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CONSTITUTIONAL AMENDMENTS ANALYZED

Analysis of the Eight Proposed Amendments
for Election—November 4, 1975

Prepared by the Staff
of the
Office of Constitutional Research
Texas Legislative Council

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INTRODUCTION

On November 4, 1975, the voters of Texas will vote on eight constitutional amendments. Each amendment revises portions of the present constitution relating to a particular subject. If all eight are adopted, the Texas Constitution will be revised to consist of eleven articles and approximately 18,000 words. If only one or more propositions are adopted, the constitution will be partially revised to consist of a combination of new and old provisions—those provisions of the present constitution that are retained without change because of the failure of a particular amendment and those revised provisions that are included because of the adoption of a particular amendment. In the event of either possibility, the Bill of Rights is retained in full, unaltered except for the technical amendments required because of changes in other parts of the constitution.

The amendments are:

Proposition No. 1 – revising the Separation of Powers, Legislative, and Executive Provisions

Proposition No. 2 – revising the Judiciary Provisions

Proposition No. 3 – revising the Voting and Election Provisions

Proposition No. 4 – revising the Education Provisions

Proposition No. 5 – revising the Finance Provisions

Proposition No. 6 – revising the Local Government Provisions

Proposition No. 7 – revising the General Provisions

Proposition No. 8 – revising the Mode of Amending Provisions

Except for the amendment in Proposition No. 1, which becomes effective on January 1, 1976, the amendments become effective on September 1, 1976. This time lag between November 5, 1975 and September 1, 1976 is intended to permit state and local governments to prepare for operating under the new or revised provisions of the constitution.

Each amendment makes numerous changes from the present constitution. Most such changes are not controversial. Only the more controversial changes from the present constitution are analyzed in this study. The arguments made for and against these changes are intended to be representative of such arguments and are not intended to be comprehensive. Many other changes and those provisions which have been carried forward from the present constitution are not analyzed. For additional information, please contact the Office of Constitutional Research, Texas Legislative Council, P. O. Box 12128, Capitol Station, Austin, Texas 78711, (phone no. 512/475–6494).

Constitutional Revision

The eight amendments to be voted on on November 4, 1975 are unlike most constitutional amendments. If all eight are adopted, the entire Texas Constitution will have been revised, except for the Bill of Rights.

The present Texas Constitution was drafted by a constitutional convention in 1875 and adopted by the voters of Texas in 1876. Since then, the constitution has been amended 220 times and now consists of seventeen articles and approximately 63,000 words.

The current effort to revise the Texas Constitution began with an amendment adopted in 1972 which called for the state legislature to sit as a constitutional convention. The revised constitution being submitted in eight amendments on November 4, 1975 had its origin in a citizen's group, the Constitutional Revision Commission, which held a series of meetings and hearings across Texas in 1973 and submitted a proposed new constitution to the legislature sitting as a convention in 1974. The 1974 Constitutional Convention worked from the document proposed by the Revision Commission, reviewing and changing it over a seven month period. The convention adjourned on July 30, 1974 without agreeing on a final version of a new charter. The 64th Legislature, meeting in the spring of 1975, reconsidered the constitution drafted by the Constitutional Convention, and, after slight modification, submitted it in the form of eight separate amendments each revising certain provisions of the present constitution.

If all eight amendments are adopted, the Texas Constitution will consist of eleven articles and approximately 18,000 words.

Arguments

For:

1. Change should never be made merely for the sake of change, but there comes a time when any vehicle, however useful it may have been in the past, may no longer be effectively patched and spot repaired, but must be overhauled. After 100 years and 220 amendments, the present Texas Constitution is long (the third longest in the nation) and filled with ambiguities, inconsistencies, and conflicts. Provisions on the same subject are spread helter-skelter throughout the document, making difficult any effort to determine the constitutional law on a subject. Some provisions are in apparent conflict, while others are partially or wholly inoperative. Others have been present since 1876 without any enforcement or definitive legal interpretation. Instead of providing a foundation on which the people and government of Texas can depend for guidance, the present constitution is more often a document whose provisions are openly ignored or are so clouded in uncertain meaning that they result

in sporadic governmental action or continuous litigation. Other provisions have directly led to waste or inefficiency in government by prescribing restrictions or structures that were adequate in 1876, but are no longer appropriate today. If the present constitution of Texas were a short and general one like the U.S. Constitution, written for changing seasons, perhaps Texas could afford not to revise it for 200 years. But the present Texas Constitution is not such a charter, and Texas may not be able to afford to enter the last quarter of the 20th century with a constitution that presently and potentially poses as many problems as the present one.

2. The proposed revision is not the work of only one legislature or one group. It was written and rewritten over a two year period by members of the 1973 Constitutional Revision Commission, 1974 Constitutional Convention, and 64th Texas Legislature. The result is a carefully drafted document that is organized according to subject and is written in a modern and understandable style. In addition, an effort was made at each stage to assign fairly definite meanings to provisions, words, or terms that otherwise could be subject to more than one reading. Undoubtedly the courts will have to answer many questions under a revised constitution, just as they must under the present one, but the average citizen, government planner, and attorney will have a readily available and carefully prepared record of the intent behind each provision. In the long run, the number of legal questions raised and law suits brought may be fewer under the proposed revision than the present constitution with its current and future patches.

3. There are many strengths of the proposed revision. The first is that the changes in law from the present constitution are consistently intended to promote more efficiency and economy in government. In addition, the document is not written for any one person or group. Each citizen may find something he likes and something he dislikes. The proposed revision reflects the diverse opinions and views of the people of Texas. Much of the proposed revision consists of provisions retained from the present constitution because they remain useful today. Other provisions of the present constitution have been discarded and new ones substituted in response to lessons learned over the last 100 years or in anticipation of future needs. Some observers may be tempted to read the proposed revision and substitute their own worst conclusions as to the nature of possible future legislation, most of which is possible regardless of whether the proposed revision is adopted. The proposed revision should be judged on its own merits. A constitution cannot answer all questions or resolve all problems. It only can provide the structure and confines within which solutions may be found. On this basis, the proposed revision is a vast improvement over our present constitution.

Against:

1. The 100-year-old Constitution of Texas was drafted by a convention of eminent citizens who were disillusioned with the legislative body during the years of reconstruction following the Civil War. The document emphasized the right of the citizen to make the final decision in many important areas by limiting the power of both state and local government and requiring that government come to the people for approval by constitutional amendment before embarking on a new project. This principle is a good one and remains appropriate. The proposed revision removes many of the restrictions imposed in the present constitution and leaves more to be decided by the legislature or by local governments. This new authority could result in unnecessary additional regulation of society and an increase in governmental expenditures. The total fiscal impact of the proposed revision is admittedly uncertain. It is possible to identify certain provisions that will mean a definite additional cost; and others may encourage new legislation that otherwise might not be passed. Some of the provisions of the proposed revision may mean possible savings, but the growth of government in Texas and elsewhere suggests that legislatures and local governments are more inclined to take advantage of new authority to spend money than to save it.

2. The current effort to revise the Texas Constitution is not the first and likely will not be the last. The first effort occurred almost immediately after the present constitution was adopted. Others followed. All of these efforts have been rejected. The reason is that the present constitution of Texas is not outmoded. It has been updated with each of the 220 amendments that have been adopted. As the need for a particular change was suggested, it was studied and if specifically approved by the people of Texas, the change was made. Even though it has been divided into eight separate propositions, the proposed revision is so comprehensive in its changes that no voter can be adequately informed on or be able to knowledgeably assess each change. This lack of understanding by the average citizen is worsened by the fact that the proposed revision was primarily drafted by the legislature, not by citizen delegates to a constitutional convention. The citizen has been inadequately represented in the revision process that produced the amendments to be considered on November 4, 1975.

3. One effect of adoption of the proposed revision may be to increase future litigation. The provisions of the present constitution of Texas have been explained through court decisions and attorneys general's opinions. The provisions of the proposed revision are new and of uncertain meaning. It may take many years before the citizens of Texas will know the true meaning of many of the provisions. In addition, the manner of submitting the revision, in the form of eight amendments

rather than one, may result in a patchwork constitution if some amendments are adopted and others rejected. This result could further increase questions of meaning and cause a need for even more litigation.

Proposition No. 1

Revising the Separation of Powers, Legislative, and Executive Provisions of the Texas Constitution

[Effective January 1, 1976]

This proposed amendment contains three articles: Article II, Separation of Powers; Article III, The Legislature; and Article IV, The Executive. Proposed Article II revises Article II, The Powers of Government, of the present constitution and contains no substantive changes. Proposed Article III generally revises the first 43 sections of present Article III, Legislative Department. Proposed Article IV generally revises Article IV, Executive Department, of the present constitution. The amendment repeals Article XIII, Spanish and Mexican Land Titles, and Article XIV, Public Lands, of the present constitution. The articles following Article XIV are renumbered accordingly.

Article III

The Legislature

Among the more controversial changes from the legislative provisions of the present constitution are:

Sessions. Currently the legislature of Texas is limited to one biennial regular session of 140 consecutive days and such special sessions of 30 days maximum duration as may be called by the Governor. Special sessions are limited to items submitted by the governor. The proposed Article III would continue the 140 day session in odd-numbered years. In addition, the legislature would meet in even-numbered years for a regular session of not more than 90 consecutive days. Revised Article III also would permit the legislature, by petition of 3/5 of the membership of each house to reconvene in a veto session 50 days after the regular session. This veto session would be limited to consideration of items vetoed by the governor which, because of adjournment, the legislature was unable to reconsider prior to adjournment. The session could not exceed 15 consecutive days in length. The proposed Article III also would continue to provide for special sessions called by the governor as under the present constitution.

Arguments

For:

1. Annual sessions could allow more rational consideration of legislation by:

(a) providing more time in a biennium to study the problems and seek the solutions;

(b) decreasing the need to "do something about the problem now or not for another two years," thereby reducing the logjam of bills at the end of the session and the passage, in haste, of ill-considered bills;

(c) encouraging the formation of a professional research and committee staff to gather the necessary information;

(d) shortening the time between sessions while retaining sufficient time in the districts to allow the voters to voice their opinions with regard to both laws already passed and laws to be adopted; and

(e) providing an annual review of state spending, thereby allowing the legislature to tailor state spending to state needs and preventing waste resulting from budgets inflated to cover possible contingencies over a two year budgetary period.

2. Annual sessions should reduce the number of special sessions necessary. There have been 9 special sessions in the last 10 years. This reduction in special sessions will at least partially compensate for any additional costs resulting from the addition of a 90-day regular session.

3. Veto sessions would permit the legislature to ensure that a necessary bill is not killed by the action of one man. The three-fifths requirement will ensure that this session does not occur unless the legislature foresees a need. The 50 days between adjournment and the veto session will allow the people to express their views on whether the veto should be overridden.

Against:

1. Annual sessions would not increase the efficiency of the legislature, rather, they could:

(a) increase the number of bills introduced over a two-year period;

(b) enlarge the opportunities for pork barrelling, more state spending as various agencies apply for additional funds, and therefore increased taxes;

(c) provide the special interests with a greater chance to get their bills passed;

(d) reduce the amount of time the members spend in their districts, thereby turning them into professional politicians; and

(e) increase the staff of the house and senate.

2. Annual sessions are unnecessary because emergencies can be and are handled by special sessions. In addition they would cost the state at least $900,000 more every two years. In 1973 the voters rejected an amendment proposing annual sessions.

3. Veto sessions may seriously weaken the governor's authority by giving the legislature another opportunity to override the governor's veto. They may encourage logjams at the end of the session, as there will be no need to insure that a bill passes early enough to allow reconsideration, if vetoed, during the session. These sessions would leave the status of legislation in suspense since the veto session takes place 50 days after adjournment. The estimated cost of a veto session, if called, is $150,000.

Organizational Assembly. Presently, the legislature convenes in regular session and spends the first week or more organizing, which includes the adoption of rules and the election of officers. The revised legislative provisions would allow the legislature to provide by law for organizational assemblies of one or both houses. These organizational assemblies, composed of the members of the respective houses, could adopt rules and elect the officers for the upcoming session of the legislature.

Arguments

For:

Organizational assemblies would:

(1) permit organizational and procedural matters to be taken care of prior to the legislative session, thus leaving more time for consideration of bills during the session;

(2) significantly shorten the time between the beginning of the session and naming of committees;

(3) give newly elected members a chance to become acquainted with their fellow legislators, the legislative process, and the resources available to them.

Against:

Organizational assemblies would:

(1) prolong the divisive ordeal of the speaker's election by removing the need to start considering the business of the state;

(2) contribute to lengthy debate on the rules;

(3) increase any tendency by new members to act as a member prior to the beginning of his or her term.

Salary Commission. Under the present constitution, the salary of members of the legislature is fixed at $7,200 per year. Members are also entitled to a $30 per diem for each day in session and mileage at the same rate as set for state employees. Proposed Article III establishes a nine-member salary commission. The members of the commission are appointed jointly by the governor, lieutenant governor, speaker of the house, attorney general and the Chief Justice of the Supreme Court, and can serve only one full term. This commission could make annual recommendations on the compensation and allowances of members of the legislature. The legislature could not exceed the amount recommended by the commission and any increase would not become effective until after an intervening general election.

Arguments

For:

1. A salary commission would:

(a) provide citizen control of legislative compensation and allowances while removing constitutional restrictions;

(b) allow flexibility to adjust compensation both to needs of the legislators and to changes in the economy.

2. Constitutional amendments on the question of salary increases have cost the state and counties over $60,000 per amendment. A salary commission would relieve this taxpayer burden, by decreasing the number of amendment elections on this question.

3. In 1973, of the states which use some form of compensation commission, several provide compensation less than the current Texas salary. This statistic indicates that a salary commission does not guarantee increased legislative compensation.

4. Additional citizen input will be provided by the requirement that no increase can take effect until after an intervening general election.

Against:

1. A salary commission would:

(a) remove the ability of the voters directly to determine legislative salaries;

(b) receive greater pressure to increase legislative pay than to decrease it, irrespective of the economic situation.

2. A constitutional amendment in 1971 would have established much the same system. It was defeated 273,191 to 500,981.

3. The voters increased legislative salaries from $4,600 a year to $7,200 per year in April of this year.

4. Even if the increase is not implemented until after a general election, the members who are elected will receive the increase.

Single-Member Districts. Although single-member districts for Senators are mandated under the current constitution, house members may be elected on a multi-member basis. The proposed Legislative Article would mandate single-member districts for state representatives as well as state senators.

Arguments

For:

1. Multi-member districts have been under increasing constitutional attack.

2. Single-member districts reduce the cost of campaigning and help ensure that minorities are represented.

3. Single-member districts increase identification of a representative with those whom he represents.

Against:

1. The courts have not determined that all multi-member districts are unconstitutional.
2. Most multi-member districts have been in urban areas, therefore most costs in the campaign, especially media costs, would not be decreased by single-member districts.
3. Because of legislation in the 64th Legislature, single-member districts are now provided by law and the issue is unlikely to arise again.

Local and Special Laws. Article III, Section 56 of the present constitution prohibits local or special laws on any one of numerous subjects listed in the section or in instances in which a general law may be made applicable. Despite this limitation, numerous bills are passed by the legislature which affect only persons within a limited geographical area. The proposed legislative article prohibits a local or special law when a general law is or can be made applicable. Whether a general law is or can be made applicable is expressly made a question subject to judicial determination. All local laws are required to identify the affected area by name or other official designation. No bill may be enacted which defines the affected area by use of population figures or other statistical data unless all political subdivisions of one type are classified statewide.

Arguments

For:

A stronger limitation on local and special laws would decrease the number of bills introduced in a session and reduce the amount of meddling which the legislature could do in local affairs, thereby allowing local needs to be dealt with on the local level.

Against:

Deletion of the list of specific subjects on which local and special laws are prohibited may allow the legislature to pass local and special laws on those subjects. On the other hand, a strict judicial interpretation of the new provision could limit the legislature's ability to deal adequately with a pressing local problem unique to a particular locality.

Article IV

The Executive

Among the more controversial changes from the executive provisions of the present constitution are:

Gubernatorial Appointments. Currently there is no constitutionally mandated alignment of terms of appointed members of statutory state agencies. As a result, a newly elected governor makes his first appointments to some state agencies as late as the second year of the governor's term. Proposed

Article IV would require the terms of gubernatorially appointed board members of statutory state agencies to expire between February 1 and May 1 of odd-numbered years, while continuing to require staggered terms for multi-member agencies.

Arguments

For:

This alignment of terms could:

(a) eliminate "midnight" appointments by an outgoing governor.

(b) ensure that a newly-elected governor is able to have voice in state agencies through those persons he appoints while the continued staggering of terms would retain other members of the board to supply experience and continuity.

Against:

This alignment of terms could:

(a) require a newly-elected governor to appoint a very large number of persons during his first six months in office, with no time to review the appointees' credentials or the agencies' needs.

(b) bring in new board members during the session, when an experienced membership is most needed.

Designation of Chairmen. Under the present Texas Constitution, the legislature is free to determine the method by which the chairman of a statutory state agency is selected. As a result, of the top 25 agencies with members appointed by the governor, 12 chairmen are designated by the governor, 12 are elected by the members and 1 is determined by the sector he or she represents. The revised Article IV authorizes the governor to designate prior to May 1 in odd-numbered years the chairmen of all multi-member statutory state agencies with appointed members unless a member of the executive department is designated by law.

Arguments

For:

1. Because the governor is the chief executive of the state, elected and held responsible by the people, the governor should have a strong voice in the direction of the various state agencies. The authority to designate the chairman could help ensure that voice.

2. The provision would allow the governor to designate a senior member of the board. It does not require him to appoint a new member to the chairmanship.

Against:

1. The governor does not have time to determine the special needs of each agency. Agency members are more capable of judging a member's qualifications to be chairmen.

2. This provision could bring further confusion at the beginning of the legislative session in odd-numbered years. It could lead to a lack of continuity during the legislative session. The governor could designate inexperienced new members who are his appointees.

Appropriations for governor-elect. Under the present constitution, a new governor does not take office until after the legislature is in session. No provision exists for the governor-elect to receive state funds prior to inauguration. The proposed amendment would mandate the legislature to appropriate funds for a governor-elect prior to inauguration and would entitle the governor-elect to all reports of state agencies.

Arguments

For:

This provision would allow a governor-elect to organize a staff and gather necessary information prior to taking office, thereby providing for better gubernatorial preparation for the legislative session.

Against:

This provision mandates appropriation of state funds for a private person. In addition to cost, this amendment could lead to confusion, as two "governors", the incumbent and the newly elected, try to give direction to state government.

Removal. The present constitution requires a trial prior to removal of a state officer if the method has not been otherwise provided for in the constitution. Proposition No. 1 provides that the governor may remove any gubernatorially appointed officer other than appointed officers of the executive department (who serve at pleasure) by submitting stated reasons to the senate. The senate may veto the removal by a majority vote of the membership.

Arguments

For:

A method should be available by which the governor can remove a gubernatorially appointed board member. Otherwise most board members, serving six-year terms, are subject to less review and accountability for their actions than any elected state office holder. This provision could provide such a method of removal while checking any tendency toward abuse by providing a possible veto by the senate.

Against:

This provision will have one of two consequences. Either the senate will treat removal as it treats confirmation, with little or no study or opposition to the governor's wishes, leading to a spoils system; or the section will allow agency members to play the senate against the governor, thereby weakening the governor.

Governor's Term of Office. Both the present constitution and Proposition No. 1 provide four-year terms for the major elected statewide executive officers. However, revised Article IV limits the governor to two consecutive four-year terms.

Arguments

For:

This provision would ensure rotation in the highest office in the state. With the increased authority of the governor with regard to state agencies, this provision could ensure that a governor did not abuse the power in order to gain continual reelection.

Against:

This provision prohibits the people from reelecting a governor who has served them well, while being able to reelect all other executive officers. It also makes the governor a lame duck during the second term, thereby weakening both his position as the chief executive and his sense of responsibility to the people.

Budget Execution. Several times in the recent past the legislature has tried to provide some mechanism for budgetary review and control of appropriations while the legislature is not in session. All of the methods attempted have been frustrated by various Attorneys General's opinions. To solve the problem, proposed Article IV requires the Governor to ensure that appropriations to the executive branch are expended only as directed by law and authorizes the legislature to give the governor fiscal control over the expenditure of appropriated money.

Arguments

For:

This will bring greater fiscal responsibility to state government and should result in savings to the state, by allowing the legislature to provide the governor with the authority to oversee execution of the state budget as necessary. This is not a direct grant of authority to the governor, thereby eliminating the danger that the governor could, while the legislature was not in session, totally control state spending. The legislature could tailor the authority to the needs of the time.

Against:

Budget execution authority could lead to greater instability in the financial structure of state government. Any authority which is granted to the governor would jeopardize long-range planning of an entity receiving appropriations. A governor might abuse the authority, impounding or diverting funds while the legislature is not in session. On the other hand, a governmental agency could circumvent legislative intent; relying on the governor to cover any problems which might arise by transferring funds from one line item to another or one agency to another.

Review of state agencies. Since the turn of the century, the number of statutory state agencies has increased dramatically with little long-range planning or review. Today, Texas has over 250 agencies, with no one person or group having responsibility for reviewing and updating the agencies. Proposed Article IV would (1) require a biennial report from the governor to the legislature on the organization and efficiency of the executive branch; (2) permit the governor to submit bills to the legislature reorganizing the executive branch, which bills, although amendable by the legislature, would have to be voted on by the legislature and (3) provide that statutory statewide agencies become temporary agencies with lives of not more than 10 years unless renewed, except agencies related to higher education, and agencies with outstanding bonds unless the legislature provides for administration and service of the debt.

Arguments

For:

1. With over 250 state agencies (no one knows exactly how many actually exist), the state bureaucracy has burgeoned. Haphazard creation and only slight review have led to overlapping jurisdiction, gaps between jurisdiction and general confusion to the public. The provisions contained in Proposition No. 1 require the governor to become responsible for keeping track of the executive branch and its efficiency. This biennial review prior to the governor's report to the legislature could also furnish the governor with the information necessary to draft and submit reorganization bills. The authority to introduce bills and the requirement that these bills be voted on could ensure full consideration of the governor's plan, while the ability of the legislature to amend the plans could ensure legislative input.

2. By making most state agencies temporary, the proposed revision may force the legislature to do what it has the authority to do currently – review the state agencies and determine whether they should be reorganized, retained in full, or modified in their statutory authority or jurisdiction. This provision could ensure that the ability of state government to meet the changing needs of Texas is not impaired by an unwieldy bureaucracy.

Against:

1. The governor already has the ability to review and report to the legislature on the state agencies, their organization and efficiency. The mandate would only put an additional burden on the governor. The new authority to the governor to submit reorganization bills goes against the traditional separation of powers while not really granting any truly valuable authority to the governor. By permitting the legislature to amend the governor's reorganization bills and requiring affirmative passage by the legislature, the provision will pit the governor against the legislature, with the agencies

the winners. While seeming to grant additional authority to the governor, these provisions merely increase the burdens on the office. Any plan of reorganization which a governor could not get at least one member to introduce stands small chance of surviving the legislative process.

2. The provision giving most agencies a life of only 10 years unless renewed by the legislature threatens the independent action of the agencies. Currently the legislature has the authority to review state agencies and reorganize, modify, or terminate as necessary. But the burden of proof is with the legislature. The new provision would place the burden on the agencies and require them to spend valuable time and money justifying their existence. The legislature has sufficient ability to direct agencies through its law making and appropriating powers.

Proposition No. 2

Revising the Judiciary Provisions of

The Texas Constitution

[Effective September 1, 1976]

The proposed amendment generally revises those portions of Article V which deal with the judicial branch of government. Among the more controversial changes from the judiciary provisions of the present constitution are:

Merger of Supreme Court and Court of Criminal Appeals. Texas is currently one of two states which provide by constitution for two high courts of appeal; one for civil matters (the Supreme Court) and one for criminal matters (the Court of Criminal Appeals). Proposed Article V would combine these two courts into one new supreme court. The court would consist of a chief justice and at least eight other justices and could sit in sections of not fewer than five justices. The transition schedule provides that the chief justice of the Supreme Court becomes the Chief Justice of Texas and the judges of the Court of Criminal Appeals and associate justices of the Supreme Court become justices on the new Supreme Court. Existing Courts of Civil Appeals would become Courts of Appeals and would no longer be constitutionally restricted only to review of civil cases.

Arguments

For:

Texas presently has a significant backlog of criminal cases, leading to a delay in justice and added expense to the accused or convicted person and to the government. Merger of the two highest courts and distribution of criminal appeals among the courts of appeals should result in more efficient management of the judicial branch, helping alleviate the backlog of criminal cases without interfering with civil appeals. The flexibility provided in the number of justices on the new supreme court and the ability of the court to sit in sections should allow the legislature and the court together to handle any immediate increase in workload resulting from the need to eliminate the existing backlog of criminal appeals and to handle future fluctuations in caseloads. Distribution of criminal appeals among the new intermediate appeals courts, the Courts of Appeal, should lead to a more rapid resolution of criminal cases than if all such cases continued to flow to only one court. The creation of a new Supreme Court by merging the Court of Criminal Appeals with the Supreme Court should supply any expertise which might be needed immediately in criminal matters.

Against:

Merger would mean that courts which have traditionally concerned themselves only with civil matters would judge both civil and criminal matters. The merger would cause a loss in specialization in civil and criminal law which now exists in the judges of the appellate courts. Rather than resulting in more efficient operation of the judicial branch, case logjams may result from the sudden influx of criminal cases into a system previously limited to civil actions. The better approach would have been to have maintained the bifurcated judicial system and to have established a level of criminal appellate courts, thus allowing specialization while reducing the caseload of the present Court of Criminal Appeals.

Statutory Courts. The present constitution establishes a Supreme Court, a Court of Criminal Appeals, Courts of Civil Appeals, District Courts, County Courts and Justice of the Peace Courts. Additionally, the present constitution allows the legislature to create other courts. The Legislature has acted by law to create numerous courts with special limited jurisdiction, including probate courts, criminal district courts, special juvenile courts, etc. The proposed amendment provides for a unified judicial system composed of the Supreme Court, Courts of Appeals, District Courts and, if the legislature creates them, Circuit Courts. Each court of the same level would be required to have uniform jurisdiction. County courts, justice courts, and municipal courts would continue, but would not be part of the unified court system. The legislature is prohibited from creating courts not specifically authorized in the constitution.

Arguments

For:

By limiting the types of courts and mandating uniform jurisdiction, the proposed amendment should result in a court system that is generally uniform throughout the state. Lawyers will know the jurisdiction of the courts within the unified judicial system; whether in Loving County or Harris County. A unified judicial system with uniform jurisdiction also should allow easier management of the system and a more efficient use of the time and capabilities of each judge.

Against:

Although under the present constitution numerous courts have been created by statute, most of these courts fulfill a particular purpose. The requirement of uniform jurisdiction will prevent the creation of courts to handle the unusual needs of particular jurisdictions and will lead to a loss of specialization by judges hearing the cases. Elimination of statutory courts could increase the problems of overloaded dockets if the lack of judicial specialization lengthens the time needed to reach a decision.

Court Administration. Under the present constitution, administration of the judicial branch is divided between the judiciary and the legislature. Proposed Article V would vest responsibility for administration of the judicial branch in the Supreme Court of the State, and allow the Supreme Court to delegate this authority to the Chief Justice and the Administrative Judges. The legislature may create an agency to propose rules of administration and no rule of administration may be inconsistent with general law or rules of procedure. The Supreme Court would continue to have the authority to prescribe rules of civil procedure, not in conflict with law. As under the present constitution, other rules of procedure would be prescribed by law, or the Supreme Court could be granted the authority. The Supreme Court may direct the transfer of cases between courts of the same level and may temporarily assign justices or judges within or between levels.

Arguments

For:

Presently in Texas there is no coordinated system of internal administration of the judicial branch. Considerable waste results. Some courts and judges are immersed in work. Others have few cases on their docket. The proposed amendment should result in better administration of the judicial branch by allowing judges to be temporarily assigned to different areas or levels to meet the workload. Primary responsibility for administration is given to the agency that is best able to identify and evaluate needs and to determine solutions, the Supreme Court. There are numerous safeguards against any abuse of this authority. Although day-to-day duties of administration may be delegated to the Chief Justice and Administrative Judges, the Supreme Court itself remains ultimately responsible. In turn, no rule of administration may be inconsistent with general law. Also the legislature may create an agency of the judicial branch to propose rules of administration, but the rules must be approved by the Supreme Court.

Against:

Authority to administer a system as extensive and important as the state's judicial branch should be granted with care. The proposed amendment comes close to totally vesting that authority in the Supreme Court and its head, the Chief Justice. Although rules of administration must be consistent with general law, there is no clear indication of what degree of control this permits the legislature. The tribunal to decide the meaning of "consistent with general law" is the same one to which the apparent authority to administer the judicial branch has been granted.

Criminal Appeals. The present constitution does not specifically guarantee a person a right of appeal except in certain cases of denial of bail. But, at the same time, the present constitution prohibits the state from appealing in any criminal case. The proposed revision of the judiciary article specifically grants each person convicted of a criminal offense a right of appeal from a trial court to the court having jurisdiction. Subject to the guarantees of the Bill of Rights, the proposed revision grants the state a right of appeal from the trial court if the court has ruled a statute unconstitutional. The state may appeal from a court of appeals to the Supreme Court, which appeal is at the discretion of the Supreme Court unless otherwise provided by law. An appeal to the Supreme Court by a defendant in a criminal case is at the discretion of the Supreme Court unless otherwise provided by law.

Arguments

For:

Inclusion in the constitution of a specific right of appeal for a person convicted of a criminal offense assures that such a right will always exist. Texas is the only state which absolutely proscribes in its constitution any appeal by the state in criminal cases. The limited right of appeal permitted in the proposed amendment should ensure a more rapid final adjudication of challenges to the constitutionality of criminal statutes and a more equal and uniform application of criminal law throughout the state. Appeals to the Supreme Court by individuals or the state will allow that court to resolve conflicts between the decisions of lower appellate courts. Under no circumstance could the state appeal and place the defendant in double jeopardy.

Against:

The state's right of appeal may allow the state to intimidate defendants by permitting the state to prolong the case through a long and expensive appellate procedure. This danger of harassment could continue through the appellate level. Any defendant in a criminal case who appeals to the Court of Appeals runs the further risk of having the decision of that appeals court taken by the state to the Supreme Court.

Proposition No. 3

Revising the Voter Qualifications and Elections Provisions of the Texas Constitution

[Effective September 1, 1976]

Generally, the amendment revises Article VI, Suffrage, of the present constitution. Among the more controversial changes from the provisions of the present constitution are:

Age and Residence Requirements. The present constitution sets the minimum voting age as 21 and also establishes various residence requirements, depending on the election involved. The 26th Amendment to the U.S. Constitution lowered the age to 18. Recent court decisions have invalidated many of the residency requirements. Proposition No. 3 would bring the age requirement in line with the 26th Amendment and allow the legislature to establish residency requirements.

Arguments

For:

The United States Supreme Court has outlawed length-of-residence requirements for voting, and the only discretion left to the state with respect to residency requirements is in such areas as the right of a former resident of a voting precinct or county to continue to vote at the place of former residence for a limited period of time after moving to another precinct or county. These matters, which are interrelated with the voter registration system in use, should be given the flexibility of legislative determination instead of being sealed into the constitution. The flexibility gained by allowing the legislature to prescribe the residency requirements will also allow the legislature to react to any additional court decisions.

Against:

A constitution is the basic document of state government and such items as qualifications for voting – including residence requirements – should be guarded by constitutional provisions. Proposition No. 3 would make it possible for the legislature to pass statutes going from one extreme of entirely cutting off a citizen's right to vote during the transitional period following a change of residence to the other extreme of allowing a former resident to continue to vote for an unreasonably long period of time after removal.

Property Qualifications. The present constitution contains many constitutional property qualifications for voting in various elections on local fiscal concerns. Several of these have been declared invalid by recent court decisions. Proposed Article VI permits the legislature to require property ownership as a requirement for voting in certain limited circumstances.

Arguments

For:

The flexibility of this section will allow the legislature to adjust the property qualifications for voting in certain elections consistent with the changing needs of the state and the decisions of various courts. The amendment eliminates invalid and misleading provisions from the constitution.

Against:

Recent court decisions ruled against property ownership requirements in only certain elections. The constitution, as the primary law of the state, should speak clearly to the question of property qualifications, not leave it to the changing moods of the legislature.

Convicted Felons Right to Vote. The current constitution prohibits a person, once convicted of a felony, from voting, while allowing the legislature to make exceptions. The usual method by which a convicted felon may regain voting privileges is by obtaining a pardon from the governor. The proposed Article VI would permit a convicted felon who is not incarcerated, on probation, or on parole to vote, unless the legislature further limits the voting rights of convicted felons.

Arguments

For:

Once a person is no longer incarcerated, on probation or on parole, and has paid his debt to society, there should be no further denial of voting privileges unless he thereafter proves himself to be unworthy of those privileges. The concept of perpetual disfranchisement for one mistake is contrary to humanistic and sociological principles. Acceptance of the individual back into society as a full-fledged citizen promotes his rehabilitation and future good conduct, and this positive approach will better serve the interests of both the individual and society as a whole than the negative approach found in the current constitution. At the same time, Proposition No. 3 will give the legislature adequate authority to deal with the voting rights of recidivists and special classes of felons in an appropriate manner.

Against:

A person who has been convicted of a felony has indicated that he is unwilling to abide by the laws of the state. His full rights should not be restored merely because the term of incarceration, probation or parole has expired. The burden should be on the convicted felon to show that he is prepared to abide by the laws of the state. The route of pardon or restoration of rights is available to those who are worthy.

Proposition No. 4

Revising the Education Provisions of the Texas Constitution

[Effective September 1, 1976]

The proposed amendment generally revises Article VII of the Texas Constitution. Among the more controversial changes from the education provisions of the present constitution are:

Equal Educational Opportunity. Article VII, Section 1 of the proposed amendment provides that the legislature has the duty to establish and provide for the equitable support and maintenance of an efficient system of free public schools below the college level. The system must furnish each individual an equal educational opportunity, but school districts may provide local enrichment of educational programs exceeding the level provided by the state consistent with general law. Article VII, Section 1 of the present constitution similarly provides for the support and maintenance of a system of public free schools, but does not specifically provide for equal educational opportunity or local enrichment.

Arguments

For:

1. No child in Texas should be denied an opportunity for a proper education solely because of the poorness of his school district.
2. The 64th Legislature passed legislation which began implementation of the policy of equal educational opportunity. This provision constitutionalizes that concept.
3. The proposed amendment constitutionally guarantees that local enrichment consistent with general law will be possible in the future.

Against:

1. No one knows what "equal educational opportunity" means and this could cause disruption of the state educational system as the courts try to define the term.
2. The costs of an equal educational system statewide could be high, causing the need for increased state taxes.
3. Because "equal educational opportunity" is modified by the right of local enrichment above the level of state funding, Section 1 actually may not assure that educational opportunities will be equal.

Permanent University Fund. Both the present Article VII and the revised one in the proposed amendment establish a Permanent University Fund, consisting of land and investments held for the benefit of schools within the University of Texas and Texas A&M Systems. The fund as contained in the proposed Article VII is changed in several ways, including: (1) the division of income from the

fund on a basis of two-thirds for the University of Texas and one-third for Texas A&M has been elevated from statute to the constitution; (2) the amount of bonded indebtedness that may be incurred payable from the income from the Permanent University Fund has been increased from 20% to 30% of the fund; (3) Permanent University Fund bonds may be issued for all institutions or campuses within either system rather than only the specific ones named in Article VII, Section 18 of the present constitution; and (4) bond proceeds may be used for the rehabilitation of permanent improvements, the purchase of capital equipment, and the acquisition of library books and materials in addition to the only uses permitted under the present constitution, which are the acquisition, construction, or equipping of permanent improvements.

Arguments

For:

1. The Permanent University Fund is a trust to assure the quality of higher education in Texas. It now exceeds $770 million and should be preserved by the constitution for future generations and only income from the fund should be spent.

2. Bonds payable from the income of the Permanent University Fund are much less costly in interest expense than bonds payable from tuition or building use fees, and the increase in bonding authority granted by the proposed amendment may save millions of dollars in state interest payments.

3. By bringing under one fund all of the various campuses and institutions of the University of Texas and Texas A&M Systems, the need is eliminated for developing alternative methods of financing bonds for new schools within the system. All must share from the same source.

4. By allowing the use of bond proceeds for purposes in addition to permanent improvements, needed flexibility is established to accommodate a future time when emphasis may shift from the construction of new facilities to maintenance of existing ones and the acquisition of needed materials such as library books.

Against:

1. The constitution should not prevent the legislature from using each state fiscal resource as necessary to meet the changing needs of the state. Inclusion of a permanent fund in the constitution and the dedication of the income from that fund to only certain purposes ties the hands of future legislatures.

2. Because the currently statutory division of income from the Permanent University Fund is made constitutional, the legislature has lost the ability to change that division in the future.

3. The increase in bonding authority from 20% to 30% of the fund means a possible immediate increase of approximately $70 million in bonded indebtedness. If new facilities are constructed from this money, they could require an increase in appropriations for maintenance, utilities, or operation.

4. Proceeds from bonds should be used only for permanent improvements which will last for the life of the bond. Funds for the maintenance of buildings or the acquisition of capital equipment or library books should come from appropriations or the income of the Permanent Fund, not bond proceeds.

Higher Education Fund. Article VII, Section 17 of the present constitution levies a tax of 10 cents on the $100 valuation which is dedicated to 17 named colleges and universities and is allocated on a constitutional formula for the purpose of financing the construction of permanent improvements. Article VII, Section 10 of the proposed amendment similarly levies a tax of 10 cents on the $100 valuation for certain colleges and universities, but the new fund is different in several ways: (1) the fund is for all colleges and universities not included in the University of Texas or Texas A&M Systems; (2) the 10 cent tax may be reduced by law; (3) the legislature is required to establish an assessment ratio for the state tax which must be applied uniformly throughout the state; (4) the determination of an institution's need under the new fund is made annually rather than every ten years as under the present one; (5) the formula for determining allocations of revenues among the colleges is established by law and not the constitution; (6) the fund may be used for the rehabilitation of permanent improvements, the purchase of capital equipment, and the acquisition of library materials; and (7) a portion of the fund may be allocated by law to state-owned vocational and technical institutes.

Arguments

For:

1. The proposed Higher Education Fund for Texas is a vast improvement over the existing one because it allows a more efficient use of an existing revenue source. As future educational needs change, allocation formulas may be altered on the basis of annual rather than decennial determinations of need, vocational-technical institutions may be added, or the tax may even be reduced below the 10 cent maximum. None of these alternatives are possible under the present constitution.

2. Because the legislature may control allocations of tax revenue under the proposed fund, the legislature also may control the amount of indebtedness created by the institutions payable from those allocations.

3. By allowing the use of the tax revenues for purposes in addition to acquiring or constructing permanent improvements, needed flexibility is provided to accommodate a future time when the need for capital equipment, library books and the maintenance of existing structures will exceed the need for the construction or acquisition of new facilities.

4. Presently the state ad valorem tax falls unevenly on taxpayers in different parts of the state because the tax is based on the assessed values determined by each separate county. Use of an assessment ratio that is uniformly applied throughout the state could help equalize the burden of the

state tax and lessen the possibility of federal court intervention to equalize the tax.

Against:

1. The State Higher Education Fund is another example of a fund that should not be in the constitution. Such funds needlessly hamstring future legislatures in their effort to meet the changing revenue needs of the state from available revenue sources.

2. The requirement for establishment of a state assessment ratio to be applied uniformly throughout the state may encourage state interference with local assessment or appraisal practice.

3. An assessment of needs on an annual basis may impair the saleability of bonds issued payable from the fund unless the legislature acts to provide assurances by law that future annual allocations will be at least sufficient to meet the debt service requirements of each institution. It further may lead to insecurity in planning among the institutions who now may depend on an allocation formula that is set by the constitution for ten year cycles.

4. Because the proposed fund does not list the institutions that may participate or set a formula for allocation of the fund, those institutions that now share in the fund may receive less in the future.

Proposition No. 5

Revising the Finance Provisions of the Texas Constitution

[Effective September 1, 1976]

The proposed amendment generally revises Article VIII, Taxation and Revenue, of the Texas Constitution except for Sections 14, 16 and 16a and the tax limits on counties located in Section 9. The amendment also repeals or amends sections in Article XI, Municipal Corporations; Article III, Legislative Department; Article VII, Education; and Article XVI, General Provisions. Among the more controversial changes from the finance provisions of the present constitution are:

Petroleum Products Manufacturing Tax. Article VIII, Section 7-a of the present constitution limits the purposes for which motor vehicle registration fees and the revenue from all taxes on motor fuels and lubricants may be used. This dedication of revenue is carried forward in Article VIII, Section 7 of the proposed amendment. Registration fees are divided between use by the counties and use related to state public roadways. The revenue from any tax on motor fuels or lubricants is divided between use related to state public roadways (3/4) and deposit in the Available School Fund (1/4). The present constitution makes an exception to this dedication for gross production taxes and ad valorem taxes. The proposed amendment adds a new exception to this dedication of tax revenue. If a "petroleum products manufacturing tax" is levied under the proposed amendment, revenue from the tax may be used for purposes other than public roadways and the school fund.

Arguments

For:

1. The proposed amendment does not authorize or require a petroleum products manufacturing tax. The legislature could levy one today under the present constitution. The purpose of the proposed amendment is to make it clear that if such a tax is ever levied, revenue from the tax may be used for any purpose, not just roads and the Available School Fund. This adds needed flexibility without directly taking money away from either of these important uses. As long as existing motor fuel taxes are levied, revenue from the taxes would continue to be dedicated to the two purposes, thus assuring their support.

2. A tax levied at the refinery on petroleum products produced or petroleum processed in Texas could result in significant additional state revenue with little or no added cost to Texas citizens. For example, in 1971 Texas refineries produced 24.8 billion gallons of motor gasoline, but Texans consumed only 6.7 billion. The remainder was shipped to other states or areas. Texans pay a five cent per gallon gasoline tax that is levied at the pump. If the tax were levied at the refinery instead, the tax

paid by Texans would remain the same, but the tax revenue would be approximately four times as great. Or the same revenue as is now produced from the five cent tax at the pump could be derived from a tax of 1 1/4 cents levied at the refinery. Under the present constitution, all of this revenue might have to go solely to highways and the school fund.

Against:

1. Although the proposed amendment does not require a petroleum products manufacturing tax, it may encourage passage of one. Such a tax could compel oil companies to stop building oil refineries in Texas and perhaps even to move existing refinery operations to another state. The proposed amendment fails to clearly define what constitutes a petroleum products manufacturing tax. But the type of tax usually described by supporters of the provision is one that may impose a burden on interstate commerce in violation of the United States Constitution, or at least may encourage other states to impose similar new taxes on products that they manufacture and ship to Texas.
2. The change made by the proposed amendment may only disguise a method for destroying the dedication of motor fuel taxes to the state highways and the Available School Fund. If a petroleum products manufacturing tax is levied at the refinery, the existing tax at the pump may be reduced or eliminated. Texas has a history of excellent roads, which could be endangered by any reduction of the motor fuel tax. Moreover, the schools of the state also could suffer. If a refinery tax is levied and the tax at the pump is not reduced, the effect would be higher taxes for the citizens of Texas.

Sales Tax Exemptions. The state's power to tax is plenary. If the constitution does not specifically impose a limitation, the legislature has virtually unlimited authority over the levy and structure of the tax. The present constitution does not mention the retail sales tax. The proposed amendment prohibits a retail sales tax on (1) agricultural machinery or parts, fertilizer, feed or seeds, (2) prescription drugs or medicine, or (3) food except food sold by restaurants or comparable establishments for immediate consumption. Generally these same tax exemptions are currently provided in statute.

Arguments

For:

1. The battle over whether the retail sales tax should be extended to food or agricultural supplies has been fought often in the past. If Texas again faces a need for new tax revenue, it may be suggested once more that the best method for obtaining such revenue is to eliminate exemptions from existing taxes rather than to levy a new tax. The proposed amendment would prevent the levy of a retail sales tax on food or the other items mentioned without the approval of a future constitutional amendment.
2. The issue is one of who shall bear the burden of future taxes. Someday Texas may have to find a

new source of tax revenue. Should the tax fall directly on the consumer; or are there alternatives that may lessen the impact on the average taxpayer? The amendment does not answer where such future revenue will be found, but assures that it will not come from an extension of the sales tax to important commodities like food, medicine, and certain agricultural supplies.

Against:

1. The amendment unnecessarily forecloses a possible source of revenue. It may even exempt items that currently are taxable, such as soft drinks, diluted juices, and candy. Likewise, it may remove the existing tax on certain agricultural machinery that although designed primarily for farm and ranch use may be used for other purposes. This may occur because the provision in the proposed amendment is broad whereas the current exemptions are spelled out in considerable detail in statute. A significant amount of sales tax revenue could be lost by both the state and cities depending on the interpretation given to the terms in the proposed amendment.

2. Regardless of whether a future tax falls directly on the consumer, it is the consumer who eventually will pay. If a tax on corporations or businesses is levied in lieu of one on the items exempted in the proposed amendment, the price of the product or service provided by the business will be increased. Other revenue sources, such as a personal income tax also would fall on the consumer.

State Ad Valorem Taxation. Beginning in 1978, the present constitution will prohibit state ad valorem taxation for state purposes, except for a 10¢ per $100 valuation tax levied for certain institutions of higher education. Other state ad valorem taxes, which totaled 37¢ in 1968, have been phased out pursuant to a constitutional amendment adopted that year. Only a two cent tax will be levied in 1976 in addition to the aforementioned 10¢ one. Article VIII, Section 1 of the proposed amendment continues to impose a quantitative limit on state taxes, but makes three changes: (1) the limitation applies only to state taxes on real and tangible personal property, not state taxes on intangible personal property; (2) the two cent tax, scheduled to end before 1977, is continued; and (3) both the two cent tax and the 10¢ tax, which continues in the education article, are made reducible by law. State ad valorem taxes levied in the present constitution may be reduced or ended only by constitutional amendment.

Arguments

For:

1. The two cent tax is retained because it has proven to be a valuable source of revenue, permitting the construction and maintenance of state buildings without the need for issuing costly long-term bonds. The need for state buildings has not disappeared. Elimination of the tax will mean that other

sources of revenue will have to be found, possibly contributing to the need for tax increases elsewhere. The new power to reduce by law state ad valorem taxes is potentially an important one if the desire to reduce or end such taxation remains strong. The taxes could be reduced by a majority vote in the legislature rather than the two-thirds vote required for submitting a constitutional amendment.

2. The elimination of intangible personal property (as evidenced by stocks, bonds, etc.) from the state tax prohibition occurred because this substantial source of wealth in Texas has never effectively been taxed, either by state or local government, even though the present constitution and laws require it to be taxed on an ad valorem basis. One day an effective manner of locating and taxing the property may be found, with a resulting reduction of the tax burden currently assumed by persons who own more real property or tangible personal property than intangible personal property. If such a tax is possible, it probably can be better administered from the state level.

Against:

1. The voters of Texas decided in 1968 that no state ad valorem tax, other than the 10¢ one for higher education, should be levied for state purposes. The proposed amendment excludes a tax on intangibles from this prohibition and continues a two cent tax that should end in 1976. The proposed amendment ignores the clearly stated will of the Texas voter. The two cent tax is primarily used for the construction of state office buildings. New buildings suggest new state employees and further governmental growth. The termination of the two cent tax will not necessarily mean that an alternative revenue source must be found. State construction could be reduced.

2. Elimination of intangibles from the prohibition may encourage state experimentation in the taxation of intangibles and a further tax increase for many Texas taxpayers. Although the present constitution requires that intangible personal property be taxed, almost all of it escapes taxation. Virtually all persons own at least some such property and any effort to tax intangibles may mean only an additional tax increase for everyone.

Ad Valorem Tax Reform. Article VIII, Section 1 of the present constitution requires that taxation be equal and uniform and that all property in the state be taxed in proportion to value. Other sections of the present constitution specifically exempt or permit the exemption of certain types or amounts of property. For example, the constitution exempts from all ad valorem taxes public property used for public purposes and $250 of household furniture, and exempts from state taxes $3,000 of the value of residential homesteads. Also the constitution authorizes the exemption of other property. Together, these provisions define the constitutional tax base for state and local ad valorem taxes. To comply with the law, a taxing authority should tax all property within that base, and should tax all of it at the same tax rate and at market value or the same percentage (ratio) of market value. Recent studies

indicate that no taxing authority complies with the constitution or with the numerous laws in existence intended to implement the constitutional requirements. They also indicate that interjurisdictional and intrajurisdictional disparities in property valuation and assessment ratios are the rule rather than the exception in Texas. The proposed amendment: (1) changes the constitutional tax base by providing only that all real property and tangible personal property must be taxed and by specifically exempting all household goods and personal effects not used for the production of income; (2) requires that the legislature establish and enforce uniform standards and procedures for the appraisal of property; (3) provides that each county provide for a single appraisal of property which must be used by all taxing authorities; and (4) provides that each taxpayer may pay taxes in protest and sue for a refund.

Arguments

For:

1. When first included in the Texas Constitution in 1845 and subsequently carried forward in 1876, the basic ad valorem tax provisions of the present constitution were intended to assure an equitable tax system in which each person paid according to his wealth. Instead, at least over the past 100 years, the provisions have contributed to the development of a property tax system that today is one of the most confused and apparently inequitable of any in the nation. The individual taxpayer is often unaware and unable to determine if he is being treated fairly. Because of the gap between constitutional principles and local taxing practices, inconsistencies in legal doctrine are commonplace, and the individual taxpayer is virtually unable to effectively challenge even flagrant violations of the property tax laws. The ad valorem tax provisions of the proposed amendment are written to provide the basis for reform of the tax in Texas. If Texas does not act promptly to reform its own system, congress or the federal courts may act to force necessary changes. Texas should not await such federal interference.

2. Efforts to reform the ad valorem tax in Texas have always been frustrated under the present constitution. Reform may not be possible until the tax is made administrable. By removing from the constitutional tax base all intangibles and all household goods and personal effects not used for the production of income, the proposed amendment eliminates that property which has never successfully been taxed on an ad valorem basis in Texas and makes the tax administrable. Intangibles would remain part of the tax base by virtue of existing statutes until those statutes are changed. After study, Texans may find that there are certain intangibles that can and should be taxed to ease the burden on persons who own primarily real property or tangible personal property. The proposed amendment makes this possible.

3. Ad valorem tax reform is probably impossible without some guidance and enforcement from the state level. Otherwise the local tax office remains unaccountable for its policies. The proposed amendment would require that the legislature provide for the establishment and enforcement of standards and procedures for appraisal of property for ad valorem tax purposes. This duty is only applicable to appraisals and not to assessment ratios, assessed values, or tax rates which also are factors in determining the final tax levy. In conjunction with the other reform provisions of the proposed amendment, the requirement for uniform appraisals should do much to assure reform of the ad valorem tax in Texas without interfering with the right of local governments to tax to meet their own revenue needs.

4. Currently in Texas there are more than 3,000 separate tax offices. Theoretically each has an independent duty to appraise and assess property. But the offices generally are under-staffed or lack the professional training or tools necessary for the tasks assigned to them. The individual taxpayer often finds his same property valued differently on several tax rolls. Article VIII, Section 2(c) of the proposed amendment requires that each county, or the various local governments within the county acting together, provide for the appraisal of all taxable property within the boundaries of the county in the manner provided by law. Each taxing authority imposing a tax on property within the county must tax in proportion to that appraisal. The cost of the appraisal would be allocated among the taxing authorities as provided by general law. This requirement should eliminate multiple appraisals and provide a single market value figure for the use of taxpayers and all taxing authorities, while maintaining the actual appraisal function at the local level and allowing all taxing authorities to adjust their own assessment ratios or rates to meet their own revenue needs. Most states use a single appraisal approach to property valuation and some bond authorities suggest that such a system enhances the stability of local government bonds by establishing a definite value figure which bond purchasers may use to more easily determine the total public debt attributable to any single piece of property.

5. The proposed amendment provides a new right to taxpayers to pay their taxes in protest and sue for a refund. No similar right exists in the present constitution or laws of Texas. A duty is placed on the court to enter those orders necessary to ensure equal treatment for the complaining taxpayer, including a refund of taxes and equalization of property appraisals and assessments. Additionally, subject to limitation by law, the court is under a duty to ensure equal treatment under the law for all property owners within the taxing authority. This provision should assure an adequate remedy for taxpayers without requiring the taxpayer to enjoin the collection of all taxes in the taxing authority to find a solution to his own assessment or tax as is currently required.

6. The condition of the ad valorem tax is a pressing problem in Texas. The proposed amendment establishes a reasoned approach for reform of the tax. Until such reform occurs, some other major state problems, such as unequal educational opportunity, will also continue. Perhaps most importantly, however, it is the average taxpayer, the homeowner, small businessman, and small farmer or rancher, who now suffers most from an inequitable ad valorem tax because it is his property that is consistently valued and taxed at the highest proportion to market value. Reform of the property tax in Texas should not mean higher taxes, only a more equitable tax in which each person pays his fair share.

Against:

1. If adoption of the proposed amendment results in ad valorem tax reform, significant increases in local taxes could result. Although the present constitution requires all property to be taxed, much is not. An example is personal automobiles. If personal automobiles were added to all local tax rolls, the total tax increase could exceed $72 million a year in those jurisdictions that now do not tax automobiles. Also the proposed amendment requires that property be valued at market value. A similar requirement exists in the present constitution but as a practical matter every local taxing authority uses whatever tax base it pleases. A use of true market value could add as much as $75 billion, or 60 percent, to the present values of property on the tax rolls in Texas. Unless local taxing authorities acted to reduce rates or assessment ratios, or the legislature prohibited higher taxes, major increases in local taxes could result.

2. Property tax administration has traditionally been a matter of local concern. The requirement in the proposed amendment that the legislature provide for the establishment and enforcement of standards and procedures of appraisal is an invitation for state interference. The legislature or some state agency, rather than the local taxing officer, would be determining appraisal policy. This would further separate the process from the taxpayer and perhaps provide a new level of state bureaucracy. Presently each taxing jurisdiction may effectively determine its own taxing policy without state interference. If local property owners want a change, they can indicate their desires to their local officials. If reform is desired, it can and should be accomplished on the local level.

3. Centralization of appraisal in one local unit may adversely affect the finances of other dependent local governments. Presently each local government may adjust property valuations as necessary to meet local revenue needs. Some local governments value property at close to actual market value because their revenue needs are great in proportion to taxable property within their jurisdiction. Others appraise property at a low ratio to market value. School districts or other local governments currently valuing property at near actual market value could be seriously affected if they were

required to depend on the lower valuations of another unit of government. A serious problem in marketing bonds could develop if a local government is unable to provide reliable information on future property valuations. In addition, the possibility of cost savings because of a consolidation of tax offices may be more than offset by the expense of more frequent appraisals that may be required by other portions of the proposed amendment.

4. By providing that courts may order reassessment or reappraisal of property if necessary to assure equal treatment for property owners, the proposed amendment invites courts to interfere in local reassessment and appraisal activities which traditionally have been immune from court scrutiny. The entire taxing and bonding capabilities of a local government could be upset by a single lawsuit if a court orders reappraisal or reassessments of property throughout the taxing authority. Even if such catastrophic events do not occur, the taxpayer appeal provision of the proposed amendment will almost certainly mean an additional expense for local governments required to defend their tax rolls in court.

5. The proposed amendment removes intangible personal property from the constitutional tax base and allows the legislature to exempt such property or to tax it at a rate higher or lower than that applied to other property. It has been estimated that a low millage rate tax on only bank deposits and savings and loan deposits could mean as much as $53 million in new taxes.

6. Most of the provisions included in the proposed amendment could be left to statute. By placing in the constitution provisions, such as the one requiring a single appraisal at the county level, the amendment proscribes the legislature from trying other alternatives which may be more desirable. If property tax reform was the goal of those who drafted the proposed amendment, they should have left all avenues open for the legislature to most efficiently accomplish that objective.

Appraisal of Land Devoted to Agricultural Purposes or Timber Production. Because both the present constitution and the proposed amendment require that real property be taxed uniformly in proportion to value, any exceptions to that policy must be provided by the constitution itself. Article VIII, Section 1-d of the present constitution directly grants a right of appraisal on the basis of productivity for land owned by natural persons and designated for agricultural use but only if agriculture is the "primary occupation and source of income of the owner." The proposed amendment requires the legislature to provide separate appraisal formulas for open-space land devoted to farm or ranch purposes and permits the legislature to provide such formulas for forest land devoted to timber production. The proposed amendment authorizes the legislature to provide limitations and impose sanctions in furtherance of the appraisal policy. The transition schedule of the proposed constitution

carries forward Article VIII, Section 1-d of the present constitution as a statute, thus implementing this provision of the proposed amendment at least with regard to farm and ranch land. The 64th Legislature enacted a new and more far-reaching program of separate formulas for both farm and ranch land, and timberland.

Arguments

For:

The problem addressed by this provision of the proposed amendment is a very real one. Approximately 35 states have constitutional provisions or laws providing some ad valorem tax relief to owners of ranch, farm, or timberland who otherwise would face higher taxes resulting from land values inflated by nearby urban or resort growth. Without such relief, agricultural or timber production from the land may be insufficient to meet the additional tax burden and the owner may be forced to sell the land or to convert it to more intensive uses. Admittedly, there is a narrow line separating bona fide farmers, ranchers, or timber owners who need such relief from land speculators or large businesses who have purchased the land because of its probable increase in value or who are not likely to be compelled to convert the land merely because of higher taxes. The issue is whether this line between deserving and undeserving landowners should be set in the constitution or by law. The proposed amendment reflects the view that it should be set by law. Possible limitations or sanctions that could be imposed by law to avoid abuse of the appraisal privilege include: excluding land owned by corporations; requiring the land to be the owner's residence; requiring that the land have been in the owner's possession for a number of years; or imposing long-term restrictions on the use of the land, preventing conversion without state or local government approval. The approach of resolving the issues by law is preferable because it allows careful structuring of particular provisions, to permit better administration and allows the opportunity for review and revision of all or part of the provisions to meet changing circumstances. Perhaps most importantly, it leaves primary responsibility for defining the provisions and administering the appraisals with the legislature and not the courts.

Against:

The provision in the present constitution is self-enacting and is narrowly drafted to prevent abuse of the special appraisal privilege for farm and ranch land. The proposed amendment adds timberland to land eligible for the privileges and leaves the decisions to the legislature. If the legislature extends the special appraisal privilege to timberland it could significantly affect the tax base of approximately 34 counties in Texas where timberlands make up from 65 to 90 percent of all land. But the actual effects cannot be calculated. It is reasonable to expect that appraisal of farm, ranch, or timberland on the basis of productivity is likely to result in a value below full market value. In those jurisdictions where

land is being valued at full market value, a significant reduction in the tax base could occur. But in most taxing authorities rural land is presently valued well below market value and an appraisal on the basis of productivity actually could increase the taxable value of the land, increasing the local tax base and the taxes of the land owner. If, however, because of adoption of this proposed amendment all property except eligible farm, ranch, and timberland is valued at market value, the value of such land would be proportionately lower, causing a reduction in the market-value tax base of the taxing authority. Perhaps the strongest arguments against the provision are that no one can predict its actual effects and that the formulas for appraising land on the basis of productivity are hard for local tax assessors to learn and apply, causing further problems of tax administration.

Ad Valorem Tax Exemptions. Because the present constitution and the proposed amendment both require that certain property be taxed, any legal exemption of such property must occur because of an express grant made in the constitution itself. Both the present constitution and the proposed amendment contain such grants. Some are direct, requiring no action by the legislature or local government; others are merely authorizations for an exemption, requiring further action before the exemption is actually available. Generally, the ad valorem tax exemptions provided in the proposed amendment are the same as or similar to ones available under the present constitution. Among the most significant changes are: (1) an increased direct exemption of household furniture from a total amount of $250 of such property to the exemption of all such property and all personal effects not used for the production of income; (2) new authority by law to increase the residential homestead exemption from state taxes to an amount above the present $3,000 limit but also changing the basis of the exemption from assessed value to appraised value; (3) conversion of the permissive residential homestead exemption of at least $3,000 for persons 65 and older that appears in the present constitution to a mandatory one, with authority in the political subdivisions to increase the exemption; (4) new authority by law to exempt property owned by a nonprofit water corporation whose board of directors is elected by the members it serves, if the property is not held for profit and is reasonably necessary for and is used in the acquisition, storage, transportation, or distribution of water or in providing sewage or waste water treatment service; and (5) new authority by law to provide ad valorem tax relief to persons determined to be in need of relief because of economic circumstance and either age or disability, and to preserve cultural, historical, or natural history resources. The legislature also is authorized to provide limitations, classifications, or exclusions within the exemption granted by law.

Arguments

For:

1. The legislature has virtually complete authority to exempt persons or classes from every tax except the ad valorem tax. The proposed amendment permits the exemption by law of certain property that now is taxable, but also provides clear authority to limit or exclude property within the prescribed exemptions as necessary to assure that the proper purpose of each exemption is met.

2. The exemption of all household furniture and personal effects not used for the production of income is part of the effort to make the property tax administrable in Texas. The experience in Texas has been that household goods and personal effects not used for the production of income cannot properly be located and appraised, thus the proposed amendment exempts such property.

3. The legislature's new authority to increase the homestead exemption is in recognition that the $3,000 figure, which was first added to the constitution in 1932, is inadequate today in the face of inflated property values. The exemption is in terms of "appraised" value because this should assure that each eligible taxpayer will receive an equal benefit from the exemption; a result that otherwise might not be the case because of variations in assessment ratios between counties. The existing exemption based on county assessed valuations may violate the U.S. Constitution and could be declared invalid unless changed. The legislature may increase the new exemption to any reasonable figure.

4. The elderly of Texas are often on fixed incomes and have greater difficulty than others in meeting the increased cost of living. The mandatory exemption of the residential homestead is intended to ease the tax burden of the elderly citizen and to better enable him to retain his home.

5. Nonprofit water corporations perform a vital function for certain portions of the state that otherwise would not have adequate water supplies.

6. The legislature's new authority directly to provide ad valorem tax relief to persons in need because of economic circumstance and either age or disability, and to provide relief to preserve cultural, historical, or natural history resources is limited to state taxes. A law granting relief from local ad valorem taxes for persons in need must provide either that political subdivisions are reimbursed for revenue losses or that relief is contingent on the approval of the particular political subdivision. Relief from local ad valorem taxes for cultural, historical, or natural history resources must await the designation of the property by the political subdivision.

Against:

1. Any reduction in the ad valorem tax base is undesirable, particularly because the local governments of Texas still rely almost exclusively on the tax for their revenue.

2. The exemption of household furniture and personal effects not used for the production of income is not a significant exemption because such property generally is not taxed today.

3. Because the state ad valorem tax homestead exemption in the proposed amendment is based on appraised value rather than assessed value, the exemption would have to be increased to $7,000 to provide the same benefit as the $3,000 one that is in the present constitution. If the legislature does not increase the exemption, the state could gain $1 million per year at the expense of homeowning taxpayers.

4. Conversion of the permissive exemption for the elderly to a mandatory one could cause a significant loss of tax revenue in those political subdivisions that have not granted the exemption.

5. Texas voters have twice rejected constitutional amendments permitting the exemption of property belonging to nonprofit water corporations.

6. The tax relief provisions of the proposed amendment are of uncertain effect. They may result in a significant reduction in local ad valorem tax revenue. The provision for relief based on need is particularly deficient, providing no guidelines except that the person must also be either aged or disabled. The legislature will define these terms and could choose to exempt almost any class of property owner under the broad authorization contained in the proposed amendment.

State Debt. The present constitution prohibits debt created by or on behalf of the state, except that created for certain limited purposes such as to supply casual deficiencies in revenue of up to $200,000, to repel invasion, to suppress insurrection, or to defend the state in war. The prohibition in the present constitution has been interpreted to apply only to borrowing which obligates the credit of the state itself. Bonds issued by an agency of the state and payable solely from the non-tax revenues of the agency are not "state debt" and may be issued pursuant to authority granted by law. The proposed amendment requires that all evidences of indebtedness secured by the general credit of the state or to be repaid from taxes, fees, tuition, or other charges of the state, a state senior college or university, or a state agency or institution having statewide jurisdiction must be approved by the record affirmative vote of two-thirds of the membership of each house of the legislature and by a majority of the qualified voters of the state voting on the question. Bonds or other evidences of indebtedness issued to finance a project could be authorized by law if payable solely from revenues generated by the project to be financed. (The so-called "pay-as-you-go" limitation on state appropriations is a different requirement than the one discussed herein. The limitation is retained without change in the proposed amendment but is not discussed in this publication because its retention has not been controversial.)

Arguments

For:

The proposed amendment greatly strengthens the constitutional limitation on the creation of state debt. The amount of debt created by state agencies without constitutional amendment or a vote of the people of Texas has climbed astronomically in recent years. The Constitutional Revision Commission reported that approximately $800 million in such debt existed in 1973. Although the debt consists of bonds that technically are payable only from local agency revenues, the bonds indirectly constitute a drain on state tax revenue which must be appropriated to the agency to replace local revenues obligated for debt service. Also, although the state legally may not be obligated on the agency bonds, it is unlikely that the state could allow such debt to be forfeited and probably would find some way, directly or indirectly, to assure that the debt is repaid. Finally, borrowing through bonds payable solely from local or special fees is significantly more costly than borrowing through bonds payable from such fees but also directly backed by the credit of the state. The proposed amendment puts a handle on the future issuance of such bonds by requiring the approval of the voters of the state before the bonds may be issued.

Against:

This provision in the proposed amendment is likely to result in considerable litigation to determine specifically what is included or not included within the new definition of state debt. Such litigation may seriously disrupt the ability of state agencies to market even legitimate revenue bonds. Revenue bonds have long been an accepted method for borrowing money. Because they are payable only from local fees and do not obligate the tax revenues or credit of the state, it is inappropriate to require a statewide election before they may be issued. The costs of such an election may more than offset any interest savings on the bonds.

Proposition No. 6

Revising the Local Government Provisions of the Texas Constitution

[Effective September 1, 1976]

The proposed amendment generally revises Article IX, Counties, of the present constitution. It also repeals Article XI, Municipal Corporations, and repeals or amends sections in Article III, Legislative Department; Article V, Judicial Department; Article VII, Education; Article VIII, Taxation and Revenue; and Article XVI, General Provisions of the present constitution. Among the more controversial changes from the local government provisions of the present constitution are:

Counties. The proposed amendment provides that the counties have both those powers granted by the constitution and those granted by general law. Among new powers specifically granted by the proposed amendment are: (1) county voters, under procedures prescribed by general law, may vote to eliminate or combine county offices, or to create new ones; (2) county voters, under procedures prescribed by general law, may increase or decrease the size of the county commission; (3) the voters, under procedures prescribed by general law, may grant ordinance-making powers to the county commission; and (4) the county commission provides for the number and election of constables.

Arguments

For:

1. The status and authority of counties are uncertain under the present constitution. The proposed amendment clarifies that the legislature by law may grant powers in addition to those set out in the constitution. These powers may be granted only by general law, leading to greater uniformity in the powers of counties and to the elimination of local laws in which currently the legislature tries to legislate on the internal affairs of particular counties when those affairs probably could be better handled by the county itself.

2. The local government provisions of the present constitution create certain county offices but generally do not allow the voters of the county to eliminate, combine or add to those offices. This inflexibility is inappropriate considering the diverse needs of the counties of this state. In some counties there may be no need for all of the offices provided in the constitution. The elimination or combination of certain offices would lead to less waste and to more efficient government. The voters of each county should have the right to control the size and structure of their county government.

3. As county populations increase, counties will need new authority to deal with problems such as environmental protection and crime prevention. The authority for voters to grant ordinance-making power is a new and important one which will permit counties to better respond to local needs without coming to the legislature for solutions, thus providing for government closer to the people.

Against:

1. To authorize counties to enact ordinances is to invite more governmental regulation and the imposition of new restrictions on how a person may use his private property. Implementation and enforcement of the ordinances also may increase the cost of county government. The effect of adoption of the proposed amendment is to encourage even further growth in government.

2. The authority to abolish or consolidate county offices could lead to instability. Despite the requirement of a vote, offices may be created or abolished because of the politics of a current officeholder or a prospective candidate. The local government provisions of the present constitution, which assure that each county will be uniform in its offices, afford greater security.

3. All of the "new" grants of authority to the counties are dependent on some action by the legislature. If the legislature does not act, counties will continue to be unable to combine offices or exercise ordinance-making power. In addition, the powers, even if granted, are not equivalent to county home-rule. If counties are to exercise new authority, the constitution should provide each county the right to operate under a home-rule charter adopted by the voters of the county.

City Home Rule. The local government provisions of both the present constitution and the proposed amendment provide for city home rule through the adoption of a city charter which is consistent with the constitution and laws of the state. The proposed amendment lowers from 5,000 to 1,500 the number of inhabitants required in a city before a home-rule charter may be adopted. There are 275 towns or cities in Texas that would become eligible for home-rule because of the reduction. Cities with fewer than the prescribed number of inhabitants may be chartered only by general law. The proposed amendment provides that no city which adopts a home-rule charter may lose its power to amend or repeal its charter because the city's population drops below 1,500.

Arguments

For:

1. Although not all of the cities eligible for home-rule under the proposed amendment may wish to adopt such a charter, those who do should not be denied the opportunity by an overly restrictive constitution.

2. Cities with home-rule charters are able to adopt their own forms of organization and to provide services that may not be available from cities operating under general law. If the citizens of a city of 1,500 or more inhabitants wish their city to modify its organization or to assume responsibility for additional services, they should be able to vote to do so.

Against:

1. Most cities with between 1,500 and 5,000 inhabitants are unable to support the extra expense or undertake the procedural requirements associated with adoption of a home-rule charter.

2. Cities with less than 5,000 inhabitants do not have the problems associated with larger ones, therefore the need for home-rule is not as great.

Special Districts. Currently there are more than 1,200 special districts in Texas which provide hospital, water, waste disposal, soil conservation, or other service to the inhabitants of a defined geographical area. These special districts have been created by political subdivisions or by either general or local laws under authority granted by numerous provisions scattered through the present constitution. The proposed amendment repeals those constitutional provisions and substitutes one which (1) permits the legislature to create special districts or authorities by general or local law; (2) allows counties, cities and towns to create special districts if authorized by general law; (3) permits these special districts to be created for any public purpose; and (4) prohibits the legislature from creating a special district wholly within a county, city, or town if a general law authorizes the county, city or town to create one for the same purpose. The present constitution prescribes a specific maximum tax rate for hospital districts, airport authorities, and rural fire prevention districts. The proposed amendment does not prescribe a maximum tax rate for any special district. It requires that no interest-bearing obligation payable from ad valorem taxes may be issued or any ad valorem tax, for purposes other than debt service, levied unless authorized by a vote of the qualified voters of the district. Similar requirements exist for various special districts in the local government provisions of the present constitution. Some provisions of the present constitution require a vote before a district may be created; others allow creation of the district without a vote, but require a vote before an ad valorem tax may be levied or bonded indebtedness may be incurred.

Arguments

For:

1. The special district provisions of the present constitution are lengthy and are scattered through three different articles. This makes it difficult to locate and understand these important provisions or to understand their interrelationship. The proposed amendment substitutes a much briefer, but more easily understood provision.

2. The special district approach to providing services for state citizens is useful because it allows flexibility, being adaptable to areas both smaller and larger than city or county governments. The proposed amendment puts several safeguards on this approach, including a new one which prevents the legislature from creating special districts by local law if the county, city or town is authorized by

general law to create one for the same purpose. This latter requirement should help preserve the integrity of local governments and lessen the possibility of the legislature creating a special district in response to special interest requests that are not representative of the desires of the affected city or county.

3. Although some of the special district provisions of the present constitution impose tax rate limits, the vast majority of existing special districts (such as conservation and reclamation districts, navigation districts, etc.) have been created under provisions that do not prescribe a maximum tax rate. Vote requirements also vary between different types of special districts. The proposed amendment brings order out of chaos and imposes sensible and uniform requirements for all special districts.

Against:

1. The special district provisions of the present constitution have served well in the past. The lack of uniformity in vote or tax rate requirements for different types of special districts is at least in part intentional. Persons are accustomed to the existing requirements and there is no need for wholesale change. If changes are necessary for particular types of special districts, the changes may be made by future amendments.

2. The proposed amendment encourages a further proliferation of special districts by permitting special districts to be created for any public purpose. Special districts are an inappropriate method for providing services because they are less publicly accountable than cities and counties. Most services now provided by special districts could be provided by cities and counties, but special districts are created to avoid the tax limits imposed on cities and counties. Even though the proposed amendment requires that ad valorem taxes be approved by a vote before they may be levied, more special districts will almost certainly mean higher taxes on the taxpayers in the district.

3. Under the local government provisions of the present constitution, certain special districts, such as hospital districts, may not be created without a vote. Although the proposed amendment requires a vote before an ad valorem tax may be levied, it permits special districts to be created without a vote. This may cause a proliferation of special districts which are created without a vote and which derive their revenue from sources other than the ad valorem tax.

Local Government Tax Rates and Debt Limitations. Under the present constitution, cities and towns with a population of 5,000 or less are limited to a maximum ad valorem tax rate of $1.50 per $100 valuation of taxable property in the city or town. Cities with a population of over 5,000 are limited to $2.50. Counties are authorized three separate tax levies which total $1.25. The rate limits imposed on cities and counties are aggregate ones for the particular local government and apply to all ad valorem taxes, whether levied for debt service or other purposes. The proposed amendment distinguishes ad

valorem taxes levied for debt service from ad valorem taxes levied for other purposes. The maximum annual ad valorem tax rate for purposes other than debt service is $2 on the $100 assessed valuation for cities and $1.25 on the $100 assessed valuation for counties. No maximum rate is prescribed for ad valorem taxes levied for debt service. Instead, the legislature is required to establish by general law the maximum amount of interest-bearing obligations payable from ad valorem taxes that may be issued by cities, towns, counties, school districts, or community junior college districts. The transition schedule to the proposed amendment establishes such limits until changed by law.

Arguments

For:

1. Limiting the amount of debt that a local government may incur rather than the maximum ad valorem tax that it may levy to retire its indebtedness is not only the approach used by most states and by school districts in Texas, but is one which makes good fiscal sense. Bonds issued payable from taxes that are limited by the constitution generally are less easily sold and require a higher rate of interest than those which are backed by the general taxing power of the local government. Cities and counties are needlessly losing thousands, even millions, of dollars yearly under the present system. Significant savings may be expected under the proposed amendment. Protection from any actual increase in taxes is provided by the limit placed on the total amount of indebtedness that the city or county may incur. Only in a single limited circumstance does the present constitution actually directly limit the amount of debt that a local government may incur. The proposed amendment requires that such limits be provided by general law and actually enacts limits in the transition schedule which may be adjusted by the law. Providing such limits by law allows for adjusting the amounts permitted to accommodate changes in need or the differences between particular political subdivisions within a class of local government. For example, the needs of a city the size of Houston may vary significantly from those of a smaller city.

2. The proposed amendment affords a clear and sufficient statement of the authority for local governments to tax to meet future needs. Article VIII, Section 9 of the present constitution, which provides authority for counties to levy a tax of 80 cents and one of 15 cents, has been the cause of 13 separate proposed amendments, each costing the taxpayers of Texas a significant sum and further confusing the effect of the section, resulting in considerable litigation. The provisions of the proposed revision are clear in their meaning and applicability. This should limit the need for future constitutional amendments and litigation.

3. The change in tax rate limits for cities and counties does not mean that the taxes of any person will be increased. Constitutional tax rate limits offer little or no actual security to the taxpayer. They

are based on valuations of property that may be changed by adjustments in market value or the percentage of market value used for tax purposes. In addition, the jurisdiction of cities, counties, school districts, and special districts overlap, with the result that although under the present constitution and laws the total tax rate of cities and counties is limited to 3.75% of market value, it is possible that a piece of property lying in one of all of the various types of taxing authorities could be taxed at an annual rate in excess of 10% of its market value. The proposed amendment provides additional flexibility for cities and counties, perhaps leading when appropriate to a greater concentration of services in those types of local governments rather than to the creation of additional special districts.

Against:

1. By removing the limit on taxes levied for debt service, the proposed amendment in effect authorizes higher ad valorem tax rates for counties and cities. Higher rates would mean higher taxes for already overburdened property owners. A purpose of ad valorem tax rate limits is to encourage the development of alternative sources of revenue. The proposed amendment may increase the reliance of local governments on the ad valorem tax.

2. During most of Texas' history, the state has used a system of rate limitation on the total taxes of cities and counties. The system is easily understood. The proposed amendment could create uncertainty and confusion for taxpayers and is an unnecessary deviation from a system that has worked for many years.

3. Allowing limits on debt to be set at the will of the legislature may encourage an increase in local government debt, with an accompanying increase in the cost of debt service. Revenue to pay such new expenses would come from increased ad valorem taxes. Although statutes may continue to require that an election be held before general obligation bonds are issued, voters may not be given adequate information concerning how much their taxes may be increased if a particular bond proposal is approved.

4. Only two years ago the voters of Texas rejected an amendment that would have altered the tax structure of cities in the manner provided in this amendment. Rather than learning from this rejection, supporters of the proposal have returned and included counties as well as cities in their proposed change.

Proposition No. 7

Revising the General Provisions of the

Texas Constitution

[Effective September 1, 1976]

The proposed amendment generally changes Article X, Railroads, of the present constitution to an article containing all of the general provisions of the constitution. The amendment repeals Article XII, Private Corporations; Article XIII, Spanish and Mexican Land Titles; Article XIV, Public Lands and Land Office; Article XV, Impeachment; and Article XVI, General Provisions, of the present constitution. Portions of these articles are retained and relocated elsewhere in the constitution if certain other proposed amendments are not adopted. In addition, the amendment repeals Sections 20, 47, and 62 of Article III, Legislative Department, Section 25 of Article IV, Executive Department and Section 2 of Article XVII, Mode of Amending the Constitution of this State. Article XVII also is renumbered to remain the last article of the constitution. The more controversial changes from the general provisions of the present constitution are:

The Environment and Natural Resources. The proposed amendment provides that the quality of the environment is to be protected and the legislature is charged with implementing and enforcing this policy. No similar provision exists in the present constitution. Both the present constitution and the proposed amendment declare that it is the policy of the state to promote the conservation and development of the natural resources of the state, including certain specific actions listed in the constitution. The proposed amendment adds abatement of subsidence as one of the listed actions and provides that state funds may be used for the importation of water. The proposed constitution also provides for preservation of the coastal natural resources of the state and, subject to reasonable limitations, the right of public access to free and unrestricted use of the beaches. No similar provision exists in the present constitution.

Arguments

For:

1. Concern over protection of the environment is becoming increasingly evident at the national, state, and local levels. Such concern is unlikely to be merely transitory. The need for protecting the environment will be a continuing one and one which is deserving of being stated in the constitution.
2. The beaches of Texas have traditionally been held in trust for the use of the citizens of this state. This is an important and fundamental right that should be clearly stated in the constitution.
3. A significant problem of natural resource conservation in Texas is the extent of subsidence

occurring along the coast. The proposed amendment adds abatement of subsidence to the other actions mandated in the present constitution for the conservation of natural resources.

4. As the time draws nearer when the economic future of Texas depends on adequate water, it may well become necessary to bring water into the state. The new provision regarding transfer of water from the basin of origin clarifies the question of whether the state can use state funds for the importation of water, thereby lessening the chances of lengthy court fights. The importation of water in any significant amount, particularly anything approaching the size of the Texas Water Plan that was rejected by Texas voters in 1969, would require the issuance of bonds. No bond obligating the credit of the state could be issued unless approved by the voters of the state.

Against:

1. Inclusion in the constitution of a statement of policy in favor of protection of the environment is likely to provide the basis for increased pressure for state regulation and spending in this area. The state already imposes numerous restrictions on the use of private property in the name of environmental protection. Adoption of the proposed amendment may cause more such restrictions.

2. The guarantee of access to the beaches of the state may require additional state or local expenditures and could impinge on private property.

3. The statement on the environment does not go far enough. Protection of the environment is sufficiently important that the constitution should provide a right for every citizen to sue for its protection.

4. In 1969 the voters of Texas rejected the Texas Water Plan. The provision of the proposed amendment which permits the use of state funds to import water was part of the amendment rejected in 1969. Even though the Texas Water Plan may not be possible under the new provision, lesser efforts at importation may be possible from appropriations or bonds already authorized by voters for water development. The provision does not answer the question of when the water has to be replaced or the quality required of imported water. If the need for water importation becomes sufficient, the constitution can be amended at that time with a more specific authorization clarifying these questions.

Lotteries. Both the present constitution and the proposed amendment provide that the legislature shall prohibit lotteries and gift enterprises. The proposed amendment makes an exception for bingo or raffles conducted for the benefit of a nonprofit charitable organization if all proceeds are spent in this state for the purposes of the organization and the games are limited to one location.

Arguments

For:

Although the present constitution requires that the legislature prohibit all lotteries and gift enterprises, some churches, service clubs, and other nonprofit charitable organizations regularly conduct bingo and raffle games. The proposed amendment recognizes this reality.

Against:

The people of Texas have consistently expressed opposition to gambling. Adoption of the proposed amendment would open a crack in the prohibition that exists in the present constitution and could lead to future amendments that remove the prohibition entirely.

Handicapped Persons. The proposed amendment prohibits discrimination against a person because of the person's physical or mental handicap.

Arguments

For:

Presently there are more than 1.5 million Texans who experience some physical or mental handicap. The proposed amendment is not designed to create special rights or privileges for these persons, but to guarantee them equal rights and equal treatment.

Against:

The provision prohibiting discrimination against a handicapped person is of uncertain meaning. It may lead to new state regulations and possibly to increased state expenditures and litigation.

Access to Health Care. The proposed amendment establishes a state goal of access to adequate, comprehensive health care for every resident.

Arguments

For:

Adequate and comprehensive health care for every resident of Texas is a worthwhile goal and one that Texans should be eager to state in their constitution.

Against:

The statement of a state goal of comprehensive health care for each resident of Texas may increase general public approval of and pressure for more state action and spending in this area. The costs of such a health care program could be substantial.

Proposition No. 8

Revising the Mode of Amending Provisions of the Texas Constitution

[Effective September 1, 1976]

The proposed amendment revises only the provisions in Article XVII, Mode of Amending the Constitution of the State of the present constitution.

Amendment by the Legislature. The major change in the legislative amendment process is the restriction in the proposed article which limits a proposed amendment to all or part of one article except for portions of other articles which are germane to the main article. The present constitution has no such limitation.

Arguments

For:

The limitation will ensure that the voters can make a decision on amendments to each of the several major constitutional concepts and could not be required by the legislature to cast only one vote on an entire constitutional revision.

Against:

The restriction may make it impossible for the legislature to submit an amendment revising a single constitutional concept which is so closely related to two or more existing articles as to make it impossible to permit the voters to vote on the question without the expense of a constitutional convention.

Amendment by Convention. The only provision in the Texas Constitution which speaks to the question of constitutional conventions is an amendment which was adopted by the voters in 1972. This amendment required the members of the 63rd Legislature to meet in 1974 as a unicameral constitutional convention of limited duration. The amendment further limited the convention; it could not change Article I, The Bill of Rights, and anything submitted to the voters had to be agreed to by a two-thirds vote of the membership of the convention. This amendment to the constitution no longer has any effect on state government. Proposition No. 8 prescribes the method for calling constitutional conventions—two-thirds vote of the membership of each house and submission of the question to the voters; permits the legislature, in the call submitted to the voters, to limit the subjects considered by the convention; permits public officeholders to run for delegate positions; requires that any product submitted to the voters be by a two-thirds vote of the membership of the convention; and mandates that the question of calling a constitutional convention be submitted to the voters every 30 years.

Arguments

For:

By carefully defining the procedure by which the legislature may call a convention and by requiring a 2/3 vote of the membership of each house, this amendment could ensure that the legislature will not submit the question of a constitutional convention unless necessary. The right of the people to be heard is guaranteed by the mandatory submission of the question every 30 years. The requirement of an affirmative two-thirds vote of the membership of the convention to submit any convention product to the people will ensure that the convention does not waste the taxpayer's money in an election on a product which received only a bare majority vote of the convention, thereby reinforcing the need to submit only something which speaks to the needs of the state.

Against:

This amendment places, directly or indirectly, unwieldy limitations on the legislature, constitutional conventions, and the people of the state. The legislature may not submit the question unless it is approved by two-thirds of the membership of each house. The legislature may, however, submit the question of a limited convention and requiring an extraordinary majority to submit the question could increase the probability that any convention would be limited in the subjects it might consider. The convention would be further restricted by the requirement that its product receive a two-thirds vote of the membership of the convention. The same general procedure was used in calling the 1974 Convention and the convention was unable to submit anything to the voters. All three of these restrictions impinge on the right of the people to change their form of government. In return, all the people have gained is the mandatory submission of the question every 30 years.