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HOUSE STUDY GROUP special legislative report-

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1983 Constitutional Amendments

Eleven proposed constitutional amendments will be submitted to Texas voters on Nov. 8, 1983. The Legislature approved ten of them during the 1983 regular session and the eleventh during the June 1983 special session. (By coincidence, Amendment No.3, approved during the special session, and Amendment No.8, approved during the regular session, bear the same joint resolution number, SJR 1.) The proposed amendments are analyzed here in the order in which they will appear on the November ballot.

Ernestine Glossbrenner
Chair

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HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 1 (HJR 91)

SUBJECT: Justice-of-the-peace and constable precincts

BACKGROUND Art. 5, sec. 18 of the Texas Constitution requires each county to have at least four and no more than eight justice-of-the-peace and constable precincts. The precincts are drawn by the county comnissioners court and often coincide with county conmissioners' precincts. Each precinct must have one justice of the peace and constable. Any precinct containing a city with a population of 8,000 or more is required to elect two justices of the peace. Under these rules a county must have from four to eight constables and from four to 16 justices of the peace.

DIGEST: HJR 91 would amend the Constitution to permit counties with a population of less than 30,000 (according to the last federal census) to have fewer than four constable and justice-of-the-peace precincts. Counties with a population of 30,000 or more would continue to have from four to eight constable and justice-of-the-peace precincts. Counties with a population of at least 18,000 but less than 30,000 could have two to five precincts. Counties with a population of less than 18,000 could have one to four precincts. Each precinct would have one JP and one constable unless the precinct contained a city of 18,000 or more, in which case two JPs would have to be elected.

In the event of a precinct boundary change, a justice of the peace or constable would serve out the term in the precinct he or she was elected to. If a vacancy occurred because of the change in precinct boundaries, the corrmissioners court would fill it by appointment until the next general election. If a change in a county commissioner's precinct lines occurred, the ccmn.i.ssioner also would serve out the tenn he or she was elected to.

Eligible counties could reduce the number of precincts as of Jan. 1, 1984. Counties with more than four precincts and fewer than 30,000 residents would have until Jan. 1, 1987, to comply with the provisions of this amendment.

The ballot language will read:

> The constitutional amendment authorizing fewer justices of the peace and constable precincts in counties with a population of less than 30,000 and providing for continuous service by justices of the peace, constables, and county commissioners when precinct boundaries are changed.

SUPPORTERS SAY:

Many smaller counties have no need for four JPs and four constables. Loving County, for instance, has only 91 inhabitants. Requiring such a county to have four JPs and four constables serves no purpose and wastes the county's money. Currently, 105 Texas counties have fewer than the constitutional minimum of four JP precincts. Gillespie County, which employs one JP, narrowly escaped legal action recently for violating this provision of the Constitution. The constitutional amendment is needed to eliminate such legal problems.

Allowing more local variation will contribute to more effective local government. It is better to have one qualified and adequately paid JP and constable instead of four to eight who are underqualified and underpaid.

The proposed amendment presents no problems under the federal Voting Rights Act. Any precinct change authorized under this amendment will have to be approved by the U.S. Justice Department.

OPPONENTS SAY:

Supporters have shown no significant problems with the existing constitutional language. And reducing the number of elected local officials sets a bad precedent. For example, this precedent could be cited by a future Legislature to help justify cutting the required number of county commissioners.

Besides cluttering up the Constitution, this proposed amendment will open the door to possible dilution of minority-group representation in counties where the number of JPs and constables is reduced. At a minimum, each precinct-boundary change will have to go through the cumbersome process of Justice Department preclearance under the Voting Rights Act. The potential hassles just aren't worththe trouble.

NOTES:

The West Texas County Judges and Commissioners Association, the Panhandle County Commissioners and Judges Association, and the County Judges and Commissioners Association of Texas support this legislation. Leaders of the Justice of the Peace and Constable Association also favor the amendment.

NOTES:
(cont'd)

Justice-of-the-peace courts have original jurisdiction in criminal cases when punishment is a fine of $200 or less and in most civil cases when the amount contested is $500 or less. (This dollar ceiling on civil jurisdiction rises to $1,000 on Sept. 1, 1983, under HB 164, which was passed in the regular session.) JPs may issue search and arrest warrants, conduct preliminary hearings, serve as notaries public, perform marriages, and serve as coroners in counties where there is no medical examiner. Constables serve civil papers for courts in the county and have authority as peace officers to make arrests.

Of Texas' 254 counties, 146 have less than 18,000 inhabitants, and 39 have between 18,000 and 30,000. In 1981, there were 962 justices of the peace in Texas.

The proposed constitutional amendment has been submitted by the Texas Secretary of State's office to the Justice Department for preclearance under the federal Voting Rights Act. The Justice Department has taken no action to date but has requested more information.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 2 (HJR 105)

SUBJECT: Urban homestead exemption

BACKGROUND: Art. 16, sec. 50 of the Texas Constitution exempts a person's homestead from forced sale to payoff creditors except when a debt is for the money used to purchase the property, for home improvements, or for taxes due on the property. Art. 16, sec. 51 gives homestead protection to an urban lot or lots worth up to a maximum of $10,000 when first designated a homestead (usually the time of purchase). The $10,000 limit applies to the value of the lot only; it does not include the value of a house or any other improvements on the property.

No matter how much the value of homestead property increases over time, the homestead exemption protects it from forced sale if it was worth $10,000 or less when it became a homestead. If homestead property was originally worth more than $10,000, a creditor can force a sale but can only get at part of the proceeds. For example, if homestead land was purchased for $15,000, the $10,000 exemption accounts for two-thirds of the lot's value. If the lot is later sold for $30,000, the owner is entitled to two-thirds of the proceeds, or $20,000: Creditors are entitled to no more than $10,000. And Texas courts have ruled that creditors are not entitled to any of the proceeds from the sale of the improvements on the lot, such as a house.

From 1869 through 1969, the urban-homestead exemption was $5,000. It was increased to $10,000 in 1970.

DIGEST: The amendment would replace the $10,000 limit with a one-acre limit. The new definition would apply retroactively to all homesteads in Texas, not just to homesteads acquired after the amendment passed.

The ballot language will read: "The constitutional arrendment replacing the limitation on the value of an urban homestead with a limitation based on size."

SUPPORTERS SAY:

Texas has a long history of protecting people's homesteads from general creditors. In recent years, however, as urban land values have become increasingly inflated, the constitutional exemption has protected fewer and fewer urban homesteads from forced sale for debt. Ten thousand dollars used to be more than enough to buy an urban residential lot, but now it may represent just a fraction of the value of a newly-purchased lot. More and more often now creditors stand to gain something by forcing a sale, and naturally they are doing so. So the current exemption doesn't protect people's homes as it was intended to.

Basing the urban homestead exemption on land area instead of land value would make periodic revisions of the exemption limit unnecessary. The rural homestead exemption has always been figured by area, not dollar value.

There is good reason to make the one-acre exemption retroactive. The number of Texans whose homes are really protected from forced sale under current and past exemption limits has dwindled. The amendment would restore to most urban homeowners in Texas the full protection of the constitutional urban-homestead exemption.

Opponents claim that the U.S. Constitution bars a retroactive exemption because it would impair the enforceability of existing contracts between creditors and debtors. But federal courts have ruled that the public interest sometimes justifies a law "impairing the obligation of contracts." In the case of the homestead exemption, a public interest is clearly served by protecting people from the economic hardship involved in losing their homes.

OPPONENTS SAY:

A one-acre urban homestead exemption is far too generous. The few city homesteads that are this large belong to the wealthy, who would get an unfair break from this exemption. A half-acre limit would be plenty.

The acre limit also treats homestead claimants in different locations inequitably. An acre homestead in an affluent section of Dallas, for example, would be far more valuable than an acre in Cotulla. A more equitable method would be to alluw a hometitead claimant to choose between an area exemption and a value exemption--say, a half-acre or $50,000.

OPPONENTS SAY: (cont'd)

Making the revised homestead exemption retroactive exposes the amendment to constitutional challenge. The U.S. Supreme Court long ago ruled that states could not impair creditors'rights under existing contracts by applying homestead exemptions retroactively. A retroactive exemption, the court said, would violate Art. 1, sec. 10, clause 1, of the U.S. Constitution, which says that no state shall pass any law "impairing the obligation of contracts." The court said an expanded homestead exemption, applied retroactively, would protect from forced sale for debt property that was not protected when a contract was entered into. By reducing the means of enforcing a contractual debt, a retroactive exemption would frustrate the legitimate expectations of creditors.

OTHER OPPONENTS SAY:

The $10,000 urban-homestead exemption is too generous as it is. Since the $10,000 limit applies only to the land, a homestead claimant can invest large sums of money in a home and other improvements without exposing the investment to recovery by creditors. If the homestead exemption is to be revised, the new limit should still be based on dollar value, and this should include the value of a home and any other improvements on homestead property.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 3 (SJR 1)

SUBJECT: Commodity board assessments

BACKGROUND: Since 1967 the Legislature has authorized producers of most agricultural commodities to elect boards that promote marketing and production of particular commodities and support programs of education, research, and control of disease, insects, and predators.

These commodity producer boards are authorized to charge producers a fee to pay for their programs. The fee is collected when the commodities are processed or sold. To avoid paying the fee, at the time of each sale a producer may file a signed request for exemption. A producer who pays the assessment has the option of applying for a refund within two months after payment.

From 1969 to 1975, producers could not get an exemption from payment at the time of processing or sale but could obtain a refund later. In January 1975, the Texas Supreme Court ruled 5 to 4 (in Conlen Grain and Mercantile, Inc. v. Texas Grain Sorghum Producers Board, 519 S.W. 2d 620) that the refundable assessment was not voluntary and in effect imposed an occupation tax on agricultural pursuits in violation of Art. 8, sec. 1 of the Texas Constitution. The 64th Legislature then amended the statute to allow exemptions as well as refunds, in order to establish that the assessment was voluntary.

SB 607, enacted by the 68th Legislature, would let commodity boards established before Sept. 1, 1983, adopt a rule denying assessment exemptions. In referenda to create new commodity boards or to enlarge the territory covered by existing boards, producers could vote to bar assessment exemptions. Refunds would still have to be allowed. The bill was adopted during the regular legislative session, contingent on passage of a constitutional amendment embodied in SJR 21. SJR 21 never came up for a vote in the House. but in the June 1983 snecia1 session the Legislature adopted an identical proposal, SJR 1.

DIGEST:

SJR 1 would authorize the Legislature to let commodity boards collect refundable assessments on product sales if the assessments were approved by the affected producers in a referendum. The revenue would be used solely to finance commodity marketing, promotion, research, and education.

The ballot language will read:

> The constitutional amendment providing for the advancement of food and fiber production and marketing in this state through research, education, and promotion financed by the producers of agricultural products.

SUPPORTERS SAY:

SJR 1 would simply enable commodity producers to collect their voluntary assessments in a way that will yield enough revenue to operate these programs effectively. All of the producer boards now operating were approved by wide margins in balloting by the affected producers. The boards provide many worthwhile services, from promotion of export sales to advanced research on eradication of destructive predators and diseases. The voluntary, refundable assessment amounts to a very small contribution by individual producers and adds nothing to the cost of food and fiber for consumers, yet it brings substantial dividends through enhanced agricultural productivity.

Agricultural producers have strongly supported the commodity boards. Revenue collected through assessments has dropped not because producers are dissatisfied but because the processors who collect the assessments wish to avoid the trouble and paperwork of collectlng the money. For example, grain-elevator operators, who derive little direct benefit from the board programs, often pressure grain farmers to sign assessment-exemption forms. Some of the same farmers who sign exemption forms under this sort of pressure would probably not seek refunds on their own. A uniform, refunds-only system would ensure that nonparticipation is the choice of the producer rather than the processor.

The commodity boards may soon suffer another revenue loss as the federal payment-in-kind (PIK) program reduces production and sales of commodities. Under the PIK program, as a means of shoring up prices, producers will receive surplus commodities (which are currently held in storage by the federal government) if they reduce" their own production. No commodity board assessment can be made on sale of these PIK commodities.

SUPPORTERS SAY: (cont'd)

The clout of Texas producers in national commodity organizations depends on how much they contribute to those organizations. If commodity board revenue is cut because of inefficient collection, then the influence of Texas producers will be diluted at a time when national commodity organizations are expanding international markets for their members.

The amendment will not change the voluntary nature of the assessment. Either a two-thirds vote of producers or approval of those producing more than 50 percent of the commodity must be obtained to ratify both the creation of a board and the setting of a maximum assessment rate. Upon petition by 10 percent of the producers, an assessment can be abolished by majority vote. Board members are directly elected by the producers. And an individual producer can always get a prompt refund of any assessment.

This proposed amendment would not cost Texas taxpayers a dime, directly or indirectly. It would simply help agricultural producers help themselves rather than rely on state or federal programs.

OPPONENTS SAY:

The supporters of this amendment know that the hassle and paperwork of applying for a refund will discourage individual producers from trying to get their money back. That is precisely why they want to eliminate the convenient, up-front exemption option. A refundable assessment with no exemption option is nothing less than a tax on agricultural pursuits, as the Texas Supreme Court noted in the Conlen case. Forbidding exemptions from this extra charge on producers would be like letting a labor union deduct dues automatically from workers' paychecks, forcing workers who do not support the union to apply for a refund of the withheld wages.

The commodity boards have not been so popular with agricultural producers that they should be granted special taxing powers in the Constitution. There are only seven such boards; the turkey producers' board dissolved itself only last June.

OPPONENTS SAY: (cont'd)

These boards usually duplicate existing services. In fact, they typically operate by contracting for the services of private organizations that already promote the same commodities. The federal and state departments of agriculture, Texas A&M University, and other agencies likewise duplicate many of the services provided by the boards.

Texas voters have twice rejected similar constitutional propositions. This time the proposal should be laid permanently to rest.

NOTES:

Art. 7 of the 1975 proposed revision of the Texas Constitution said that a refundable assessment charged by a commodity boardwas not a tax. But the proposed Art. 7 was voted down in a statewide referendum along with the rest of the constitutional revision proposals. In 1977 the Legislature passed SJR 19, proposing a constitutional amendment authorizing refundable assessments by commodity producer associations and stating that such assessments were not to be considered a tax. Voters rejected the proposed amendment by a vote of 299,060 to 231,164.

According to the Texas Department of Agriculture, the seven commodity boards now operating are:

Commodity	Territory	Assessment Rate
corn	7 counties	½¢ per bushel
grain sorghum	29 counties	5¢ per ton
mohair	54 counties	4½¢ per pound
peanuts	117 counties	$1 per ton
porK	stateW1Qe	20¢ per head
soybeans	32 counties	2¢ per bushel
wheat	34 counties	½¢ per bushel

The Texas Turkey Producers Board voted to dissolve itself as of June 30, 1983.

Rice, flax, and cattle are specifically excluded by the commodity-producers statute.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 4 (HJR 30)

SUBJECT: Legislative succession and emergency powers during enemy attack

BACKGROUND: Members of the Legislature are explicitly excluded from current constitutional and statutory provisions for succession to public office during a wartime emergency. Art. 3, sec. 62 of the Texas Constitution, approved by Texas voters in 1962, required the Legislature to provide for prompt and temporary succession to the powers and duties of public offices, except members of the Legislature, to ensure continuity of government in case of disaster caused by enemy attack.

Art. 3, sec. 58 of the Constitution declares Austin to be the seat of government and requires the Legislature to hold its sessions there. Under Art. 4, sec. 8, however, the Governor can convene the Legislature elsewhere if Austin is "in possession of the puhlic enemy or in case of the prevalence of diseare threat."

The Constitution makes no explicit provision for convening the Legislature at a location other than Austin in the event of a nuclear attack.

DIGEST: This proposed amendment would require the Legislature to provide for emergency interim successors to take the place of legislators who become "unavailable" due to enemy attack. It would also allow the Governor to suspend certain constitutional requirements in case of an enemy attack or "inunediate threat" of an attack. After consulting with the Lieutenant Governor and House Speaker, the Governor could convene the Legislature at a place other than Austin and could take precautions to keep confidential the time and location of its meeting. Once the Governor proclaimed a period of emergency caused by enemy attack or threat of attack, the House and Senate, by concurrent resolution approved by majority vote, could also suspend the constitutional rules concerning the order of business, quorum requirements, three-day reading of bills, required conunittee action, and the effective dates of laws. This suspension could remain in effect no longer than two years, but it could be renewed if a further proclamation were approved by both houses.

DIGEST:
(cont'd)

The ballot wording for the proposed amendment will be:

> The constitutional amendment authorizing statutory provisions for succession of public office during disasters caused by enemy attack, and authorizing the suspension of certain constitutional rules relating to legislative procedure during those disasters or during immediate threat of enemy attack.

SUPPORTERS SAY:

If an enemy attack occurred or was about to occur, state government would lack crucial powers needed to respond to the emergency. There would be no means of reconstituting the Legislature if legislators were killed, injured, or otherwise unable to perform their duties. Constitutional requirements for the time and place of legislative sessions and for passing legislation could also become a hindrance during an emergency. Without an orderly plan for bypassing these restrictions, lives could be lost due to needless delays, and the authorities would probably have no choice but to invoke martial law.

Proper civil-defense planning--of which this proposal is only a small part--could save lives and ensure the continuance of our democratic form of government. The procedure outlined in this proposed constitutional amendment is recommended by the Federal Emergency Management Agency, the chief U.S. civil-defense agency. According to a 1982 study by the National Governors' Association, nearly all states and U.S.-controlled territories have succession laws for top state and local officials and only three states do not provide for legislative succession.

Those who say civil defense is futile are mistaken about the potential for human survival after a nuclear war. A 1977 study by the Defense Civil Preparedness Agency (now a part of the Federal Emergency Management Agency) estimated that an all-out attack on the U.S. would cause 125 million fatalities if no civil-defense program existed. But the agency estimated that 30 million could be saved by using existing fallout shelters, and another 70 million people living in high-risk areas could be saved by moving them to safer areas without fallout protection. Since modern satellites could detect an enemy's own civil-defense preparation for nuclear war, such as mass

SUPPORTERS SAY: (cont'd)

evacuations from cities, it is likely that the federal and state governments could take emergency-evacuation measures too. This is one reason why the amendment applies to emergencies caused not only by an attack but also by an "immediate threat" of attack.

Passage of this proposed amendment would strengthen other civil-defense efforts in Texas. Currently the Department of Public Safety, the Department of Health, and approximately 120 local governments are receiving federal matching funds for civil defense.

Other nations also recognize the wisdom of planning for civil-defense emergencies. According to the Federal Emergency Management Agency, the Soviet Union spends eight to 15 times more on civil defense than the United States. And Switzerland, West Germany, Denmark, and Sweden, to name just a few, also have extensive civil-defense programs. To fear the worst and prepare to deal with it is the only responsible course--it doesn't mean we want a war.

OPPONENTS SAY:

This proposed amendment is at best an exercise in futility. No matter who launches the first strike, it is naive to suppose that a nuclear war could remain "limited." The destructiveness of nuclear weapons and the antagonisms between the nations that wield them ensure that rational thinking would not prevail--a nuclear war would be unrestrainable. In the nightmarish aftermath, with most of the population and all major resources obliterated, state government would already be an anachronism. Even if some governmental authorities could survive the holocaust, who would be around to obey their emergency edicts? And just how likely is it that anyone in that post-holocaust world would care about the niceties of the Texas Constitution? Submitting this amendment to the voters is an insult to their intelligence.

The proposed amendment would also give the Governor dangerous and unprecedented powers under "the immediate threat of an enemy attack." The amendment does not define "immediate threat." And it does not offer any significant checks to ensure that the Governor would not abuse this emergency authority. Mischievously or on the basis of misinformation, the Governor and Legislature could aggravate an international crisis by precipitately exercising emergency powers under this proposal. And though the civil-defense provision in the Texas Constitution specifies that it does not affect the state Bill of Rights, there are numerous U.S. precedents during wartime for violation of constitutional rights.

OPPONENTS SAY: (cont'd)

Passage of this amendment would send exactly the wrong signal to those responsible for arms control both in the U.S. and abroad. This proposed amendment and related civil-defense measures now advocated by the federal government should be avoided, because they help get us "ready" for nuclear war and justify a weapons buildup. Endorsing this proposal would encourage the theory that a "limited" nuclear war is possible, that it can be survived, and that nuclear weapons are an acceptable bargaining tool of international diplomacy. Tensions between the U.S. and the Soviet Union are already heightened--it is the wrong time to encourage the revival of nuclear brinksmanship by passing this 1950s-style legislation.

NOTES:

HB 1216, by Rep. Hollowell, the implementing legislation for HJR 30, was enacted during the 1983 regular session. The bill specifies procedures for selecting "emergency interim successors" to assume the powers and duties of legislators who become unavailable for service in the event of an enemy attack. The bill would become effective on Jan. 1, 1984, contingent on voter approval of HJR 30.

Under HB 1216, the executive director of the Employees Retirement System would submit to the Lieutenant Governor and House Speaker a list of three to seven qualified successors for each Texas Senate and House district. To qualify as an emergency successor, the designee must be a former state senator or representative who lives in the district he or she is designated for and must be a member or retiree of the Employees Retirement System.

If the ERS submitted fewer than seven names for a district, the Lieutenant Governor and Speaker would rank each of the former members residing in the district in terms of legislative seniority and add the members with the most seniority to the successor's list until seven names were listed. To become eligible as an emergency successor, each designee would send a written acceptance to the Lieutenant Governor or House Speaker, as appropriate.

NOTES (cont'd)

The executive director of the Employees Retirement System, the secretary of the Senate, and the chief clerk of the House would update the lists annually. As a back-up to the emergency-succession list, each legislator would designate three to seven successors who met certain specified requirements. All designees would have to meet the legal qualifications for the legislative office they would fill.

In the event of an enemy attack, if a legislator was unavailable, the Secretary of State would "notify the legislator's emergency interim successor highest in order of succession who is not unavailable" of the date, time, and place at which the successor would have to appear to assume the duties of legislator. The bill defines "attack" as

> any action or series of actions taken by an enemy of the United States resulting in substantial damage or injury to persons or property in this state whether through sabotage, bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological, or biological means or other weapons or methods.

The bill defines "unavailable" as

> dead or unable for physical, mental, or legal reasons, to exercise the powers and discharge the duties of a legislator, whether or not the absence or inability would give rise to a vacancy under existing constitutional or statutory provisions.

The bill does not say how the records of the Secretary of State's office, now kept in the Capitol Building, would be preserved during a nuclear or other attack, nor by what means the Secretary of State would notify emergency interim successors in the aftermath of an attack.

Emergency interim successors would assume the powers and duties of the office, but not the office itself. A successor would have to step down if the incumbent legislator or a higher-ranking successor became available, or if a new legislator were elected.

NOTES:
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An emergency interim successor would be entitled to the same immunities and compensation to which a legislator is entitled. Emergency service would not deprive successors of compensation and benefits to which they ordinarily would have been entitled--e.g., those who served as emergency legislative successors after a nuclear attack would not thereby have their retirement benefits affected.

HB 1216 also would suspend the quorum requirements for legislative action in the event of an enemy attack.

Current state law specifies emergency interim succession for the Governor, state offices other than the Legislature and the judiciary, and local offices. Under Art. 4, sec. 16 of the Constitution, the Lieutenant Governor replaces the Governor in the event of the Governor's death, resignation, removal from office, or inability or refusal to serve. Under Art. 4, sec. 17, the President of the Senate serves as Governor if both the Governor and the Lieutenant Governor are unavailable. The Emergency Interim Executive Succession Act, VACS art. 6252-10, specifies that, if the Governor, the Lieutenant Governor, and the President Pro Tempore of the Senate are all unavailable, the order of emergency interim succession until a new Governor qualifies is: the House Speaker, the Attorney General, and the Chief Justices of each of the Courts of Civil Appeals, in the numerical order of the Supreme Judicial Districts in which they serve.

The Emergency Interim Public Office Succession Act, VACS art. 6252-10a, enacted in 1953, requires all state officers whose duties are defined by the Constitution and state law, excepting the Governor, legislators and judges, to designate not less than three nor more than seven emergency interim successors, in addition to any deputy authorized by law to exercise the powers and discharge the duties of the office, to serve in the event the state officer and the deputy are rendered unavailable as the result of an enemy attack. Emergency interim successors are required to take the oath of office at the time of their designation as successors.

NOTES:
(con'td)

VACS art. 6252-l0a also authorizes the legislative bodies of cities, towns, counties and other units of government to enact resolutions or ordinances providing for emergency interim successors for any local offices for which the legislative bodies have the power to make temporary appointments or to specify procedures for filling vacancies.

Although VACS art. 6252-l0a does not enumerate the state offices to which it applies, the following offices come under the requirements of the statute: Lieutenant Governor, Attorney General, Comptroller, Treasurer, Secretary of State, and Land Commissioner. Apparently none of these offices except the Lieutenant Governor's is in compliance with the requirement that at least three emergency interim successors be designated by title and receive the oath of office. Lieutenant Governor Bill Hobby's office says Hobby in 1973 designated one or more successors as prescribed by law and filed notice of the designation with the Secretary of State.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 5 (SJR 12)

SUBJECT: Using the Permanent School Fund to guarantee school bonds

BACKGROUND: The Permanent School Fund (PSF) is a perpetual trust fund made up of income from public lands that is constitutionally set aside for the support of the state's public schools. The land produces income primarily through grazing and mineral leases and royalties on production of oil and natural gas. As of June 1983, the PSF totaled $3.9 billion.

The PSF is invested in government and corporate securities. The interest on these investments, combined with revenue from certain taxes, makes up the Available School Fund (ASF). This fund is distributed among the state's school districts each year through the Foundation School Program. The money goes mainly for employee pay, maintenance, and operating expenses. Money for school construction is raised locally, typically through the sale of school-district bonds.

Art. 7, sec. 5 of the Constitution bans appropriation of the Permanent School Fund or the Available School Fund for any purpose other than the support of public schools. The cost of administering the PSF is currently paid out of general revenue.

DIGEST: The amendment would permit the Legislature to appropriate money from the Available School Fund to administer the Permanent School Fund or any bond-guarantee program established by law.

The ballot language will read: "The constitutional amendment authorizing use of the permanent school fund to guarantee bonds issued by school districts."

SUPPORTERS SAY: A bond-guarantee program, by improving school districts' bond ratings, would lower the interest rate they must pay on bonds. According to Moody's Investors Service, at the end of 1982 only seven Texas school districts had the highest possible bond rating of Aaa, and only 45 had the next highest rating of Aa. Some 228 districts were classified A, an "upper medium" rating, 469 were classified Baa, a "lower medium" rating, and one district was rated Ba, or "marginally speculative." The state's remaining 341 districts were unrated (about two-thirds had no bond debt).

SUPPORTERS SAY:
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The Municipal Advisory Council, a trade association for bond dealers, estimates a bond-guarantee program could lower bond interest rates by one-fourth to one-half of a percentage point. The council estimates such a program would have saved Texas districts between $19 and $38 million over the life of bonds issued in 1982.

School districts face increasing needs for school construction as the state's population grows. The Texas 2000 Commission projected that by 2000 Texas will have 1.6 million more students than in 1980. The Select Committee on Public Education estimated in its report to the 68th Legislature that 67,000 more classrooms would be needed to accommodate this population increase.

A bond-guarantee program would pose virtually no financial risk for the state. The likelihood of a local default is small. No Texas school district has defaulted on bonds since the late 1950s, according to the Municipal Advisory Council. And the implementing legislation for this amendment provides that if a school did default, the Permanent School Fund would be protected: A reimbursement could be deducted from state appropriations to a defaulting school district.

Enabling school districts to finance construction at lower rates would not encourage unnecessary construction. School bonds must be approved by voters and paid for out of local tax revenue. And there are statutory limits on the bond debt a school district may incur: Sec. 20.04 of the Education Code limits a district's bonded indebtedness to 10 percent of the assessed valuation of the district's taxable property.

The state pays the investment managers of the Permanent School Fund less than the private sector would pay them, because their salaries are fixed by their standing in the state's employee classification system. If the TEA could pay enough to hire and retain more experienced investment managers, the Permanent School Fund would likely earn more money. The increased earnings would more than cover the salary increases. But first either the Governor or the Legislature must exempt the positions from the state classification system. SJR 12 tackles this problem indirectly: It would permit the Legislature to appropriate Available

SUPPORTERS SAY: (cont'd)

School Fund money, instead of general revenue, "for administration of the Permanent School Fund," which would include investment-staff salaries. This move would not in itself exempt the positions from the classification system, but it would remove one big roadblock, since legislators tend to resist such exemptions if they increase the demands on general revenue. And it seems reasonable to pay the managers of Permanent School Fund investments out of the fund's earnings. Administration of the Permanent University Fund is paid out of that fund's earnings; the Permanent School Fund should be managed the same way.

OPPONENTS SAY:

If the state is going to use the Permanent School Fund to guarantee school-district bonds, it must be prepared to spend part of the fund in the event of a default. Defaults have been rare in recent decades, but they are certainly possible, particularly in areas of the state where the economy is depressed or unstable. Extracting a reimbursement from a defaulting district by reducing its annual allocation of state money is a poor idea. Districts use most of their state money for teacher salaries, maintenance, and operations. Ultimately, the schoolchildren would suffer if a school district were forced to use operating money to pay back the state for a bond default.

NOTES:

SB 384, the implementing legislation for SJR 12, would allow school bonds for construction, equipment, or site acquisition to be guaranteed by the Permanent School Fund and the Available School Fund. The total amount of guaranteed bonds could not exceed two times the cost value or market value (whichever is less) of the corpus and income of the Permanent School Fund, exclusive of real estate. A school district seeking a bond guarantee would apply to the Commissioner of Education, who would investigate the district's accreditation and the total amount of its outstanding guaranteed bonds. The commissioner and the Attorney General would have to approve the bonds.

NOTES:
(cont'd)

If a school district were unable to pay the matured principal or interest on a guaranteed bond, the commissioner would transfer the amount needed to prevent default from the Permanent or Available School Fund to the district's paying agent. The Comptroller would then withhold an equivalent amount, plus interest, from the first state money payable to the school district. Reimbursement could also be authorized in other ways by the commissioner, with approval from the State Board of Education. If two or more defaults occurred and the commissioner determined a district was acting in bad faith, the Attorney General could take legal action.

In the fiscal note for SB 384, the LBB estimated that the bond-guarantee prograrr would save local school districts $2.7 million in 1984. Savings would increase each year as the amount of guaranteed bonds outstanding increased, reaching annual savings of $13.7 million in 1988. These LBB figures represent savings on each year's interest payments, unlike the Municipal Advisory Council figures previously cited, which represent multiyear savings over the life of the bonds issued in 1982.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 6 (HJR 1)

SUBJECT: Garnishment of wages to provide child support

BACKGROUND: Since 1876 the Texas Constitution has prohibited the garnishment of wages--that is, seizure of a person's current pay to satisfy the claims of creditors. In Art. 16, sec. 28, the Constitution says: "NO current wages for personal service shall ever be subject to garnishment." South Carolina is the only other state with a similar provision.

This constitutional prohibition has been interpreted as a bar to any Texas law permitting involuntary withholding of wages to satisfy court-ordered child-support obligations--a mechanism used in 45 other states to enforce child-support orders. In those states, a court may order an employer to withhold wages from a person who is behind in child-support payments and divert those wages to the person entitled to the support. Ten of the 45 states that use income withholding also permit voluntary wage assignments by parents who are ordered to pay support.

In December 1982, the Texas Senate Subcommittee on Public Health and Welfare completed a study of child-support enforcement and published a report, "Child Support in Texas." The panel recommended, among other things, that the Constitution be amended to permit courts to order income withholding in child-support cases. During the 1983 regular session, the Legislature approved such a proposal, HJR 1, by Rep. Rene Oliveira. Also approved was HB 2, by Oliveira, which amended the Family Code to permit persons to divert voluntarily, through the courts, up to one-third of their disposable earnings for the payment of child support. This part of the bill became effective June 19, 1983.

A separate section of the bill permitting involuntary assignments in cases when a person is in arrears on payments will become effective if HJR 1 is approved by voters.

For more background on wage assignment and related child-support issues, see HSG Special Legislative Report No. 91, Child Support: Issues Facing the State, April 4, 1983.

DIGEST:

HJR 1 would amend the Constitution to permit garnishment to enforce child-support orders. Art. 16, sec. 28, would read: "No current wages for personal services shall ever be subject to garnishment, except for the enforcement of court-ordered child-support payments."

The ballot language will read: "The constitutional amendment allowing the legislature to provide for additional remedies to enforce court-ordered child support payments."

Upon passage of the amendment, the statutory language on involuntary wage assignment contained in HB 2 would go into effect. See the NOTES section for details of this enabling legislation.

SUPPORTERS SAY:

Texas law grants to children under age 18 the right of support from both parents. This is, however, a right that often goes unenforced. The Texas Department of Human Resources reports that, in the child-support cases under its jurisdiction, more than 70 percent of the parents legally obligated to provide support fail to pay up. DHR also estimates that of the 286,850 Texas recipients of Aid to Families with Dependent Children (AFDC), 205,956 require this welfare aid because they lack the support of an absent parent.

In addition, there are many non-AFDC families that should have the support of an absent parent. Approximately 20 percent of all U.S. families with children are single-parent families--the result of the increasing frequency of divorce and out-of-wedlock births. National figures indicate that some 60 percent of the noncustodial parents do not pay support for their children, despite court orders.

Current enforcement tools are inadequate, as shown by the noncompliance rate with court-ordered child support owed to DHR clients. Under current law, a judge can only:

--Throw the defaulting parent in jail.

--Put the person on probation, with the threat of jail unless payments are forthcoming.

SUPPORTERS SAY:
(cont'd)

--Render judgment for past-due child support. The judgment debt then becomes enforceable, via further time-consuming and expensive court action, subject to all the debtors' protections in Texas law, including the constitutional ban on garnishment.

Texas lacks most of the enforcement tools other states use to collect child support, the main one being wage assignment. The state has become a haven for parents who want to avoid paying child support.

Assignments benefit the parent who pays support, his or her employer, and the child who receives the money. Parents with court-ordered child-support obligations don't have to be concerned about making payments; these are automatically deducted from wages. The employer benefits because the assignments can be made part of the regular payroll process; the employer need not deal with irregular garnishments or lost work time due to court proceedings. The person with custody and the children themselves receive the support they are due and are assured that the support payments will arrive regularly each month.

In addition, wage assignments will benefit the state by removing families from welfare rolls and reimbursing the state for AFDC payments made. The federal government requires each state to have a child-support enforcement program to qualify for AFDC funds. The state assists AFDC recipients in collecting support, and the recipients are required by law to sign over their support rights to the state. Support payments collected on their behalf are used as reimbursement for their AFDC payments. If support equals or exceeds AFDC benefits, the family goes off AFDC and gets the support instead. It is estimated that wage assignment in Texas will save the state and federal governments more than $7 million a year.

The Texas enforcement program has been singularly ineffective--ranking 46th among the states in its ratio of AFDC collections to program expenditures and collecting only 45 cents on the dollar spent, compared to a national average of $1.33. Up to now, the federal government has paid the lion's share of the administrative costs for the enforcement program. However, funding formulas are changing to shift more of that burden onto the state. Only wage assignment will increase collections enough to avoid substantially increased costs.

SUPPORTERS SAY: (cont'd)

It is ironic that the constitutional ban on garnishment has served as a roadblock to child-support enforcement, since the framers of the Constitution clearly intended the provision to protect a wage-earner's ability to support a family, not to provide a way to shirk that duty. The historical note in Vernon's Texas Constitution Annotated says:

> ...every man, even the extravagant and improvident, owes a first duty to those immediately depending on him. The authors of the present constitution felt strongly that it was better that some creditors go unpaid than to take away from the debtor and his family the current wages essential to preserve the family from want and make them independent.

HJR I has the support of a wide variety of organizations--legal, religious, business, and educational groups have registered their support. And organized labor, a traditional foe of altering the garnishment ban, has not opposed this amendment.

OPPONENTS SAY:

Texas has a long tradition of legally protecting a wage-earner's paycheck from creditors. Weakening this protection through this proposed amendment is a dangerous step that seriously threatens workers. This amendment would set a precedent for profiteering creditors to use in seeking further exceptions to the ban on garnishment.

Wage assignments are an intrusion into the private lives of citizens. As the result of an assignment order, employers will learn, for example, that an employee is divorced or has an out-of-wedlock child. Employers may discriminate against workers because of this knowledge. Wage assignment also creates administrative bother for employers, who may hesitate to hire or retain workers under assignment orders. Assignments create an adversary relationship between the employee and the employer who must withhold the wages. All this adds up to a threat to a person's livelihood--and thus to the ability to support children.

OPPONENTS SAY: (cont'd)

Texas has one of the lowest personal bankruptcy rates in the nation, quite probably because of the ban on garnishment. In other states debtors declare bankruptcy in order to terminate the garnishment of wages. The constitutional ban on garnishment eliminates an incentive for evading debt.

There are practical limitations to wage assignment. Employees may quit work or change jobs frequently to avoid the assignment. Wage assignments are ineffective against debtors who are self-employed or paid in cash.

The potential dangers of court-ordered wage assignment outweigh any benefits that might accrue.

voter's aren't being given the full story on what they're voting on. The ballot language is unreasonably vague--neither it nor the caption of the resolution mentions garnishment, and the ballot doesn't even use the euphemistic wage-assignment language.

The enabling legislation describes this proposed garnishment as "involuntary wage assignment"--a contradiction in terms. "Assignment" clearly implies action by the assignor, but the wage-earner would have no say in the matter; the wages would be seized without any consent on the part of the wage-earner. Furthermore, the wage-earner has no way of knowing that the money will indeed be used to support children. Texas law makes no provision for an accounting of how the money is spent.

Even admitting the inadequacy of the old sanctions against parents who refuse to pay court-ordered child support, there is no need to amend the Constitution: The Legislature has already created a new enforcement mechanism in the form of voluntary wage assignment as provided by HB 2. We should give this statutory, mechanism a chance to work before we take the drastlc step of a constitutional amendment.

NOTES:

The enaLling legislation for HJR 1 specifies that up to one-third of a person's disposable earnings can be assigned to child support. "Earnings" includes all compensation for personal services--including bonuses and commissions.

NOTES:
(cont'd)

A motion for an involuntary assignment of earnings may be made by the person entitled to the support; by the Attorney General, if the state is providing assistance to the child; or by the court. Assignments may be ordered if the arrears equal or exceed two months' worth of support payments.

Various parts of the voluntary-assignment law also would apply to involuntary assignments. These include:

--Provision for a hearing on the assignment.

--Allowing employers to deduct a $5-a-month administrative fee from the amount assigned.

--Making a noncomplying employer liable to the person entitled to the support, but not to the wage-earner, for the assigned wages.

--Prohibiting discrimination against employees by employers because of wage assignments.

--Providing for execution of a bond to secure payment of past-due child support by persons for whom wage-assignment is impracticable--i.e., the self-employed and those employed by persons outside the court's jurisdiction.

--Giving assignments for child support priority over other attachments and garnishments.

--Provisions for cases in which an employer is served with two or more assignment orders on an employee.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 7 (SJR 14)

SUBJECT: Veterans' Housing Assistance Fund and Land Fund

BACKGROUND: The Constitution authorizes the Veterans' Land Board to sell $950 million in state general-obligation bonds to finance land purchases by the Veterans' Land Fund. The board sells the land to qualified veterans, subsidizing the purchases with 40-year, low-interest loans of up to $20,000. Each tract sold must be ten acres or more. Loan repayments retire the bonds and cover the program's administrative costs.

Since the program was started in 1949, Texas voters have approved the issuance of additional bonds seven times, most recently in 1981. The 1981 amendment also allowed bonds to be issued at a maximum interest rate of 10 percent (subject to increase by statute).

DIGEST: SJR 14 would amend the Constitution to permit the Veterans' Land Board to issue $500 million in general-obligation bonds to create a Veterans' Housing Assistance Fund. The fund would be used to make home-mortgage loans to Texas veterans. Eligibility requirements would be identical to those of the veterans' land program. Mortgage-loan interest rates and program regulations would be set by law. (The implementing legislation delegates to the land board the authority to set loan interest rates.) The amendment would also give the Veterans' Land Fund another $300 million in qeneral-obligation bond authorization.

The general-obligation bonds would have to be approved by the Attorney General and registered by the Comptroller. If one fund were insufficient to pay the principal and interest due on its general-obligation bonds, the land board could use money from the other fund. However, if neither fund were adequate to cover the bond payments, money would be appropriated from the state Treasury.

In addition to the general-obligation bonds, which are backed by the full faith and credit of the state, the board could issue and sell revenue bonds to finance either program. Revenue bonds would not be backed by the state's general revenue; they would have to be paid off with income of the funds.

DIGEST:
(cont'd)

The board could not issue revenue bonds in an amount greater than could be retired from unobligated fund receipts or other pledged revenue. Income of the funds not required to pay the principal and interest on general-obligation bonds could be used to retire revenue bonds. The interest rate on revenue bonds would be set by the board.

The ballot language will read:

> The constitutional amendment for financial assistance to veterans and to authorize the issuance of $800 million in bonds of the state to finance the Veterans' Land Program and the Veterans' Housing Assistance Program.

SUPPORTERS SAY:

The 1.6 million veterans in Texas receive few state benefits for the sacrifices they have made serving their country. The veterans' land program since 1949 has helped more than 80,000 veterans acquire land. This program should be continued, especially so younger veterans who have not yet had the opportunity can use it. But the minimum purchase of ten acres means that the land program is no help to the majority of Texas veterans who dwell in urban areas. The veterans' housing assistance program would help these veterans buy new homes.

The land board's low-interest loans in effect would finance the down payment on a home, up to a maximum of $20,000 under the implementing legislation already passed by the Legislature (see NOTES). The interest rate on these housing loans probably would be close to the amount charged on the board's land loans--about 1 percent above the interest rate the board pays on bonds sold to pay for the program. Current federal home loans under FHA and VA bear interest rates substantially higher than those likely under this state program. Many Texas veterans, including more than 500,000 from the Vietnam era, would be eligible to finance homes they could not otherwise afford. The implementing legislation includes strong safeguards against use of the state loans to finance speculative homebuying.

Like the veterans' land loans, the proposed housing loans would pose almost no financial risk to the state. Under the implementing legislation, all mortgage loans would have to be secured by a mortgage, deed of trust, or other lien on the home. If a veteran defaulted on a loan, the board could foreclose on the mortgage. Also, the implementing legislation

SUPPORTERS SAY: (cont'd)

requires the board to obtain insurance to cover at least 50 percent of anticipated losses due to defaults on loans secured by first or second mortgages. Administrative costs of the program, including the cost of mortgage insurance, would be borne by the veteran.

Beyond the direct benefits to veterans, the housing loan program would boost the state economy. Home-building would expand to meet the demand for an estimated 25,000 new homes to be financed through the program. Lenders would have reason to cooperate, because they could finance the balance of the purchase price over $20,000 with a conventional mortgage at regular interest rates. Local governments would reap greater property tax revenue. The program could add as many as 45,000 new jobs, according to estimates by Land Commissioner Garry Mauro and others.

The additional bonds to be issued over the next few years for these veterans' programs would be a drop in the bucket in the multi-billion-dollar, nationwide bond market--certainly not enough to cause any distortion of interest rates on other bonds or in the allocation of capital. Moreover, the U.S. Congress has set a tax-exemption policy favoring such mortgage-subsidy bonds in order to assist home purchases by veterans.

Standby authority to issue a limited amount of revenue bonds will prevent both the land and housing loan programs from shutting down every few years until the general-obligation bond ceiling is raised by a new constitutional amendment. The land program has in the past quickly reached its constitutional ceiling; the home-mortgage program will probably do the same. Revenue-bond authority will keep the loans flowing pending constitutional change, yet built-in limits on this authority will keep the programs from becoming overcommitted.

Prudent management of the veterans' land fund over the years has created a fund surplus, and under the proposed amendment that surplus could be put to use either to purchase more land or to back revenue bonds to raise more money for more land-purchase loans. The veterans' land board does not envision piling up a surplus in the home-mortgage program large

SUPPORTERS SAY: (cont'd)

enough to back a substantial amount of revenue bonds any time soon. In any event, the board would not defeat the purpose of its own low-interest loan program by raising mortgage interest rates to veterans in order to gain extra lending capital.

OPPONENTS SAY:

The proposed amendment would authorize a massive increase in state debt and an unwarranted government intrusion in the capital-investment markets. The volume of mortgage-subsidy bonds issued by state and local governments has greatly increased in recent years. The increasing numbers of government bonds on the market compete for limited investor dollars, forcing up the interest rate. As a result, it becomes more difficult for governments to offer lower mortgage interest rates, defeating the purpose of the mortgage-subsidy programs.

By offering more tax-exempt bonds to investors, the state would also take capital away from some sectors of private industry. In order to compete, industries badly in need of investment dollars will be forced to raise the interest yield on their securities, pushing up their costs of production.

The housing market itself will be distorted, because diverting millions of dollars into tax-exempt mortgage subsidies will promote real-estate speculation and spur housing-cost inflation. Consumers who are ineligible for special mortgage subsidies will simply be driven out of the marketplace.

The indirect costs to taxpayers will also be substantial. Interest rates on bonds for public works such as dams, sewers, and utilities will be forced upward by another massive infusion of mortgage-subsidy bonds. The federal government will lose more millions in revenue from the tax exemption for interest on public bonds, thereby increasing the federal budget deficit.

If the state wants to subsidize mortgages, it should either appropriate the money directly or use other existing capital sources such as pension funds. It should not distort the bond market and hide the costs.

Texas veterans certainly deserve aid, and they are already eligible for a wide variety of benefits, including federal VA loans, college-tuition assistance, and hiring preferences for federal and state civil-service jobs. Regardless of need or income,

OPPONENTS SAY: (cont'd)

veterans can already obtain government-subsidized mortgages at interest rates far lower than those available to others. It is simply unnecessary to add a state housing program, particularly one that will increase state debt by $500 million while helping only a small fraction of Texas veterans.

The proposed amendment would also create a loophole allowing the Veterans' Land Board to issue an unlimited amount of revenue bonds. Specific restrictions on the amount and interest rates of such bonds should be established in order to prevent overextension. Default on these revenue bonds could have large indirect costs to taxpayers, by adversely affecting investor confidence in all other Texas government bonds and pushing up interest rates accordingly. This revenue-bond authority also creates an incentive to charge veterans a higher loan interest rate, in order to bring in more unpledged revenue to fund more revenue bonds. And by the end of the year, Congress may no longer allow a tax exemption for revenue bonds used to subsidize home mortgages, so they will no longer be an effective means of providing below-market interest rates on housing loans.

NOTES:

SB 408 was passed by the 68th Legislature to implement the veterans' housing loan program, subject to voters approval of the proposed amendment. The Veterans' Land Board would make home-mortgage loans through arrangements with lending institutions. The subsidized portion of the loans could not exceed $20,000 and would have to be repaid within 40 years. A qualified veteran ordinarily could receive only one such loan, but the board could waive that restriction, for example, if a veteran was forced to move because of a job change or condemnation of the house. The home purchased would have to be the principal residence of the veteran and remain occupied by the veteran for three years before it could be leased or transferred, although the board could waive the time limit under certain circumstances. If such loan conditions were not met, the board could increase the loan interest rate, accelerate the loan repayment, or take other appropriate action.

The board could contract with lending institutions to make loans to qualified veterans. The board would have to obtain default insurance covering at least 50 percent of anticipated losses on its loans. Any board-approved fees and expenses incurred in connection with a loan, including insurance costs, could be charged to the veterans. Loan applications would be filed with the state Veterans' Affairs Commission, which would determine eligibility.

NOTES:
(cont'd)

Interest rates on the loans would be set by the board. The loans would have to be secured by a mortgage, deed of trust, or lien on the home. The board could require an initial loan payment of not more than five percent of the loan. If payments were delinquent, the board could foreclose on the secured property and ask the Attorney General to take necessary legal action.

Under Title XI of the federal Omnibus Reconciliation Act of 1980, all mortgage-subsidy bonds, except general-obligation bonds used to provide residences for veterans, will lose their tax-exempt status as of Dec. 31, 1983. There has recently been a strong push in Congress to repeal this provision.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 8 (SJR 1)

SUBJECT: Property-tax exemption for veterans' and fraternal groups

BACKGROUND: Art. 8, sec. 2 of the Texas Constitution permits the Legislature to exempt from taxation public property used for public purposes, churches, cemeteries not held for private or corporate profit, solar or wind-powered energy devices, all buildings used exclusively for school purposes, and public charity institutions. All property exemptions not mentioned in this section are expressly made "null and void."

Sec. 11.23(a) of the Tax Code provides a property-tax exemption for certain veterans' organizations, including the American Legion, American Veterans of World War II, Veterans of Foreign Wars of the United States, Disabled American Veterans, Jewish War Veterans, Catholic War Veterans, and the American G.I. Forum, if the property is not used to produce revenue or gain. The constitutionality of this exemption has been placed in doubt by Attorney General Opinion No. MW-436 (1982), which held that the Legislature could not add to the list of properties constitutionally entitled to an exemption.

Sec. 11.18 of the Tax Code exempts real and tangible personal property of certain "charitable organizations" that are organized exclusively to perform certain charitable functions listed.

DIGEST: This amendment would permit the governing body of a political subdivision to exempt property of certain veterans' organizations from ad valorem taxation. Congressionally-chartered veterans' organizations composed of current or former members of the U.S. armed forces and organized for patriotic and public-service purposes would be eligible for the tax exemption. The American Legion, Veterans of Foreign Wars, and Disabled American Veterans are expressly deemed to qualify.

DIGEST: (cont/d)

Those fraternal organizations organized to perform "charitable and benevolent functions" would also be eligible for exemptions. The Legislature could limit the types or amount of property that could be exempted and could set eligibility requirements for the fraternal organizations.

The ballot language will read: "The constitutional amendment to authorize taxing units to exempt from taxation property of certain veterans' and fraternal organizations."

SUPPORTERS SAY:

This amendment is necessary to ensure that veterans' groups receive property-tax exemptions, since the current tax exemption for veterans' groups has been declared unconstitutional by the Attorney General. In addition, most fraternal organizations do not meet the "purely public charity" standard imposed by the courts and used by tax appraisers to decide whether they qualify for an exemption under Tax Code sec. 11.18, because many of these groups have membership restrictions and their benevolent deeds do not affect "indefinite numbers of people."

Many veterans' and fraternal organizations have been receiving these tax breaks and would not be able to survive without them. If these organizations do not get their tax breaks, either their services will suffer or communities will have to support them with more contributions. With this constitutional amendment, each local governing body will be able to decide what type and amount of exemptions are justified and what can be afforded locally.

This proposed constitutional amendment and enabling legislation contained in SB 23 are needed to establish securely the Legislature's authority to give these groups the tax break they deserve.

OPPONENTS SAY:

Fraternal organizations do not need to be mentioned in this constitutional amendment, since most of those organizations already receive a tax exemption under the "charitable organization" section of the Tax Code. This amendment would also allow the Legislature to slacken the requirements for the exemption. Moreover, the amendment does not make clear exactly what constitutes a "fraternal organization." Leaving that determination up to each individual taxing unit might invite a flood of litigation.

OPPONENTS SAY: (cont'd)

If an amendment is needed, it should also allow the Legislature itself to limit the types and amounts of property that may be exempted and to provide eligibility requirements for veterans' organizations, as it does with fraternal organizations.

OTHER OPPONENTS SAY:

The chief appraiser in each appraisal district currently determines whether veterans' groups or fraternal organizations qualify for a tax exemption. This constitutional amendment would transfer that authority to elected officials in local government units. This could encourage politically-motivated decisions to grant exemptions that are not legally justified.

NOTES:

SB 23, upon passage of SJR 1, would add new language to Tax Code sec. 11.23 to provide exemptions for veterans' and fraternal groups. Along with the requirements included in the constitutional amendment, SB 23 would add that only buildings owned by the groups and used primarily and exclusively by them as their post or meeting hall would qualify for exemptions. A nonmember's use of a building would not nullify an exemption if the use were limited to civic, educational, or charitable activities and were incidental to the group's use of the building. No veterans' organization classified as subversive by the United States Attorney General would be entitled to an exemption. Fraternal organizations would be required to be organized to perform "charitable and benevolent functions" and not to practice or advocate racial discrimination.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 9 (HJR 70)

SUBJECT: Statewide assignment of probate-court judges

BACKGROUND: The Texas Constitution provides that each county shall have a county court; this court is presided over by the elected county judge (who also heads the county commissioners court and in that capacity serves as chief executive officer of the county). Each of these so-called "constitutional" county courts has general jurisdiction over probate matters. Probate jurisdiction concerns registration of wills, administration of estates, appointment of guardians, and commitment of the mentally impaired.

Acting under its power to create courts and prescribe jurisdiction,the Legislature by statute has established more than a hundred county courts to relieve the constitutional county judge of some or all judicial duties. Many of these so-called "statutory" county courts have at least some probate jurisdiction; 11 of them specialize in probate matters. Three of these specialized probate courts are in Dallas County, three in Harris County, two in Tarrant County, two in Bexar County, and one in Galveston County.

DIGEST: The proposed amendment would authorize the Legislature to allow statutory probate-court judges to substitute in any county in the state for a judge of a statutory county court with probate jurisdiction or for the judge of the constitutional county court.

The ballot language will read: "The constitutional amendment providing for assignment of judges of statutory probate courts to other statutory county courts with probate jurisdiction and to county courts."

SUPPORTERS SAY: HJR 70 would allow those judges who specialize in probate matters to assist county judges in other counties should the need arise. The existing procedure for assigning active and retired district judgesto those areas where a district-court problem arises has worked well. A similar system for assigning probate judges in emergency situations would be equally beneficial. Under the implementing legislation, the probate-court judges themselves, through their elected presiding judge, would decide whether to make a requested assignment.

SUPPORTERS SAY: (cont'd)

Probate cases can involve complex questions of law. Under the new Mental Health Code, probate proceedings such as ordering protective custody of the mentally ill must be handled quickly to protect due-process rights. If the judge who usually handles probate cases in a county is unavailable due to an overcrowded docket or disqualification, either the constitutional county judge must hear the case, a special judge must be appointed, or--in counties with no statutory county court--the case can be sent to the district court. But these options are unsatisfactory. Constitutional county judges are not required to be attorneys. They serve primarily as county chief executives, and many in fact have no legal training. Appointment of a special judge is cumbersome. District judges have overcrowded dockets of their own and may not be available when needed in a particular county of a multicounty district. It would be more efficient to allow judges with special expertise in probate matters to hear cases when emergencies arise outside their home counties.

OPPONENTS SAY:

Transferring special probate-court judges around the state would mean that those judges might be unavailable in their home counties when their services were required. The constitutional county judges would be tempted to disqualify themselves in controversial cases on the slightest excuse, knowing that a statutory probate-court judge could be brought in from Houston or Dallas to take the heat. If a county needs a statutory county court with probate jurisdiction, the Legislature should create that court rather than shift the load to a few overburdened probate-court judges.

NOTES:

HB 637 was passed by the 68th Legislature to take effect if the constitutional amendment is approved.

HB 637 would allow active and retired judges of statutory probate courts to be assigned to other county courts around the state to hear probate matters. The statutory probate judges could be assigned if the regular judge requested assistance, were absent, disabled, or disqualified, or if the office were vacant.

The statutory probate judges would elect one of their number to serve as statewide presiding judge for four years. The presiding judge would make assignments and call and preside over meetings

NOTES:
(cont'd)

of all statutory probate judges at least once a year to study probate docket statistics, determine assignment needs, and try to achieve uniformity of court rules. Judges would be compensated by their home counties for their expenses in attending such meetings.

A judge would receive travel, lodging, and food expenses during an assignment. If assigned outside their home counties, they would also receive $25 per day. The county to which the judge was assigned would pay the expenses and per-diem allowance to the assigned judge and reimburse the home county for the judge's salary while serving away from home. Retired judges would receive their salaries directly from the county in which they serve. They would be paid at the same rate as an active probate judge.

HOUSE
STUDY
GROUP Constitutional Amendments Analysis Amendment No. 10 (SJR 17)

SUBJECT: Public spending on private sewer connections

BACKGROUND: Art. 3, sec. 51 of the Texas Constitution prohibits the Legislature from making or authorizing "any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever." Exceptions are permitted in cases of "public calamity."

Art. 3, sec. 52 limits the power of the Legislature to authorize local governments and other political subdivisions to lend their credit or "to grant public money or thing of value in aid of, or to any individual, association or corporation."

In an informal March 17, 1983, letter to Rep. Brad Wright, the House sponsor of SJR 17, the Attorney General's office suggested that a bill to let cities spend public funds and levy assessments for replacing or relocating sewer laterals on private property would be of questionable constitutionality under the current constitutional provisions cited above.

DIGEST: This proposed amendment would empower the Legislature to authorize cities to spend public money for replacing sewer lines on private property and to assess the cost against the owner of the property, if the owner consented to the arrangement. The expense would be authorized only in conjunction with a city's replacement or relocation of sewer mains that serve the property.

The owner would have up to five years to pay the assessment, at an interest rate set by statute. The city meanwhile would have a lien against the property.

The ballot wording for the proposed amendment will read: "The constitutional amendment to permit a city or town to expend public funds and levy assessments for the relocation or replacement of sanitation sewer laterals on private property."

SUPPORTERS SAY:

When a city needs to replace old sewer lines, it is sometimes more convenient and less expensive to build a new line along the street rather than along the sewer easements at the backs of residential lots, because of trees, fences, swimming pools, and so forth. This rerouting necessitates moving or rebuilding the lateral sewer lines connecting the houses ,to the sewer main. Many people, particularly those on fixed incomes, cannot afford the $l,OOO-to-$3,000 cost. Cities allover the state are running into this problem.

The Constitution prohibits cities from lending their credit or spending public money for a private group or individual. This proposed amendment is needed to allow cities to provide for replacing sewer laterals, charge customers for the work, and have them pay the city back in installments. This policy would not cost cities any money and would greatly benefit homeowners who otherwise could not bear such an unexpected cost.

The amendment would be permissive with regard to both cities and homeowners. Cities would be authorized, but not required, to use public funds to pay the front-end costs of replacing or relocating sewer laterals on private property. Homeowners either could have the city arrange for the work to be done or could make their own arrangements with a plumbing contractor.

OPPONENTS SAY:

This proposed amendment embodies a worthy idea, but it belongs in a statute, not in the Constitution. Our patchwork Constitution is not improved by simply placing more patches on it. At a minimum, a formal Attorney General's opinion regarding the need for a constitutional amendment should be obtained before this proposal is approved. Some legal opinion and case law suggests that a constitutional amendment is not needed to accomplish the purpose of this proposal, that a statutory change would be sufficient. An informal letter from the Attorney General's office is not a good enough basis for amending the Constitution.

OPPONENTS SAY: (cont'd)

Even if a constitutional amendment proves necessary this proposal is overly restrictive. If this is intended to be a permissive amendment, authorizing cities and homeowners to reach voluntary agreements with regard to replacing sewer lines, why must the amendment specify a maximum five-year repayment period? Having to pay the city an unanticipated $3,000 for sewer service over a five-year peiod--i.e., $600 a year plus interest--would still be a hardship for many, such as older homeowners living on fixed incomes. Since the city would have a lien on the property, these people could lose their homes if they couldn't make the sewer-line payments on time. Instead of being locked into the Constitution, the terms of the amortization should be left up to locaJ. ordinances, to ensure that the terms are better suited to local circumstances.

NOTES:

SB 595, by Sen. J.E. Brown, the implementing legislation for SJR 17, will take effect if SJR 17 is approved by the voters. SB 595 would allow a city that builds or rebuilds a sewer main to contract for replacing sewer lines on private. residential property and to assess the cost against the owner of the property, if the owner agreed in writing. After the city accepted a bid on the work, it would have to inform the owner of the expected cost, advising the owner that the final cost could exceed the bid by as much as 10 percent. The owner could reject the contract by notifying the city within 45 days after the city mailed its notice. The owner would have up to five years to pay the assessment, at an interest rate not to exceed 10 percent. The city would have a lien against the property.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 11 (SJR 13)

SUBJECT: Authority to grant and revoke paroles

BACKGROUND: An 1893 law created a board of pardon advisors, consisting of two members, to help the Governor evaluate applications for executive clemency. A statutory Board of Pardons and Paroles (BPP), composed of three members serving six-year staggered terms, replaced the board of advisors in 1929. Both boards served at the Governor's pleasure and did not restrict his clemency power.

In 1936, however, amid charges that some governors had abused their power to grant clemency, voters approved a constitutional amendment restricting that power to cases approved by the BPP. The 1936 amendment also gave the board constitutional status and distributed the power of appointing the board members among the Governor, the Chief Justice of the Supreme Court, and the presiding justice of the Court of Criminal Appeals. As a result, the Governor may now appoint only one member of the three-member board.

Even though the Texas Constitution does not expressly give the Governor the authority to grant paroles, judicial interpretation has found such authority in the Governor's power to grant pardons. The Governor may grant paroles only to those inmates who have been recommended for parole by the BPP. The Governor also has the authority to deny any recommended parole and to revoke paroles. The Legislature, however, retains the authority to enact parole laws.

DIGEST: This amendment would change the Board of Pardons and Paroles from a constitutional to a statutory agency and would give the board the exclusive power to revoke paroles. It would also restore the Governor's power to appoint all members to the board, which would no longer be limited constitutionally to three members.

The ballot language will read: "The constitutional amendment to change the Board of Pardons and Paroles from a constitutional agency to a statutory agency and to give the board the power to revoke paroles."

SUPPORTERS SAY:

Along with its implementing legislation, SB 396, this amendment will expedite the parole process and save the taxpayers money. Eliminating the Governor's power to deny parole was a key recommendation of Gov. Bill Clements' blue-ribbon commission on criminal justice reform.

The BPP has the staff, the resources, and the expertise to determine if an offender should be granted parole. Trained parole officers and analysts rigorously examine the parole-eligible offender's criminal record, institutional adjustment, and family background and prepare files that are used by the parole commissioners. The commissioners interview the offender and his or her family and friends. Two parole commissioners and one board member then vote on the parole. Trial judges and prosecutors and county sheriffs have the opportunity to protest the proposed parole before the recommendation is ever submitted to the Governor. Every parole-eligible offender is thus sufficiently screened without the Governor's involvement.

Any review that the Governor's clemency office conducts is duplicative, adds at least three weeks to the parole process, and prolongs an inmate's stay in TDC. The Governor's staff is less qualified than the BPP and reviews the inmate's file without even interviewing the inmate. Adding more time to the process can also jeopardize any job found for the parolee upon release. When the Governor denies a recommended parole, all the BPP's careful screening has in effect been a waste of time and resources.

The Governor's rate of denial has fluctuated widely over the years, reflecting inconsistent criteria for review of BPP recommendations. In fiscal year 1978, Gov. Dolph Briscoe vetoed 622 parole recommendations, a denial rate of 10.9 percent. In the 1980 fiscal year, Gov. Bill Clements vetoed 2,241, a denial rate of 28.4 percent. These parole vetoes kept in TDC inmates who, in the best judgment of the BPP, could properly have been released. Eliminating the Governor's authority to revoke paroles would reduce the soaring prison population by ensuring that more of these inmates would be released from TDC.

SUPPORTERS SAY: (cont'd)

Under this amendment and its companion statute, the Governor would retain a role in the parole process by having the authority to appoint all six members of the BPP. Ultimate accountability to the voters would thus be preserved.

converting the BPP into a statutory agency would ensure that any further changes in the BPP would not require a constitutional amendment. It would simply give the BPP the same status as every other state agency.

Texas and Oklahoma are the only states that still give their governors the authority to deny paroles. Oklahoma has legislation pending that would change this situation. It is time for Texas to recognize that the Governor's role in the parole process is at best unnecessary, at worst obstructive.

OPPONENTS SAY:

The Governor's veto power over paroles is an important safeguard to ensure that only capable and rehabilitated offenders are released. The Governor's staff need not investigate each possible parolee as closely as the BPP in order to evaluate the wisdom of the BPP's recommendations. The power to deny recommended paroles gives the Governor the discretion to be tougher than the BPP if that is what the public wants. Additional gubernatorial appointment powers would not compensate for the loss of this direct power to prevent premature releases from Texas prisons.

NOTES:

SB 396, by Sen. Ray Farabee, would give the Board of Pardons and Paroles exclusive power over paroles by amending art. 42.12 of the Code of Criminal Procedure. It would increase board membership from three to six and would give the Governor the authority to appoint all six members. Board members would each serve a staggered term of six years, with terms expiring on Jan. 31 of odd-numbered years. The bill would give the BPP the exclusive authority to revoke paroles and releases to mandatory supervision. The BPP would also have the authority to issue warrants for the return of paroled prisoners, of prisoners released to mandatory supervision, and of prisoners released on emergency reprieve or on furlough. Gov. Mark White signed SB 396 on May 25. It will become effective upon adoption of SJR 13.