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HOUSE RESEARCH ORGANIZATION

special legislative report

September 26, 1986 No. 127A

1986 Constitutional Amendments

Four proposed constitutional amendments will be submitted to Texas voters on Nov. 4, 1986. The Legislature approved three during the 1985 regular session and one during the special session in August. The proposed amendments are analyzed here in the order that they will appear on the November ballot.

The first three proposed amendments were also analyzed in a previous edition of this special legislative report, No. 127, published on June 17, 1986.

Ernestine Glossbrenner
Chair

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Constitutional Amendment Analysis — Amendment No. 1 (SJR 15)

SUBJECT: Apportionment of railroad rolling-stock property for county taxation

BACKGROUND: Under Art. 8, sec. 8 of the Texas Constitution, the Comptroller is directed to apportion for property-tax purposes the value of a railroad company's rolling stock among the counties through which the railroad runs. The term "rolling stock" refers to the company's boxcars, tank cars, engines, etc. Rolling-stock value is apportioned according to the number of miles the company's rail line runs through each county. Under Art. 8, sec. 8 of the Constitution, only counties levy property tax on rolling stock.

VTCA, Tax Code sec. 24.31 requires the chief appraiser for the county in which a railroad company maintains its principal place of business to appraise the company's rolling stock. Sec. 24.37 of the Tax Code requires the State Property Tax Board to apportion the appraised value of railroad rolling stock among the counties through which the railroad runs. The value of the rolling stock is apportioned to each county based on the ratio that the rail mileage owned by the railroad in the county bears to the total rail mileage owned by the railroad in the state.

DIGEST: SJR 15 would amend Art. 8, sec. 8 of the Constitution to allow the value of railroad rolling stock to be apportioned among the counties for property-taxation purposes as provided by general law, rather than by the Comptroller.

The ballot language will read: "The constitutional amendment to allow the legislature to provide by general law for the apportionment of the value of railroad rolling stock among counties for purposes of property taxation."

SUPPORTERS SAY: This amendment would do no more than reconcile current statutory practice with the Constitution by repealing an obsolete provision. Neither the counties nor the railroads would be affected by the change.

There is no particular reason why the Comptroller should be even nominally responsible for the apportionment of the value of railroad rolling stock among the counties. The Comptroller has no other duties of this nature and does not want to retain responsibility for this duty.

The State Property Tax Board has been apportioning the value of railroad rolling stock among the counties ever since the property-tax law was revised in 1979. The Intangible Tax Division of the Comptroller's office was transferred intact to the Property Tax Board, where it continued its work as before. To comply with the constitutional provision that the Comptroller apportion the value, the board initially carried out this task under a contractual agreement with the Comptroller, but even this pretense has since been dropped.

OPPONENTS SAY: It would make more sense for the Legislature to change the current statute, which now violates the Constitution, to allow the Comptroller to carry out his constitutional duty. Instead, the voters are being asked to take the expensive step of amending the Constitution merely to conform with bureaucratic convenience. Since apportionment of the property-tax value of railroad rolling stock among the counties is an important and potentially controversial duty, it should remain in the hands of a constitutional official elected statewide, not delegated to an appointed body like the State Property Tax Board.

OTHER OPPONENTS SAY: As long as the state is paying for an election involving Art. 8, sec. 8 of the Constitution, it should use the opportunity to repeal this section entirely rather than to make a mere technical adjustment. The entire section is unnecessary and should be eliminated, as was recommended by the Constitutional Revision Commission in 1973. Art. 8, sec. 1 of the Constitution provides, "All property in this State... shall be taxed in proportion to its value, which shall be ascertained as may be provided by law." Art. 8, sec. 11 of the Constitution states, "All property... shall be assessed for taxation, and the taxes paid in the country where situated...." These sections provide a more than sufficient basis for the Legislature to enact statutes detailing how railroad

rolling stock should be taxed and how that tax is to be apportioned among the counties.

The Constitution should say what it means. If Art. 8, sec. 8 is not repealed entirely, its archaic language should at least be updated to reflect actual practice. A literal reading of the current language of Art. 8, sec. 8 of the Constitution is that the county where the principal office of a railroad is located may tax the railroad's rolling stock, and if it does tax the rolling stock, the Comptroller shall apportion the tax collected by the home-office county among the other counties based on their proportion of the company's statewide rail mileage. However, the statutory implementation of this constitutional provision has been that the county where the principal office of the railroad is located determines the value of the railroad's rolling stock, then the Comptroller (actually the State Property Tax Board) apportions that value among the counties based on their proportion of the company's statewide rail mileage. Each county can then tax that value at its local rate.

Constitutional Amendment Analysis — Amendment No. 2 (SJR 33)

SUBJECT: The bill-caption rule and statutory revision

BACKGROUND: Art. 3, sec. 35 of the Texas Constitution prohibits any bill, other than appropriation bills, from containing more than one subject (the "one-subject" rule). It also requires the subject of every bill to be expressed in the title or caption of the bill (the "bill-caption" rule). Art. 3, sec. 35 contains a severability provision saying that any subject included in an act that is not expressed in the title of the act is void; the remainder of the act is still valid.

Art. 3, sec. 43 of the Constitution required the first session of the Legislature after the Constitution was adopted in 1876 to provide for revising, digesting and publishing the civil and criminal laws. It also permits a similar revision, digest and publication to be made every 10 years. The one-subject and the bill-caption rules of Art. 3, sec. 35 do not apply to the revision permitted by this section.

The first complete revision, updating, and reorganization of all Texas statutes under Art. 3, sec. 43 occurred in 1879, with subsequent revisions in 1895, 1911, and 1925. No complete revision of all of the statutes has been made since 1925; instead, the Legislature has periodically compiled certain statutes into codes covering specific areas (the Tax Code, the Natural Resources Code, etc.)

DIGEST: SJR 33 would amend Art. 3, sec. 35 to eliminate the bill-caption rule as an absolute constitutional requirement. Instead, each house of the Legislature would have to include in its rules of procedure a requirement that the subject of each bill must be expressed in its title, which must give the public and the Legislature reasonable notice of the bill's subject. The Legislature would be solely responsible for determining compliance with this rule.

No law, including one enacted before the effective date of the amendment, could be held void because it had an insufficient title. Also, the severability provision found in Art. 3, sec. 35 would be deleted.

SJR 33 would amend Art. 3, sec. 43 of the Constitution to delete the provision allowing statutory revisions to be made every 10 years. Instead, it would generally require the Legislature to provide for revising, digesting and publishing the civil and criminal laws. It would specifically define "revision" to include a revision of the statutes on a particular subject and any act having the declared purpose of codifying, without substantive change, statutes that relate to different subjects.

The ballot language will read: "The constitutional amendment requiring each house to include in its rules of procedure a rule that each bill contain a title expressing the bill's subject, and providing for the continuing revision of state laws."

SUPPORTERS SAY:

The bill-caption rule in Art. 3, sec. 35 of the Constitution is outdated and should be changed. The intent of the provision is to give the Legislature and the public fair notice of the subject of bills. In practical terms, however, the caption hardly gives notice at all. When amendments are made to a bill, both houses usually adopt a standard motion authorizing the Chief Clerk to change the title of the bill so that it will conform to the text of the bill as it was amended. A bill's title is usually not changed until after its final passage, so legislators rarely read the final version of the title before they vote on the bill. Thus the bill-caption rule has been reduced to a mere formality.

When the original bill-caption provision was adopted in the 19th Century, bills were hand written and few copies were available, so a precise notice requirement was necessary. But, now, computers, fiscal notes, bill analyses, and legislative-information services provide legislators and the public with information about the content of each bill.

Only the foolhardy would rely exclusively on the brief caption of a bill in order to discover what a bill

actually would do. The amendment would recognize that the real protection against the Legislature slipping unrelated provisions into a bill is not the bill-caption rule but the one-subject rule. The one-subject rule would be retained intact in the Constitution and could still be the basis for challenging the validity of a statute.

Keeping the bill-caption rule as it is now would only invite abuse, allowing laws to be invalidated on a technicality decades after their enactment. A recent example was the drug-trafficking law that was passed in 1981 as part of the "War on Drugs" package. The Court of Criminal Appeals ruled the statute unconstitutional because the bill caption only referred to the Controlled Substances Act, while the bill also modified other related statutes. As a result, in 1983 the Legislature had to re-enact the same bill with a new caption.

Such hypertechnical, nonsubstantive attacks on legislation that has already been enacted and fully implemented should not be allowed to continue. The amendment would ensure that any future legislation would not meet its demise on the basis of a technicality, while the retroactive clause in the amendment would protect the legality of those statutes already enacted.

The amendment would still require that the caption of a bill must give reasonable notice of its subject, but it would place that requirement in a proper perspective. The bill-caption rule would become an internal legislative procedure rather than a constitutional rule that can be used by the courts to invalidate Texas statutes. If the bill-caption rule were violated, a legislator would be able to raise a point of order and kill the bill on those grounds before it is passed. The courts long ago established the "enrolled bill" doctrine that once a bill is enacted by the Legislature, its provisions will not be invalidated because some legislative procedure was not followed. The bill-caption rule should be treated in the same way -- an internal procedure to be enforced by the legislators themselves.

The amendment would eliminate outdated provisions in the Constitution that could be used to overturn the ongoing effort to reorganize and codify Texas statutes. It is is not clear whether the provision for periodic statutory revision found in Art. 3, sec. 43 includes the subject-by-subject codification process underway since 1967 or whether it applies only to a complete revision of all Texas statutes, which last occurred in 1925. Because the scope of the bills enacting the codes was so broad and all-encompassing, they may have violated both the one-subject rule and the bill-caption rule. Thus years of painstaking work to bring order to the growing mass of Texas statutory law could be declared unconstitutional based on a mere technicality.

This amendment would simply clarify that the codes already enacted and those enacted in the future are not subject to technical challenge. The proposed change in Art. 3, sec. 43 would eliminate any doubt that the codes come within the exception to the one-subject rule; the provision added to Art. 3, sec. 35 retroactively validating all bills that may have violated the bill-caption rule would cover the code-enactment bills as well.

OPPONENTS SAY:

SJR 33 would undermine the intent of the bill-caption rule by making it easier for legislators to slip unrelated provisions into a bill and have them passed unnoticed. Since legislators know that the courts can later overturn a law for a defective caption, they are less inclined to try such a maneuver; this amendment would eliminate that deterrent.

The courts should have the authority to review whether a bill's caption gives adequate notice of its contents. Such judicial review serves as a check and balance by one branch of government on another. Making the Legislature solely responsible for determining compliance with the bill-caption rule would be like letting the fox guard the chicken coop. Bills are often railroaded through the Legislature, particularly those bills designated as local or uncontested, and legislators frequently have time only to read the caption to determine the content of the bill. Retaining adequate authority for the courts to strike down a statute is the only tool the public has for ensuring that the Legislature abides by the rule.

The U.S. Congress merely requires a bill to have a caption, regardless of whether that caption relates to the body of the bill. An example of what could happen in Texas if the bill-caption rule were diluted to that degree occurred in 1978 with President Carter's energy-tax bill. The caption of the original version of the bill, HR 5263, read "An act to suspend until the close of June 30, 1980, the duty on certain bicycle parts." The bill was later amended substantially and its purpose entirely changed. Not until the bill finally passed was the caption altered to reflect the new purpose of the bill: "An act to provide tax incentives for the production and conservation of energy, and for other purposes."

If a change in the caption rule were to be made, it would be bad public policy to apply it retroactively. The public, as well as legislators, always knew in the past that ultimately the courts could enforce the caption requirement; they will have had no advance warning to examine bills more closely. Therefore, the courts should at least retain the authority to invalidate those statutes enacted before the bill-caption requirement was watered down.

OTHER OPPONENTS SAY:

The proposed amendment would not ensure that those statutory codes already enacted will not be struck down by the courts for violating the one-subject rule. The amendment would exempt from the one-subject rule those codifications made in the future, but it would not grant retroactive approval to those codes previously enacted that may have violated the one-subject rule. In contrast, the amendment would specifically grant retroactive approval to all bills previously enacted that may have violated the bill-caption rule. Since the Legislature specifically included a retroactive amnesty for past violations of the bill-caption rule but omitted such a provision for past violations of the one-subject rule, it could be argued that the Legislature did not mean to grant such retroactive amnesty for one-subject rule violations.

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Constitutional Amendment Analysis — Amendment No. 3 (HJR 73)

SUBJECT: Mutual-insurance purchases by political subdivisions

BACKGROUND: Mutual insurance companies are directly owned by their policyholders. The policyholders' financial investment is in the form of the premiums paid for insurance coverage. Mutual-insurance companies can raise capital by assessing policy holders some extra amount on their premiums to cover company claims and expenses. However, not all mutual-insurance companies are assessment mutuals. For example, advance-premium mutual-insurance companies do not issue assessable policy contracts. The premiums paid are expected to cover all claims and expenses.

A stock-insurance company is owned by the stockholders of the company. The stockholders receive a dividend if the company makes a profit.

Art. 3, sec. 52 (a) of the Texas Constitution prohibits any political subdivision from lending its credit or granting public money to an individual, association, or corporation, or from becoming a stockholder in such association or corporation. Art. 11, sec 3. of the Texas Constitution prohibits a county, city or municipality from being a stockholder or lending its money or credit to a private corporation.

In 1926, the Supreme Court upheld a judgment of the commission of appeals (288 S.W. 409) that a municipal corporation would violate Art. 3, sec. 52(a) of the Constitution if it entered into a contract with a mutual-insurance company because a policyholder in a mutual-insurance company is the same as a stockholder of a corporation. In 1942 the Texas Supreme Court ruled (161 S.W. 2nd 450) that a school district could not have an insurance policy with a mutual-insurance company because such a policy would have made the district a stockholder in the company and thus violated Art. 3, sec. 52 (a) of the Constitution.

DIGEST:

HJR 73 would amend Art. 3, sec. 52(a) of the Texas Constitution to allow political subdivisions to use public funds to pay premiums to mutual-insurance companies for "nonassessable" life, health, and accident insurance policies and for annuity contracts. (An annuity contract is a type of retirement plan in which a contract holder pays an insurance company a certain amount over a period of time and then is paid back, with interest, during retirement or whenever the contract specifies.)

The ballot language will read: "The constitutional amendment allowing political subdivisions the opportunity to engage in and transact business with authorized mutual insurance companies in the same manner as with other insurance companies."

SUPPORTERS SAY:

Mutual-insurance companies should be allowed to compete along with stock-insurance companies for life, health, and accident policies and annuity contracts sold to local governments. Some of the largest and most reputable insurers are mutuals, such as Metropolitan Life, Prudential, and Mutual of Omaha. Broader competition among insurance companies for the business of political subdivisions would result in tax savings as the companies bid against one another for this business.

There is no reason to prohibit political subdivisions from having nonassessable policies with mutual insurers. Mutual insurers have virtually abandoned the use of assessments, but those few that still use assessments would be barred from dealing with political subdivisions. A political subdivision's policy with a mutual-insurance company would thus involve only the same liability as with a stock insurance company: payment of premiums specified in a contract.

The defeat of the same amendment in 1984 was surely due to misleading ballot language that made the amendment sound like a giveaway of public funds to insurers. The revised ballot language will clarify to voters that the amendment would merely allow mutual-insurance companies the opportunity to bid for local-government insurance contacts.

OPPONENTS SAY:

The framers of the Texas Constitution knew what they were doing when they refused to permit public funds or credit to be used for investment in private businesses. The prohibition was originally incorporated into the Constitution in part because railroads had defaulted on state loans. By definition, if a political subdivision contracted with a mutual-insurance company, it would become a stockholder in that company, the first step down the road to using government funds to speculate in private enterprises.

There is no particular need to amend the Constitution to allow mutual-insurance companies to do business with local governments. Currently, 949 stock-life insurance companies and 90 mutual-life insurance companies are licensed to do business in Texas. The addition of only 90 companies would not expand the competitive pool of potential insurers enough to result in much of a savings.

Texas voters overwhelmingly defeated this proposed amendment to the Constitution in November 1984 when 64.9 percent voted against and only 35.1 percent voted in favor. The people have rejected this amendment once, and it is a waste of tax money to vote on the same issue again.

OTHER OPPONENTS SAY:

However desirable the intent of this amendment, to allow mutual-insurance companies to do business with local governments in Texas, it would only change one section of the Texas Constitution, Art. 3, sec 52(a). In order to resolve the issue beyond question, Art. 11, sec. 3, which also prohibits counties and municipalities from being stockholders in private corporations, should be amended as well.

Moreover, this amendment is just another example of hypertechnical tinkering with the constitution. Rather than specifically providing for mutual-insurance companies in the Texas Constitution, the provision should be amended to speak to the issue in a more general way. For example, the 1975 proposed revision of the Texas Constitution would have simply stated that "public funds and public credit may be used only for public purposes," a general, straight-forward statement

of policy that would have eliminated the need for mentioning mutual-insurance in the Constitution.

NOTES: The same amendment was rejected by the voters in the Nov. 6, 1984 election by a vote of 1,301,880 in favor (35.1 percent), 2,406,003 opposed (64.9 percent). The ballot description of the 1984 proposed amendment read: "The constitutional amendment to permit use of public funds and credit for payment of premiums on certain insurance contracts of mutual insurance companies authorized to do business in Texas."

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Constitutional Amendment Analysis — Amendment No. 4 (SJR 4)

SUBJECT: Branch banking

BACKGROUND: Art. 16, sec. 16 of the Texas Constitution prohibits branch banking, i.e. engaging in banking business at more than one place.

The Texas Banking Code permits certain drive-in/walk-up facilities as far as 20,000 feet (3.8 miles) from a bank's central building. On June 6, 1986, Attorney General Jim Mattox issued an opinion (JM-498) concluding that statute law permitting such detached facilities violates the constitutional ban on branch banking.

DIGEST: SJR 4 would amend Art. 16, sec. 16 of the Texas Constitution to permit branch banking under certain circumstances. SJR 4 would require the Legislature to authorize Texas banks to operate banking facilities at more than one location within their home county or city, subject to limitations imposed by statute. The Legislature could permit a bank in a city located in two or more counties to operate branches within both the city and the county where it is located.

The Legislature could permit a bank that acquired a failed bank to operate at more than one place.

A subsidiary of a bank-holding company would not be considered a branch of another bank owned by the same holding company.

The restrictions on bank-branch offices would not apply to any other type of state-chartered financial institution.

The ballot language will read: "The constitutional amendment to provide that a bank may offer full service banking at more than one location with the city or county where its principal facility is located, subject to limitations and restrictions provided by law."

SUPPORTERS SAY:

SJR 4 would give Texas banks the flexibility necessary to survive in the competitive environment created by deregulation of financial institutions. Banks in Texas have for years been at a competitive disadvantage to savings and loan associations, which are already permitted to branch statewide. In recent years, new non-traditional financial institutions, such as Merrill Lynch and Sears, and out-of-state credit card companies have started to offer bank-type services throughout the state. Allowing Texas banks to operate branches would give the banks a chance to compete equally with these institutions and to grow stronger in preparation for competition with out-of-state banks.

SJR 4 is necessary to ensure that Texas banks will not have to shut down hundred of drive-in/walk-up facilities due to the Attorney General's recent opinion. The Attorney General specifically determined that the 1985 amendment to the Banking Code that permits drive-in/walk-up facilities up to 20,000 feet from a bank's central building is unconstitutional. However, the logic on which the opinion is based could be applied against many more facilities authorized by earlier statutes. The only sure way to avoid a disastrous shut-down of all detached banking facilities across the state is to modify the constitutional ban on branch banking.

Passage of SJR 4 would also prevent interference in the state banking system by the U.S. Comptroller of the Currency, who regulates federally chartered banks. The Comptroller of the Currency has sued the State of Mississippi, alleging that Mississippi's practice of permitting savings and loan associations to establish branches statewide while prohibiting banks from branching discriminates against banks because savings and loans can offer the same services as banks. Texas' current branching rules, which are identical to Mississippi's, could face a similar legal challenge. SJR 4 would make a clear distinction between banks and savings and loan associations, weakening the legal case of federal regulators who might try to interfere in the Texas banking structure.

For years large banks in Texas have operated what are essentially branch banks through bank-holding companies. Beyond recognizing reality, a limited

authorization for branch banks would provide a more efficient way to offer banking services than requiring banks to establish separate subsidiaries within a holding company. Subsidiaries must have separate central buildings, separate boards of directors, and separate management. This extra cost burdens banks in their competition with savings and loan associations and non-financial institutions and forces banks to charge higher fees and interest rates to cover their administrative expenses. Branching would permit banks to lower the cost of their services and would encourage less expensive services by increasing competition in many markets.

Branch banking would be more convenient for bank customers. Under current law, a customer of a suburban subsidiary of a bank-holding company cannot cash a check or make a deposit with the downtown subsidiary of the same holding company. SJR 4 would require the Legislature to permit establishment of branch banks throughout a county, so that customers could receive the full array of services from their bank in several locations. Texans in rural communities or lower-income urban neighborhoods, who do not have ready access to banking services, would benefit from the entry into their communities of branch banks, which would be interested in making loans and providing services locally.

Branch banks would not drain away capital from the community in which they operate. All branches would be within the same city or county, so that bank managers would remain sensitive to the interests of their depositors. Although branch banks would not have boards of directors separate from the principal bank, as subsidiary banks within a bank-holding company do, the proximity of the branches to the principal bank would guarantee that the interests of the community where a branch is located would be considered by the principal banks. Banks want to increase their earnings, not just their deposits, and earnings come from profitable loans. Rural areas and other communities not currently served by more than one bank offer many opportunities for profitable loans, so Texas banks would establish branches in order to expand their lending to new areas of their home city or county.

Small independent banks would not be hurt by branch banking. The experience of other states has shown that small banks are as efficient as larger banks and can maintain their market share in competition with large banks. Independent banks might face new competitors in some areas of the state, but this does not mean that independent banks could not continue to succeed.

The provisions of SJR 4 permitting the Legislature to authorize the acquisition of a failed bank and its operation as a branch anywhere in the state would give the Banking Commissioner a vital tool in meeting the increasing problem of failing banks. As of late September, eighteen Texas banks had failed this year, and more are likely to fail. The Commissioner often has little alternative to shutting down these banks, leaving their communities without adequate banking services. This constitutional change would give the Commissioner the alternative of arranging a merger or take-over with a bank anywhere in the state, which could then continue to serve the failed bank's community through a branch bank. However, the acquiring bank could operate only in locations already operated by the failed bank. Thus urban banks could not move into smaller counties just to open new branches to compete with local banks.

OPPONENTS SAY:

The long-standing Texas tradition, enshrined in the Constitution, of prohibiting large banks from establishing branches should not be changed. Some Texas banks have been having financial difficulties, but these problems would not be cured by permitting branch banking. Texas banks were holding their own in competition with savings and loans, Merrill Lynch, and Sears until oil prices fell, real estate markets collapsed, and farmers ran into hard times. Once the state's economy returns to normal, so will Texas banks. Most bank failures have been caused by mismanagement and foolish loans, not by the inability to branch or by the inefficiencies of the bank-holding company system. Texas banks will receive additional help soon with the advent of interstate banking, which will allow out-of-state banks to purchase Texas banks and strengthen them with injections of new capital.

The Attorney General's recent opinion questioning the constitutionality of detached bank facilities could be

easily circumvented by a statutory change explicitly defining the constitutional phrase "one place," which currently limits where a bank may engage in business. Even if it were necessary to amend the Constitution to circumvent the Attorney General's opinion, an amendment could simply authorize the current arrangement permitting drive-in/walk-up facilities at certain locations set by the Legislature, without opening the door to branch banking.

The uncertain threat of a federal suit is a flimsy reason for Texas to be stampeded into abandoning the central feature of the state's banking structure. The federal challenge of the Mississippi branch-banking restriction is still in its early stages and is sure to reach the U. S. Supreme Court before a final decision is reached. There is plenty of time to watch the outcome of the suit before making a decision about our own banking policies.

This amendment would cause the demise of the independent bank, which cares about its community and prospers only by helping the community its serves to prosper. SJR 4 would allow any statewide bank-holding company to establish a subsidiary in a county, then use its huge reserves to spread branches throughout the county. Similarly, banks located in the largest cities of each county could establish branches throughout the county. Each branch could be opened for a small fraction of the investment required of a new independent bank. An independent bank that had served a community for years, but could not afford to open competing branches, could be forced out of business by the economic clout of the bigger bank. A branch of a bigger bank competing in the same community would be able to engage in predatory pricing, taking losses on low-interest loans or high-yield certificates of deposit, until the independent bank was no longer able to sustain the losses of matching the competition and had to close its doors.

Branch banking would drain money out of smaller communities for loans to corporate borrowers in bigger cities. Savings and loan associations, which are permitted to branch statewide, take deposits from around the state to make loans in Houston and Dallas. Banks with branches would follow the same pattern,

concentrating money in the largest cities of each county.

Branch banking would concentrate the financial decision-making power of the state in the large cities. Branches are just local offices of the central bank, where the final decisions are made, and are likely to be unresponsive to local needs. Subsidiaries of statewide bank-holding companies are preferable to branch banks, since holding company subsidiaries must have independent boards of directors, giving local citizens some influence over bank decisions. With branch banking, bank customers would lose their personal relationship with a banker who understands their individual situations and is willing to consider more than cold balance sheet factors in making loan decisions. Loan decisions would have to be approved by the downtown bank, eliminating all personal elements from banking in Texas.

SJR 4 would be the death knell of independent banks in Texas. The value of investments in independent banks would drop as independent banks are forced out of business. There would be no opportunity to sell the stock in an independent bank to a potential buyer desiring to enter a local market, since it would be cheaper for a competitor to open a branch than to acquire an existing bank. New independent banks would be unable to raise start-up money, since potential investors would fear losses to competition from branch banks. Eventually all banking in Texas would be controlled by a few very large bank-holding companies with subsidiary banks and branches all over the state.

OTHER OPPONENTS SAY:

Some limitation should be placed in the Constitution on the size of counties where branching would be allowed in order to protect smaller communities from competition with big-city banks. At least, there should be some requirement that branch banks must loan some minimum percentage of their deposits in the community where they are located and must post that percentage publicly.

NOTES:

For additional background on the branch-banking issue, please see House Research Organization Interim News No. 69-9, Banking Facilities -- The Attorney General's Branch-Banking Opinion, July 7, 1986.

SB 10, a statute passed by the Legislature during the August special session, would implement SJR 4 by amending the Banking Code to permit city- and county-wide branch banking. SB 10 would permit a bank to operate three branch offices more than 5,000 feet from its principal building and two drive-in facilities within 1,000 feet of each branch. A bank could also operate an unlimited number of bank facilities within 5,000 feet of its principal building. SB 10 would allow a bank-holding company to convert its subsidiary banks into branches of one bank, which would not be counted against the three-branch limit per bank. Any independent bank (a bank not owned or controlled by a bank-holding company) that was acquired by a bank or bank-holding company could be converted into a branch and would not be counted against the three-branch limit per bank.

SB 10 would permit a bank acquiring a failed bank in a different county to establish branches where the failed bank had owned or operated facilities at least six months prior to its failure.

The branching permitted by SB 10 would not apply to non-bank banks (banks offering limited services) and savings and loan associations.

SB 10 would take effect only if SJR 4 is approved by the voters.