HOUSE STUDY GROUP

CONSTITUTIONAL AMENDMENTS 1985

CONTENTS

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

SUBJECT: Financing of water projects

BACKGROUND: Texas voters approved constitutional amendments in 1957 and 1966 authorizing the state to issue $400 million in general-obligation bonds for water-development projects ($200 million in each election). In 1971 and 1976, voters approved $200 million more ($100 million in each election) in water-development bonds to be used for "water-quality enhancement" (i.e., sewage-treatment plants). The Texas Water Development Board administers the bond program and puts the proceeds from bond sales into the Water Development Fund, the main conduit for state funding of water projects.

The board has used some of the money from the Water Development Fund to buy a share of the storage capacity of new reservoirs, for later resale to local political subdivisions. Most of the bond money is lent in various forms to municipalities and water districts to be used to buy land and to build dams, reservoirs, pipelines, pumping facilities, and treatment plants. State funds do not go to flood-control projects, or to conveyance facilities or sewage-treatment plants that are not part of reservoir projects in which the board owns a share.

Of the current $400-million bonding authorization for water-development projects, $68.6 million is as yet unissued. Of the current $200 million authorization for water-quality projects, $50 million remains unissued.

HJR 6 will appear on the Nov. 5, 1985, ballot as two separate proposals, this one to finance water projects generally, and another to finance agricultural water-conservation projects. For an analysis of the agricultural water-conservation amendment see HSG Constitutional Amendment Analysis No. 2.

DIGEST: The proposed amendment would authorize the Water Development Board to issue an additional $980 million of general-obligation bonds, of which $400 million would be earmarked for state participation in reservoirs, conveyance, and water- and wastewater-treatment facilities; $190 million for sewage-treatment projects in "hardship" political subdivisions (i.e., cities or others that could not otherwise sell their own water bonds) and regional

DIGEST: (cont.) sewage-treatment facilities; $190 million for "hardship" water-supply projects and water-supply projects in areas that are converting from ground-water to surface-water supplies; and $200 million for structural and nonstructural flood-control projects. ("Structural" flood control requires construction of public works such as dikes or levees; "nonstructural" flood control means controlling flood damage without building anything--e.g., by converting floodplains to parkland.)

The state's ownership share of a project could not account for more than 50 percent of its total cost. Through the general appropriations act or other statute, the Legislature could limit the total amount of state funds used to buy into these projects each fiscal year. (An appropriations rider to SB 249, the water agencies' sunset bill, limits use of the state-participation account to $50 million for the 1986-87 biennium.)

The amendment would also allow the Legislature to create and make appropriations to one or more special funds in the state treasury, separate from the Water Development Fund, dedicated to water conservation, water development, sewage treatment, flood control, drainage, subsidence control, aquifer recharge, chloride control, agricultural soil and water conservation, desalinization, or any combination of these purposes. The Legislature could channel the money in these special funds to political subdivisions in the form of grants, loans, or other assistance. Except on an interim basis, no project could use money from these funds to remove surface water from its basin of origin, unless the water was not going to be needed to meet that basin's reasonably foreseeable water requirements for the next 50 years.

The amendment would also authorize a bond-insurance program in which the state would pledge $250 million of its credit to insure qualified local political subdivisions' water-related bonds against default. The board could insure bonds issued for any of the purposes listed above except subsidence control and agricultural soil and water conservation.

The amendment would establish an initial leverage ratio (the ratio of bonds insured to the state's total liability for those bonds) of two to one and limit to $100 million the amount of bonds that could be insured in any fiscal year. By a two-thirds vote of both houses, the Legislature could change the leverage ratio, change the annual insurance limit, or continue

DIGEST:(cont.) the program beyond its scheduled expiration six years from its effective date.

The amendment would also authorize the Legislature to exempt nonprofit water-supply corporations from the constitutional prohibition against state aid to private corporations. Nonprofit water-supply corporations would become eligible for state financial aid under any programs except those paid for by the newly created special-purpose funds that will be separate from the Water Development Fund.

HJR 6 would also authorize other changes in the way bond proceeds are used. It would give the Water Development Board explicit authority to use the state-participation account to buy a share in regional water- and wastewater-treatment and conveyance systems as well as reservoirs. Regional systems would be eligible for state assistance even if they were not connected to reservoir projects in which the state owned a share.

The constitutional requirement under which the Legislature currently sets terms and conditions for the board's sale, transfer, or lease of reservoirs would apply to other facilities as well. The amendment would require the board to deposit the proceeds from sales of state-owned facilities and to use the money as directed by the Legislature, instead of plowing it back automatically into other water projects.

The ballot language will read: "The constitutional amendment to authorize the issuance of an additional $980 million of Texas Water Development Bonds, to create special funds for water conservation, water development, water quality enhancement, flood control, drainage, subsidence control, recharge, chloride control, agricultural soil and water conservation, and desalinization, to authorize a bond insurance program, and to clarify the purposes for which Texas Water Development Bonds may be issued."

SUPPORTERS SAY: Texas needs money for water projects, because the customary sources of funding--federal grants and local revenue and general-obligation bonds--are dwindling. Cutbacks have hurt both water-supply and water-quality projects. The federal government used to provide 50-year financing for reservoirs on terms that required little or no initial spending by local governments. Future federal aid for dams will undoubtedly come on less generous terms, requiring bigger local shares of projects, higher local front-end costs, and shorter payback periods.

SUPPORTERS SAY: (cont.)

Federal funds also accounted for $2.6 billion (81 percent) of the total $3.2 billion spent in Texas on water-quality projects in the decade 1973-1982, including $1.24 billion in EPA construction grants for sewage-treatment plants. But the federal share of these grants is expected to decline to 33 percent in fiscal 1985-1989, and the U.S. Congress seems to favor phasing out the program by 1990.

Meanwhile, changes in tax law have made municipal bonds less attractive to institutional investors, and nontraditional tax-exempt securities such as industrial-development bonds compete with cities in the bond market. All these developments combine to raise bond costs for all political subdivisions, not only "hardship cases." The state can and should step in to help, so that needed projects can be developed sooner and more cheaply.

The state should provide aid for reservoirs and other water-supply projects because private capital markets are not set up to finance projects with useful lives of 50 to 100 years.

The water plan that the amendment will fund is comprehensive, balanced, and realistic. It provides $190 million each for water supply and sewage treatment. Hardship cases have access to this money, as do regional facilities and supply projects in areas converting from ground water to surface-water supplies. The plan provides state flood-control loans for the first time. It revives the storage-acquisition program for reservoirs, dormant since the mid-1970s, and lets the state buy shares in other kinds of projects that will benefit every part of the state.

The bond-guarantee program will improve bond ratings and lower interest and total-project costs for participating entities by reducing the risk of default. In principle, the state provides short-term insurance against default and will recoup any losses over the long term. If the program works as expected, it will reduce the interest rates cities have to pay by as much as a full percentage point.

Opponents are wrong to suggest that special funds and legislative appropriations would establish a state "pork-barrel" system of approving water projects. The board would still approve the vast majority of projects. In any case, it is entirely legitimate for the Legislature to get directly involved in deciding whether to fund some water projects, just as it now

SUPPORTERS SAY: (cont.)

decides to raise and spend money on other projects that serve a public purpose, such as parks, hospitals, and universities. Some opponents are inconsistent. They cry "pork barrel" now, but in 1981 they opposed letting the board approve projects. If neither the people's elected representatives nor the appropriate state agency should decide, who should?

OPPONENTS SAY:

The state needs more money for water projects, but not this much. Conservation is a much cheaper way of stretching the state's water supply to meet projected demand. For necessary projects, the $300 million proposed in last session's Senate water package would be plenty. Yet this amendment's bond authorization alone more than triples that amount, to say nothing of the $250 million bond-insurance program and the separate $200 million agricultural proposal.

HJR 6 and its enabling legislation do not significantly improve current state water policy. They provide more than a billion dollars for water development, but their conservation and environmental-protection requirements are weak. The definition of "conservation" in HB 2 even preserves the time-honored fiction that water development means saving water. Tighter controls should be placed on the use of bond proceeds, including a requirement that projects be funded only if the need cannot be met by other means, including conservation.

The legislation also contains inadequate protection for the coast and for ground water. The bay-and-estuary provisions are written so vaguely and ambiguously that their effectiveness will depend on how the Water Commission interprets the language. The ground-water provisions offer no guarantee of action to manage and conserve, because there is no state backup if local residents vote down a water-management district.

HJR 6 would weaken the public's control over how much money Texas should spend on water projects, by allowing the Legislature to fund projects directly out of appropriations. This funding may be unconstitutional; the 1981 appropriation of $40 million to create the Water Assistance Fund has not been tested in court. (Passage of HJR 6 would remove any doubt about its constitutionality.) In hard times, of course, few projects would be approved. But later, when the state has more money, voters may regret granting the Legislature the power to appropriate it for water projects without a vote.

OTHER OPPONENTS SAY:

According to the November 1984 state water plan, over the next decade Texas will need much more money for water and wastewater projects than this amendment would provide. The amounts proposed are a step in the right direction, but three times that much will actually be needed.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 2 (HJR 6)

SUBJECT: Agricultural water-conservation bonds

BACKGROUND: HJR 6 will appear on the Nov. 5, 1985, ballot as two separate proposals: this one, specifically to finance agricultural water-conservation projects, and another to finance other water projects. For an analysis of the general water-finance proposal see HSG Constitutional Amendment Analysis No. 1.

DIGEST: The amendment would authorize the Legislature to approve the issuance of up to $200 million of general-obligation bonds for agricultural water-conservation projects. The Legislature would be empowered to provide by statute for all aspects of the issuance of the bonds and the use of the proceeds. Legislative approval of bond issuance would require a two-thirds vote of both houses. Both legislative approval and sale of the bonds would have to occur within four years of the effective date of this constitutional amendment.

The amendment would take effect upon certification of voter approval in the Nov. 5, 1985, general election. The ballot language will read: "The constitutional amendment authorizing the issuance and sale of $200 million of Texas agricultural water conservation bonds."

SUPPORTERS SAY: This amendment will allow the Legislature to enact a sound agricultural water-conservation program that will preserve land and water resources for future generations. If the bond money is used to expand the pilot program outlined in HB 2 (See NOTES), the amendment will help farmers maintain irrigated agriculture until research develops more water-efficient crop varieties and identfies new water supplies. And it will ease the transition to sustainable-yield farming in the most water-short areas. The use of bonds means the program can be paid for without increasing anybody's taxes; and the state will not issue the bonds at all unless the Legislature is convinced by a two-thirds majority that state-backed financing is needed.

The Legislature wisely chose to try a a $5-million pilot loan program instead of immediately throwing hundreds of millions of dollars into this approach to the complex problem of agricultural water conservation. If the pilot loan program works, this amendment allows

SUPPORTERS SAY: (cont.) the Legislature to expand it. If it does not work, other methods can be tried without committing large amounts of state money to what are after all risky experiments.

OPPONENTS SAY: The amendment represents only a first hesitant step toward conserving water in agriculture, and it is unlikely to produce real benefits. Even if voters approve the amendment in November, the pilot loan program succeeds, and two-thirds of both houses approve the full $200 million, much more will be needed. In fact, however, the program has too many hurdles to jump. One of the highest is that aid under the pilot program is in the form of loans, and most farmers are reluctant to add to their debt. More help is needed, sooner, and in the form of cost-sharing programs that farmers would actually use to improve the efficiency of their operations. The state would gain greatly in the long run by spending money now to avoid major economic dislocations.

OTHER OPPONENTS SAY: Aid to individual farmers, which the pilot program under HB 2 would provide, is unconstitutional and should remain so. It would be unwise even if the state could afford it. Any subsidy program will inevitably lead to abuses, spawn other unjustifiable assistance programs, and artificially maintain economically uncompetitive private enterprises at public expense.

NOTES: Part of HB 2, the omnibus water bill passed in the 1985 regular session of the Legislature, would authorize the Water Development Board to spend up to $5 million during fiscal 1986 and 1987 on a pilot program of low-interest loans to farmers, to enable them to buy or install water-efficient irrigation equipment. The program would use money transferred under HB 2 from the Water Assistance Fund. The bill also would authorize spending on ten other types of agricultural water-conservation programs, using part of the income from another $10 million transferred from the Water Assistance Fund. This $10-million fund for agricultural water conservation could be increased by legislative appropriation and by other revenue required by law to be deposited in it--e.g., proceeds of the sale of any constitutionally authorized bonds. Increases in the fund could also be used for expansion of the loan program.

Under the pilot loan program, the board would lend money to ground-water districts or to any of the state's 201 local soil- and water-conservation

NOTES:(cont.) districts, which in turn would make loans to eligible farmers. If a farmer defaulted, the district would be responsible for foreclosing and liquidating any collateral that the farmer put up to get the loan. Under a loan-guarantee provision of HB 2, the state would pay half of any amount that remained unpaid on a defaulted loan after the district sold the collateral. The bill would set up a reserve fund, called the conservation-loan account, to pay the state's part of any defaulted loans.

Money for this conservation-loan reserve, as for the other HB 2 agricultural water-conservation programs, would come from the income on the $10 million transferred from the Water Assistance Fund into the new agricultural trust fund. Half of the investment income from this trust fund could be used for the agricultural water-conservation programs, with the other half going to augment the principal of the fund.

The board would have to report the status of the pilot loan program to the Legislature twice, by Jan. 1, 1987, and Jan. 1, 1989. These reports would discuss how the program was working, its experience of defaults, and any administrative problems. The reports would also discuss the feasibility of expanding the program.

The language of HB 2 makes implementation of the pilot program for agricultural water conservation dependent on passage of Proposition 1. Sec. 6.05 of HB 2 states that the bill will take effect "when and only if the constitutional amendment proposed by Sections 1 and 2, H.J.R. No. 6, 69th Legislature, Regular Session, 1985, is adopted." Sec. 1 of HJR 6 covers the $980-million bond authorization, direct appropriations to special funds, and the bond-insurance program. Sec. 2 of HJR 6 concerns uses of bond money. Secs. 1 and 2 are both included in Proposition 1 (general water finance) on the Nov. 5 ballot. Agricultural water-conservation bonds are covered in sec. 3 of HJR 6. Thus, should Proposition 1 fail and Proposition 2 pass, the pilot program would be voided along with the rest of HB 2 under sec. 6.05. The Legislature could, of course, pass other implementing legislationfor use of the agricultural water conservation bonds.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 3 (HJR 54)

SUBJECT: City financing of water laterals

BACKGROUND: Under Art. 11, sec. 12 of the Texas Constitution, the Legislature may authorize cities to spend public money to replace sewer lines on private property, if the city is moving or replacing the sewer mains that serve the property. The implementing statute, VACS art. 1110g, allows such spending only on sewer lines serving residential property. The city assesses the cost against the owner, if the owner consents in writing. Owners have up to five years to pay the city back, at an interest rate set by statute. Until the assessment is paid, the city holds a lien against the property.

DIGEST: HJR 54 would amend Art. 11, sec. 12, to allow legislative authorization of city spending for water lines on private property to the same extent as for sewer lines. The ballot language will read: "The constitutional amendment to authorize the legislature to enact laws permitting a city or town to spend public funds and levy assessments for the relocation or replacement of water laterals on private property."

SUPPORTERS SAY: Art. 11, sec. 12 of the Constitution already relieves homeowners of the need to pay immediately when cities rebuild or reroute old sewer lines. But an equal burden exists when cities rebuild or reroute water mains. In both cases, some people, especially those on fixed incomes, cannot afford the $1,000-to-$3,000 hookup cost. For water as well as sewer lines, cities should be allowed to charge residential customers for the work and have them pay back the city in installments. This policy would not cost the city any money and would benefit homeowners who are facing an unexpected expense.

OPPONENTS SAY: HJR 54 is a worthy idea. But surely this is not a matter of constitutional magnitude. The state's patchwork Constitution is not improved by placing more patches on it. When a state reaches the point of putting neighborhood water-main financing in its fundamental law, it's time to start over.

NOTES: Under HB 260 by Wright, the implementing legislation for HJR 54, cities will be able to finance water lines and assess owners for the expense effective immediately upon certification of voter approval of the amendment.

NOTES: (cont.) HB 260 will change part of the current procedure under sec. 1110g regardless of what happens to the constitutional amendment. Currently, before cities sign construction contracts, they must tell property owners how much the work on their property will cost. After notification, owners have 45 days to reject the contract. During this period the city cannot sign the contract and work cannot begin. Effective Aug. 26, 1985, property owners can waive their right to reject a contract by filing a sworn affidavit with the city clerk or city secretary. As soon as a waiver is filed, the city can sign a contract and work can begin without further consent by the owner.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 4 (SJR 21)

SUBJECT: Use of funds from sale of Permanent School Fund land

BACKGROUND: The Permanent School Fund receives the income from leases on some 4.75 million acres throughout the state, including bays, river beds, and submerged lands under the Gulf of Mexico. These leases are negotiated and administered by the School Land Board. The board can sell land dedicated to the Permanent School Fund, but under the current provisions of Art. 7, sec. 4, of the Constitution the proceeds from these sales must be used only to invest in certain bonds and securities.

In an effort to increase the revenue from public-school land, the Legislature in 1973 authorized the School Land Board and General Land Office to trade public-school land, or mineral interests in the land, for land of equal or greater value. This authorization has been periodically renewed, most recently in 1983. The current authorization, found in Natural Resources Code sec. 32.061, expires on Dec. 31, 1986.

DIGEST: SJR 21 would give the School Land Board constitutional authority to use proceeds from the sale of public-school land to acquire other land for the Permanent School Fund. Proceeds could also be invested by the State Treasurer.

The ballot language will read: "The Constitutional amendment authorizing proceeds from the sale of land dedicated to the permanent school fund to be used to acquire other land for that fund."

SUPPORTERS SAY: SJR 21 would allow the School Land Board to manage more efficiently the public-school lands under its jurisdiction. Currently the state owns many parcels of land too small and scattered to make leases of the grazing and mineral rights marketable. Old land grants to the railroads were made in a checkerboard pattern in which the state retained every other tract. The board and the General Land Office have been able to trade these small tracts for single larger tracts that form contiguous blocks with greater lease value. However, the process of arranging trades is cumbersome. The state must locate a willing buyer for the land, then locate another tract it would like to own, and then convince the buyer to purchase the second tract and trade it for the first. In some instances dozens of buyers of small lots have to combine to purchase the single large tract the state desires. The

SUPPORTERS SAY: (cont.)

inconvenience and unnecessary paperwork generated by this process have made it harder for the board to wring all the possible revenue out of the public-school lands.

This proposed amendment will allow the board to sell the small and scattered tracts outright and use the proceeds to purchase a single larger tract. The result will be the same as what is now achieved, but with much less waste motion.

OPPONENTS SAY:

No apparent opposition

NOTES:

The School Land Board sunset bill, SB 493, included the procedures to be followed if this amendment is adopted by the voters. Proceeds would be placed in an escrow account until used for the purchase of land. Land would be purchased to bring existing tracts up to a size sufficient to be manageable, to add land contiguous to existing tracts, or to acquire property of unique biological, commercial, geological, cultural, or recreational value. If the proceeds were not used within two years, the money would be deposited in the Permanent School Fund, just as it is now immediately after the sale of land.

SUBJECT: Standards for hospital-district care

BACKGROUND: Under Art. 9, sec. 9, of the Texas Constitution, the Legislature may provide by law for the creation of hospital districts, each encompassing one or more counties. Creation of a hospital district is subject to the approval of district voters. Districts can issue bonds for the purchase, construction, acquisition, and repair of hospital buildings, and can levy a property tax of up to 75 cents per $100 valuation to cover operating expenses and to retire bonds. The Constitution states that any hospital district created by law must "assume full responsibility for providing medical and hospital care for its needy inhabitants...."

DIGEST: HJR 89 would allow the Legislature to set out by statute the types of health-care services a hospital district must provide, the requirements a hospital-district resident must meet to qualify for services, and "any other relevant provisions" necessary to regulate the health care provided to district residents.

HJR 89 will be submitted to the voters on Nov. 5, 1985. The ballot will read: "The constitutional amendment to authorize the legislature to regulate the provision of health care by hospital districts."

SUPPORTERS SAY: HJR 89 would give the Legislature explicit authority to establish standards for the types of services a hospital district must provide and to set eligibility standards for free or reduced-rate services. Though the Constitution requires hospital districts to provide "medical and hospital care" to the "needy," its language is vague: How much care must be provided? And who is needy? SB 1, the Indigent Health Care and Treatment Act passed during the May 1985 special session, answers these questions for county and public hospitals but specifically excludes hospital districts from its provisions because hospital districts are constitutionally authorized. Only a constitutional amendment can clear the way for lawmakers to give hospital districts similar statutory guidance.

Because state law offers no clear guidance now, hospital districts have set their own widely divergent standards. Some districts, like the one in Dallas County, consider themselves obligated to provide

SUPPORTERS SAY: (cont.)

extensive services, and they are overwhelmed by the resulting demand. Others exist on paper but collect no taxes and provide no services. The existence of such do-nothing districts gives some counties an excuse for not laying out tax dollars to meet their own statutory obligation to provide indigent health care. HJR 89 would allow the Legislature to protect districts like the one in Dallas County (by establishing, say, that they are not obligated to pay for expensive transplant operations) and to force do-nothing districts either to provide basic services or to dissolve themselves and let the county do the job.

Apart from saving hospital districts money, a clear statutory definition of "medical and hospital care" could help them avoid lawsuits alleging that they have failed to "assume full responsibility" for poor residents' health needs. Although hospital districts have not yet been held to this standard in court, some counties with public hospitals have come under legal fire for shirking their comparable statutory duty to provide care for their "indigent sick" (VACS art. 4438). Under HJR 89, lawmakers could give hospital districts a uniform set of standards for both services and eligibility, as they have for county and public hospitals in SB 1, and clarify districts' legal duties.

The courts cannot be expected to do the Legislature's job. Federal courts, understandably, are hesitant to rule on what they see as a state matter. State courts are hesitant to read much into a vague constitutional directive that really should be clarified by statute.

Hospital districts get their money from local property taxes, but they derive their authority to operate from the state. It is therefore perfectly legitimate for the state to promulgate district standards.

HJR 89 is not an attempt to limit hospital districts' responsibilities and cut services. It would merely define responsibilities and standardize services. The Legislature's passage of the indigent health-care package this year suggests that lawmakers would be more likely to increase than to diminish hospital-district obligations.

OPPONENTS SAY:

No one, including HJR 89's supporters, knows how the role of hospital districts in Texas would change under this amendment, which is a half-baked compromise passed simply to pacify opponents of the indigent health-care package. One thing is certain, however--approval of HJR 89 would remove the Constitution's guarantee that hospital-district health

OPPONENTS SAY: (cont.)

care will be available to every district resident, regardless of relative poverty or ability to pay.

Hospital districts currently are an important part of the social safety net, especially for the 28 percent of the state's poor who have too little to pay for private health insurance, but too much to qualify for Medicaid and other forms of public assistance. Under SB 1, for example, the Department of Health estimates that its eligibility guidelines will restrict the state's indigent health-care program to people with up to 25 percent of the federally defined poverty-level income. By contrast, Parkland Hospital (owned by the Dallas County Hospital District) sets its guidelines for free care at 150 percent of the poverty-level income. Considering that 55 percent of the state's poor depend on hospital-district services, removing this guarantee could potentially leave thousands without health care.

Opening this constitutional provision to legislative interpretation could produce a hodgepodge of local standards for each district. On the other hand, legislation mandating comprehensive statewide standards could put small, rural districts out of business. Hospital districts are funded by local property taxes, not state funds. Decisions about what services are needed and can be provided should be left to local administrators.

If HJR 89's supporters want to go after do-nothing hospitals districts, they need only file suit. Clearly such districts do not fulfill their constitutional duties. Since the courts could correct the problem and establish an authoritative interpretation of the constitutional mandate, why risk subjecting hospital-district standards to legislative whim?

The argument that hospital districts must become more "selective" or risk overburdening district taxpayers is unfounded. Among 14 hospital districts surveyed statewide, the highest property-tax rate was 24 cents per $100 valuation--way below the constitutionally imposed ceiling of 75 cents per $100. Furthermore, on the average, only 11.75 percent of total charges for the state's 90 hospital district hospitals is attributable to bad debt and charity care. The largest urban hospital districts certainly devote far more than average to indigent care (the Dallas County district provides 81.6 percent of its services free, Harris County 62.4 percent, and Bexar County 53.2 percent). But they manage to do it without imposing a crushing tax burden on their residents (the Dallas and Bexar

OPPONENTS SAY: (cont.)

districts collect about 20 cents per $100 valuation; Harris collects 13.395 cents per $100.)

Hospital districts cannot be compared to counties--hospital districts, by definition, agree on creation to supply as much care as their residents may require.

NOTES:

During the May 27 special session of the Legislature, Rep. Schoolcraft, sponsor of HJR 89, attempted on second reading of SB 1 in the House to add an amendment authorizing hospital districts to establish their own standards for eligibility and services, so long as those standards were no more restrictive than the standards set for counties under SB 1. The amendment also would have created a formula for determining required hospital-district spending levels. The provision would have become effective only upon voter adoption of HJR 89. The House tabled the amendment by a vote of 79 to 60.

During the regular session, Sen. Parker proposed two related constitutional amendments, both of which died in the House Committee on Calendars. SJR 32 would have repealed authorization for the creation of a hospital district in Jefferson County near Port Arthur. SJR 29 would have authorized the Legislature to create indigent-health-care districts. Like hospital districts, indigent-health-care districts would have been independent political subdivisions capable of issuing bonds and of levying a property tax of up to 25 cents per $100 valuation. Each indigent-health-care district would have assumed full responsibility for indigent health care within its boundaries either by providing services directly or by contracting for services.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 6 (SJR 6)

SUBJECT: Authority to transfer inmates out of state

BACKGROUND: Art. 1, sec. 20, of the Texas Constitution says that no citizen shall be outlawed and no person shall be transported out of the state for any offense committed within the state. "Outlawry" under the English common law was a process in which the courts could strip people of all their legal rights. It was used by the courts against people who refused to appear when subpoenaed and against fugitives from justice. "Transportation" was the practice of exiling prisoners, usually to a penal colony in another country. Sec. 20 prohibits these practices.

DIGEST: SJR 6 proposes an amendment to Art. 1, sec. 20, that would allow the state to enter into agreements with other states providing for the transfer of Texas inmates to other states' penal or correctional facilities. The ballot language will read: "The constitutional amendment to permit state prisoners to be placed in penal facilities of another state pursuant to an interstate agreement." The amendment would would take effect on certification of voter approval in the Nov. 5, 1985, general election.

SUPPORTERS SAY: In 1934, the U.S. Congress authorized states to enter into interstate contracts for mutual assistance in the prevention of crime and the enforcement of criminal laws. Since then, at least 31 states have adopted the Interstate Corrections Compact, which allows states to enter into contracts to exchange prisoners. SJR 6 and its implementing legislation would allow Texas to do the same.

Adopting the plan would give TDC more flexibility in separating certain classes of inmates from the general prison population. It would be a valuable tool for controlling prison violence. Inmate gang leaders could be transferred out of state where they wouldn't pose security problems. Informants who have supplied evidence to the state and are in danger of being harmed by fellow prisoners could also be transferred out of state.

In addition, inmates who are low security risks but have special health problems, such as a mental or physical handicap, could be transferred to out-of-state prisons with facilities better equipped to handle their needs. TDC could also transfer inmates who are

SUPPORTERS SAY: (cont.)

convicted in this state but who have families in another state, so that they could be closer to home.

The implementing legislation provides sufficient safeguards of inmate rights. Transferred inmates would be guaranteed reasonable, humane, and nondiscriminatory treatment. Texas would retain jurisdiction over any inmate transferred, plus the right to inspect facilities and visit inmates in the other state, so inmates could be brought back if there were any problems. Moreover, the constitutional provision prohibiting outlawry and transportation would remain, so TDC could not transfer a prisoner out of state as a form of punishment.

Inmate-transfer agreements would not bring more inmates into the state than are transferred out. The state would presumably agree only to even swaps. And it could simply refuse to enter into any agreements that were disadvantageous. The state could also refuse to accept any out-of-state inmates who would pose a threat to TDC security.

OPPONENTS SAY:

No matter how many safeguards are put into the bill, the only way to ensure that Texas inmates are properly treated is for the state to take care of them itself. Texas has no business transferring problems away to other states.

Nor should Texas adopt problems from other states. Transferring problem inmates to other states would only mean that we would receive their troublemakers. Texas also could end up receiving more inmates than it transfers out, which would only exacerbate the prison-overcrowding problem.

OTHER OPPONENTS SAY:

The constitutional provision prohibiting outlawry and transportation is unnecessary and should simply be abolished outright. Other provisions of the Constitution forbidding cruel and unusual punishment and requiring due process of law already prohibit this type of punishment.

NOTES:

SB 126 is the implementing legislation for SJR 6. If SJR 6 is approved by the voters, SB 126 would become effective Jan. 1, 1986. The bill would incorporate the Interstate Corrections Compact into the Code of Criminal Procedure. The director of the Texas Department of Corrections would administer the compact.

As a member state of the compact, Texas could enter into inmate-transfer contracts with other member states under which Texas inmates could be sent to the

NOTES: (cont.) contracting states' penal or corrections institutions. Other member states could also agree to send their inmates to Texas on the same terms.

Contracts would have to include provisions specifying contract duration, payments for inmate maintenance and for any special programs or extraordinary treatment measures an inmate required, delivery and retaking of inmates, and inmate-employment arrangements.

Texas officials could inspect the facilities of a state with which Texas has a contract and could visit Texas inmates confined there. Inmates transferred to another state would remain under this state's jurisdiction. After transferring an inmate out of state, Texas would still have the authority to discharge, release on probation or parole, or relocate the inmate. Texas would still be obligated, however, to make payments required under any contract it had entered into with a participating state. Texas inmates held out of state and due to be released would be returned here at Texas' expense, unless the inmate, this state, and the contracting state agreed otherwise.

Each inmate transferred would be guaranteed reasonable, humane, and nondiscriminatory treatment in the other state. The powers of a parent, guardian, or trustee to act for or advise an inmate would be unaffected by the transfer. Transferred inmates would also retain their rights under the sending state's law, including the right to participate in legal actions as if confined in the sending state.

Any necessary hearings concerning an inmate could be held in the state where the inmate was confined, but the laws of the sending state would apply and the authorities in the sending state would make the final decision on the matter, based on a required record of the proceeding.

The sending state could retrieve an inmate at any time, unless criminal charges were pending against the inmate in the receiving state. In that case, the receiving state would have to consent to the removal of the transferred inmate.

Texas could receive federal aid in connection with transferring inmates under the interstate compact.

The state could withdraw from the compact by repealing adoption of the compact and giving one year's formal notice to the other participating states.

NOTES:(cont.) The following states participate in the Interstate Corrections Compact: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Missouri, Nebraska, Nevada, New Jersey, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, Wisconsin, and Washington.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 7 (HJR 27)

SUBJECT: Chambers County justice-of-the-peace precincts

BACKGROUND: The Texas Constitution was amended in 1983 to require each Texas county to have a certain number of justice-of-the-peace (JP) precincts, depending on county population according to the most recent federal census. Instead of requiring every county to maintain four to eight JP precincts, the Constitution now requires counties of 30,000 or more to have four to eight precincts, counties of 18,000 to 30,000 to have two to five, and counties of less than 18,000 to maintain one to four precincts. Counties with more JP precincts than constitutionally allowed for their population categories must come into compliance by Jan. 1, 1987.

DIGEST: HJR 27 would amend the Constitution to allow Chambers County to have two to six JP precincts, regardless of the county's population. The amendment will be put to the voters on Nov. 5, 1985, and if passed would take effect Jan. 1, 1986. The ballot will read: "The constitutional amendment authorizing Chambers County to be divided into two to six precincts."

SUPPORTERS SAY: Chambers County, located on the Gulf Coast between Houston and Beaumont, is a small county that needs its six JP courts even though it is entitled to only five under the 1983 amendment. Although it had a 1980-census population of just 18,538, the county has a high volume of intercity and coastal tourist traffic. As many as 50,000 nonresidents pass through the county daily. As a result, the county's six JP courts handled 12,899 traffic cases last year--more than all but 22 other counties in the state. Chambers County is not a speed trap; the heavy nonresident traffic just entails a heavier-than-average case load for a county of this size.

Several physical barriers--the Trinity River, Trinity Bay, Lake Anahuac, numerous bayous, and Interstate 10--also justify having six JP courts in Chambers County. If the number of JP precincts were reduced, getting to the JP's office would a lot harder for some county residents. The county is also divided between two local telephone systems, which means some residents could end up having to pay long-distance tolls to speak to their JP.

SUPPORTERS SAY: (cont.)

JP courts are maintained with county funds. If Chambers County wants six rather than five, that decision should rightfully lie with the county. The one-time cost of $48,000 for publishing the proposal statewide is a reasonable price to pay for a thoroughly justified amendment. By the same token, no other county has expressed a wish for a similar amendment, so it is entirely appropriate that the proposal deals only with Chambers County.

Making this exception for Chambers County does not mean the 1983 constitutional amendment was a bad idea. Its purpose was to allow sparsely populated counties that do not need four JP precincts to eliminate a few and save some money. That purpose can be served without imposing needless hardship on Chambers County.

OPPONENTS SAY:

Although Chambers County may have a case for some relief, this type of local amendment further clutters the Constitution with inappropriately particularized language. If the measure is truly needed, it would be more prudent to amend the Constitution to let all counties in the same population category as Chambers County have two to six precincts. That categorical approach would let other counties, which may seek similar relief in the future, add a sixth precinct without having to ask for yet another constitutional amendment.

Another flaw in this proposal is that it would limit Chambers County to six precincts regardless of any increase in population. This limitation violates the principle behind the 1983 amendment--that counties should be able to increase the number of their JP courts to accommodate population growth.

Increasing the maximum number of precincts to eight for all counties would probably make the most sense. That would take care of any problems that come up as counties change. It would be better to amend the Constitution once on this subject and be done with it. The $48,000 cost to the state for publishing the proposed amendment statewide begins to loom pretty large if the Constitution is going to be amended one county at a time.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 8 (SJR 9)

SUBJECT: Bonding authority of the Veterans Housing Program

BACKGROUND: The Veterans Land Board was created in 1946 to provide eligible veterans with low-interest loans to purchase land. In 1983, a separate Veterans Housing Assistance Program was established to supplement the land program by providing low-interest loans of up to $20,000 to assist veterans in purchasing a home. The Veterans Land Board was authorized to issue $500 million in general-obligation bonds to fund these loans. Eligibilty, currently defined in the Constitution, is limited to certain veterans of the Army, Navy, Air Force, Coast Guard, and Marines and their survivors. Mortgage-loan interest rates and program regulations are set by the Veterans Land Board.

DIGEST: SJR 9 would grant the Veterans Land Board $500 million in additional bonding authority for the Veterans Housing Assistance Fund. Eligibility for the Veterans Housing Assistance Program and the Veterans Land Program would be set by the Legislature by law, rather than defined in the Constitution.

The ballot language will read: "The constitutional amendment providing $500 million in additional bonding authority for the veterans' housing assistance program and changing the definition of those veterans eligible to participate in the veterans' land program and the veterans' housing program by authorizing the legislature by law to define an eligible veteran for the purposes of those programs."

SUPPORTERS SAY: The Veterans Land Board will reach the current limit on its bonding authority by the end of 1985. The board needs authority to issue an additional $500 million in bonds in order to continue making low-interest home-mortgage loans to veterans.

This is a popular program. The board made more than 21,000 loans during the program's first 17 months, and about 450 lenders are participating in the program across the state. Approval of this amendment will permit the board to make another 25,000 loans, which will stimulate the housing industry and generate property-tax revenue for local governments.

The 1.6 million veterans in Texas receive few state benefits for the sacrifices they have made serving their country. A loan from the housing-assistance

SUPPORTERS SAY: (cont.)

program in effect finances the down payment on a home, up to a maximum of $20,000. Current federal home loans under FHA and VA bear interest rates substantially higher than under this state program. Without the housing-assistance program many Texas veterans, including some of the more than 500,000 from the Vietnam era, would be unable to afford a home. There are strong safeguards in the current law to ensure that these loans are not used to finance speculative purchases.

These loans pose almost no financial risk to the state. All mortgage loans 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. The board is required 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, are borne by the veteran.

The additional bonds to be issued over the next few years would be a drop in the bucket in the multibillion-dollar, nationwide bond market. They would certainly not be enough to distort interest rates on other bonds or in the allocation of capital.

The definition of a veteran eligible to participate in Veterans Land Board programs sometimes needs to be adjusted to meet changing federal regulations. Giving the Legislature the ability to change the definition, rather than freezing a definition in the Constitution, will permit these programs to comply promptly with new federal requirements. The Veterans Land Board sunset bill, SB 316, adopted the same definition of veteran contained in the current constitutional provision, with the addition of former members of the U.S. Public Health Service. The definition would become effective only if this amendment is approved. Public-health officers have been eligible to participate in these programs at various times in the past, depending on the federal requirements in force at the time. Making these veterans eligible for the land and housing programs would simply correct an oversight by the Legislature.

OPPONENTS SAY:

The proposed amendment would authorize a massive increase in state debt and an unwarranted government intrusion in the capital markets. The volume of bonds issued by all levels of government has greatly increased in recent years. Government borrowing crowds out private corporations and individuals who are competing for the limited amount of funds available,

OPPONENTS SAY: (cont.)

forcing up interest rates. This has slowed economic growth, forced up the value of the dollar, and shrunk the housing market.

The state should not favor one sector of the economy over another. Offering mortgages at subsidized rates below the market level will spur housing-cost inflation by distorting the operation of the free market. Interest rates on bonds for public works that can only be undertaken by the government, such as dams and sewers, will be forced upward, increasing the cost to taxpayers. The federal government's budget deficit will increase due to the forgone tax revenue from the tax exemption for interest on public bonds.

Texas veterans certainly deserve aid. But they are already eligible for a wide variety of benefits, including federal Veterans-Administration housing loans, college-tuition assistance, and hiring preferences for federal and state civil-service jobs. Regardless of need or income, veterans can obtain government-subsidized mortgages at interest rates far lower than those available to other home-buyers. It is unnecessary to double the size of the state's housing-assistance program and thus increase state debt in order to help only a small fraction of Texas veterans.

NOTES:

The Veterans Land Board sunset bill, SB 316, authorizes the board to set and collect reasonable and necessary fees to cover the expenses of administering the Veterans Housing Assistance Program. Under SB 316, if an eligible veteran dies after filing an application for a loan, the surviving spouse would be able to complete the transaction.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 9 (HJR 72)

SUBJECT: Control over expenditure of appropriated funds

BACKGROUND: Texas has no central budget management authority--no one official or agency to oversee and manage state spending once the Legislature adjourns. Each state agency has sole authority over its budget, within the limits imposed by the appropriations act.

The Legislature has tried repeatedly to create a mechanism for managing state finances between legislative sessions. In 1951 the Legislature included in the appropriations act several riders authorizing the Legislative Budget Board to require state agencies to submit quarterly budgets for LBB approval before spending any appropriated funds. The Attorney General held that, since the affected state agencies were not part of the legislative branch of government, the riders violated Art. 2, sec. 1 of the Texas Constitution, which established the separation of powers between the branches of state government (Opinion No. V-1254). The Attorney General held that the fiscal administration of the appropriations act after it became law was a function exclusively of the executive branch. The opinion stated, "The money once appropriated, the Legislature is no longer authorized to concern itself with the further segregation and disbursement of the funds...." The opinion added, "parenthetically," that "...if the approval of proposed expenditures be considered a legislative function, still such function could not be delegated by the body as a whole to a few of its members."

A section of the appropriations bill passed in 1971 authorized transfers of appropriated funds from the agency to which the appropriation had been made to another agency, when requested by the Governor. The Attorney General held that this was an unconstitutional attempt by the Legislature to delegate to the executive branch the legislative power to determine the purpose and amount of appropriations, in violation of the separation of powers (Opinion No. M-1191). This section was also found to violate sections of the Texas Constitution that require state expenditures to be made according to specific appropriations made by law (Art. 3, sec. 30) and that require all laws to be passed by bill (Art. 8, sec. 6). The Attorney General ruled that allowing the Governor to transfer funds from their appropriated purpose to unspecified purposes and in

BACKGROUND: (cont.)

unspecified amounts would not be a specific appropriation and would not be a law passed "by bill."

The Legislature then proposed amending the Constitution to overcome the objections raised by the Attorney General's opinions. In 1979 the Legislature passed HJR 86, which would have empowered the Legislature to give the Governor control over the expenditure of appropriated funds, except funds constitutionally dedicated to specific purposes. The amendment specified that the law or rider would not be subject to Art. 2 of the Constitution. The Legislature could have limited the authority in any way it wished. The amendment specified that budget-execution actions by the Governor would have required the approval of a budget-execution committee consisting of the Governor, the Lieutenant Governor, the Speaker of the House, the chair and vice-chair of the Senate Finance Committee, and the chair and vice-chair of the House Appropriations Committee. The amendment was defeated by the voters in November 1980 by a margin of 56 to 44 percent.

In 1981 the Legislature approved HJR 38, which would have empowered the Legislature to authorize a state finance-management committee to manage the expenditure of appropriated funds, except constitutionally dedicated funds. The Legislature could have set conditions and limitations on the committee's authority by law or by appropriations rider. The committee would have consisted of the Governor, the Lieutenant Governor, the Speaker of the House, and the chairs of the Senate Finance Committee, the Senate State Affairs Committee, the House Appropriations Committee, and the House Ways and Means Committee. This amendment was defeated by the voters in November 1981 by a margin of 62 to 38 percent.

DIGEST:

HJR 72 would permit the Legislature to require state agencies to obtain approval before spending or making an emergency transfer of any appropriated funds. The Legislature could impose this requirement by a rider in the appropriations act or by separate statute.

The ballot language will read: "The constitutional amendment to protect public funds by authorizing prior approval of expenditure or emergency transfer of state appropriations."

SUPPORTERS SAY:

A state government as large as Texas' cannot function well without continuous budget management.

The current budget-writing process takes so long that it depends heavily on estimates of revenues and expenditures far into the future. Agencies submit budget estimates at least 14 months before the beginning of the fiscal biennium covered by the budget. That is 26 months before the second year of the biennium, and 38 months before the end of the biennium. It is unrealistic to expect the Legislature to anticipate every fiscal need one to three years in advance.

Allowing the Legislature to require approval before appropriated funds can be spent or transferred will allow continuous management of the state budget, so that line-item appropriations can be adjusted to meet changing circumstances. Currently, the only way to make changes in the state budget to meet unforeseen needs during the interim between regular legislative sessions is for the Governor to call special sessions of the Legislature--an extremely unwieldy and expensive mechanism. The Legislature in special session must pass a law to grant any emergency or supplemental appropriation, or to allow the transfer of funds from one agency to another or from one item to another within an agency.

If there is no special session, agencies may have to deal with emergencies by cutting back programs--for example, because of increased spending for other programs compelled by federal-court rulings, or because of federal-aid cutbacks. This amendment would allow the Legislature to establish a method of making emergency transfers within an agency or between agencies to meet such unanticipated expenses.

Letting the Legislature require state agencies to get approval before spending appropriated funds could prevent wasteful spending and control the spiraling costs of state government. If, for example, the Highway Department received a windfall from the federal government from increased gasoline taxes, interim budget authority could be used to ensure that the new funds would not be spent hastily or on unnecessary projects. Agencies that squander their appropriated funds through bad management or that undertake programs not intended by the Legislature could be held to account for their actions before they would be permitted to spend additional money.

SUPPORTERS SAY: (cont.)

Under the current fragmented budget structure, state agencies run the state's business during the interim between legislative sessions, without supervision from the Legislature. Unelected bureaucrats have the power to decide how taxpayers' money is spent on a daily basis without oversight by representatives elected by the people. This amendment would allow the Legislature to require the bureaucrats to justify their budget actions to an oversight body designated by the Legislature before they spend an agency's funds. The taxpayers should not have to wait from one biennium to the next for somebody to crack down on wasteful spenders.

The objections raised by the Attorney General to earlier statutory attempts to manage the state budget during the interim are not applicable to HJR 72, since it would specifically amend the Constitution to permit legislative control of the budget. The constitutional amendments proposed in 1980 and 1981 lost because they were viewed by the voters as an unwarranted attempt to increase the powers of the Governor. HJR 72 cannot be criticized on this basis, since it would not necessarily involve the Governor in budget execution.

OPPONENTS SAY:

This resolution is similar to the two budget-management proposals that have already been rejected by the voters. It is bad politics for supporters of the concept to keep forcing it on the voters, waiting for the one off-year election when they might sneak through this basic change in the Constitution. The electorate has already definitively turned down this proposal.

At least three different sections of the Constitution would be violated by HJR 72, according to past Attorney General's opinions. Allowing the Legislature to exercise executive power over the daily operation of state government is a flagrant violation of the concept of separation of powers, the keystone of the American notion of checks and balances in government. Texas already has a weaker executive than most other states. It would be a step away from the flexibility and responsiveness needed in the quick-moving modern world to weaken the executive branch of state government further. Even if in some instances legislative management of the budget might seem like a good idea, it is dangerous to enshrine the concept in the Constitution.

This amendment is too vague. Unlike earlier versions, HJR 72 does not specify who would exercise the power of approving expenditures and emergency transfers, or under what conditions, or with what limitations. This

OPPONENTS SAY: (cont.) deliberate vagueness is an attempt to avoid the political controversy that surrounded other proposals that specified which elected officials would be given budget-execution power. By leaving all the details undefined, HJR 72 would plant a time bomb ticking away in the Constitution, capable of causing unexpected damage.

HJR 72 was not fully considered by the Legislature. At the time of its passage by the House HJR 72 was an entirely different proposal, involving approval by the Governor and the Legislative Budget Board of expenditures for private consulting and professional services. During the frantic last weekend of the session HJR 72 was completely amended on the Senate floor into its current form, so that only the number survived from the original bill. The House approved the Senate amendments the next day with little discussion. This legislative history shows a clear lack of the careful scrutiny required when a major change in the state's fundamental law is contemplated.

Giving the Legislature the opportunity to control the state budget between sessions is asking for political hanky-panky. The opportunities for political interference with the daily workings of state agencies would be enormous. For instance, the appropriations for the controversial pesticide program in the Agriculture Department, which were worked out carefully in a process involving the full Legislature, could be totally restructured by just a few people. Special interests that were unable to convince the Legislature to accept their pet project during the regular session would be given a second chance to achieve their ends. During the interim lobbyists would be able to concentrate their influence on the few officials who would be given the power over appropriations. These officials, with power over the budget of the entire state, would not be elected statewide. Delegating the power over expenditures of the Legislature to some small committee is dangerous, and it would run afoul of both the 1951 Attorney General's opinion and judicial precedent.

OTHER OPPONENTS SAY: This amendment is just another in a long series of doomed attempts to deal with the undeniable problems of state budget management. The only way to ensure adequate legislative control over the budget is for the Legislature to meet annually. Until Texas is willing to enter the 20th century and recognize the need for annual sessions, it will be unable to function efficiently as a large, modern state.

NOTES: Another proposed constitutional amendment on the same subject, HJR 70 by Jackson and Schlueter, was passed by the House on May 20, 1985, by a vote of 102 to 27 but died in the Senate Finance Committee. HJR 70 prescribed in detail the structure and powers of a proposed interim budget authority, which would have consisted of the members of the House Appropriations Committee and the Senate Finance Committee. A House floor amendment made the committees' interim budget actions subject to gubernatorial veto.

SUBJECT: Farm and ranch bonds

DIGEST: The amendment would authorize the Veterans Land Board to issue up to $500 million in general obligation bonds to fund the Farm and Ranch Finance Program established under HB 196, the implementing legislation for HJR 19 (See NOTES). The interest rate that the state could pay on these bonds would be limited to the rate allowed by Tex. Const. Art. 3, sec. 65(b), which governs interest rates on Veterans Land Bonds. (The current constitutional limit is 10 percent, and the Legislature may adjust the limit by statute.)

The ballot language will read "The constitutional amendment authorizing the issuance of general obligation bonds to provide financing assistance for the purchase of farm and ranch land."

SUPPORTERS SAY: The Farm and Ranch Finance Program this amendment would fund will help family farmers and ranchers stay on their feet by helping them acquire much-needed land on favorable terms. By providing up to $95,000 in financing for at least 50 acres of land, the program will help young farmers and ranchers acquire their first acreage and will help owners of small farms or ranches expand their holdings. The effect will be to preserve both the institution of the family farm in Texas and the productive capacity those farms represent.

The progam's screening procedures and eligibility requirements would channel the money only to real farmers and ranchers, not to land speculators or city people looking for weekend homes. The low, 5-percent down payment the program allows is particularly important, because most farmers need all the capital they have to meet operating expenses. The loan rate would be low--less than 10 percent in today's market, according to the General Land Office--and the rate would be fixed for up to 40 years.

The program poses no financial risk to the state. Since the state retains title to the land until the loan is paid off, it can sell the land, usually for more than the original price, if a participant cannot live up to the contract. The program would require no draw from the General Revenue Fund, either. All costs will be paid from a special fund into which applicants' fees and the interest accrued on the bond money will be deposited.

OPPONENTS SAY: The program will not rescue the small family farm. That institution is being replaced by large-scale, capital-intensive farms in Texas as elsewhere, and it cannot be revived. Nor will the program help the few small-scale, family operations that remain. Their problem is a lack of money to service the debt on their production and operating costs, not lack of land. The program will not help new farmers, because new family operations cannot make money. Since the state cannot and should not aid corporate farmers, the loan program is likely to become a $500-million windfall for hobby "farmers" who will use it to expand their holdings, drive out poorer neighbors, or speculate on land at state expense. Or the program may simply not work, like the 1979 Family Farm and Ranch Security Program. That program, which guarantees 90 percent of eligible farmers' and ranchers' first mortgages, has done little to reverse the trend away from family farming.

The program will also distort the bond market for worthier causes. A $500-million issue could drive up interest rates for municipal and state bonds across the board and contribute to a state credit bind.

NOTES: The implementing legislation for this proposed amendment, HB 196 by Patterson, establishes a Farm and Ranch Finance Program, administered by the Veterans Land Board, to help farmers and ranchers acquire land. The program will take effect Sept. 1, 1986, if the constitutional amendment proposed in HJR 19 is approved by the voters.

Each eligible farmer or rancher could buy only one plot of land of at least 50 acres under the program and would have to use the land for farming or ranching only, unless the board approved another use. The amount financed by the state could not exceed $95,000.

To qualify for the program, an applicant would have to be a U.S. citizen and a five-year Texas resident, be a member of a household that has derived at least 35 percent of its gross income from farming or ranching for the preceding three years, and have a net worth less than $250,000.

The Veterans Land Board would rule on applications after they were screened by a committee of farmers or ranchers and a banker in the applicant's home county. If it approved an application, the board would buy the land with bond proceeds, sell it to the applicant on contract, and retain title to it until the debt was

NOTES: (cont.) repaid. The board could allow a participant to acquire clear title to one acre of the land bought under this program for a homestead.

Participants could not transfer their ownership interest under the contract to anyone, but if a participant died, the ownership interest could be transferred to a surviving spouse or heirs.

A participant who sold or leased the rights to oil, gas, minerals, chemicals, hard metals, timber, sand, gravel, or other materials found on the land would have to pay half the proceeds from such leases or sales to the board. The board would then apply the money to the participant's indebtedness.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 11 (SJR 16)

SUBJECT: Requirements for written criminal charges

BACKGROUND: Art. 1, sec. 10, of the Texas Constitution guarantees anyone accused of a criminal offense the right to know the nature and cause of the accusation and to have a copy of the accusation. This provision also says no person can be tried for a felony offense unless indicted by a grand jury.

Art. 5, sec. 12, provides that all prosecutions must be carried out "in the name and by authority of the State of Texas" and must conclude with the words "Against the peace and dignity of the State."

DIGEST: SJR 16 would amend Art. 5, sec. 12, to allow the Legislature to provide by law for practices and procedures concerning the use of indictments and informations, including their contents, amendment, sufficiency, and requisites. An indictment would be constitutionally defined as a written instrument presented by a grand jury charging a person with commission of an offense. An information would be constitutionally defined as a written instrument presented by an attorney for the state charging a person with commission of an offense. Presenting an indictment or information to a court would suffice to give the court jurisdiction over a criminal case.

The ballot language will read: "The constitutional amendment relating to the manner in which a person is charged with a criminal offense and to certain requirements applicable to state writs and processes."

SUPPORTERS SAY: SJR 16 would eliminate obsolete language from the Constitution and would let the Legislature set reasonable standards governing the process of charging people with crime. The proposed amendment would protect the rights of defendants without subjecting prosecutors to unnecessary and unreasonable restrictions. The court cases defining in detail the requisites of a proper indictment or information are so confusing, conflicting, and hypertechnical that it is time to wipe the slate clean and start over. Rules originally devised to protect the accused have evolved into a trap for prosecutors while providing only illusory benefits for defendants.

Caught in a bind by accumulated precedents, the courts have been reversing convictions based on minute

SUPPORTERS SAY: (cont.)

technicalities that no prosecutor or grand jury can anticipate. Some of the cases have become notorious. A murder conviction of a man who drowned his wife was thrown out because the indictment did not specify the liquid in which she was drowned. A conviction for possession of cocaine was reversed because the indictment failed to specify that the substance was "the derivative of coca leaves."

Under SJR 16, flaws like these would no longer be treated as "fundamental defects" compelling the Court of Criminal Appeals to reverse convictions. Under the "fundamental defect" doctrine, the court has ruled that every essential element of the Penal Code offense being alleged must be stated in the written charges with precision, in terms drawn from the Penal Code itself and from the cases interpreting the code (as in the "coca leaves" case), in order for the trial court even to have jurisdiction to hear the case. Thus the doctrine means that finding a formal defect in the indictment in effect nullifies the entire legal proceeding that produced the defendant's conviction.

This doctrine is strict to the point of perversity. Certainly, as a matter of fundamental due process, defendants deserve notice of the charges against them. But there is no reason why detailed notice must necessarily be given in the indictment itself. The Legislature should have the power to prescribe other adequate methods of pretrial notice of the charges. For example, broader discovery procedures, allowing defendants more pretrial access to the evidence gathered by the prosecution, would give defendants more information than indictments do. A separate "bill of particulars," supplementing the basic charging document, could also be used to give defendants details about the accusation. The Court of Criminal Appeals could be given rulemaking authority to establish further safeguards of defendants' notice rights.

It is only reasonable to expect defendants to object before trial to any defect in the charges. If they do not, they should be deemed to have waived the right to base an appeal on the defect. Defense attorneys should not be able to lie in wait to see if their client will be acquitted before claiming that the proceedings were fundamentally flawed by an error in the charges. New trials on corrected charges are costly and may not even be practical--e.g., witnesses may no longer be available, or prosecutors may have huge case loads of more recent offenses to prosecute.

SUPPORTERS SAY: (cont.)

Unfortunately, this problem cannot be solved by statute. The Legislature as long ago as 1881, in the "Common Sense Indictment Act," tried to simplify the rules for written charges, in order to prevent legitimate convictions from being overturned simply because the grand jury failed to dot every "i" and cross every "t." But the Court of Criminal Appeals said that a grand-jury indictment, as the term was used in the Constitution, clearly meant a statement of all the essential elements of the offense, and that it was for the court, not the Legislature, to decide what sufficed to meet this definition.

SJR 16 merely gives the Legislature long-overdue authority to implement the constitutional requirement of written charges in common-sense fashion. By stating flatly that the court has jurisdiction once the indictment, however flawed, is presented, SJR 16 would force defendants to examine the indictment closely before trial and make their objections early enough for the state to make needed corrections. Convicted criminals could no longer comb the Penal Code and the precedents for a ritual phrase, omitted or misstated in the indictment, that could serve as a prison-escape clause. And public confidence in the criminal-justice system would be greatly enhanced.

OPPONENTS SAY:

SJR 14 would wipe out decades of judicial precedent guaranteeing that prosecutors give people accused of crime sufficient notice of the charge in order to defend themselves. Inadequate notice of the accusation gives the prosecution an unfair advantage, subverting the fundamental principle that defendants are innocent until the prosecution proves them guilty. If an indictment is too broad or vague, it can also threaten the right of an accused not to be placed in double jeopardy--tried twice for the same action.

Defendants must rely on the charge for basic information about the accusation against them. If the Legislature permitted vague, general charges to be filed, then the prosecution could get away with waiting to bring up key allegations until the case came to trial. The courts in a few well-publicized instances have indeed set out quite detailed requirements for indictments, but they have only been seeking to ensure fairness.

The Legislature cannot be depended upon to protect the basic rights of defendants in their unequal contest with the power of the state. Bills to give defendants more pretrial access to evidence and to let the Court

OPPONENTS SAY:(cont.)

of Criminal Appeals establish pretrial-notice rules failed to pass last session, once more indicating the Legislature's lack of concern for the rights of the accused.

Under this amendment, the courts would still end up having to act to protect defendants' rights, starting from scratch in defining how best to provide the notice that is required by due process. The legal uncertainties would be far greater than they are now.

The implementing legislation for this amendment, SB 169, would require defendants to object to all defects in the charge prior to trial. This bill, another demonstration of the Legislature's lack of sympathy for defendants, would give prosecutors a blank check to find a "mistake" in an indictment or information at the last minute, then make significant changes in the charge--e.g., by stating a different time or place of the alleged offense or even alleging an entirely new offense. Defense strategy could be shattered by a last-minute indictment change.

Under current law, the grand jury would have to scrutinize a new, corrected indictment to satisfy itself that probable cause existed to charge the defendant with each element of the crime. The system proposed under SJR 16 would eliminate this safeguard.

Defendants would be expected to know in advance of trial when an error had been made, or else waive the right to protest the error on appeal. But there would be no way for defendants to know before trial that the prosecution's case would vary substantially from the charge in the indictment. Indigent defendants with appointed attorneys already tend to get less adequate representation than other defendants, and this subtle form of discrimination would be compounded by setting another procedural trap for the unwary or inattentive defense lawyer.

Most defense attorneys would probably make a practice of challenging every indictment in every case on grounds of defect, whether they had actually detected an error or not, just to preserve their right to appeal. The result would be a tremendous waste of court time on these pretrial motions.

NOTES:

SB 169 by Brown, the implementing legislation for SJR 16, will take effect on Dec. 1, 1985, if SJR 16 is approved by the voters. The bill would require defendants to object to defects in an indictment or

NOTES: (cont.) information prior to trial or else waive the right to object to any defect on appeal.

If the defendant objected to a defect, error, or irregularity of form or substance before the trial date, the charging instrument could be amended before trial, after notice to the defendant. The trial could then proceed. The court would have to allow the defendant (upon request) not less than ten days, or a shorter period if the defendant preferred, to respond to the amended indictment or information. An indictment or information could not be amended over the defendant's objection regarding form or substance if the amended instrument charged the defendant with an additional or different offense or if the substantial rights of the defendant were prejudiced. A matter of form or substance could be amended after the trial began if the defendant did not object.

SUBJECT: Answering state-law questions from federal courts

DIGEST: The proposed amendment would give the Texas Supreme Court and the Court of Criminal Appeals the jurisdiction to answer questions of state law certified from a federal appellate court. These state courts would be required to establish rules of procedure for review of these referred questions. The amendment would take effect Jan. 1, 1986, if approved by the voters in the Nov. 5 election.

The ballot language will read: "The constitutional amendment granting the Supreme Court of Texas and the Court of Criminal Appeals of Texas jurisdiction to answer questions of state law certified from a federal appellate court."

SUPPORTERS SAY: Federal judges often have to apply state law to decide cases brought in federal court. The most obvious example is in cases where a resident of one state sues a resident of another state in federal court. Federal procedural law requires federal judges to use state law to decide many such "diversity of citizenship" cases. In these and other types of cases where the outcome hinges on the interpretation of state law, the federal court must look for guidance to the court rulings of the state involved. Sometimes, however, the state courts have not yet ruled on the question that has come up in federal court.

Texas courts do not have this authority. The Texas Constitution nowhere gives the Supreme Court or the Court of Criminal Appeals the power to answer certified questions submitted by the federal courts. (The Texas Supreme Court is the ultimate interpreter of Texas law on civil matters; the Court of Criminal Appeals has the same authority in criminal matters.) As a result, federal judges have to engage in guesswork when construing Texas law on issues the state's highest courts have yet to decide. Federal judges can look at the state courts' prior rulings and anticipate how they would rule. But there have been cases where the interpretation chosen by the federal court was later contradicted by the state court when the same issue finally did come up on appeal from lower state courts.

The proposed amendment would remedy this unsatisfactory situation. SJR 10 would give Texas' highest appellate courts the same power to answer state-law questions

SUPPORTERS SAY: (cont.)

referred from the federal courts that is now exercised by the high courts of Louisiana and Mississippi, the other two states that fall within the 5th U.S. Circuit Court of Appeals. The amendment would ensure that Texas controls the development of its own law, instead of letting the federal courts decide what the Texas law should be. Uncertainty about the correct interpretation of state law will be minimized.

Of course, the amendment will most directly benefit litigants in the cases that give rise to certified questions. A federal appellate court's interpretation of Texas law is binding on the parties in the case at hand. It is no help to them if the Texas Supreme Court or Court of Criminal Appeals later interprets the same Texas law differently. Their case has been decided, albeit wrongly.

The proposed amendment would be warranted even if its only effect were to remedy this type of injustice. But in fact it does much more, by reinforcing the status of the state courts as the ultimate interpreters of state law and providing definitive precedents for both federal and lower state courts to follow.

There would be no danger of burdening the state courts with too many certified questions or with inappropriate questions, since they would be free to choose not to answer them. Experience in Louisiana and Mississippi sheds some light on this point. Since May 1981, the 5th Circuit has submitted 15 questions to the Mississippi Supreme Court. Ten have been accepted, four refused, and one is pending. Since May 1980, the 5th Circuit has submitted only 12 certified questions to the Lousiana Supreme Court. Five were accepted and seven refused.

Neither state's supreme court will answer a certified question from federal court unless the question is determinative of the outcome in the case and there is no clear precedent on the issue. Texas' two high courts would be free under this amendment to adopt the same sensible rules. The Texas Supreme Court already uses the "outcome-determinative" standard in deciding whether to accept certified questions from state appeals courts.

The Texas courts would not be placed by this amendment in the position of giving nonbinding, advisory opinions or of answering hypothetical questions. A state-court answer to a certified question is binding on all federal courts. The state court receives a certified question with a statement of the facts in the case and

SUPPORTERS SAY: (cont.)

a copy of court briefs and other documents, so that it can independently judge whether the question is in fact raised by the circumstances of the case and whether the answer will determine the case's outcome.

OPPONENTS SAY:

This amendment could increase the work load of the already overburdened Texas Supreme Court and Court of Criminal Appeals. The volume of certified questions handled in smaller neighboring states is a poor guide to the likely case load this amendment would impose on the high courts of a big state like Texas, whose laws are involved in a lot more federal cases.

More importantly, Texas courts should not get in the business of issuing advisory opinions for the benefit of federal judges. Nothing in this amendment restricts the answering of certified questions to cases where the state court's answer will decide the outcome. Advisory opinions of this sort are like answers to hypothetical questions; you can never be sure the court would rule the same way in the context of a real controversy that had come before it on the basis of a full lower-court record, where its own ruling would directly decide the outcome.

It is unfortunate that federal judges sometimes incorrectly anticipate how the Texas courts would rule on issues where precedents are murky. But that is better than having state judges answer state-law questions out of context, in cases where federal judges have the final say.

NOTES:

The House Judiciary Committee added an amendment to SJR 10 giving the Court of Criminal Appeals the authority to answer certified questions received from the federal appellate courts. The original bill gave this authority only to the Texas Supreme Court.

Rule 461 of the Texas Rules of Court allows Texas appeals courts to submit certified questions of law to the Texas Supreme Court.

SUBJECT: Court redistricting and reorganization

BACKGROUND: Art. 5, sec. 7, of the Texas Constitution says that the Legislature by law must divide the state into judicial districts and may expand or shrink those districts. The Legislature has created 374 district courts and corresponding judicial districts, with one more to be added on Jan. 1, 1987. Where population and case load warrant, a single county can be the judicial district for two or more district courts. For example, Harris County is the statutorily defined judicial district for 59 different district courts. A county also can be included in more than one multicounty district. No judicial district currently includes an area smaller than an entire county.

The subject-matter jurisdiction of state trial courts is set in the first instance by the Constitution, but the Legislature is empowered to set further jurisdictional limits for each court. Art. 5, sec. 8, defines the jurisdiction of district courts. District courts can hear all felony criminal cases, all civil cases in which $500 or more is at stake, all suits on behalf of the state, all divorce cases, all official-misconduct misdemeanors, all slander and defamation suits, all suits involving land title and liens, all levies on property valued $500 and over, contested elections, and certain probate matters. The Legislature can change the jurisdiction of a district court over probate questions, and district courts generally have been given concurrent jurisdiction with county courts in those matters. The Constitution gives district courts jurisdiction to hear cases for which a remedy or jurisdiction is not provided by law and to hear other cases as provided by law.

Art. 5, sec. 16, grants to county courts jurisdiction over misdemeanor criminal cases when the fine is more than $200, concurrent jurisdiction with justice courts in civil cases in which the amount at stake is more than $200 but not more than $500, concurrent jurisdiction with district courts in civil cases (except suits to recover land) in which the amount at stake is more than $500 but not more than $1,000, and general probate jurisdiction. In those counties with specialized criminal district courts, the county court has no criminal jurisdiction unless specifically granted by law. The county court hears appeals from justice courts by trial de novo (a new trial unaffected

BACKGROUND: (cont.)

by the result in the justice court). The Legislature, under its general authority to create new courts, has also established county courts-at-law with varying jurisdiction established by statute.

Art. 5, sec. 19, grants to justice-of-the-peace courts jurisdiction over criminal cases for which the penalty is no more than a $200 fine, exclusive jurisdiction in civil cases involving an amount of $200 or less unless exclusive jurisdiction is given to the district or county court, concurrent jurisdiction with the county courts in civil cases when the amount is more than $200 but not more than $500 (unless exclusive jurisdiction has been given to the county court), and, if granted by law and not given exclusively to the district or county court, concurrent civil jurisdiction when the amount at stake is more than $500 but not more than $1,000. The justice courts can be given other criminal or civil jurisdiction by law.

DIGEST:

SJR 14 would create a Judicial Districts Board to propose reapportionment plans for district-court districts. The 13-member board would include the chief justice of the Texas Supreme Court, who would serve as chair, the presiding judge of the Court of Criminal Appeals, the presiding judges of each of the nine administrative judicial districts, the president of the Texas Judicial Council, and one person licensed to practice law in Texas appointed by the Governor for a four-year term. The board would have powers and duties provided by the Legislature, within the limits set by the constitutional provision.

If the Legislature did not enact a statewide reapportionment of judicial districts by the first Monday in June of the third year following the federal decennial census, the Judicial Districts Board would convene to make a reapportionment. If the board did not file its plan with the Secretary of State by Aug. 31, the Legislative Redistricting Board (the Speaker, the Lieutenant Governor, the Attorney General, the Land Commissioner, and the Comptroller) would adopt a reapportionment plan not later than 150 days after Aug. 31.

The Judicial Districts Board also could meet in the interim between legislative sessions and propose further reapportionment plans as necessary by moving counties from one district to another. In order to take effect, any reapportionment order adopted by the Judicial Districts Board would have to be approved by recorded majority vote of each house of the Legislature. The board could not propose a

DIGEST:(cont.) reapportionment if the Legislature had enacted a judicial reapportionment plan during the preceding regular session. If a district's boundaries were changed, no county with a population equaling or exceeding that of the existing judicial district could be added.

The Legislature, the Judicial Districts Board, and the Legislative Redistricting Board could not adopt a reapportionment plan with districts smaller than an entire county, unless county voters had already passed a proposal to let their county be split between judicial districts.

SJR 14 would also make a number of changes in the state court system. Supreme judicial districts would be renamed court-of-appeals districts and would include a chief justice, two or more other justices, and other officials as provided by law, rather than a chief justice and at least two associate justices.

The specific grants of jurisdiction to district courts in Art. 5, sec. 8, would be replaced by a general provision. District courts would have exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies except in cases where such jurisdiction was conferred by the Constitution or other law on some other court, tribunal, or administrative body. District judges would have the power to issue writs to enforce their jurisdiction. District courts would retain their appellate jurisdiction and general supervisory control over county-commissioners courts, subject to exceptions and regulations prescribed by law.

Art. 5, sec. 7, would be amended to allow each judicial district to have one or more judges, as provided by law or the Constitution, and to delete the requirement that district judges hold regular terms in the county seat of each county in the district at least twice each year. Art. 5, sec. 14, concerning judicial districts and the time of holding court, would be repealed.

Art. 5, sec. 16, would be amended to replace the specific constitutional grants of jurisdiction to county courts with a general grant of "jurisdiction as provided by law." The county judge would be the presiding officer of the county court, with judicial functions defined by law. County courts would have the power to issue writs necessary to enforce their jurisdiction. County courts in existence on the effective date of the amendment would be continued unless otherwise provided by law. Art. 5, sec. 22,

DIGEST: (cont.) concerning changes in the jurisdiction of county courts, would be repealed.

Art. 5, sec. 17, would be amended to eliminate the requirement that county courts hold terms for civil business once every two months, for criminal business once every month, and for probate business as provided by law. Art. 5, sec. 16a, concerning assignment of probate judges, would be repealed.

The specific constitutional grants of jurisdiction to justice-of-the-peace courts in Art. 5, sec. 19, would be eliminated, except for original jurisdiction over misdemeanors punishable by fine only and exclusive jurisdiction in civil matters when the amount in controversy is $200 or less. Justice-of-the-peace courts would have their other jurisdiction defined by law. Justices of the peace would be ex officio notaries public.

The Supreme Court would promulgate rules consistent with state law as necessary for the efficient and uniform administration of justice in the various courts. The Supreme Court would promulgate rules of civil procedure for all courts, consistent with state law. The Legislature could delegate to the Supreme Court or to the Court of Criminal Appeals the power to promulgate other rules prescribed by law or by the Constitution, subject to limits and procedures established by law. Art. 5, sec. 25, the general grant of authority to the Supreme Court to make and establish rules of procedure, would be repealed.

The ballot language will read: "The constitutional amendment providing for the reapportionment of the judicial districts of the state by the Judicial Districts Board or by the Legislative Redistricting Board, and providing for the administration and jurisdiction of constitutional courts."

SUPPORTERS SAY: SJR 14 would lay the constitutional groundwork for reforms that will make the state court system more efficient and cheaper to operate. Regular, statewide review of judicial-district boundaries will help put judges where they are most needed. Dropping most grants of jurisdiction from the Constitution will make it easier to reallocate the work of the courts in response to new demands. In the future it will not be necessary to go through the cumbersome process of amending the Constitution in order to make commonsense changes in court structure.

SUPPORTERS SAY: (cont.)

Since judicial districts were first established in 1876, the Legislature has made piecemeal revisions, mostly adding local judges in urban areas. But judicial districts have not been reviewed from a statewide perspective with an eye toward fairness and efficiency. As a result, there are some wide disparities in judicial work loads. The population in some counties has shrunk to the point that the district judges are underemployed, while their counterparts in fast-growing districts can barely keep up.

Docket loads should be equalized so that every part of the state is adequately served. The proposed Judicial Districts Board could review district boundaries as population changes occur between legislative sessions and could propose reapportionment plans accordingly.

The procedures for judicial reapportionment would guarantee that all interests and communities in the state would receive equal justice. No reapportionment plan adopted by the board could take effect without approval by the Legislature. The Legislature could change any plan that was adopted, and the board could not second-guess the Legislature in the interim after a legislative plan was enacted.

To protect rural and suburban districts from being suddenly transformed by the addition of a larger county, the amendment bars adding a county if its population equals or exceeds the existing district's. A rural judge thus will not have to face a million new voters all of sudden because a big county had been added to a district that formerly contained a few thousand residents.

SJR 14 would rightly make it unconstitutional to split a county into several judicial districts, unless county voters agreed to the idea. It could be highly inefficient to elect a judge from just part of a county and restrict that judge's docket to cases originating in that area. Single-member districts encompassing an area smaller than the county also might reduce district judges to the status of justices of the peace.

SJR 14 does make allowance for big counties whose voters want to experiment with smaller districts. A majority of county voters could authorize dividing the county into several judicial districts. But county voters could only approve or disapprove the general idea of such a split--no specific plan could be drawn up in advance of voter approval. The voters' decision should not be swayed by the features of any particular plan, because once they have allowed the county to be

SUPPORTERS SAY: (cont.)

divided for judicial purposes, the districts would be subject to reapportionment without further voter approval.

SJR 14 also would impose some rational order on the allocation of subject-matter jurisdiction. The Constitution specifies in great detail the jurisdiction of district courts, county courts, and justice-of-the-peace courts, creating a mishmash of overlapping and exclusive jurisdiction that can confuse even the most experienced attorneys. To get around these jurisdictional strictures, the Legislature has created piecemeal a new tier of county courts-at-law, with specialized jurisdiction. The result has been even more confusion about which courts do what.

SJR 14 would base constitutional jurisdiction on one cardinal principle--that district courts will hear all matters, regardless of the subject or amount, unless jurisdiction has been given exclusively to some other court. The amendment would also allow more than one district judge to be elected from the same district, instead of requiring a new district court with its own facilities and a full complement of court personnel every time the case load increases significantly. This arrangement would let district judges specialize in particular types of cases, such as probate, instead of having to handle every type of case that appears on the district's docket.

The combined effect of these reforms would be to restore district courts to their proper place as the principal trial courts of Texas.

OPPONENTS SAY:

The proposed Judicial Districts Board is unnecessary, and it poses a threat to locally based administration of justice.

The Legislature already examines the need for district courts every two years and when necessary makes extensive boundary adjustments statewide. The Legislature should continue to be the exclusive forum for determining the districts of the judges whose salaries the state pays. Representatives and senators elected by the people are more likely to defend local interests. Just because a county is small or a district has not grown as fast as others is no reason to disrupt local court systems by dismantling long-established judicial districts.

There is no guarantee in this amendment or its implementing legislation that an incumbent judge would not be forced from office simply because a state board

OPPONENTS SAY:(cont.)

arbitrarily decided that the district docket was too small. Those who elect a judge to serve a particular district should have some assurance that the district will not be dismembered.

The Legislature should not give up the power to divide a county into smaller districts or even to disregard county lines in reshaping districts to meet local needs. Creating smaller districts in places like Harris or Dallas County, where the number of judges has grown so large that few are known to the voters, would ease the problem faced by incumbents as well as challengers in judicial elections. Judicial candidates must spend vast sums to gain name identification, and many respected incumbents of both parties have been swept away by straight-party votes. A political party that dominates countywide elections may oppose single-member districts because they would threaten the party's monopoly of county offices, but that partisan advantage does not deserve constitutional protection.

Preserving the power of the Legislature to divide a county into several districts would also allow minority communities and viewpoints to secure representation on the local bench. An attempt to foreclose this means of promoting minority representation in the judiciary might run afoul of the federal Voting Rights Act.

Requiring prior approval of single-member districts by local voters conflicts with the goal of increasing the judicial system's flexibility. And county voters would be getting a pig in a poke anyway, because no specific set of proposed boundaries could be agreed upon in advance of the vote.

While unwisely restricting legislative authority over the state district courts, this amendment would at the same time give the Legislature a blank check to strip local trial courts of their jurisdiction. The constitutional grant of jurisdiction to these locally constituted courts should not be tampered with. Since its first constitution in 1836, with only a brief interruption during Reconstruction when judicial power was centralized at the state level, Texas has had county courts in each of the 254 counties. County courts are especially important in rural areas where district courts often encompass several counties and local concerns can be submerged.

Supporters of SJR 14 object to the confusion and fragmentation of the trial-court system. But that is all the more reason to keep certain jurisdictional grants in the Constitution. The Constitution

OPPONENTS SAY: (cont.) stabilizes the judicial system by preventing the Legislature from shifting jurisdiction from court to court each session. SJR 14 would jeopardize that stability and let the Legislature further fragment and confuse court jurisdiction.

NOTES: SJR 14 contains certain provisions of SJR 23, relating to judicial reorganization, which passed the Senate on March 18 but was blocked in the House by a point of order against hearing it on second reading during the last 72 hours of the session. Provisions of SJR 23 were added via the conference report on SJR 14.

SB 290, the implementing legislation for the Judicial Districts Board, specifies certain restrictions and procedures not provided for in the constitutional amendment. Some notable features are described below.

The board would meet initially at the call of the chair and thereafter at least once in each interim between regular legislative sessions. In judicial-district reapportionment plans, a district could be removed to another location in the state so that it contained an entirely different county or counties. If a district contained more than one county, the counties would have to be contiguous.

After the effective date of a reapportionment plan ordered by the board and approved by the Legislature, the new district court would have complete jurisdiction in its new area. If a county were located in two or more judicial districts, all of the district courts in the county would have concurrent civil and criminal jurisdiction. In counties with more than one district court, the judges could equalize their dockets.

District attorneys would not be affected by a judicial-district reapportionment, since the county or counties in <u>their</u> districts would be unchanged.

The commissioners court of a county newly included in a district by reapportionment would have to provide suitable quarters, facilities, and personnel for the district court.

HOUSE
STUDY
GROUP Constitutional Amendment Analysis Amendment No. 14 (SJR 27)

SUBJECT: Abolishing the offices of county treasurer and county surveyor in certain counties

BACKGROUND: Under Art. 16, sec. 44, of the Texas Constitution, all but four counties must elect a county treasurer and all counties must elect a county surveyor for four-year terms. The counties exempt from electing a county treasurer--Bee, Bexar, Collin, and Tarrant counties--abolished the office after the passage of authorizing amendments in 1982 (Bee and Tarrant) and 1984 (Bexar and Collin). The county treasurer's duties in Bee and Tarrant counties were transferred to the county auditor. In Bexar and Collin counties the duties moved to the county clerk.

DIGEST: SJR 27 would amend the Constitution to abolish the office of county treasurer in Andrews and El Paso counties. (The amendment adds an extra condition for abolition of the treasurer's office in El Paso County: It would be abolished Jan. 1, 1986, only if a majority of the voters in that county voted in favor of this amendment in the statewide election Nov. 5, 1985.) The duties of the county treasurer in Andrews County would be transferred to the county auditor or to the officer who assumes the auditor's functions. In El Paso County, the county commissioners court would have the option of transferring the treasurer's duties to another county officer or of hiring a qualified person to perform the job on a full or part-time basis.

The amendment would abolish the office of county surveyor in Denton, Randall, Collin, Dallas, El Paso, and Henderson counties if a majority of the voters in those counties voted to do so in a local election called by the county commissioners. If the office were abolished, the county survey records would be transferred to the county clerk. The commissioners court could employ or contract with a qualified person to perform needed surveyor functions once the office is abolished.

The ballot language will read: "The constitutional amendment to provide for: (1) the abolition of the office of county treasurer in Andrews County and El Paso County; (2) the abolition of the office of county surveyor in Collin, Dallas, Denton, El Paso, Henderson, and Randall Counties."

SUPPORTERS SAY:

This amendment would abolish two elective county offices, the treasurer's and surveyor's, in the counties named and would either transfer their functions to other county offices or have them performed by private contractors. The change will make county government more efficient and save taxpayers money.

The office of county treasurer is no longer worth maintaining in a number of Texas counties. Andrews and El Paso counties wish to abolish the office to save money. The county treasurer merely serves as a transfer agent--receiving money, depositing funds, and issuing checks on warrants. These duties can be performed by another county office or on a contract basis at substantial savings to the counties. The county auditor in Andrews County can easily do the treasurer's job. Eliminating the treasurer's office in Andrews County will save the taxpayers $250,000 over the next five years.

Independent audits of the county auditor or any other office or person performing the treasurer's job would protect against mistakes and fraud and would maintain the proper system of checks and balances.

Fewer than half the counties in Texas have a county surveyor. The surveyor determines the boundaries of real property within the county and keeps the county survey records. County surveyors are compensated on a fee basis rather than by a salary, although surveyors are entitled to an office in the county courthouse. Many county surveyors do not do enough public business to justify the cost of providing them county office space. Hiring a licensed surveyor on a contract basis and keeping the survey records with the county clerk would be more cost-effective. SJR 27 would merely let the residents of six counties choose this cost-effective option.

OPPONENTS SAY:

The trend toward abolition of constitutionally created offices is unfortunate. Elective positions should not be abolished, especially to give the duties to an appointed official or private individual chosen by the commissioners court.

The county treasurer, as the elected official who safeguards the county's funds, serves an important function. In Andrews County the amendment would give control of county funds to the county auditor. Auditor's and treasurer's functions should remain separate, to avoid putting the auditor in the conflict-of-interest situation of passing judgment on

OPPONENTS SAY: (cont.)

his or her own handling of county funds. It is wrong on principle to give control of county funds to any person who is neither elected by the people nor at least answerable to elected county commissioners. County auditors are appointed by the county judge.

In terms of checks and balances, the transfer options proposed for El Paso County are nearly as undesirable. There the commissioners court could transfer the treasurer's duties to another county official or could hire a person to do the job. Either way, an independent check on county commissioners' supervision of expenditures would be lost.

If the argument against having county surveyors boils down to the cost of maintaining their office space, why not just amend the relevant statutes and require that survey records be kept in the county clerk's office? Abolishing the surveyor's post is not necessary to achieve this economy. The county surveyor, apart from surveying, records and examines field notes of surveys made in the county. The county surveyor also has traditionally acted as an impartial judge to resolve disputes between private surveyors. The surveyor's functions are limited, it is true, but the office is far from obsolete.

OTHER OPPONENTS SAY:

If the offices of county treasurer and county surveyor are obsolete in these counties, they are obsolete everywhere in the state. The constitutional amendment should allow all counties to decide whether or not they need county treasurers and surveyors. This resolution continues a piecemeal approach to an important issue of efficiency in county government. Holding a statewide election to abolish county offices every two years is a waste of state tax money.

NOTES:

County treasurers are responsible for the receipt, deposit, and disbursement of county funds within guidelines specified by county commissioners courts. County treasurers also must keep accurate accounts of all county receipts and expenditures and must make financial reports to the county commissioners court.

Texas law requires each county with a population of 10,000 or more to have an auditor appointed by the district judge or judges. The auditor must oversee all books and records of offices that collect county money. In some counties, the auditor serves as a purchasing agent. State law requires every county with a population of 350,000 or more to have annual independent audits of all county funds. Any commissioners court may provide for independent audits.

NOTES (cont.) Andrews County has a population of 13,323 and El Paso County 479,899 according to the 1980 census.

County clerks are elected for four-year terms. They are the recordkeepers of the county and county courts and also oversee elections. They keep records of real and personal property.

Although the Texas Constitution requires each county to elect a county surveyor for a four-year term, only 114 of Texas' 254 counties have county surveyors. VACS art. 5282c, sec. 28, makes the county clerk the legal custodian of the surveyor's records and gives the clerk authority to act as the county surveyor in counties with no county surveyor.

VACS art. 5298a states that the office of county surveyor in counties of more than 39,800 but fewer than 39,900 residents (Angelina County) is abolished. The effective date of this statute was Sept. 1, 1969, and all the county survey records were in fact transferred to the county clerk. (This statutory abolition of a constitutional office has not faced any legal challenge.)

In 1979, the Legislature passed a bill (HB 396) allowing Tarrant County voters to decide whether or not to abolish the county treasurer's office and to transfer its duties to the county auditor. In 1980 the state court of appeals in Fort Worth ruled in Moncrief v. Gurley that HB 396 was unconstitutional, because it attempted to abolish by statute an office created by the Constitution. Art. 3, sec. 64, of the Texas Constitution does give the Legislature authority to enact special laws providing for consolidation of government offices of political subdivisions "comprising or located within any county," subject to the approval of county voters. But the Fort Worth appeals court said county government was not a political subdivision "comprising or located within" a county.