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Proposed Constitutional Amendments Analyzed

CONSTITUTIONAL AMENDMENT ELECTION

— YOUR — COUNTY

April 22, 1975

SAMPLE BALLOT

Nº

CONSTITUTIONAL
AMENDMENT ELECTION

— Your — COUNTY

April 22, 1975

Note: Voter's signature to be affixed
on the reverse side.

PROPOSED CONSTITUTIONAL AMENDMENTS

Instruction Note: Place an X in the square beside the statement indicating the way you wish to vote.

No. 1	<input type="checkbox"/> For <input type="checkbox"/> Against	The constitutional amendment revising and consolidating provisions relating to state and local retirement systems and programs and providing for a maximum state contribution to state systems of 10 percent of the aggregate compensation paid to individuals.
No. 2	<input type="checkbox"/> For <input type="checkbox"/> Against	The constitutional amendment setting the salaries of members of the legislature at \$600 per month and setting a per diem of \$30 per day during legislative sessions and a mileage allowance at the same rate provided by law for state employees.

TEXAS LEGISLATIVE COUNCIL

P. O. BOX 12128 -- CAPITOL STATION
AUSTIN, TEXAS 78711

2 PROPOSED CONSTITUTIONAL AMENDMENTS ANALYSED

Analyses of Proposed Constitutional Amendments

For Election--April 22, 1975

**Prepared by the Staff
of the
Texas Legislative Council**

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TABLE OF CONTENTS

	Pages
Introduction	1
Analyses of 2 Proposed Constitutional Amendments	3
Appendix--Resolutions Proposing Amendments	13

Proposed Amendments, Listed by Place on Ballot, Subject, and Resolution

Amendment No. on Ballot	Subject	Analysis Page No.	Resolution	Appendix Page No.
1.	State and Local Retirement Systems and Programs	3	S.J.R. 3	13
2.	Legislative Compensation	7	H.J.R. 6	15

INTRODUCTION

A number of changes in the constitution were indicated during the deliberations of the Constitutional Convention of 1974 even though convention delegates failed to agree on an entirely new constitution. Two of the proposed changes, now considered of pressing importance, include (1) revision of provisions relating to retirement programs for public employees, including teacher retirement, state employees retirement, and city and county retirement; and (2) an increase in salaries, per diem, and mileage allowances for members of the Texas Legislature. Submitted as Constitutional Amendment No. 1 and Constitutional Amendment No. 2, respectively, these two proposals will appear on the ballot of the Texas electorate on April 22, 1975.

The following table lists years in which proposed amendments have been submitted to Texas voters, the number of amendments proposed, and the number of those adopted. The proposed constitutional amendments for election on April 22, 1975, will bring the total of those proposed to 345, while 218 have been added during the years since the Constitution of 1876 was adopted.

1876 CONSTITUTION—AMENDMENTS PROPOSED AND ADOPTED

Year	Proposed	Adopted	Year	Proposed	Adopted
1879	1	1	1929	7 ²	5
1881	2	0	1931	9	9
1883	5	5	1933	12	4
1887	6	0	1935	13	10
1889	2	2	1937	7	6
1891	5	5	1939	4	3
1893	2	2	1941	5	1
1895	2	1	1943	3 ²	3
1897	5	1	1945	8	7
1899	1	0	1947	9	9
1901	1	1	1949	10	2
1903	3	3	1951	7	3
1905	3	2	1953	11	11
1907	9	1	1955	9	9
1909	4	4	1957	12	10
1911	5	4	1959	4	4
1913	8 ¹	0	1961	14	10
1915	7	0	1963	7	4
1917	3	3	1965	27	20
1919	13	3	1967	20	13
1921	5 ²	1	1969	16	9 ⁴
1923	2 ³	1	1971	18 ⁵	12 ⁵
1925	4	4	1973	9	6
1927	8 ²	4	1975 ⁶	2	—
			TOTALS	345	218

¹Eight proposals approved by legislature, with one including two proposed amendments, but only six were actually submitted on ballot.

²Two amendments included in one proposal.

³Two proposals approved by Legislature, but only one actually on ballot.

⁴Sixteen amendments proposed by legislature, and four adopted in election held in 1969, with nine proposals submitted; remaining seven proposals voted on November 3, 1970, and five adopted.

⁵Four amendments submitted on May 18, 1971, with one adopted. Remaining 14 proposals submitted on November 7, 1972, and 11 adopted.

⁶To be voted on April 22, 1975.

AMENDMENT NO. 1—S.J.R. NO. 3

[Revising and consolidating provisions relating to state and local retirement systems and programs and providing for a maximum state contribution to state systems of 10 percent of the aggregate compensation paid to individuals.]

The proposed Constitutional Amendment No. 1 has two major purposes: (1) to consolidate nearly all constitutional provisions relating to state and local retirement systems in one section of the constitution, and (2) to lift the ceiling on state contributions to state systems from the existing maximum of 6 percent of the aggregate compensation paid to individuals to a maximum of 10 percent.

To accomplish the first purpose, Sections 48a, 48b, 51—e, and 51—f of Article III, and Sections 62 and 63 of Article XVI are repealed. These provisions dealing with state and local retirement systems and programs are then consolidated in a new Section 67, which is added to Article XVI.

Section 67 continues in effect the public retirement and benefit programs and systems already established under the Constitution and laws, authorizes the legislature to create other systems and programs, and requires funding and fiduciary standards necessary to maintain such systems and programs on a sound actuarial basis. The sound actuarial requirement is intended to place a high level of fiscal and fiduciary responsibility on the legislative and administrative bodies concerned with the creation, funding, and management of public retirement systems of Texas and is an entirely new provision.

Already in effect under existing constitutional provisions is the authority for the transfer of retirement credits between the Employees Retirement System of Texas and the Teacher Retirement System of Texas, and this provision is retained. The proposed amendment also authorizes the legislature to provide that persons who perform service in more than one system may receive fractional benefits from each, based on a service and benefit formula applicable to each system. This offers protection to persons who perform service under two or more systems and are frequently ineligible for benefits under the present constitutional provisions.

Administration of each statewide benefit system is to be by a board of trustees, which is responsible for making investments under the “prudent person” rule as established by prevailing case law. The rule requires a board to 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 and considering the probable income therefrom as well as the probable safety of the capital. As a further safeguard, the legislature is authorized to restrict the investment discretion of a board by law.

With regard to funding, the proposed amendment provides that the amount to be contributed by persons participating in the Employees Retirement System of Texas and the Teacher Retirement System of Texas shall be established by the legislature and may not be less than 6 percent of current compensation, and the amount contributed by the state may not be less than 6 nor more than 10 percent of the aggregate compensation paid to the individuals participating in the system. In an emergency, as determined by the governor, the legislature may appropriate additional sums as may be actuarially determined to be required to fund benefits authorized by law. No systems' or programs' funds or assets may be diverted to other uses inconsistent with the purposes of the system or program.

In connection with the provision authorizing the appropriation of additional funds, Senate Bill 56 has been enacted by the 64th Legislature (now in session) to provide a 12 percent increase in retirement benefits for retired government workers to be effective through April, 1975. Permanence of the increase, however, will depend on voter approval of this proposed Constitutional Amendment No. 1. The senate bill also makes an emergency appropriation from the General Revenue Fund of \$21.8 million to the Retirement Annuity Reserve Fund, but this appropriation cannot be transferred to the annuity fund unless the proposed amendment is adopted. The sum appropriated has been determined to be the amount necessary to cover the benefit increases during the life expectancy of those entitled to benefits.

Local retirement systems and, to a limited degree, the Judicial Retirement System, receive treatment in the proposed Amendment No. 1.

Concerning local retirement systems, the proposed amendment requires that the legislature provide for the creation of (a) a system of benefits for its officers and employees by any city or county; (b) a system of benefits for the officers and employees of counties or other political subdivisions of the state to operate statewide in which counties or other political subdivisions may participate on a voluntary basis; and (c) a system of benefits for officers and employees of cities to operate statewide and under which cities may participate on a voluntary basis.

As to the Judicial Retirement System, the proposed constitutional amendment states only that retirement, disability, and survivors' benefits established by the constitution and by law for justices, judges, and commissioners of the appellate courts and judges of the district and criminal district courts are continued in effect.

[For the full text of the resolution proposing this amendment, see Appendix]

Background The first public employee retirement programs in Texas were established by cities operating under authority of their charters. The first state public employees retirement program was not authorized until 1936, when Section 42a of Article III of the Texas Constitution was adopted to authorize the establishment of a teacher retirement program. Then, in 1944, Sections 51-e and 51-f of Article III received the approval of the Texas electorate. These two sections of Article III specifically authorized municipalities to establish retirement programs and also authorized the establishment of a statewide retirement system for municipalities.

However, it was not until two years later, in 1946, that Section 62 of Article XVI was adopted to authorize, under subsection (a), the creation of a retirement program for state officers and employees, and, under subsection (b), a retirement program for county employees. Subsequently, a bill implementing subsection (a) [compiled as Article 6228a, Vernon's Texas Civil Statutes] created the Employees Retirement System of Texas and was enacted by the 50th Legislature in 1947.

Continuing this piecemeal approach in establishing the state's public employees retirement systems, the 60th Legislature, in 1967, proposed a constitutional amendment, which was adopted in 1968, to make the Employees Retirement System of Texas a constitutional, rather than a statutory, state agency. In that same amendment, the state matching fund contribution to the State Retirement, Disability and Death Compensation Fund for officers and employees of the state was limited to a maximum of 6 percent.

The same amendment to Subsection (a) of Section 62, Article XVI, made it possible for the board of trustees to buy securities other than federal and other government bonds within certain limitations and safeguards established for the fund.

ARGUMENTS

For:

1. Pensions are an absolutely indispensable complement to wages in the modern concept of employment, and it is important that constitutional provisions be well organized and easily understood. The proposed constitutional Amendment No. 1 accomplishes this purpose by consolidating provisions and including them within a single section, Article XVI, Section 67.

2. The tremendous increase in the cost of living in the United States within the past decade has created the greatest hardship on persons with fixed incomes, particularly those drawing retirement pensions based upon a time when a dollar was worth a dollar. By permitting an increase in the percentage of state matching funds contributed for employees, up to a maximum contribution of 10 percent, the proposed Amendment No. 1 looks to the future retirement income of persons now employed and offers relief for those already retired and forced to stretch 1967 dollars over 1975 prices.
3. Broader investment authority conveyed on the board of trustees by the proposed amendment, while including strict safeguards for fund security, makes it possible for the board to secure greater returns which will, in turn, insure actuarial soundness for the program.

Against:

1. The consolidation into one section of the constitution of such diverse retirement pension provisions as those for state employees, teachers, and county and municipal employees could endanger each system by attempting to make general provisions apply in dissimilar situations.
2. It is imperative that the costs of state government be reduced if further inflation is to be halted. An increase in the state's share of contributions for retirement benefits, up to the maximum of 10 percent of the aggregate compensation paid to the individuals participating in the system could prove just one more step upward in government expenditures at a time when tax dollars are becoming harder and harder to obtain and more and more money is needed in this inflationary period to finance state services.
3. The broader investment authority conveyed to the board of trustees by the proposed amendment, even with the safeguards built into the amendment, could result in more speculative investments should the legislature fail in its charge to restrict the investment discretion of the board by law.

AMENDMENT NO. 2--H.J.R. No. 6

[Setting the salaries of members of the legislature at \$600 per month and setting a per diem of \$30 during legislative sessions and a mileage allowance at the same rate provided by law for state employees.]

The proposed amendment to Article III, Section 24, makes several changes in Article III, Section 24, of the Texas Constitution. These changes are:

- (1) The salary of members of the legislature, now set at \$4,800 per year is raised to \$600 per month, or \$7,200 per year, and the per diem allowance, now limited to \$12 for the first 120 days only of a regular session and 30 days of each special session, is increased to \$30 for each day during each regular and special session of the legislature.
- (2) The mileage allowance, now limited to \$2.50 for every 25 miles in going to and returning from the seat of government by the most direct route of travel as indicated on a table prepared by the Comptroller of Public Accounts, is changed to entitle members of each house mileage at the same rate as prescribed by law for employees of the State of Texas.

[For full text of the resolution proposing Amendment No. 2 see appendix.]

Background Until disillusioned by abuses and heavy expenditures of the Reconstruction Government, framers of Texas constitutions prior to that of 1876 permitted the legislature to set its own rates of compensation, except that no increase in salary could take effect during the session at which the increase was voted. In the 1876 Constitution, however, a provision was inserted limiting per diem to \$5 and, to discourage long sessions, a further provision was included to drop compensation to \$2 a day after the first 60 days. As this reduction resulted in early adjournment and a need for frequent special sessions, a constitutional amendment was adopted in 1930 which set per diem at \$10 for each of the first 120 days of a session. Pay after the 120-day period was reduced to \$5 for the remainder of the session.

Again in 1954, Article III, Section 24, was amended to raise per diem to \$25, to be paid only during the first 120 days of a regular session and 30 days of any called session.

The most recent amendment to Article III, Section 24, was adopted in 1960, when the current compensation rate of \$4,800 in annual salary and \$12 in per diem for the first 120 days of a regular session and for 30 days of each special session was set. Later proposals to increase legislative compensation were rejected

by Texas voters in 1965, 1968, 1969, 1972, and 1973. A proposal to let a commission set legislative compensation was also rejected in 1970.

ARGUMENTS

For:

1. The legislator can no longer be considered a part-time official. Increasing complexity in the problems of state government and greater expenditure of time as a member of standing and special interim committees meeting between sessions leaves the legislator little time to devote to his private business or profession. The \$4,800 annual salary now provided in the constitution is inadequate to meet present-day costs of living.
2. Many qualified person do not become candidates for legislative seats because they are unable or unwilling to make the financial sacrifice involved in service at the present constitutional salary. Raising the salary of members of the house of representatives and the senate to a more realistic level would provide a greater incentive for public service.
3. Under the present salary, a legislator is forced to engage in outside employment, a business, or a profession in order to have sufficient income to support himself and his family. Such employment could create a conflict of interest which would impair independence of action by the lawmaker.
4. The \$12 per diem allowance adopted in 1960 is as out of date as the \$4,800 salary provided at that time. Since then the cost of living has mushroomed, and the \$30 provided by the proposed amendment is certainly justified as an aid to offset the cost of maintaining two homes during a session. Also, it is unrealistic to deprive the legislator of his per diem after a certain number of days when his expenses continue throughout any session, no matter what length.

5. The change in mileage allowance for legislators from the present 10¢ per mile to the amount prescribed by law for state employees (16¢ per mile under the 1975-1976 general appropriation bill) is certainly far below the cost of operating any motor vehicle in these days of inflated gasoline and oil prices and other automotive expenses.

Against:

1. A substantial pay increase for members of the legislature during this critical period of inflation and recession would increase the costs of state government and bring about a resulting increase in taxes at a time when the people are least able to pay.
2. The Texas Constitution requires the legislature to meet in regular session not to exceed 140 days every two years. Thus, the job of a legislator is not envisioned as a full-time one, and the official holding a seat in the house of representatives or the senate should not receive a full-time salary.
3. Because of high campaign costs, a potential legislative candidate without substantial financial resources would still be discouraged from running for office even under the proposed salary increase to \$7,200.
4. The \$30 per diem allowance authorized under the proposed amendment, which includes no limitation on the number of days it is to be paid, could result in a slower and slower legislative process and sessions of maximum length. The costs of state government would continue skyrocketing, and the ever-burdened taxpayer would again suffer the consequences.
5. Although the present 10¢ per mile travel allowance for legislators is unrealistic, the proposed change to the same amount as that provided for state employees has a potential for overexpenditure by legislators, since no limit is placed on the number of trips a legislator may make to and from the seat of government.

APPENDIX

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Amendment No. 1

By: Doggett

S.J.R. No. 3

SENATE JOINT RESOLUTION

proposing an amendment relating to state and local retirement systems and programs to Article XVI of the Texas Constitution; and repealing Sections 48a, 48b, 51e, and 51f of Article III and Sections 62 and 63 of Article XVI of the Texas Constitution.

Be it resolved by the Legislature of the State of Texas:

Section 1. That Article XVI be amended by adding a Section 67 to read as follows:

Section 67. (a) General Provisions. (1) The legislature may enact general laws establishing systems and programs of retirement and related disability and death benefits for public employees and officers. Financing of benefits must be based on sound actuarial principles. The assets of a system are held in trust for the benefit of members and may not be diverted.

(2) A person may not receive benefits from more than one system for the same service, but the legislature may provide by law that a person with service covered by more than one system or program is entitled to a fractional benefit from each system or program based on service rendered under each system or program calculated as to amount upon the benefit formula used in that system or program. Transfer of service credit between the Employees Retirement System of Texas and the Teacher Retirement System of Texas also may be authorized by law.

(3) Each statewide benefit system must have a board of trustees to administer the system and to invest the funds of the system in such securities as the board may consider prudent investments. In making investments, a board 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 therefrom as well as the probable safety of their capital. The legislature by law may further restrict the investment discretion of a board.

(4) General laws establishing retirement systems and optional retirement programs for public employees and officers in effect at the time of the adoption of this section remain in effect, subject to the general powers of the legislature established in this subsection.

(b) State Retirement Systems. (1) The legislature shall establish by law a Teacher Retirement System of Texas to provide benefits for persons

employed in the public schools, colleges, and universities supported wholly or partly by the state. Other employees may be included under the system by law.

(2) The legislature shall establish by law an Employees Retirement System of Texas to provide benefits for officers and employees of the state and such state-compensated officers and employees of appellate courts and judicial districts as may be included under the system by law.

(3) The amount contributed by a person participating in the Employees Retirement System of Texas or the Teacher Retirement System of Texas shall be established by the legislature but may not be less than six percent of current compensation. The amount contributed by the state may not be less than six percent nor more than 10 percent of the aggregate compensation paid to individuals participating in the system. In an emergency, as determined by the governor, the legislature may appropriate such additional sums as are actuarially determined to be required to fund benefits authorized by law.

(c) Local Retirement Systems. (1) The legislature shall provide by law for:

(A) the creation by any city or county of a system of benefits for its officers and employees;

(B) a statewide system of benefits for the officers and employees of counties or other political subdivisions of the state in which counties or other political subdivisions may voluntarily participate; and

(C) a statewide system of benefits for officers and employees of cities in which cities may voluntarily participate.

(2) Benefits under these systems must be reasonably related to participant tenure and contributions.

(d) Judicial Retirement System. (1) Notwithstanding any other provision of this section, the system of retirement, disability, and survivors' benefits heretofore established in the constitution or by law for justices, judges, and commissioners of the appellate courts and judges of the district and criminal district courts is continued in effect. Contributions required and benefits payable are to be as provided by law.

(2) General administration of the Judicial Retirement System of Texas is by the Board of Trustees of the Employees Retirement System of Texas under such regulations as may be provided by law.

(e) Anticipatory Legislation. Legislation enacted in anticipation of this amendment is not void because it is anticipatory.

Sec. 2. That Sections 48a, 48b, 51e, and 51f of Article III and Sections 62 and 63 of Article XVI of the Texas Constitution be repealed.

Sec. 3. The foregoing constitutional amendment shall be submitted to a vote of the qualified electors of this state at an election to be held on the fourth Tuesday in April, 1975, at which election the ballots shall be printed to provide for voting for or against the proposition: "The constitutional amendment revising and consolidating provisions relating to state and local retirement systems and programs and providing for a maximum state contribution to state systems of 10 percent of the aggregate compensation paid to individuals."

Amendment No. 2

By: Munson

H.J.R. No. 6

HOUSE JOINT RESOLUTION

proposing an amendment to Article III, Section 24, of the Texas Constitution, as amended, relating to legislative compensation.

Be it resolved by the Legislature of the State of Texas:

Section 1. That Article III, Section 24, of the Texas Constitution, as amended, be amended to read as follows:

"Section 24. Members of the Legislature shall receive from the Public Treasury a [an annual] salary of Six Hundred Dollars (\$600) per month [not exceeding Four Thousand, Eight Hundred Dollars (\$4,800) per year and a per diem of not exceeding Twelve Dollars (\$12) per day for the first one hundred and twenty (120) days only of each Regular Session and for thirty (30) days of each Special Session of the Legislature]. Each member shall also receive a per diem of Thirty Dollars (\$30) for each day during each Regular and Special Session of the Legislature. No Regular Session shall be of longer duration than one hundred and forty (140) days.

"In addition to the per diem the Members of each House shall be entitled to mileage at the same rate as prescribed by law for employees of the State of Texas [in going to and returning from the seat of government, which mileage shall not exceed Two Dollars and Fifty Cents (\$2.50) for every twenty-five (25) miles, the distance to be computed by the nearest and most direct route of travel, from a table of distances prepared by the Comptroller to each county seat now or hereafter to be established, no Member to be entitled to mileage for any extra Session that may be called within one (1) day after the adjournment of the Regular or Called Session]. This amendment takes effect on April 22, 1975."

Sec. 2. The foregoing constitutional amendment shall be submitted to a vote of the qualified electors of this state at an election to be held on April 22, 1975, at which election the ballots shall be printed to provide for voting for or against the proposition: "The constitutional amendment setting the salaries of members of the legislature at \$600 per month and setting a per diem of \$30 per day during legislative sessions and a mileage allowance at the same rate provided by law for state employees."

