund may not exceed an amount equal to 10 percent of the total amount, excluding investment income, interest income, and amounts borrowed from special funds, deposited in general revenue during the preceding biennium.

(h) In preparing an estimate of anticipated revenues for a succeeding biennium as required by Article III, Section 49a, of this constitution, the comptroller shall estimate the amount of the transfers that will be made under Subsections (b), (d), and (e) of this section. The comptroller shall deduct that amount from the estimate of anticipated revenues as if the transfers were made on August 31 of that fiscal year.

(i) The state treasurer shall credit to general revenue interest due to the economic stabilization fund that would result in an amount in the economic stabilization fund that exceeds the limit in effect under Subsection (g) of this section.

(j) The comptroller, with the consent of the state treasurer, may transfer money from the economic stabilization fund to general revenue to prevent or eliminate a temporary cash deficiency in general revenue. The comptroller shall return the amount transferred to the economic stabilization fund as soon as practicable, but not later than August 31 of each odd-numbered year. The state treasurer shall allocate the depository interest as if the transfers had not been made. If the comptroller submits a statement to the governor and the legislature under Article III, Section 49a, of this constitution when money from the economic stabilization fund is in general revenue, the comptroller shall state that the transferred money is not available for appropriation from general revenue.

(k) Amounts from the economic stabilization fund may be appropriated during a regular legislative session only for a purpose for which an appropriation from general revenue was made by the preceding legislature and may be appropriated in a special session only for a purpose for which an appropriation from general revenue was made in a preceding legislative session of the same legislature. An appropriation from the economic stabilization fund may be made only if the comptroller certifies that appropriations from general revenue made by the preceding legislature for the current biennium exceed available general revenues and cash balances for the remainder of that biennium. The amount of an appropriation from the economic stabilization fund may not exceed the difference between the comptroller's estimate of general revenue for the current biennium at the time the comptroller receives for certification the bill making the appropriation

and the amount of general revenue appropriations for that biennium previously certified by the comptroller. Appropriations from the economic stabilization fund under this subsection may not extend beyond the last day of the current biennium. An appropriation from the economic stabilization fund must be approved by a three-fifths vote of the members present in each house of the legislature.

(l) If an estimate of anticipated revenues for a succeeding biennium prepared by the comptroller pursuant to Article III, Section 49a, of this constitution is less than the revenues that are estimated at the same time by the comptroller to be available for the current biennium, the legislature may, by a three-fifths vote of the members present in each house, appropriate for the succeeding biennium from the economic stabilization fund an amount not to exceed this difference. Following each fiscal year, the actual amount of revenue shall be computed, and if the estimated difference exceeds the actual difference, the comptroller shall transfer the amount necessary from general revenue to the economic stabilization fund so that the actual difference shall not be exceeded. If all or a portion of the difference in revenue from one biennium to the next results, at least in part, from a change in a tax rate or base adopted by the legislature, the computation of revenue difference shall be adjusted to the amount that would have been available had the rate or base not been changed.

(m) In addition to the appropriation authority provided by Subsections (k) and (l) of this section, the legislature may, by a two-thirds vote of the members present in each house, appropriate amounts from the economic stabilization fund at any time and for any purpose.

(n) Money appropriated from the economic stabilization fund is subject to being withheld or transferred, within any limits provided by statute, by any person or entity authorized to exercise the power granted by Article XVI, Section 69, of this constitution.

(o) In this section, "net" means the amount of money that is equal to the difference between gross collections and refunds before the comptroller allocates the receipts as provided by law.

(p) This section takes effect September 1, 1989. This subsection expires September 2, 1989.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 3, 1987.* The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment establishing an economic stabilization fund in the state treasury to be used to offset unforeseen shortfalls in revenue."

*The election for this amendment was changed from 1987 to 1988 by S.J.R. No. 8 and S.J.R. No. 5, 70th Leg., 2nd C.S.

AMENDMENT NO. 3

HOUSE AUTHOR: Stan Schlueter
SENATE SPONSOR: Chet Edwards

H.J.R. No. 5
(70th Leg., 2nd C.S.)

A JOINT RESOLUTION

proposing a constitutional amendment relating to the establishment of the Texas growth fund and the investment of certain state funds in businesses in the state to promote and encourage economic development of the state.

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

SECTION 1. Article XVI of the Texas Constitution is amended by adding Section 70 to read as follows:

Sec. 70. (a) In this section:

(1) "Board of trustees" means the board of trustees of the Texas growth fund.

(2) "Fund" means the Texas growth fund.

(3) "Venture capital investment" means an investment in debt, equity, or a combination of debt and equity that possesses the potential for substantial investment returns, and includes investments in new or small businesses, investments in businesses with rapid growth potential, or investments in applied research and organizational activities leading to business formation and opportunities involving new or improved processes or products.

(b) The Texas growth fund is created as a trust fund. Except as otherwise provided by this section, the fund is subject to the general laws of this state governing private sector trusts. The governing boards of the permanent university fund, the permanent school fund, the Teacher Retirement System of Texas, the Employees Retirement System of Texas, and any other pension system created under this constitution or by statute of this state in their sole discretion may make investments in the fund.

(c) The fund is managed by a board of trustees consisting of four public members appointed by the governor and one member from and elected by the membership of each of the following:

(1) the Board of Regents of The University of Texas System;

(2) the Board of Regents of The Texas A&M University System;

(3) the Board of Trustees of the Teacher Retirement System of Texas;

(4) the Board of Trustees of the Employees Retirement System of Texas; and

(5) the State Board of Education.

(d) Each public member of the board must have demonstrated substantial investment expertise. A public member serves for a six-year term expiring February 1 of an odd-numbered year.

(e) A person filling an elected position on the board of trustees ceases to be a member of the board of trustees when the person ceases to be a member of the board the person represents or as otherwise provided by procedures adopted by the board the person represents. The governor shall designate a chairman from among the members of the board of trustees who serves a term of two years expiring February 1 of each odd-numbered year. A member may serve more than one term as chairman.

(f) The board of trustees shall manage the investment of the fund, and may:

(1) employ and retain staff, including a chief executive officer;

(2) analyze and structure investments;

(3) set investment policy of the fund;

(4) take any action necessary for the creation, administration, and protection of the fund;

(5) enter into investment contracts with the participating funds or systems;

(6) adopt rules regarding the operation of the fund;

(7) pay expenses of the fund based on an assessment on investor contributions; and

(8) alternatively, or in combination with its own staff, contract for the management of investments under this section with a private investment management firm or with an investing fund or system electing a member of the board of trustees.

(g) In making investments, including venture capital investments, the board of trustees shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of the capital of the fund. All investments of the fund shall be directly related to the creation, retention, or expansion of employment opportunity and economic growth in Texas. In making venture capital investments, all other material matters being equal, the board of trustees shall invest in technological advances that could be expected to result in the greatest increase in employment opportunity and economic growth in Texas.

(h) The board of trustees shall establish and operate the fund to the extent practical under the generally accepted business procedures relating to a mutual fund and shall value the investments for determining the purchase or sales price of participating shares of investing funds or systems participating in the fund consistent with investment contracts. Evidences of participation in the fund shall be

held by the state treasurer in keeping with the custodial responsibilities of that office.

(i) An investing fund or system, without liability at law or in equity to members of the governing board of the fund or system in their personal or official capacities, may cumulatively invest in the Texas growth fund not more than one percent of the book or cost value of the investing fund or system, as determined at the end of each fiscal year.

(j) The board of trustees shall establish criteria for the investment of not more than 10 percent of the fund in venture capital investments. Not more than 25 percent of the funds available for venture capital investments may be used for unilateral investment. Investments of the remainder of the funds available for venture capital investments must be matched at least equally by funds from sources other than the fund, with matching amounts established by the board of trustees. The board of trustees shall also establish criteria for the investment of not less than 50 percent of the fund in equity or debt security, or a combination of equity and debt security, for the initial construction, expansion, or modernization of business or industrial facilities in Texas. The board of trustees may invest in money funds whose underlying investments are consistent and acceptable under the investment policy of the fund.

(k) On a quarterly basis, the amount of income realized on investments under this section shall be distributed to each of the systems and funds investing in the Texas growth fund in proportion to the number of participating shares of each investing system and fund. Capital appreciation becomes a part of the corpus of the Texas growth fund and shall be distributed in accordance with the investment contracts.

(l) The board of trustees shall make arrangements to begin liquidation, phase out investments, and return the principal and capital gains on investments to the investors in the fund not later than the 10th anniversary of the date of the adoption of this section. Except under unusual circumstances where it may be necessary to protect investments previously made, further investments may not be made in or by the fund after the 10th anniversary of the date of the adoption of this section.

(m) At the regular legislative session next preceding the 10th anniversary of the date of the adoption of this section, the legislature, by two-thirds vote of each house, may authorize the creation of Texas growth fund II, which shall operate under this section and under the board of trustees created by this section in the same manner as the Texas growth fund. Funds in Texas growth fund II may not be commingled with funds in the Texas growth fund.

(n) The board of trustees may purchase liability insurance for the coverage of the trustees, employees, and agents of the board.

(o) The legislature shall provide by law for the periodic review of the board of trustees in the same manner and at the same intervals as it provides for review of other state agencies, except that the legislature shall provide that the board of trustees is not subject to abolishment as part of the review process.

(p) This section expires September 1, 1998, except that if the legislature authorizes the creation of Texas growth fund II as provided by Subsection (m) of this section, this section expires September 1, 2008.

(q) This section is self-executing and takes effect on its adoption by the voters. All state officials named in this section, the state treasurer, and the comptroller of public accounts shall take all necessary actions for the implementation of this section. The legislature shall provide by law for full disclosure of all details concerning investments authorized by this section.

(r) The board of trustees may not invest money from the Texas growth fund in a business unless the business has submitted to the board of trustees an affidavit disclosing whether the business has any direct financial investment in or with South Africa or Namibia.

SECTION 2. Article VII of the Texas Constitution is amended by adding Section 11b to read as follows:

Sec. 11b. Notwithstanding any other provision of this constitution, in managing the assets of the permanent university fund, the Board of Regents of The University of Texas System may acquire, exchange, sell, supervise, manage, or retain, through procedures and subject to restrictions it establishes and in amounts it considers appropriate, any kind of investment, including investments in the Texas growth fund created by Article XVI, Section 70, of this constitution, that persons of ordinary prudence, discretion, and intelligence, exercising the judgment and care under the circumstances then prevailing, acquire or retain for their own account in the management of their affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. This section does not affect the state treasurer's custodial responsibilities for public funds, securities, and other evidences of investment.

SECTION 3. Article VII, Section 5, of the Texas Constitution is amended by adding Subsection (d) to read as follows:

(d) Notwithstanding any other provision of this constitution, in managing the assets of the permanent school fund, the State Board of Education may acquire, exchange, sell, supervise, manage, or retain, through procedures and subject to restrictions it establishes and in amounts it considers appropriate, any kind of investment, including investments in the Texas growth fund created by Article XVI, Section 70, of this constitution, that persons of ordinary prudence, discretion, and intelligence, exercising the judgment and care under the circumstances then

prevailing, acquire or retain for their own account in the management of their affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

SECTION 4. The following unnumbered transitional provision is added to the Texas Constitution to read as follows:

TRANSITIONAL PROVISION. (a) In making the initial appointments of public members of the board of trustees of the Texas growth fund, the governor shall appoint two members for terms expiring February 1, 1991, and two for terms expiring February 1, 1993.

(b) This provision expires September 1, 1989.

SECTION 5. This proposed amendment shall be submitted to the voters at an election to be held November 8, 1988. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to provide for the investment of the permanent university fund, the permanent school fund, and public employee retirement systems in the Texas growth fund created by the amendment, which will directly create, retain, and expand job opportunity and economic growth in Texas."