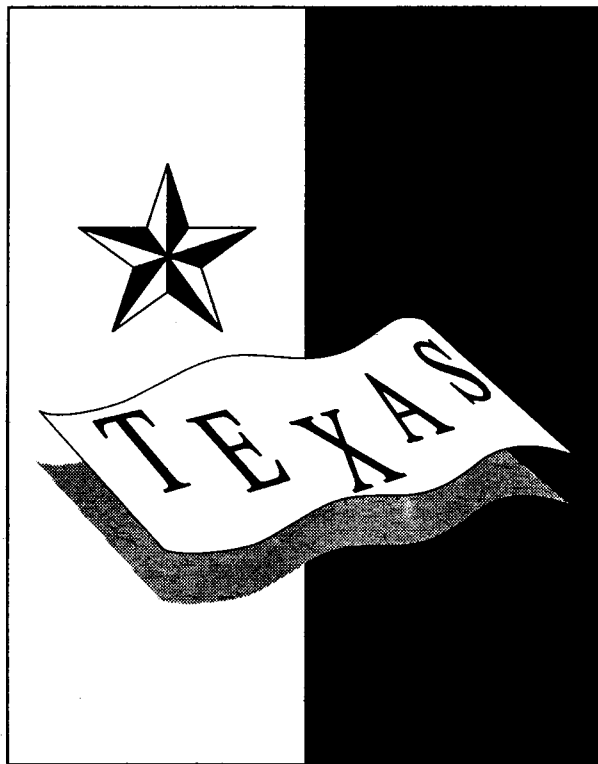


Analyses of Proposed Constitutional Amendments

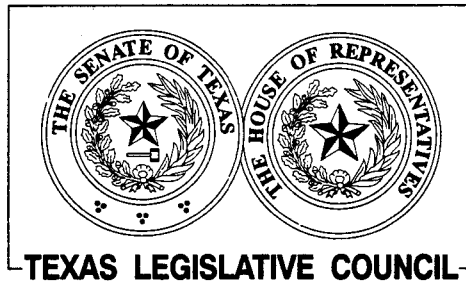
November 4, 1997, Election



Texas Legislative Council
September 1997

Analyses of Proposed Constitutional Amendments

November 4, 1997, Election



Prepared by the Staff
of the
Texas Legislative Council

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Lieutenant Governor Bob Bullock, Chairman
Speaker James E. "Pete" Laney, Vice Chairman
Robert I. Kelly, Executive Director
September 1997

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Introduction

General Information

In the 1997 regular session, the 75th Texas Legislature passed 15 joint resolutions proposing constitutional amendments. One of the proposed amendments was offered for ratification on the August 9, 1997, election ballot, with the remaining amendments appearing on the November 4, 1997, election ballot.

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

Since adoption in 1876 and through September 1997, the state's constitution has been amended 365 times, from a total of 536 amendments submitted to the voters for their approval. The 14 amendments on the November 4, 1997, election ballot will bring the total number of amendments submitted to 550. The following table lists the years in which constitutional amendments have been proposed by the Texas Legislature, the number of amendments proposed, and the number of those adopted. The year of the vote is not reflected in the table.

The remaining section of this publication contains the ballot language, an analysis of the proposition, and the text of each joint resolution proposing constitutional amendments that will appear on the November 4, 1997, ballot. The analyses include background information and arguments for and against each proposed constitutional amendment. The propositions are presented in the order in which they will appear on the election ballot.

Table					
1876 Constitution Amendments Proposed and Adopted					
year proposed	number proposed	number adopted	year proposed	number proposed	number adopted
1879	1	1	1945	8	7
1881	2	0	1947	9	9
1883	5	5	1949	10	2
1887	6	0	1951	7	3
1889	2	2	1953	11	11
1891	5	5	1955	9	9
1893	2	2	1957	12	10
1895	2	1	1959	4	4
1897	5	1	1961	14	10
1899	1	0	1963	7	4
1901	1	1	1965	27	20
1903	3	3	1967	20	13
1905	3	2	1969	16	9
1907	9	1	1971	18	12
1909	4	4	1973	9	6
1911	5	4	1975	12†	3
1913	8*	0	1977	15	11
1915	7	0	1978	1	1
1917	3	3	1979	12	9
1919	13	3	1981	10	8
1921	5**	1	1982	3	3
1923	2***	1	1983	19	16
1925	4	4	1985	17**	17
1927	8**	4	1986	1	1
1929	7**	5	1987	28**	20
1931	9	9	1989	21**	19
1933	12	4	1990	1	1
1935	13	10	1991	15	12
1937	7	6	1993	19**	14
1939	4	3	1995	14	11
1941	5	1	1997	15	1‡
1943	3**	3			

Total Proposed 550 — Total Adopted 365

Notes

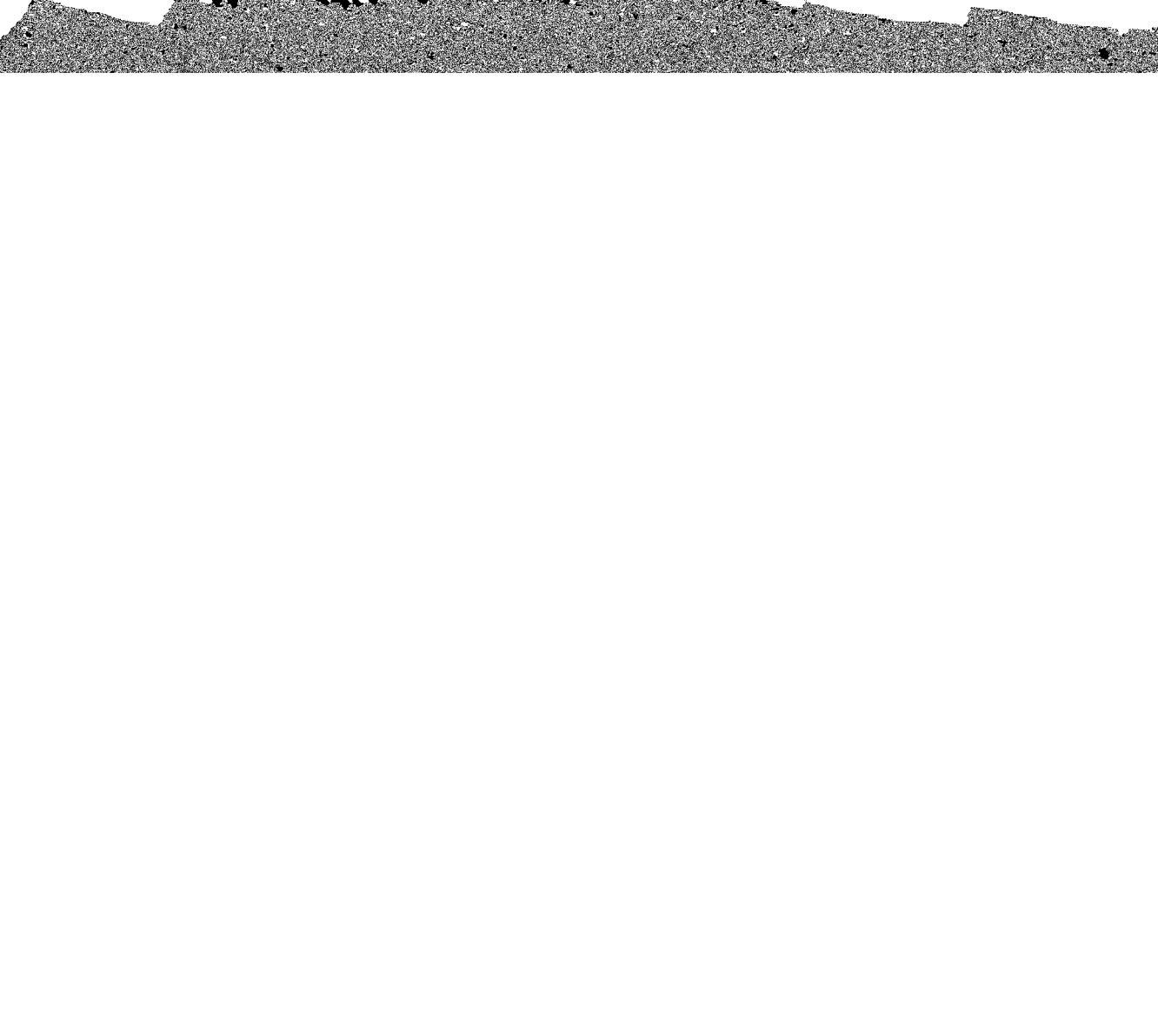
- * Eight resolutions were approved by the legislature, but only six were actually submitted on the ballot; one proposal that included two amendments was not submitted to the voters.**
- ** Total reflects two amendments that were included in one joint resolution.**
- *** Two resolutions were approved 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.**
- ‡ One of the amendments approved by the 75th Legislature during the 1997 regular session appeared on the August 9, 1997, election ballot and was adopted. The remaining 14 amendments will appear on the November 4, 1997, election ballot.**

Proposed Amendments

Amendment No. 1 (S.J.R. No. 36)

Wording of Ballot Proposition:

The constitutional amendment to allow a person who holds the office of municipal court judge to hold at the same time more than one civil office for which the person receives compensation.



employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts; provided, however, that such State employees or other individuals shall receive no salary for serving as members of such governing bodies. A person may hold the position of Municipal Court Judge in more than one municipality. It is further provided that a nonelective State officer may hold other nonelective offices under the State or the United States, if the other office is of benefit to the State of Texas or is required by the State or Federal law, and there is no conflict with the original office for which he receives salary or compensation. No member of the Legislature of this State may hold any other office or position of profit under this State, or the United States, except as a notary public if qualified by law.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 4, 1997. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to allow a person who holds the office of municipal court judge to hold at the same time more than one civil office for which the person receives compensation."

Amendment No. 2 (S.J.R. No. 43)

Wording of Ballot Proposition:

The constitutional amendment to authorize the legislature to limit increases in the appraised value of residence homesteads for ad valorem taxation and to permit a school district to calculate the school property tax freeze applicable to the residence homestead of an elderly person or the surviving spouse of an elderly person in accordance with the law authorizing the transfer of the school property tax freeze to a different homestead regardless of whether that law was in effect at the time the person established the person's homestead.

Analysis of Proposed Amendment:

The proposed amendment adds Subsection (i) to Section 1, Article VIII, Texas Constitution, to authorize the legislature to limit the maximum average annual percentage increase in the appraised value of residence homesteads for ad valorem tax purposes to 10 percent, or a greater percentage, for each year since the most recent tax appraisal. In addition, the proposed amendment adds Subsection (g) to Section 1-b, Article VIII, Texas Constitution, to provide that if the legislature provides for the transfer of all or a proportionate part of the limitation on school district ad valorem taxes on the residence homestead of an elderly person for a person who qualifies for the limitation and subsequently establishes a different residence homestead, the legislature by general law may authorize the governing body of the school district to elect to apply the law providing for the transfer of the limitation to a change of the person's residence homestead before that law took effect. The transfer of the limitation may apply only to taxes imposed in a tax year that begins after the tax year in which the election is made.

Background

Subsection (a) of Section 1, Article VIII, Texas Constitution, requires that all taxation be equal and uniform. Subsection (b) of that section requires that all real property and tangible personal property in this state be taxed in proportion to its current market value.

House Bill No. 4 was authorized by the constitutional amendment approved by the voters August 9, 1997, which also provided for a \$10,000 increase in the homestead exemption from school district taxes.

Senate Bill No. 841, which takes effect January 1, 1998, codifies the proposed limitation on increases in the appraised value of residence homesteads for ad valorem tax purposes by adding Section 23.23 to the Tax Code. Section 23.23 sets the limitation on increases at 10 percent per year, the lowest percentage permitted by the proposed constitutional amendment. Senate Bill No. 841 also codifies the proposed authorization for the retroactive application of the transfer of the tax freeze to a different residence homestead by making appropriate changes to Section 11.26, Tax Code.

Senate Joint Resolution No. 43 also contains an alternative provision (Article 2) that would have included a proposal to allow for the transfer of the tax freeze from one homestead to another. Article 2 has no effect because the authority for the tax freeze transfer was approved by the voters August 9, 1997, as noted above.

Arguments For:

1. From time to time, property values in a particular area may increase rapidly. The resulting increases in the appraised value of property have sharply increased the property tax liability of many homeowners, sometimes making it difficult for them to remain in their homes. The proposed limitation on increases in the appraised value of residence homesteads for ad valorem tax purposes would protect homeowners from dramatic increases in property tax liability resulting from sudden increases in the appraised value of their homesteads. At the same time, the effect on local governments and other taxpayers would be minimal because the limitation still allows for an average appraisal increase of 10 percent per year, and appraisals do not frequently increase more than that amount. When a homestead's market value does increase precipitously, the homestead's tax appraisal will catch up to the market value within a few years, allowing full taxation by affected local governments.

The image shows a dark gray, textured surface that resembles coarse sand or gravel. The texture is composed of numerous small, irregular grains and particles. A vertical white line runs along the left edge of the image, possibly indicating a boundary or a scanning artifact. The overall appearance is grainy and uneven.

because some school districts may choose to do so while others may not. In addition, retroactive application imposes an administrative burden on school districts and shifts the tax burden from taxpayers who are benefited by that action to other taxpayers.

Text of S.J.R. No. 43: SENATE AUTHOR: David Cain
HOUSE SPONSOR: Paul Hilbert

SENATE JOINT RESOLUTION

proposing a constitutional amendment providing for limitations on increases in the appraised value of residence homesteads for ad valorem taxation and for the transfer to a different residence homestead of the school property tax freeze on residence homesteads of the elderly and their spouses.

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

ARTICLE 1

SECTION 1.01. The constitutional amendment proposed by this article shall be submitted to the voters only if the constitutional amendment proposed by H.J.R. No. 4, Acts of the 75th Legislature, Regular Session, 1997, is approved by the voters.

SECTION 1.02. Section 1, Article VIII, Texas Constitution, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsections (a) and (b) of this section, the Legislature by general law may limit the maximum average annual percentage increase in the appraised value of residence homesteads for ad valorem tax purposes to 10 percent, or a greater percentage, for each year since the most recent tax appraisal. A limitation on appraisal increases authorized by this subsection:

(1) takes effect as to a residence homestead on the later of the effective date of the law imposing the limitation or January 1 of the tax year following the first tax year the owner qualifies the property for an exemption under Section 1-b of this article; and

(2) expires on January 1 of the first tax year that neither the owner of the property when the limitation took effect nor the owner's spouse or surviving spouse qualifies for an exemption under Section 1-b of this article.

SECTION 1.03. Section 1-b, Article VIII, Texas Constitution, is amended by adding Subsection (g) to read as follows:

(g) If the legislature provides for the transfer of all or a proportionate amount of a tax limitation provided by Subsection (d) of this section for a person who qualifies for the limitation and subsequently establishes a different residence homestead, the legislature by general law may authorize the governing body of a school district to elect to apply the law providing for the transfer of the tax limitation to a change of a person's residence homestead that occurred before that law took effect, subject to any restrictions provided by general law. The transfer of the limitation may apply only to taxes imposed in a tax year that begins after the tax year in which the election is made.

SECTION 1.04. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 1997. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to authorize the legislature to limit increases in the appraised value of residence homesteads for ad valorem taxation and to permit a school district to calculate the school property tax freeze applicable to the residence homestead of an elderly person or the surviving spouse of an elderly person in accordance with the law authorizing the transfer of the school property tax freeze to a different homestead regardless of whether that law was in effect at the time the person established the person's homestead."

ARTICLE 2

SECTION 2.01. The constitutional amendment proposed by this article shall be submitted to the voters only if the constitutional amendment

ad valorem tax purposes to 10 percent, or a greater percentage, for each year since the most recent tax appraisal. A limitation on appraisal increases authorized by this subsection:

(1) takes effect as to a residence homestead on the later of the effective date of the law imposing the limitation or January 1 of the tax year following the first tax year the owner qualifies the property for an exemption under Section 1-b of this article; and

(2) expires on January 1 of the first tax year that neither the owner of the property when the limitation took effect nor the owner's

(g) If the legislature provides for the transfer of all or a proportionate amount of a tax limitation provided by Subsection (d) of this section for a person who qualifies for the limitation and subsequently establishes a different residence homestead, the legislature by general law may authorize the governing body of a school district to elect to apply the law providing for the transfer of the tax limitation to a change of a person's residence homestead that occurred before that law took effect, subject to any restrictions provided by general law. The transfer of the limitation may apply only to taxes imposed in a tax year that begins after the tax year in which the election is made.

SECTION 2.04. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 1997. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to authorize the legislature to limit increases in the appraised value of residence homesteads for ad valorem taxation and to permit an elderly person or the surviving spouse of an elderly person to transfer the school property tax freeze on the person's residence homestead to a different residence homestead."

Amendment No. 3 (S.J.R. No. 45)

Wording of Ballot Proposition:

The constitutional amendment to authorize the legislature to permit a taxing unit to grant an exemption or other relief from ad valorem taxes on property on which a water conservation initiative has been implemented.

Analysis of Proposed Amendment:

The proposed amendment amends Article VIII, Texas Constitution, by adding Section 1-m to allow the legislature to authorize a taxing unit to grant an exemption or other relief from ad valorem taxes on property on which a water conservation initiative has been implemented.

Background

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

The Texas Constitution does not currently authorize any exemption from ad valorem taxes for property on which water conservation measures have been taken. The proposed constitutional amendment would allow the legislature to authorize a taxing unit (that is, a local government that imposes ad valorem taxes) to grant an exemption or other relief from ad valorem taxes on property on which a water conservation initiative has been implemented.

Section 5.11, Senate Bill No. 1, enacted by the 75th Legislature, Regular Session, 1997, which takes effect only if the constitutional amendment proposed by Senate Joint Resolution No. 45 is adopted, authorizes the governing body of a taxing unit to exempt from taxation

2. Because water is a state resource, conservation of water should be a statewide goal. Giving local taxing units the option of granting the exemption authorized by the proposed amendment is not the best method of encouraging statewide water conservation because a local taxing unit might elect not to grant the exemption. The goal of statewide water conservation would be better served by making the exemption mandatory rather than optional.

3. Because the exemption is optional with local taxing units, there is a risk of inconsistent and unfair tax treatment from one taxing jurisdiction to the next or even within a particular taxing jurisdiction.

**Text of S.J.R. No. 45: SENATE AUTHOR: J. E. Brown et al.
HOUSE SPONSOR: Ron Lewis**


SENATE JOINT RESOLUTION

proposing a constitutional amendment to authorize the legislature to permit a taxing unit to grant an exemption or other relief from ad valorem taxes on property on which a water conservation initiative has been implemented.

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

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

Sec. 1-m. The legislature by general law may authorize a taxing unit to grant an exemption or other relief from ad valorem taxes on property on which a water conservation initiative has been implemented.



Amendment No. 4 (H.J.R. No. 104)

Wording of Ballot Proposition:

The constitutional amendment eliminating duplicate numbering in and certain obsolete provisions of the Texas Constitution.

Analysis of Proposed Amendment:

The proposed amendment would eliminate duplicate numbering in Sections 48-e, 52e, and 61, Article III, and Section 16, Article VII, Texas Constitution. Furthermore, the proposed amendment would eliminate obsolete voting provisions contained in Section 52e, Article III, and Sections 1, 2, and 3, Article VI, Texas Constitution, as well as obsolete phraseology also contained in Sections 1 and 2, Article VI, of the constitution. Finally, the proposed amendment would eliminate provisions concerning a one-time appropriation authorized more than 50 years ago, as well as a defunct fund and office in Section 49-g, Article III, and Section 44(h), Article XVI, of the constitution.

Background

State constitutions are generally larger and more complex than the United States Constitution. This may be attributable to the ease with which a state constitution can be amended as compared to the federal constitution, as well as to a more fundamental difference between state and federal governments. Essentially, state governments have in reserve all powers not delegated to the federal government or prohibited by their constitutions, and the federal government has only the limited set of powers—however broadly construed—enumerated in its constitution. Thus, the frequency of amendment of state constitutions, the number of powers managed by state governments, and the actual exercise of federal legislative power under the enumerated constitutional powers occasionally cause state constitutions to contain provisions that have been superseded by federal law, are obsolete, or have technical errors.

Section 49-g, Article III, which became obsolete with the cancellation of that project, and the abolition of the office of county surveyor in Jackson County described in Section 44(h), Article XVI, which has occurred and the repeal of which will not revive the abolished office.

Arguments For:

1. The Texas Constitution contains several outdated, obsolete, and superseded provisions. The proposed amendment makes no changes in the effect of the law and is a positive step in the direction of a more streamlined and useful state constitution.

Arguments Against:

1. Although the proposed amendment makes only nonsubstantive changes to the Texas Constitution, it does not go far enough in removing unnecessary and outmoded provisions and could reduce the need for a more thorough revision.

**Text of H.J.R. No. 104: HOUSE AUTHOR: Anna Mowery
SENATE SPONSOR: Steve Ogden**

HOUSE JOINT RESOLUTION

proposing a constitutional amendment relating to eliminating duplicate numbering in and certain obsolete provisions of the Texas Constitution.

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

SECTION 1. Section 48-e, Article III, Texas Constitution, as proposed by H.J.R. No. 18, 70th Legislature, Regular Session, 1987, is redesignated as Section 48-f to read as follows:

Sec. 48-f [~~48-e~~]. The legislature, by law, may provide for the creation, operation, and financing of jail districts and may authorize each district to issue bonds and other obligations and to levy an ad valorem tax on property located in the district to pay principal of and interest on the bonds and to pay for operation of the district. An ad valorem tax may not be levied and bonds secured by a property tax may not be issued until approved by the qualified electors of the district voting at an election called and held for that purpose.

SECTION 2. Section 52e, Article III, Texas Constitution, as proposed by S.J.R. No. 37, 60th Legislature, Regular Session, 1967, is redesignated as Section 52g and amended to read as follows:

Sec. 52g [~~52e~~]. Bonds to be issued by Dallas County under Section 52 of Article III of this Constitution for the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, may, without the necessity of further or amendatory legislation, be issued upon a vote of a majority of the residents [~~resident property taxpayers~~] voting thereon who are qualified electors of said county, and bonds heretofore or hereafter issued under Subsections (a) and (b) of said Section 52 shall not be included in determining the debt limit prescribed in said Section.

SECTION 3. Section 61, Article III, Texas Constitution, as proposed by S.J.R. No. 5, 53rd Legislature, Regular Session, 1953, is redesignated as Section 61-a to read as follows:

Sec. ~~61-a~~ [61]. The Legislature shall not fix the salary of the Governor, Attorney General, Comptroller of Public Accounts, Commissioner of the General Land Office or Secretary of State at a sum less than that fixed for such officials in the Constitution on January 1, 1953.

SECTION 4. Section 1, Article VI, Texas Constitution, is amended to read as follows:

Sec. 1. The following classes of persons shall not be allowed to vote in this State, to wit:

First: Persons under 18 [~~twenty-one (21)~~] years of age.

Second: All persons who have been determined mentally incompetent by a court, subject to such exceptions as the Legislature may make. [~~Idiots and lunatics.~~]

Third: [~~All paupers supported by any county.~~]

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

SECTION 5. Section 2, Article VI, Texas Constitution, is amended to read as follows:

Sec. 2. Every person subject to none of the foregoing disqualifications who shall have attained the age of 18 [~~twenty-one (21)~~] years and who shall be a citizen of the United States and who is a resident of [~~shall have resided in~~] this State [~~one (1) year next preceding an election and the last six (6) months within the district or county in which such person offers to vote;~~] shall be deemed a qualified elector; provided, however, that before offering to vote at an election a voter shall have registered [~~annually~~], but such requirement for registration shall not be considered a qualification of an elector within the meaning of the term "qualified elector" as used in any other Article of this Constitution in respect to any matter except qualification and eligibility to vote at an election. [~~Any legislation enacted in anticipation of the adoption of this Amendment shall not be invalid because of its anticipatory nature.~~] The Legislature may authorize absentee voting. [~~And this provision of the Constitution shall be self-enacting without the necessity of further legislation.~~]

SECTION 6. Section 3, Article VI, Texas Constitution, is amended.

Amendment No. 5 (S.J.R. No. 19)

Wording of Ballot Proposition:

The constitutional amendment authorizing the supreme court to sit to transact business at any location in this state.

Analysis of Proposed Amendment:

The proposed amendment adds language to Section 3a, Article V, Texas Constitution, to authorize the Supreme Court of Texas to transact business at any location in the state.

Background

Section 3a, Article V, Texas Constitution, adopted in 1930, authorizes the Supreme Court of Texas to transact business at any time during the year at the seat of government. Section 3a also provides that each term of the court begins and ends with each calendar year.

Arguments For:

1. Conducting certain oral arguments in various areas of the state would be educational to the court, attorneys, and the general public. Citizens who may be interested in a particular case would be given an opportunity to observe the proceedings without incurring the expense of traveling to Austin.

2. More than half of the other states allow their highest courts to conduct proceedings in various locations in those states.

Arguments Against:

1. Conducting certain oral arguments in various areas of the state would result in unnecessary travel expenses for the justices and other court personnel.

2. The Texas Supreme Court has conducted business in Austin, the state capital, for many years, and there is no compelling reason to change that practice.

Text of **S.J.R. No. 19:** SENATE AUTHOR: Jeff Wentworth
HOUSE SPONSOR: Pete Gallego

SENATE JOINT RESOLUTION

proposing a constitutional amendment relating to the place at which the Supreme Court of Texas sits to transact business.

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

SECTION 1. Section 3a, Article V, Texas Constitution, is amended to read as follows:

Sec. 3a. The Supreme Court may sit at any time during the year at the seat of government or, at the court's discretion, at any other location in this state for the transaction of business and each term thereof shall begin and end with each calendar year.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 4, 1997. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing the supreme court to sit to transact

Africa and Namibia was intended to demonstrate the state's objection to apartheid. Namibia was included because at that time Namibia was under South Africa's control.

In 1990, Namibia became independent of South Africa. In 1994, South Africa adopted a new constitution and elected a new government, effectively abolishing apartheid and removing the rationale for the disclosure requirement.

The Texas statutes contained a number of provisions relating to investment in South Africa that were adopted for the same reason as the constitutional provision that the currently proposed amendment would repeal. The legislature has repealed all of those statutory provisions. The currently proposed amendment was submitted to the voters in 1995 and was rejected at that time by a vote of 389,432 to 326,655. The ballot language in the currently proposed amendment is worded differently than the ballot language in the 1995 proposed amendment and is intended to better help the voters understand the intent of the amendment.

Arguments For:

1. The disclosure requirement was adopted to object to South Africa's system of apartheid. Because that system no longer exists, the disclosure requirement has no purpose and should be repealed. Most other states that adopted similar provisions have already repealed those provisions.

2. Eliminating the disclosure requirement would save the state the cost of collecting, examining, and recording the disclosure affidavit.

Arguments Against:

[Research has disclosed no evidence that any argument has been presented against the proposed amendment, nor is an argument against the proposition apparent.]

**Text of S.J.R. No. 39: SENATE AUTHOR: Rodney Ellis
HOUSE SPONSOR: Helen Giddings**

SENATE JOINT RESOLUTION

proposing a constitutional amendment allowing the Texas growth fund to continue to invest in businesses without requiring those businesses to disclose investments in South Africa or Namibia.

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

SECTION 1. Subsection (r), Section 70, Article XVI, of the Texas Constitution is repealed.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 1997. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment allowing the Texas growth fund to continue to invest in businesses without requiring those businesses to disclose investments in South Africa or Namibia."

authorized bonds described in Sections 49-d-2, 49-d-6, and 49-d-7 of this article or to issue bonds for purposes described in Subsection (e) of Section 49-d-7 of this article in excess of \$250 million. The expenses of the Texas Water Development Board in connection with the issuance of bonds for an account of the Texas Water Development Fund II and administration of such account may be paid from money in such account.

(b) The Texas Water Development Board is hereby authorized, at its determination, to issue general obligation bonds for one or more accounts of the Texas Water Development Fund II in order to refund outstanding bonds previously issued to augment the Texas Water Development Fund, as long as the principal amount of the refunding bonds does not exceed the outstanding principal amount of the refunded bonds, and to refund the general obligation of the State of Texas under long-term contracts entered into by the Texas Water Development Board with the United States or any of its agencies under authority granted by Section 49-d of this article, as long as the principal amount of the refunding bonds does not exceed the principal amount of the contractual obligation of the Texas Water Development Board. Money and assets in the Texas Water

including payments by the Texas Water Development Board under a bond enhancement agreement as authorized by law with respect to principal of or interest on such bonds, shall be paid out of such account, but the money in such account that is not immediately committed to the purposes of such account or the payment of expenses may be invested as authorized by law until the money is needed for those purposes. If there is not enough money in any account available to pay the principal of and interest on the general obligation bonds issued for such account, including money to make payments by the Texas Water Development Board under a bond enhancement agreement as authorized by law with respect to principal of or interest on such bonds, there is appropriated out of the first money coming into the state treasury in each fiscal year not otherwise appropriated by this constitution an amount that is sufficient to pay the principal of and interest on such general obligation bonds that mature or become due during that fiscal year or to make bond enhancement payments with respect to those bonds.

(f) The general obligation bonds authorized by this section may be issued as bonds, notes, or other obligations as permitted by law and shall be sold in forms and denominations, on terms, at times, in the manner, at places, and in installments, all as determined by the Texas Water Development Board. The bonds shall bear a rate or rates of interest the Texas Water Development Board determines. The bonds authorized by this section shall be incontestable after execution by the Texas Water Development Board, approval by the attorney general, and delivery to the purchaser or purchasers of the bonds.

(g) This section being intended only to establish a basic framework and not to be a comprehensive treatment of the Texas Water Development Fund II, 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 as it believes necessary.

(h) The Texas Water Development Fund II, including any account in that fund, may not be used to finance or aid any project that contemplates or results in the removal from the basin of origin of any surface water

Amendment No. 8 (H.J.R. No. 31)

Wording of Ballot Proposition:

The amendment to the Texas Constitution expanding the types of liens for home equity loans that a lender, with the homeowner's consent, may place against a homestead.

Analysis of Proposed Amendment:

The proposed constitutional amendment amends Section 50, Article XVI, Texas Constitution, by allowing an owner of a homestead, at the owner's discretion and under certain conditions and restrictions, to use the homestead as collateral for an extension of credit for any purpose and making the homestead subject to foreclosure and forced sale on failure of the owner to repay the extension of credit. The amendment also adds new limits on entering into a contract for a home improvement loan to be secured by a homestead.

Background

Section 50, Article XVI, Texas Constitution, protects a homestead from forced sale for the payment of a debt except for: (1) a debt incurred to obtain the money used to purchase the homestead; (2) certain tax debts; (3) an owelty of partition, which is a debt arising by agreement or by court order to recognize the different interests of persons in property following the division of the property between the persons; (4) a refinance of a permissible debt secured by the homestead; or (5) a debt incurred to obtain money used to construct improvements on the homestead. Section 51, Article XVI, Texas Constitution, and Section 41.002, Property Code, define a homestead. A rural homestead may be one or more parcels of land, not exceeding a total of 200 acres, used for a home of a single person or head of a family. An urban homestead may be one or more lots, not exceeding a total of one acre, used for a home or a place of business of a single person or head of a family. The homestead includes any improvements on the land. Because of the constitutional prohibition

on forced sale of a homestead to satisfy a debt, borrowers are not able to use their homesteads as collateral for extensions of credit, except in the limited situations currently permitted.

The protection of a person's homestead from forced sale for payment of most debts has been included in the state's constitution since the original constitution of 1845. Before that time, however, a similar provision was included in the statutes of the Republic of Texas. Until recently only three exceptions were recognized: debts for the purchase of

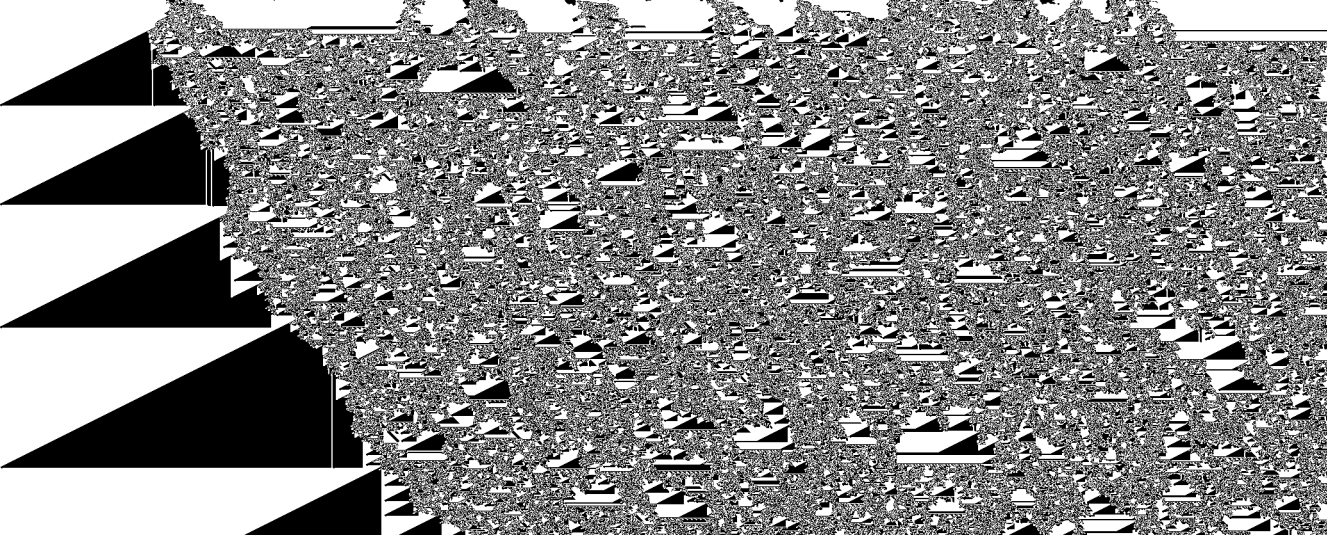
3. Reverse mortgages provide a substantial source of finances for a homeowner's retirement. Many retired people have accumulated a large amount of equity in their homes through years of mortgage payments and the appreciation of the homes' values. Reverse mortgages allow these people to use the value of their homes as income for day-to-day expenses of retired life.

Arguments Against:

1. Regardless of any purported safeguards, this amendment will result in people losing their homes. Experience in states allowing homestead mortgage loans has shown that some lenders will engage in high-pressure sales tactics to encourage homeowners to risk their homes for questionable purposes. The state has a longstanding tradition of protecting its citizens from potential abuse and has an obligation to continue doing so.

2. The existence of homestead mortgage loans will make unsecured loans less available. Lenders may refuse to make loans to homeowners unless the homeowners use their homesteads as collateral for the loans. Borrowers who do not own homes or who have little equity in their homes will find it harder to obtain loans.

3. Because elderly people are more likely to have paid off their homes or to have a greater amount of equity in their homes, these people are one of the largest markets for homestead mortgage loans. Elderly people, however, are more susceptible to unscrupulous or uncaring lending practices. For this reason, it is likely that a large proportion of people



**Text of H.J.R. No. 31: HOUSE AUTHOR: L. P. Patterson et al.
SENATE SPONSOR: Jerry Patterson et al.**

HOUSE JOINT RESOLUTION

proposing a constitutional amendment permitting an encumbrance against homestead property for certain extensions of equity credit.

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

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

Sec. 50. (a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

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

(2) the taxes due thereon;

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

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


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

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

(B) the contract for the work and material is not executed by the owner or the owner's spouse before the 12th day after the owner

credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit;

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



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

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

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

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

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

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

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

(Q) is made on the condition that:

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

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

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

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

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

“(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER’S SPOUSE;

“(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME;

“(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

“(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;

“(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3 PERCENT OF THE LOAN AMOUNT;

“(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM TIME TO TIME;

“(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

“(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

“(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PRIMARILY FOR THE PRODUCTION OF MILK;

“(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME;

“(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

“(L) THE LOAN MUST BE SCHEDULED TO BE REPAID IN PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD;

“(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

“(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

“(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF INTEREST AUTHORIZED BY STATUTE;

“(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

“(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:

“(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT THAT IS NOT SECURED BY YOUR HOME OR TO ANOTHER DEBT TO THE SAME LENDER;

“(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

“(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS LEFT TO BE FILLED IN;

“(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON

TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

“(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS YOU SIGN AT CLOSING;

“(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

“(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;

“(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

“(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

“(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER’S OBLIGATIONS.”

If the discussions with the borrower are conducted primarily in a language other than English, the lender shall, before closing, provide an additional copy of the notice translated into the written language in which the discussions were conducted.

(h) A lender or assignee for value may conclusively rely on the written acknowledgment as to the fair market value of the homestead property made in accordance with Subsection (a)(6)(O)(ix) of this section if:

(1) the value acknowledged to is the value estimate in an appraisal or evaluation prepared in accordance with a state or federal requirement applicable to an extension of credit under Subsection (a)(6); and

(2) the lender or assignee does not have actual knowledge at the time of the payment of value or advance of funds by the lender or assignee that the fair market value stated in the written acknowledgment was incorrect.

(i) This subsection shall not affect or impair any right of the borrower to recover damages from the lender or assignee under applicable law for wrongful foreclosure. A purchaser for value without actual knowledge may conclusively presume that a lien securing an extension of credit described by Subsection (a)(6) of this section was a valid lien securing the extension of credit with homestead property if:

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

(2) the purchaser acquires the title to the property pursuant to or after the foreclosure of the voluntary lien; and

(3) the purchaser is not the lender or assignee under the extension of credit.

(j) Subsection (a)(6) and Subsections (e)-(i) of this section are not severable, and none of those provisions would have been enacted without the others. If any of those provisions are held to be preempted by the laws of the United States, all of those provisions are invalid. This subsection shall not apply to any lien or extension of credit made after January 1, 1998, and before the date any provision under Subsection (a)(6) or Subsections (e)-(i) is held to be preempted.

(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 55 years or older;

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

superseded to the extent that such encumbrances shall be permitted to be fixed upon homestead property in the manner provided for by this amendment.

(r) The supreme court shall promulgate rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Subsection (a)(6) of this section.

(s) The Finance Commission of Texas shall appoint a director to conduct research on the availability, quality, and prices of financial services and research the practices of business entities in the state that provide financial services under this section. The director shall collect information and produce reports on lending activity of those making loans under this section. The director shall report his or her findings to the legislature not later than December 1 of each year.

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 75th Legislature, Regular Session, 1997, authorizing a voluntary consensual encumbrance on homestead property.

(b) The constitutional amendment takes effect January 1, 1998.

(c) This temporary provision takes effect on the adoption of the amendment by the voters and expires January 2, 1998.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 1997. The ballot shall be printed to permit voting for or against the proposition: "The amendment to the Texas Constitution expanding the types of liens for home equity loans that a lender, with the homeowner's consent, may place against a homestead."

Amendment No. 9 (H.J.R. No. 96)

Wording of Ballot Proposition:

The constitutional amendment to authorize the legislature to authorize an ad valorem tax rate in rural fire prevention districts located in Harris County of five cents on each \$100 of taxable value of property.

Analysis of Proposed Amendment:

The proposed amendment would amend Section 48-d, Article III, Texas Constitution. The amendment would authorize the legislature to permit a rural fire prevention district any part of which is located in Harris County to levy an ad valorem tax at a rate of up to five cents on each \$100 of taxable property if approved by the voters in the district.

Background

Section 48-d, Article III, Texas Constitution, authorizes the creation of rural fire prevention districts and the levy of an ad valorem tax to support a district. Rural fire prevention districts are separate local governmental entities governed by a board of fire commissioners. The main duty of a rural fire prevention district is to provide fire prevention and fire-fighting services to areas not served by municipal fire departments. A district may cover all or part of one or more counties. As the name implies, most rural fire prevention districts cover only rural areas. However, a district may include land within the jurisdiction of a municipality if the municipality agrees to the inclusion or if the municipality refuses to provide fire-fighting service to the area.

Currently, the maximum tax rate a district may levy is three cents on each \$100 valuation of all taxable property in the district. The constitutional amendment would authorize the legislature to permit districts located wholly or partly in Harris County to levy a tax at a rate not to exceed five cents on each \$100 valuation, but only if the new rate is approved by the voters in the district.

Arguments Against:

1. Adoption of a higher tax rate by a rural fire prevention district will increase the overall tax burden of district residents, many of whom also pay taxes to water districts that are authorized to provide fire-fighting services.

2. Because the amendment is limited only to districts that are in Harris County, in the future, rural fire prevention districts in other counties will press the legislature to propose additional constitutional amendments to give them the authority to raise their tax rates, too. All the taxpayers of Texas will be unfairly forced to pay for the statewide election that will be required on each of the proposed amendments.

3. Limiting the proposed amendment to the small number of rural fire prevention districts in Harris County is not justified. Because of the importance of adequate fire protection services, the constitution should be amended so as to permit a rural fire prevention district located anywhere in this state the same ability to raise its tax rate. There is no compelling reason to treat one county differently from all other counties.

The sources of revenue for the compensation to victims of crime fund are court costs assessed on certain convictions, federal funds, and gifts, grants, and donations. The only source of income for the compensation to victims of crime auxiliary fund is unclaimed compensation awarded under the Act. In recent fiscal years, revenue credited to the funds has exceeded expenditures from the funds.

Senate Joint Resolution No. 33 makes the compensation to victims of crime fund and the compensation to victims of crime auxiliary fund constitutionally dedicated accounts in the general revenue fund. The proposed amendment also authorizes the expenditure of money from the funds only for the purpose of delivering or funding victim-related compensation, services, or assistance and, if other money appropriated for emergency assistance is depleted, for the purpose of assisting victims of episodes of mass violence.

Arguments For:

1. The Crime Victims' Compensation Act ("Act") has provided compensation and other types of assistance to crime victims for almost 20 years through the compensation to victims of crime fund and the compensation to victims of crime auxiliary fund. In recent years, however, there have been bills before the legislature that, if passed, would have authorized the use of money from these funds for purposes unrelated to serving crime victims. Such attempts threaten the very sustenance of the Act by jeopardizing the availability of funding. A constitutional dedication would preserve these funds for victim-related purposes.

2. Crime victim assistance is an important state interest. The legislature recognized the importance of this interest by enacting the Act. Thereafter, the legislature reaffirmed its strong commitment to serving crime victims by exempting the compensation to victims of crime fund and the compensation to victims of crime auxiliary fund from subsequent legislation that abolished various dedicated funds and accounts in the general revenue fund. Constitutionally dedicating these funds for victim-related purposes is the logical next step in furtherance of this important state interest.

Arguments Against:

1. Dedicated state revenue lies beyond the effective reach of the legislature, thereby limiting the legislature's ability to address the state's fiscal needs. Beginning in 1991, the legislature recognized the impropriety of dedicating state revenue and enacted laws that abolished most dedicated funds and accounts in the general revenue fund. The proposed amendment is contrary to the legislature's move away from dedicating state revenue. In addition, the compensation to victims of crime fund and the compensation to victims of crime auxiliary fund currently contain a surplus. Constitutionally dedicating these funds would prohibit the legislature from making use of this money to benefit other equally worthy state interests.

2. The Crime Victims' Compensation Act ("Act") provides that money may be expended from the compensation to victims of crime fund and the compensation to victims of crime auxiliary fund *only* for the payment of compensation under the Act and other expenses incurred in administering the Act. In contrast, the proposed amendment authorizes expenditures for the purpose of delivering or funding victim-related compensation, services, or assistance. The proposed amendment's language is arguably broader than current law and would permit expenditures from the compensation to victims of crime fund and the compensation to victims of crime auxiliary fund in cases in which expenditures are not authorized under current law. This may result in excessive expenditures that could threaten the availability of funding to provide compensation to crime victims.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 1997. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment designating the purposes for which money in the compensation to victims of crime fund and the compensation to victims of crime auxiliary fund may be used."

Text of H.J.R. No. 59: HOUSE AUTHOR: Dianne White Delisi



Amendment No. 12 (H.J.R. No. 55)

Wording of Ballot Proposition:

The constitutional amendment to establish a deadline for supreme court action on a motion for rehearing.

Analysis of Proposed Amendment:

The proposed amendment amends Section 31, Article V, Texas Constitution, by adding Subsection (d), which would deny a motion for rehearing to the Supreme Court of Texas if the court does not act on the motion before the 180th day after the date on which the motion is filed.

Background

A motion for rehearing to the Supreme Court of Texas is a request by a party to the litigation that the court reconsider a judgment, decision, or order refusing or dismissing an application for writ of error.

Although Section 31, Article V, Texas Constitution, directs the Supreme Court of Texas to promulgate rules for the efficient and uniform administration of justice in state courts, when this analysis was written the Supreme Court of Texas had not imposed on itself a deadline for action on a motion for rehearing and had not included a deadline by which the court must act on a motion for rehearing in revisions to the current rules promulgated by the court to take effect September 1, 1997.

Arguments For:

1. The 180-day deadline serves a significant public policy interest by ensuring that the resolution to litigation will not be unreasonably delayed because of the pendency of a motion for rehearing to the supreme court.
2. The Supreme Court of Texas acts on the vast majority of motions for rehearing well before 180 days after the date on which the motion is filed. Thus, this deadline would not unduly interfere with the authority

**Text of H.J.R. No. 55: HOUSE AUTHOR: Harold V. Dutton, Jr.
SENATE SPONSOR: Rodney Ellis**

HOUSE JOINT RESOLUTION

proposing a constitutional amendment relating to a deadline for supreme court action on a motion for rehearing.

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

SECTION 1. Section 31, Article V, Texas Constitution, is amended by adding Subsection (d) to read as follows:

(d) Notwithstanding Section 1, Article II, of this constitution and any other provision of this constitution, if the supreme court does not act on a motion for rehearing before the 180th day after the date on which the motion is filed, the motion is denied.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 1997. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to establish a deadline for supreme court action on a motion for rehearing."


Amendment No. 13 (H.J.R. No. 8)

Wording of Ballot Proposition:

The constitutional amendment to encourage persons to plan and save for young Texans' college education, to extend the full faith and credit of the state to protect the Texas tomorrow fund of the prepaid higher education tuition program, and to establish the Texas tomorrow fund as a constitutionally protected trust fund.

Analysis of Proposed Amendment:

The proposed amendment would amend Article VII, Texas Constitution, by adding Section 10 to extend the full faith and credit of



2. The prepaid tuition program provides an essential service to Texas' students by allowing them to offset rising education costs. Higher education of the residents of Texas is essential to the success of the Texas economy. The amendment will increase the number of Texas' students who receive a higher education by ensuring the future success of the Texas tomorrow fund.

3. The amendment requires that the money in the Texas tomorrow fund be invested according to long-term "prudent person" investment strategies. This is the same standard that is applied to investments by the Employees Retirement System of Texas and the Teacher Retirement System of Texas, both of which have similar long-term investment cycles, and is the appropriate investment standard for the fund.

Arguments Against:

1. The Texas tomorrow fund should continue only as long as it is a viable fund that is able to fund itself. Placing the full faith and credit of the state behind the fund would require the state to appropriate money necessary to honor prepaid tuition contracts if the amount in the fund is ever insufficient to pay the tuition and fees of prepaid contract beneficiaries. Appropriating money for that purpose will take money away from other important needs of the state.

2. The latitude of the long-term "prudent person" investment standard that is granted to the board investing the Texas tomorrow fund is too great. The money should be invested with the utmost caution in the safest and most conservative investments available.

Text of H.J.R. No. 8: HOUSE AUTHOR: Mark Stiles et al.
SENATE SPONSOR: Gonzalo Barrientos et al.

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to extend the full faith and credit of the state to support the Texas tomorrow fund.

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

SECTION 1. Article VII, Texas Constitution, is amended by adding Section 19 to read as follows:

Sec. 19. TEXAS TOMORROW FUND. (a) The Texas tomorrow fund is created as a trust fund dedicated to the prepayment of tuition and fees for higher education as provided by the general laws of this state for the prepaid higher education tuition program. The assets of the fund are held in trust for the benefit of participants and beneficiaries and may not be diverted. The state shall hold the assets of the fund for the exclusive purposes of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the program.

(b) Financing of benefits must be based on sound actuarial principles. The amount contributed by a person participating in the prepaid higher education program shall be as provided by the general laws of this state, but may not be less than the amount anticipated for tuition and required fees based on sound actuarial principles. If in any fiscal year there is not enough money in the Texas tomorrow fund to pay the tuition and required fees of an institution of higher education in which a beneficiary enrolls or the appropriate portion of the tuition and required fees of a private or independent institution of higher education in which a beneficiary enrolls as provided by a prepaid tuition contract, there is appropriated out of the first money coming into the state treasury in each fiscal year not otherwise appropriated by the constitution the amount that is sufficient to pay the applicable amount of tuition and required fees of the institution.

(c) Assets of the fund may be invested by an entity designated by general law in securities considered prudent investments. Investments

shall be made in the exercise of judgment and care under the circumstances that a person of ordinary prudence, discretion, and intelligence exercises in the management of the person's affairs, not for speculation, but for the permanent disposition of funds, considering the probable income from the disposition as well as the probable safety of capital.

(d) The state comptroller of public accounts shall take the actions necessary to implement this section.

(e) To the extent this section conflicts with any other provision of this constitution, this section controls.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 1997. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to encourage persons to plan and save for young Texans' college education, to extend the full faith and credit of the state to protect the Texas tomorrow fund of the prepaid higher education tuition program, and to establish the Texas tomorrow fund as a constitutionally protected trust fund."

Amendment No. 14 (H.J.R. No. 83)

Wording of Ballot Proposition:

The constitutional amendment to allow the legislature to prescribe the qualifications of constables.

Analysis of Proposed Amendment:

The proposed amendment to Section 18, Article V, Texas Constitution, authorizes the legislature to prescribe the qualifications of constables.

Background

Section 18(a), Article V, Texas Constitution, provides for the division of each county into precincts for the purpose of electing constables and justices of the peace. Each precinct elects one constable. Constables are peace officers and perform a variety of duties as provided by statute, but they primarily execute civil or criminal process in the county for justice courts. The constitution does not provide any specific qualifications that are necessary to hold the office of constable other than the qualifications required of all officers in the state.

Arguments For:

1. The amendment removes any possibility of a doubt about whether the legislature by statute may set the qualifications for the office of constable. If qualifications for an office are set in the constitution, it is more difficult to make amendments to respond to changing needs for public officers. It is important that the legislature have the flexibility to set the qualifications in statute to allow for changing roles in law enforcement for constables and to prescribe minimum qualifications for constables to ensure the public safety and welfare.

Arguments Against:

1. The amendment is not necessary and gives the legislature no new powers. Under court interpretations, the legislature may set or change the qualifications for a public office if the constitution does not provide

Text of H.J.R. No. 83: HOUSE AUTHOR: Roberto Gutierrez
SENATE SPONSOR: Eddie Lucio

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to allow the legislature to prescribe the qualifications of constables.

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

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

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

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 1997. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to allow the legislature to prescribe the qualifications of constables."

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