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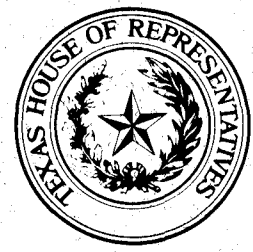
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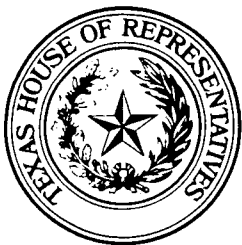
— special legislative report —

1988 CONSTITUTIONAL AMENDMENTS

July 15, 1988



Number 143



HOUSE RESEARCH ORGANIZATION

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Tom Whatley, Director

July 15, 1988

Number 143

1988 CONSTITUTIONAL AMENDMENTS

Three constitutional amendments will be submitted to Texas voters at the Nov. 8, 1988 general election. The three proposed amendments are analyzed in the order in which they will appear on the November ballot.

The official results of the Nov. 3, 1987 election on 25 proposed constitutional amendments and two referendum propositions also are included.

A handwritten signature in cursive script that reads "Anita Hill".

Anita Hill
Chairman

A handwritten signature in cursive script that reads "Ed Watson".

Ed Watson
Vice Chairman

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INTRODUCTION

This year's Nov. 8 ballot will include three proposed amendments to the Texas Constitution. The proposed constitutional amendments will appear on the ballot following the federal, state and local offices. The order of the amendments on the ballot was determined by the secretary of state in a random drawing held on June 30.

Joint Resolutions

All constitutional amendments are proposed by the Legislature in the form of joint resolutions (for example, HJR 2 refers to House Joint Resolution). A joint resolution proposing a constitutional amendment must be approved by a two-thirds vote of each house of the Legislature (100 votes in the House of Representatives; 21 votes in the Senate). The joint resolution includes the text of the proposed amendment along with other provisions such as the date on which the proposed amendment will be submitted to state voters and the wording of the amendment proposition that is to appear on the ballot. A single joint resolution may contain more than one proposed constitutional amendment. Joint resolutions cannot be vetoed by the governor.

Publication

Art. 17, sec. 1 of the Texas Constitution requires that a brief explanatory statement of the nature of any proposed constitutional amendment, along with the wording of the ballot proposition for the proposed amendment, be published twice in each newspaper in the state that prints official notices. The first publication of that notice must be made not later than 50 days, and not more than 60 days, before the date of the election.

The secretary of state's office prepares the explanatory statement, which must also be approved by the attorney general. The secretary of state's office arranges for the required newspaper publication, often by contracting with a state press association. The estimated cost of publishing each proposed amendment twice in newspapers across the state is \$45,000.

HOUSE
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Constitutional amendment analysis Amendment No. 1 (SJR 8)

SUBJECT: Dedicating federal highway money to state highway fund

BACKGROUND: Art. 8, sec. 7-a of the Texas Constitution, adopted in 1946, dedicates certain state revenues to highway-related uses. These uses include acquiring rights-of-way, constructing, maintaining and policing public roadways and supervising traffic and safety. The dedicated revenues are state motor-registration fees and three-quarters of all taxes on motor fuels and lubricants. (The other one-quarter goes to the Available School Fund.) State statutes dedicate other state revenues to highway-related uses.

The federal government reimburses the state for 90 percent of the state money spent for interstate highway projects and 75 percent of state money spent on certain other highway projects.

VACS art. 6674e established a State Highway Fund (Fund No. 006) and requires that all money dedicated to highway-related uses, either by the Constitution or by statute, must be deposited in the highway fund. During fiscal 1987 the State Highway Fund received \$2.537 billion. Over 62 percent of the money (\$1.579 billion) was state revenue dedicated by the Constitution and around 5 percent (\$121 million) was state money allocated by statute. Nearly one-third (\$837 million) came from the federal government.

On April 21, 1987 Comptroller Bob Bullock requested an attorney general's opinion on various issues concerning federal highway reimbursements. Bullock asked whether federal money that reimburses state expenditures made with revenues constitutionally dedicated to highway-related purposes in turn becomes constitutionally dedicated and can be spent only for highways. If the federal money is not dedicated by state law, then does federal law prohibit federal highway money from being spent for purposes unrelated to highways? The opinion request, however, was withdrawn on Aug. 31, 1987, before any opinion was issued.

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Rider Scott, general counsel to Gov. Bill Clements, asked the Federal Highway Administration in a letter dated June 19, 1987 whether federal money received by the state as reimbursement for highway costs can be spent for purposes unrelated to highways. In a letter dated July 1, 1987, Federal Highway Administrator Ray Barnhart (formerly a member of the Texas Highways and Public Transportation Commission) responded that federal highway revenues are paid to the state as partial reimbursement for costs previously incurred by the state. Those funds "lose their Federal identity once the payment is made to the State," said Barnhart. "There are no Federal laws relating to the use or deposit of those funds."

DIGEST:

Amendment No. 1 would provide that all federal revenues received by the state as reimbursement for expenditures of state funds dedicated to right-of-way acquisition, construction, maintenance and policing of public roadways are also constitutionally dedicated and may be used only for those purposes.

The ballot language reads: "The constitutional amendment and/or clarification providing that federal reimbursement of state highway dedicated funds are themselves dedicated for the purpose of acquiring rights-of-way and constructing, maintaining, and policing public roadways."

**SUPPORTERS
SAY:**

A formal dedication of federal highway reimbursements to highway-related uses is needed to ensure the continued stability of the State Highway Fund and to meet the state's long-term transportation needs. This "Good Roads Amendment" would make no real change; it simply would reaffirm the state practice, followed since 1917, of using federal highway money exclusively for highway-related purposes. Nevertheless, this legal clarification is needed to remove any lingering uncertainty that could tie up the highway fund in litigation.

This proposed amendment would block future attempts to raid the highway fund to obtain federal money meant to be used exclusively to build, maintain and police our highway system. The Texas Constitution now dedicates to highway spending those state revenues directly

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attributable to highway use -- vehicle registration fees and motor-fuel taxes. Logic decrees that federal money reimbursing the state when it spends that revenue also should be dedicated to highway- related purposes.

Recent legislatures, faced with a budget crunch, have hungrily eyed the State Highway Fund as a trove of untapped money. Lawmakers already have made incursions on money in the the highway fund. For example, last year the Legislature "borrowed" \$280 million from the highway fund to spend for non-highway purposes. Also, the highway department was required to transfer \$121 million to the state prison system and the mental health/mental retardation department by "buying" part of their land and leasing some of it back to those agencies for \$1 rent per year.

The highway fund does not have money to spare for purposes unrelated to highways. Although the highway fund had a large balance in 1986, this resulted from a temporary revenue surge after the motor-fuel tax rate was raised in 1984. The amount in the fund now is much reduced, which has forced the highway department to slow its rate of awarding contracts. If the Legislature earlier had tapped federal money in the highway fund when the fund was temporarily flush, the current fiscal status of the fund would be far worse. This proposed amendment would remove that temptation once and for all.

The State Department of Highways and Public Transportation plans projects years, even decades, in advance. Lead times for projects often extend well beyond a two-year state budget. Administrators cannot commit to the five-to-seven years worth of expenditures that are typical for a large project without knowing that the money to pay for it will be available. Locking in federal highway money for highway uses would provide the necessary assurance that highways funding will not be at the mercy of shifting legislative whims.

As Texas recovers from its recent economic difficulties, it needs an efficient and well-maintained highway system backed by a stable, dependable source of long-term funding. Allowing federal highway

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reimbursements to be diverted to non-highway purposes would drain funds needed for both state and federal highway projects. Highway spending not only creates new employment opportunities (each \$1 million in highway contracts generates an estimated 23.7 jobs) but also ensures the mobility of people and products essential for a thriving state economy.

This amendment is needed not to boost highway spending but to ensure adequate funding to maintain and improve the existing system. Population growth and increased vehicle usage have exceeded earlier expectations and will require additional spending for maintenance and repairs. Currently scheduled highway funding will provide for only two-thirds of projected needs. In 1986 Texas ranked 37th in per capita highway spending, and it would rank dead last if federal highway reimbursements, representing roughly one-third of the highway budget, were siphoned off for non-highway spending.

Clearly dedicating federal highway money to highway purposes would not commit the Legislature to open-ended financing of highway projects. Lawmakers could still lower the tax rate for the constitutionally dedicated taxes and oversee highway spending through the appropriations process. Nevertheless, the people of Texas support good roads and are willing to pay their fair share for them.

Using federal highway reimbursements for non-highway purposes would betray the trust of those taxpayers who finance most of the cost of our highways. Both the federal nine-cent fuel tax and the state 15-cent fuel tax are user fees, and motorists who pay 24 cents in taxes at the pump have a right to expect that all 24 cents will be spent on highways. Recent public surveys show that most Texans would oppose diversion of highway-dedicated funds to other purposes; the Texas Constitution should reflect that consensus.

Federal highway money is not a general grant but a specific reimbursement for state expenditures made under contract with the Federal Highway Administration. These federal reimbursements can be viewed as repayment of money loaned by the state by its initial payment of

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the federal share of the contract. Diversion of this federal highway reimbursement money to state general revenue would breach a legal trust and violate those contracts. Notwithstanding any federal law that might be violated, if the federal government finds a violation of a state law dedicating federal highway money, it could withhold one-third of Texas' federal highway allocation. The proposed amendment would eliminate once and for all any chance that those federal highway funds might be diverted for non-highway purposes.

If the highway dedication is threatened, then other dedicated state funds, such as the Permanent University Fund and the Permanent School Fund, might not be safe from periodic raids. The proposed amendment would prevent this dangerous precedent from being set.

It makes no difference whether state highway money reimbursed by federal funds was originally dedicated to highway-related purposes by state statute or by the Constitution. The intent of the proposed amendment is to clarify that all federal money that reimburses any state spending on highways is held in trust exclusively for highway-related purposes.

OPPONENTS
SAY:

Texas taxpayers should reject this attempt to reserve a cache of public money for the benefit of one special interest -- the powerful highway-construction lobby. During fiscal 1987 the highway fund received \$837 million in federal receipts, and it ended the fiscal year with an unspent surplus of \$643 million. Placing this money off limits for possible use in a future emergency could make the crucial difference in whether state taxes have to be raised.

Texas taxpayers should send a message to the lobby that highways, although important, do not deserve to be exalted above all other state spending priorities. Nearly two-thirds of the money that flows into the highway fund each year (around \$1.6 billion during fiscal 1987) is already protected by the Constitution. Now the highway lobby wants to guarantee that 95 percent of the revenue flowing into the highway fund (around \$2.4 billion in fiscal 1987) will remain

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forever sacrosanct, devoted to spending for highways whether we need them or not.

The highway fund faces no foreseeable threat that its federal money will be drained off for other uses. Even when a severe budget deficit hit the state in 1986-87, the Legislature acted responsibly and did not tap federal money in the highway fund. Such a raid is even less likely as the state's economy recovers. However, if circumstances should require adjusting state spending priorities, this proposed amendment would greatly restrict the state's ability to meet a crisis.

This constitutional amendment is merely part of a political deal that was cut with the highway-construction lobby during the 1987 special session to buy its acquiescence to SB 68, a bill allowing the Foundation School Program to borrow \$280 million from the State Highway Fund for two years to finance needed education programs. The money borrowed was from a surplus in the highway fund that the highway department had not spent and does not need. According to current projections by the comptroller, the recovery in the state economy should increase state revenues by more than enough to repay this loan. Just because the Legislature was willing to make a short-sighted political deal that would cut off a potential source of revenue in an future emergency does not mean that the voters have to go along with it.

This amendment would set a dangerous precedent for other federally funded programs. Other interest groups might decide to adopt the technique of amending the Constitution to dedicate federal money exclusively for their pet programs. Every new dedication further restricts the Legislature's flexibility to control state finances.

Constitutionally dedicating federal money in the highway fund would prevent the General Revenue Fund from borrowing federal highway money that it might need to cover cash shortfalls. When the General Revenue Fund, the state's principal spending source, temporarily runs out of money, it often borrows cash from other state funds, then repays those funds, with interest, before the end of the fiscal year. However,

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money dedicated by the Constitution cannot be borrowed for cash-flow adjustments. Cutting off federal highway money as a cash source in the State Treasury would increase the likelihood that the state would have to borrow money from Wall Street financiers in order to keep state checks from bouncing.

Money in the State Treasury earns interest that goes to the General Revenue Fund unless the money is constitutionally dedicated for a particular purpose. Constitutionally dedicating federal money in the highway fund would prevent interest on that money from going to general revenue, resulting in a loss that would have to be replaced with tax revenue.

Nothing in federal law requires that federal highway reimbursements be dedicated or recycled for highway use, as long as the state spends what it says it will on federal highway projects. In states that do not have a highway fund or even a dedicated state tax, federal reimbursements routinely go into general revenue without violating any trust. The Federal Highway Administration has not objected to these arrangements and has indicated it would not do so if Texas made similar arrangements.

The ballot language for this proposed amendment is misleading. It refers to the amendment as a "clarification," implying that it is somehow innocuous and would make no real change. In fact, there would be a significant change. For purposes of interfund borrowing to meet general-revenue cash shortfalls, the comptroller has treated federal money in the highway fund as not being constitutionally dedicated. For purposes of transferring to the General Revenue Fund interest earned on federal highway money while it is on deposit, the state treasurer has treated the federal money as not being constitutionally dedicated. The Federal Highway Administration does not require that the federal highway reimbursement be spent exclusively for highway purposes. Referring to this major change in the status of federal highway money a mere "clarification" is incorrect and an insult to the intelligence of Texas voters.

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OTHER
OPPONENTS
SAY:

This proposed constitutional amendment would not clarify beyond question that all of the federal highway money reimbursing state funds dedicated to highway-related purposes is also dedicated to those purposes. The highway fund includes both state revenue dedicated to highway spending by the Constitution and state revenue dedicated by statute. The amendment, however, seems to dedicate to highway-related purposes only the federal money that reimburses constitutionally dedicated state revenue, not the federal money that reimburses state revenue dedicated by statute. Future legislatures could use this large loophole to tap part of the federal reimbursement money for non-highway uses.

Even if the proposed amendment were approved, the Legislature could still get at federal money that reimbursed state highway money dedicated by statute. It could greatly reduce the proportion of constitutionally dedicated highway revenues in the state highway fund and greatly increase the proportion of state highway revenues dedicated by statute. For example, it could lower the gasoline-tax rate and replace that constitutionally dedicated revenue with general revenue dedicated to highway spending only by statute. (Under the highway-finance system in effect prior to 1984, the highway fund included large amounts of general revenue dedicated to highway spending only by statute, not by the Constitution.) By expanding the proportion of state highway money dedicated only by statute, the Legislature would expose a greater proportion of the federal reimbursement money to possible diversion for non-highway purposes.

NOTES:

While considering SJR 8 during the second special session in 1987, the House changed the resolution's wording. The amendment added the two underlined words: "All revenues received from the federal government as reimbursement for state expenditures of funds that are themselves dedicated for acquiring rights-of-way and constructing, maintaining, and policing public roadways are also constitutionally dedicated and shall be used only for those purposes." The House passed SJR 8 by 131 to 13, and the Senate concurred with the House amendment by 27 to 0.

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The method of financing state highways has changed in recent years. From 1978 to 1984 the state guaranteed the highway department a certain level of funding each fiscal year, and that funding level was adjusted by a special Highway Cost Index to take inflation into account. If state revenue constitutionally dedicated to highway spending by Art. 8, sec. 7-a did not yield the guaranteed funding level, the state transferred general revenue to the State Highway Fund to make up the difference.

In 1984 the general-revenue transfer was repealed. The tax rates for the constitutionally dedicated motor fuel taxes and registration fees were increased. For example, the state gasoline-tax rate was increased from 5 cents to 10 cents per gallon. The highway fund received a new statutory dedication of one-tenth of the revenue raised from the sales tax on motor vehicles. Also, the highway fund received a new annual transfer from general revenue equal to one-eighth of the amount of revenue raised from motor fuel taxes. The result was a substantial increase in revenue for the highway fund.

In 1986 the highway-finance formula was changed again. The tax rates for constitutionally dedicated motor-fuel taxes were increased. For example, the state gasoline-tax rate increased from 10 cents to 15 cents per gallon. Since by raising the tax rate the highway fund would receive more constitutionally dedicated revenue, the statutory dedication of additional revenue to the highway fund was suspended. The motor-fuel tax rate increase and suspension of the transfer of additional general revenue were to expire on Sept. 1, 1987. In addition, the Legislature transferred \$24.6 million from the highway fund to general revenue and \$18 million from the highway fund to a new tuition-shortfall fund. The Legislature also provided that most of the Department of Public Safety budget would be financed from the highway fund. Previously no more than \$60 million per fiscal year could be spent from the highway fund for DPS operations.

In 1987 the Legislature made permanent the motor-fuels tax increase and the suspension of general revenue

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transfers to the highway fund that had been due to expire on Sept. 1, 1987.

During the 1987 second special session the Legislature enacted SB 68, which borrowed from the highway fund \$280 million in state revenue that previously had been dedicated to the highway fund by statute and transferred that money to the Foundation School Program for the fiscal 1988-89 biennium. Starting on Sept. 1, 1989, the General Revenue Fund will reimburse the State Highway Fund for the borrowed \$280 million, plus interest, in monthly installments. SB 68 took effect only when the Legislature adopted SJR 8, the proposed constitutional amendment dedicating federal highway money to highway-related uses, and HB 62, the bill making permanent the increase in the motor-fuels tax rate.

During the 1987 second special session the Legislature also enacted SB 52, requiring the highway department to pay \$121 million for land owned by the Texas Department of Corrections and the Texas Department of Mental Health and Mental Retardation. The highway department is required to lease all or part of the property back to the agencies for \$1 per year. The highway department may sell any land it does not lease, and the proceeds will be deposited in the highway fund.

HOUSE
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Constitutional amendment analysis Amendment No. 2 (HJR 2)

SUBJECT: Economic Stabilization ("rainy day") Fund

DIGEST: Amendment No. 2 would create an Economic Stabilization Fund in the State Treasury. State revenue would be set aside in the fund and saved for appropriation when revenue shortfalls occur. If approved by the voters, the provisions of the amendment would take effect on Sept. 1, 1989.

Transfers to the fund

Transfers into the stabilization fund would include:

-- one-half of any surplus in the state's general-revenue fund at the end of each two-year state budget cycle. This transfer would be made no later than the 90th day of the next biennium.

-- 75 percent of any oil or natural gas production tax revenue that exceeds oil or gas production-tax revenue collected in fiscal year 1987. (The oil tax raised \$531.9 million in fiscal 1987, and the natural gas tax raised \$644.8 million.) The remaining 25 percent would be deposited in the General Revenue Fund. The transfer to the stabilization fund would be made no later than the 90th day of each fiscal year.

-- any additional money that the Legislature chose to transfer.

In estimating the maximum amount of revenue available for appropriation by the Legislature, the comptroller would deduct the projected amount of mandatory transfers to the stabilization fund -- one-half of the surplus and 75 percent of oil and gas tax revenue exceeding revenue raised in fiscal 1987.

Cap on the fund

During each biennium, the amount in the stabilization fund could not exceed 10 percent of the amount of general revenue raised by the state during the prior biennium, excluding investment and interest income and

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money borrowed from special funds. Each of the transfers into the stabilization fund would be reduced proportionately to avoid exceeding the cap. Any interest accrued by the stabilization fund exceeding the 10-percent cap would be credited to the General Revenue Fund.

Appropriations from the fund

The Legislature could appropriate money from the Economic Stabilization Fund at any time and for any purpose by a two-thirds (67 percent) vote of the members present in each house.

The Legislature also could appropriate money from the Economic Stabilization Fund by a three-fifths (60 percent) vote of the members present in each house under the following conditions:

Current biennium. The Legislature could appropriate money from the stabilization fund for the current biennium only by a three-fifths (60 percent) vote of the members present in each house and only if the comptroller had certified that the current fiscal biennium would end with a budget deficit -- that appropriations from general revenue would exceed the amount of general revenue projected to be raised and any cash balances.

If the comptroller certified that a deficit would arise, then the Legislature could appropriate from the stabilization fund an amount no larger than the deficit. The deficit would be defined as the difference between already-appropriated revenue and a revenue estimate made when the comptroller is asked to certify a bill making an appropriation from the stabilization fund.

During a regular legislative session, the Legislature could appropriate money from the fund only for a purpose for which a general-revenue appropriation had been made by the preceding Legislature. (Each "legislature" serves for two years. For example, the 70th Legislature will serve from Jan. 13, 1987 to Jan. 10, 1989.)

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During a special legislative session, the Legislature could appropriate money from the fund only for a purpose for which a general-revenue appropriation had been made in a previous session of the same legislature.

Upcoming biennium. The Legislature could appropriate money from the fund for a succeeding biennium only by a three-fifths (60 percent) vote of the members present in each house if the comptroller estimated that anticipated revenues for an upcoming biennium would be lower than the revenues for the current biennium.

At the end of each fiscal year, if the actual revenue shortfall was less than the estimated shortfall, the comptroller would have to transfer money from general revenue back to the Economic Stabilization Fund to make up the difference.

If the difference between estimated revenue and actual revenue was affected by a change in the tax rate or tax base, the comptroller would adjust the calculation of the revenue difference by determining what it would be if the tax rate or tax base had remained unchanged.

Any money appropriated from the Economic Stabilization Fund could be withheld or transferred under budget execution authority in the same manner as any other appropriated money. (Under current law budget execution authority allows the governor and the Legislative Budget Board to shift appropriated funds when the Legislature is not in session.)

Use of the fund for cash management

Money in the stabilization fund could be transferred temporarily to make up any cash shortfall in the General Revenue Fund. The money transferred temporarily to general revenue would not be available for appropriation. Any money transferred would have to be returned to the stabilization fund as soon as practicable, but no later than Aug. 31 of odd-numbered years (the end of a fiscal biennium). Interest on money in the stabilization fund would be deposited in the fund as if the money had not been temporarily transferred.

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The ballot language will read: "The constitutional amendment establishing an economic stabilization fund in the state treasury to be used to offset unforeseen shortfalls in revenue."

SUPPORTERS
SAY:

Texas needs a "rainy day fund" to even out the wide fluctuations in state revenue that have plagued the state over the past few years. The state would save money when times are relatively good to use when times are relatively bad. If energy prices again reach levels that boost state revenue from oil and natural gas production taxes over the levels reached in fiscal 1987 (a year when prices were relatively low) most of that increase would be saved for later use. The fund also would receive half of any general-revenue surplus remaining at the end of a biennium. Should the state ever again face another fiscal crisis like the one caused by the collapse of energy prices in 1986, it would have enough set aside to cover a budget deficit and maintain essential state services at then-existing levels.

If the Economic Stabilization Fund had existed in 1986 and 1987, the state might have been spared the hard choice between reducing essential state services and raising taxes during difficult economic times. Money could have been appropriated from the fund to reduce or eliminate the budget deficit that occurred when state revenues fell below earlier estimates and might have prevented the record tax increase. A "rainy day" fund also could have been used to alleviate the cash-flow problems that have forced the state to borrow money to meet its payment schedules since November 1986 -- cash from the fund could have been temporarily transferred to the General Revenue Fund to cover state checks.

The Economic Stabilization Fund would bring greater certainty to state fiscal planning. The state would become less dependent on the oil and gas industry, since any budget shortfall produced by another energy-price decline would be cushioned by the money that had been put aside. On the other hand, any revenue windfall from increased oil and gas revenues would be absorbed by the fund for use when needed most. Changes in energy prices would have a less dramatic

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impact on state revenues available for spending, allowing the comptroller to issue more precise revenue estimates.

The Economic Stabilization Fund would not inhibit state spending for vitally needed services. The fund would only be filled in years when state revenues had substantially increased, mostly due to higher energy prices. If the fund takes effect on Sept. 1, 1989, it would receive very little money because revenue growth, while improved, remains relatively low. The fund would receive one-half of the general-revenue surplus (currently projected to be \$52 million) and 75 percent of any oil and natural gas production tax revenues over the fiscal 1987 levels (oil tax revenue for fiscal 1989 is projected to almost equal fiscal 1987 levels, and natural gas taxes are projected to be only \$6.7 million over fiscal 1987 levels). Therefore, the fund would start with only about \$31 million, hardly a drag on a \$38.5 billion budget.

The Economic Stabilization Fund would make the state more attractive to the business community and promote needed economic development and diversification. Corporations would be more likely to establish operations here if they did not fear that wild swings in the state budget would suddenly force new taxes or cuts in vital state services.

Thirty-one other states, including some of Texas' biggest competitors for industry, have some type of "rainy day" fund. Michigan, which is as dependent on the auto industry as Texas is on the oil industry, was able to weather a severe slump in 1980 by tapping \$280 million from its stabilization fund to support state programs. Establishing such a fund would also improve the state's credit rating, since Wall Street bond houses consider state stabilization funds to be an indicator of conservative fiscal management.

By establishing a mandatory savings account for the state, this proposal would remove the temptation for the Legislature to spend every available penny of revenue when times are relatively good. State government went on a spending binge during the energy boom of the 1970s; by slowing the increase in

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available state revenue from any future energy boom, the growth of state government could be held in check.

Money from the Economic Stabilization Fund could be tapped only in times of real need and used for purposes for which a clear political consensus existed. Money from the fund could be spent only to avoid a budget deficit and a sharp reduction in state services and only with the approval of at least three-fifths of the members present in each house of the Legislature. Spending from the fund under any other circumstances would require strong, bipartisan support -- at least a two-thirds vote of each house.

While the stabilization fund would help control the growth of state revenue available for state spending, it would not unduly inhibit spending for essential needs. The fund could not grow in an unchecked fashion, locking up billions of dollars. The fund would be capped at 10 percent of general revenue raised during the prior fiscal biennium (about \$2.58 billion during fiscal 1990-91 based on the \$25.75 billion in general revenue projected to be raised in fiscal 1988-89). Once the fund reached the cap, the state actually would gain millions of dollars in new general revenue from interest generated from the fund. Also, the state could always use the "escape hatch" provision allowing the Legislature to approve spending from the fund for priority programs by a two-thirds vote of each house.

OPPONENTS
SAY:

The state should not lock away revenue needed for vital state programs that have been starved for funds during the recent budget squeeze. Establishing a "rainy day" fund now would be like opening an IRA at age 75 -- saving for the future when the money is desperately needed now.

Rather than freeing the state budget from over-dependence on the energy industry, this amendment would sustain that dependence. By placing off limits most of any additional revenue resulting from higher energy prices, the fund would eliminate the opportunity to invest that additional revenue in education, transportation and other state services needed to

diversify and strengthen the state economy and attract new business.

Skimming off one-half of any budget surplus and most of any increase in oil and gas production tax revenue would mean less money for long-postponed state spending priorities, such as public and higher education. If the state has less money for essential spending needs, then taxes might have to be raised to make up the difference. Encouraging steeper tax increases just to allow some of the revenue to be salted away is not the kind of the fiscal responsibility that is appreciated by the fiscal evaluators on Wall Street or by Texas voters.

The many dedicated funds created by the Texas Constitution already restrict budget flexibility too much and make the state budget process unwieldy. The state does not need another dedicated fund that could eventually grow to over \$2.5 billion. Since the "rainy day" fund would be enshrined in the Constitution, it would be difficult to modify it to meet changing budgetary conditions. For example, in 1985 Ohio had to suspend its "rainy day" fund restrictions so that it could cut its income tax and still adequately finance state programs. Restricting so large a portion of the state budget would make planning that much more complicated.

OTHER
OPPONENTS
SAY:

If Texas once again finds itself with a large surplus in the General Revenue Fund, it should distribute that surplus back to the taxpayers, not squirrel it away for some uncertain future contingency. Many states that increased taxes in 1982 and 1983 to avoid budget deficits were able to roll back tax rates when economic conditions improved. A "rainy day" fund would limit the possibility of a similar tax cut in Texas. The state would hoard, rather than share, the benefits of an economic recovery.

This needlessly complex provision is full of unanticipated pitfalls. The complicated restrictions on using the money stashed away in the stabilization fund would make it more like a mandatory savings account than a stabilizing influence. If an "economic stabilization" fund is desirable, then there should be

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less cumbersome ways to get at the money when a "rainy day" arrives. An emergency declaration by the governor or a separate, recorded vote by the Legislature to authorize spending money from the fund would be sufficient to call public attention to the fact that the fund was being tapped.

This proposed constitutional amendment is a classic example of the verbose, overly detailed provisions that have cluttered the Texas Constitution, making it more of a statutory code than the outline of government functions it was meant to be.

NOTES:

HJR 2 was adopted by the Legislature during its 1987 regular session by 141 to 1 in the House and 30 to 0 in the Senate. During the second special session the Legislature changed the election date for submitting the proposed constitutional amendment to the voters from Nov. 3, 1987 to Nov. 8, 1988

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis Amendment No. 3 (HJR 5)

SUBJECT: Expanding PUF and PSF investment options;
 creating Texas Growth Fund

BACKGROUND: The state of Texas has two permanent education
 funds and two major public-employee pension funds that
 invest in stocks, bonds and other financial
 instruments.

The Permanent University Fund (PUF) is administered by the University of Texas System board of regents, which invests the proceeds from more than two million acres of mineral-rich land in West Texas. As of Aug. 31, 1987 the book value of PUF investments was \$2.9 billion, with 47 percent invested in bonds, 30 percent in stocks and 23 percent in short-term securities and cash.

Income from the PUF investments, totaling about \$215 million in fiscal 1987, becomes part of the Available University Fund (AUF). The University of Texas System, the Texas A&M University System and Prairie View A&M University share the AUF.

The Permanent School Fund (PSF) is a perpetual trust fund that receives income from public lands constitutionally set aside to support public schools. The land produces income primarily through grazing and mineral leases and royalties from oil and gas production.

The State Board of Education is responsible for investing the proceeds of the PSF. As of Aug. 31, 1987 the book value of PSF investment assets was \$6.1 billion, with 62.2 percent invested in bonds, 24.8 in stocks and 13 percent in short-term securities and cash. The interest on these investments, combined with revenue from certain taxes, is deposited in the Available School Fund, which is distributed to the state's school districts. In fiscal 1987 PSF investments generated \$542.8 million.

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The Employees Retirement System (ERS) assets had a book value totaling \$4.2 billion on Aug. 31, 1987, with 78.5 percent invested in bonds, 18.5 percent in stocks and 3 percent in cash equivalents.

The Teacher Retirement System (TRS) assets on Aug. 31, 1987 totaled \$15.3 billion, with 57 percent invested in bonds, 28 percent in stocks, 10 percent in direct real-estate loans and 5 percent in cash equivalents.

The trustees of the funds are limited in their investment decisions by various constitutional and statutory restrictions and by the law of trusts. Trustees of all the funds are required to evaluate investments using the "prudent-person" standard. This requires that trustees exercise "the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of the funds, considering the probable income therefrom as well as the probable safety of the fund capital."

In addition, the Texas Constitution, in Art. 7, secs. 11 and 11a, limits PUF investments to U.S. government securities, bonds issued by the state, school districts and municipalities, corporate bonds, and preferred and common stocks of U.S. companies. The PUF cannot invest more than 1 percent of its assets in any one corporation, nor may it own more than 5 percent of the stock of any corporation. The fund may acquire only stocks that have paid dividends for at least the past five consecutive years.

The PSF investments are limited by Art. 7, sec. 4 of the Constitution, which authorizes the board of education to invest in bonds of the United States, the state of Texas or counties and in "other such securities" under restrictions set by the Legislature. Chapter 15 of the Education Code lists the various types of investments allowed and the standards for the investments. For example, no more than 1 percent of PSF assets may be invested in the stock of any one corporation, nor may it own more than 5 percent of the stock of any corporation. The fund may acquire only

stocks that have paid dividends for at least the past five consecutive years.

The Constitution allows the Legislature to restrict the investments of the retirement systems. The Legislature has limited ERS investments to government and corporate bonds, certain corporate stocks and obligations of the African Development Bank. The Legislature has not placed any statutory limits on TRS investments.

DIGEST:

Amendment No. 3 would allow the trustees of the Permanent University Fund (PUF) and the Permanent School Fund (PSF) to make any type of investment, subject solely to the prudent-person standard. The proposed amendment also would establish the Texas Growth Fund through which the state permanent education funds and public-employee retirement funds could make investments directly related to employment opportunity and economic growth in Texas.

Education fund investment options

The trustees of the PUF and the PSF could invest fund assets subject solely to the prudent-person standard. The funds specifically would be allowed to invest in the Texas Growth Fund.

Texas Growth Fund

The Texas Growth Fund would be a trust fund subject to state laws governing private sector trusts. The trustees of the Permanent University Fund, the Permanent School Fund, the Teacher Retirement System and the Employees Retirement System each could invest up to 1 percent of the book value of those funds in the Texas Growth Fund.

All investments by the Texas Growth Fund would be governed by the prudent-person standard. All fund investments would have to be directly related to employment opportunity and economic growth in Texas. At least half of the growth fund would have to be invested in stocks and bonds involving the construction, expansion or modernization of business facilities in Texas. The fund could only invest in

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businesses that submitted an affidavit disclosing their direct financial investment in or with South Africa or Namibia.

Up to 10 percent of the Texas Growth Fund could be invested in "venture capital" (stocks and bonds with potential for "substantial investment returns"), which would include investments in new or small businesses, businesses with the potential for rapid growth, applied research leading to the formation of new businesses and new processes or products. Up to 25 percent of the venture capital investments (2.5 percent of the total fund) could be unilateral, i.e. the fund could be the sole investor. All other venture-capital investments would have to be matched by investors other than the fund. In making venture capital investments, the board would give preference to technological advances expected to result in the greatest increase in employment opportunity and economic growth in Texas.

Income from the Texas Growth Fund would be distributed quarterly to each participant in proportion to its investment. Any increase in the value of the capital would remain part of the corpus of the growth fund and would be distributed according to contracts between the growth fund and its investors.

The Texas Growth Fund would be governed by a nine-member board. The board of regents of the University of Texas System, the board of regents of the Texas A&M University System, the board of trustees for the Teacher Retirement System, the board of trustees for the Employees Retirement System and the State Board of Education each would elect one of their members to the Texas Growth Fund board. The remaining four members would be public members with investment expertise. They would be appointed by the governor for six-year terms. The terms of two of the public members initially appointed to the board would expire on Feb. 1, 1991, and the terms of the other two public members would expire on Feb. 1, 1993.

The Texas Growth Fund board would manage the investment of the fund. It could hire an executive director and staff or could contract with a private investment management firm, an investing fund or one of the state

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education or retirement funds to manage Texas Growth Fund investments. The board could purchase liability insurance to cover the trustees, employees and agents of the board.

The Texas Growth Fund could not make new investments after 1998. In 1997 the Legislature could, by a two-thirds vote of both houses, authorize another, separate growth fund for a ten-year period.

The ballot language will read: "The constitutional amendment to provide for the investment of the permanent university fund, the permanent school fund, and public employee retirement systems in the Texas growth fund created by the amendment, which will directly create, retain, and expand job opportunity and economic growth in Texas."

SUPPORTERS
SAY:

This proposed constitutional amendment has two related goals -- to provide greater flexibility for investment of the state's permanent education funds and to target investment of part of those funds and the public-employee retirement funds toward promotion of economic growth in the state. Allowing the Permanent University Fund and the Permanent School Fund to be invested subject only to the prudent-person standard would give the fund trustees the flexibility they need to increase the return on investment of the funds without exposing them to undue risks. By establishing a Texas Growth Fund, the proposed amendment would provide a vehicle for the state education funds, along with the public-employee retirement funds, to direct investment of a limited portion of their considerable assets to promote the growth and diversification of the Texas economy.

Education fund investment options

Allowing the PUF and PSF trustees more investment options would increase the potential for higher yields from the funds. More income for the permanent education funds would allow the state to reduce its reliance upon tax revenue to finance public education and higher education.

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Broadening the investment discretion of the fund trustees would not dilute their fiduciary responsibility to safeguard fund assets. In fact, greater diversification of fund investments would reduce the risk by spreading it over a wider range of investment alternatives.

Removing some restrictions on investments would not give the trustees unlimited investment authority. They would remain subject to the prudent-person standard. That conservative standard ensures wise investments in the long-term interest of the beneficiaries of the funds. The prudent-person standard is widely accepted as a safe yet profitable investment standard for public funds. For example, more than 30 states now invest their public-employee retirement funds using only the prudent-person standard.

The education trust funds must be allowed to make investments that will cover tomorrow's education costs as well as today's. The specter of renewed inflation increases the urgency of allowing the funds to have broader investment authority to offset erosion in their value.

Limiting by statute or in the Constitution the types of investments that can be made by the state education funds is an outmoded and potentially risky investment philosophy. Such restrictions decrease the security of the funds by inhibiting the trustees' ability to react to changes in an increasingly volatile financial environment. The trustees should be allowed to take advantage of new investment opportunities.

The current investment restrictions on the funds were established in the mid 1950s. While they may have been appropriate 30 years ago, they now are outdated and have forced the funds to lose lucrative investment opportunities. For example, the current investment restrictions make it impossible for the funds to invest in fast-growth companies that do not pay dividends immediately but instead plow their profits back into the business. The trust funds had no opportunity to get in on the ground floor of companies like Digital Equipment, Apple Computer or even new Texas firms such as Compaq Computer and Dell Computer. Out of more

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than 6,000 registered stocks, the education trust funds can invest in only 1,200.

In 1975 the Constitution was amended to remove specific restrictions on the investments of the public-employee retirement funds. Since then, the Teacher Retirement System, which has no statutory restrictions, has been able to make a wide range of investments, without any difficulties. The investment goals of endowment funds like the PUF and PSF are similar to those for the retirement funds because both are investing for the long term.

The proposed amendment would not give the fund trustees any greater discretion to make "social" investments -- investments with a particular social or political purpose. The trustees have a fiduciary responsibility to seek maximum return for the sole and exclusive benefit of the fund beneficiaries -- the Texas school system in the case of the PSF and the University of Texas and Texas A&M University in the case of the PUF. Social investing to promote even laudable public-policy goals, such as pressuring the Republic of South Africa to eliminate its apartheid racial-segregation policy, would be incompatible with the prudent-person standard. Fund trustees must not be diverted from ensuring that the young people of Texas receive a quality education.

The amendment would not jeopardize the proposal recently made by Comptroller Bob Bullock to require the PSF to purchase school district construction bonds at below-market interest rates. The primary purpose of the PSF is to benefit the school children of Texas. Investing a small percentage of the fund in these bonds would be consistent with that purpose, by financing the building or upgrading of schools.

The Texas Growth Fund

The Texas Growth Fund would give the state education funds and public-employee retirement funds a way to invest a small portion of their considerable assets to promote the growth and diversification of the Texas economy. These funds control a combined total of \$28.5 billion in assets. The growth fund would provide a way

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to direct as much as \$285 million toward job creation and economic growth in this state.

The investment goals of the Texas Growth Fund would be completely compatible with those of the education and retirement funds, since all growth fund investments also would be governed by the prudent-person standard. Investing in Texas means investing in Texans; increased employment and economic prosperity would benefit everyone in the state, including students, teachers and public employees.

State involvement in promoting economic development is nothing new. For years the Texas Department of Commerce and its predecessors have helped new small businesses get started. Innovative programs at PUF-supported universities, such as the Institute for Ventures in New Technology (INVENT) at Texas A&M University and the Center for Technology Development and Transfer and the new Center for Technology Venturing at the University of Texas at Austin have helped promote commercialization of new technological advances. Only last year Texas voters approved an amendment to the Constitution permitting the Legislature to make loans and grants of public money for economic development programs. A new Texas Growth Fund to channel state trust-fund investments to promote economic development would be in line with prior state policies.

One of the most innovative aspects of the Texas Growth Fund would be the set-aside of up to 10 percent of the fund (at most around \$28.5 million) for venture-capital investments. Venture capital is "seed money" invested in new, rapidly growing businesses or in innovative research that leads to the creation of new businesses. Small businesses create most of the new jobs in the economy and are the leading source of technological innovation. New businesses need venture capital until they establish a track record of growth and profits and can attract investments from more traditional sources. Encouraging new ventures and nurturing their growth would help the state ensure a vibrant economy into the next century.

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The Texas financial industry was hard hit by the drop in the oil and real estate markets and has become especially cautious in investing capital in new ventures without a track record. Banks, traditionally the main source of venture capital loans, now are making few such loans. The growth fund could fill part of that capital gap.

At least three-quarters of the state venture-capital money would have to be matched by private funds, thereby multiplying its impact. Investment in technological advances would be a priority, since businesses specializing in this area are most likely to increase employment and economic growth. A small portion of the growth fund (2.5 percent, or at most \$7.1 million) could be used for unilateral investments. Since the fund would be the sole backer of these ventures, it would profit greatly if one turned out to be a commercial success.

At least half of the growth fund would be devoted directly to the creation, expansion or modernization of business facilities in Texas. This would encourage corporations to move here and make companies now operating in Texas more competitive. The rest of the growth fund would be invested in the type of stocks, bonds and government securities in which the permanent education funds and the retirement funds already invest, with an emphasis on investments that create, retain or expand jobs and growth in Texas. Investments would be made in a firm by purchasing stock or by making low-interest loans that could be converted into stock or other equity interests. If the firm prospered, the state funds would benefit as the stock appreciated in value.

While the state trust funds could make most of these investments now, the Texas Growth Fund would allow them to pool their expertise and target investments that would have the greatest impact on state economic development. Under the prudent-person standard, the growth fund could not be used for speculation in shaky or fly-by-night operations. Venture-capital investments, while relatively more risky than more established types of investments, would be spread among many firms, minimizing any danger of loss. Federal

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ERISA requirements for investment of pension funds say an investment "should not be deemed to be imprudent merely because the investment, standing alone, would have, for example, a relatively high degree of risk." Any greater risk would be minimized because the fund would have interests in a variety of investments.

The Texas Growth Fund would demonstrate to the national financial community that Texas can compete with other states in fostering new firms and new jobs. Many other states have established similar funds to encourage internal economic growth. About 30 states -- including Massachusetts, Michigan, Connecticut, Illinois, New Mexico and New York -- now permit public pension funds to invest in venture capital projects. The state of Washington has invested more than \$250 million from its state retirement systems in new or developing firms, accounting for 3.6 percent of the total assets of the retirement systems, more than three times the percentage that would be allowed for the Texas Growth Fund.

While some have suggested prohibiting Texas Growth Fund investments in companies doing business in South Africa, it would be unwise to use the Texas Constitution to attempt to influence U.S. foreign policy. The provision requiring firms in which the growth fund invests to disclose whether they do business in or with South Africa or Namibia would permit the fund board to decide, everything else being equal, if the fund should invest in those firms. Besides, the 1986 federal law restricting U.S. business dealings with South Africa has preempted state and local investment restrictions. The U.S. should speak to the world with one voice; individual states and localities have no business interfering in foreign policy.

OPPONENTS
SAY:

The ballot description of this proposed amendment is misleading and incomplete. It fails to mention the provision that potentially has the greatest significance -- elimination of restrictions on investing the \$2.9 billion Permanent University Fund and the \$6.1 billion Permanent School Fund. The ballot language also implies that the Texas Growth Fund would

have a large impact on the Texas economy by creating job opportunities and economic growth. Given the size of the Texas economy, even if the growth fund were invested to the maximum, it would merely be a drop in the bucket.

Education fund investment options

This proposed amendment would weaken the state's education trust funds by exposing them to greater risk. The school children of Texas depend upon the Permanent School Fund to finance a significant portion of the public education system. The University of Texas and Texas A&M University -- the "flagship" institutions of our state higher education system -- rely upon the Permanent University Fund. To instill confidence in the soundness of these trust funds, they should be governed by the most conservative investment policies.

The current restrictions keep possible losses to a minimum while allowing a safe, acceptable rate of return. Permitting unrestricted investments with no more guidance than a broad "prudent-person" standard would tempt the trustees to risk the funds on investments that might boost income in the short term but expose the funds to long-term loss.

The prudent-person standard, without additional restrictions, only requires trustees to exercise the judgment and care "under the circumstances then prevailing" that persons of ordinary prudence, discretion and intelligence exercise in managing their own affairs. Yet investments that were once considered speculative, such as the options and futures markets, now have entered the range of acceptability. For example, "prudent" institutional investors recently purchased index options and futures as a form of "insurance" for their stock portfolios. However, this "insurance" strategy backfired on Oct. 19, 1987, when institutional investors lost heavily as the New York Stock Exchange dropped more than 500 points in one day.

Even with the current investment limitations, the value of the PUF reportedly dropped by \$30 million during the period following the October 1987 stock-market crash. The recovery in value of blue-chip stocks since the

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crash allowed the fund to avoid permanent loss. If the PUF had been invested in less secure stocks, the impact of the crash on the fund could have been far worse.

An investment in an office building in Austin or Houston might have passed the prudent-person test in 1982, but a fund stuck with that investment now would have lost money. New ventures in oil exploration technology that seemed prudent investments in the late 1970s when oil prices were skyrocketing no longer seem so safe. The point is not that private investors should avoid ventures with an element of risk, only that the state education trust funds should not be exposed to such risks.

Eliminating the investment limits on the permanent education funds would open them to all sorts of new speculative investments. Commodities, gold, silver, foreign securities, foreign currencies, "junk bonds," real estate and similar investments may seem "prudent" at times but are subject to sharp price fluctuations.

Broadening the investment discretion of the PUF and PSF also could expose the trustees to greater political pressure in making fund investments. The current tight limitations shelter trustees from the investment demands of special-interest groups. Removing those restrictions could open the trust funds to demands for "social investing," allowing the trustees to make investments based on their political preferences on such issues as South Africa or nuclear power.

The current restriction that allows PUF and PSF investments only in companies that have paid dividends for five years assures a steady source of income from stocks as well as bonds. Theoretically, it may be prudent to invest in a stock that pays no dividends now but ultimately will increase in value. However, dividends provide the regular annual income needed to finance the state education system.

In the case of the state retirement funds, the Legislature has retained the authority to limit investments. But this proposal would grant the trustees of the two permanent education funds

unfettered investment authority, subject to no limitations by the Legislature. The Legislature should be able to impose additional investment guidelines on the funds should the prudent-person standard allow too much discretion. As soon as one of the funds is hit by a large loss, voters may be asked to amend the Constitution yet again to allow the Legislature to undo the damage.

This amendment could threaten an important part of Comptroller Bob Bullock's school finance plan. Under a prudent-person standard, the PSF might not be able to invest in local school-district bonds that yield lower-than-market interest rates, as proposed in the comptroller's plan. Since such an investment would earn less income for the fund, it might not be considered "prudent."

Texas Growth Fund

The Texas Growth Fund would permit the state permanent education and public-employee retirement funds to invest in risky new ventures with a high failure rate. If these ventures cannot attract private capital in the financial marketplace, then the state has no business gambling its trust funds on them. The recent wild gyrations of the securities markets argue against taking additional risks with the state's permanent endowments.

The purpose of the state trust funds is to ensure a reliable source of income for public education and the payment of retirement benefits to public employees, not to promote short-term political and economic goals. Of course, job creation and economic growth are important to the state, but the fund trustees should not be diverted from making safe investments that will yield the highest return, regardless of whether those investments happen to promote the state economy. If promotion of Texas enterprises is an overriding goal for the funds, then considerations such as forbidding investments in companies doing business with South Africa also may be justified. Furthermore, the growth fund would open up the possibility of political pressures in investment, as local business promoters

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pull political strings to obtain money for their own private ventures.

Rather than divert public trust funds into risky investments, a better way for the state to promote economic development would be to maintain and enhance the public education system and public services. The economic growth of such states as Massachusetts and California has been based on a skilled, educated work force and on high-technology spin-offs from well-financed institutions of higher education. Individual venture-capital investors have been drawn to the environment created by these states and have poured private money into supporting economic development there.

The Legislature should get its priorities straight. State employees have not had a decent wage increase in five years, and now the Legislature wants to divert 1 percent of their pension fund into what could be a risky venture.

In 1987 Texas voters rejected a scheme to authorize \$125 million in general obligation bonds for venture capital financing. Now the Legislature is trying again with a new plan to divert part of the state education and public-employee retirement funds to promote private business ventures. The people of Texas have repeatedly rejected such attempts to use public funds to subsidize private business schemes. This so-called "growth fund" is just another attempt to tap the public treasury.

OTHER
OPPONENTS
SAY:

If the state intends to invest part of its education and retirement trust funds in new ventures by means of a new Texas Growth Fund, then it should target those investments where they can do the most good. Too many of the new high-tech ventures receiving government subsidies provide jobs for highly trained technicians and scientists from out-of-state but do little or nothing for unemployed Texans. Growth fund investments should be directed to distressed areas of chronic unemployment, such as the Rio Grande Valley, where the money could do the most good for the most people. Hoping that the benefits from government support for high-tech industry will eventually "trickle down" to

those in real need would be a waste of public resources.

The growth-fund requirement that all investments be directly related to creating employment and economic growth in Texas is too vague. A company that gets started in Texas may move to the Far East or Mexico, where labor is cheaper. For example, in Colorado a high-tech venture capital company employed 2,000 workers within three years from start-up but two years later employed only 400 workers in Colorado and more than 1,000 in Singapore. At the very least the fund should penalize companies that leave Texas after receiving money from the growth fund.

Nothing guarantees that the permanent education funds or public-employee retirement systems will put one penny into the Texas Growth Fund. If a growth fund were properly structured to target investment capital to create new jobs for the unemployed, then the state trust funds should be required to contribute 1 percent of their assets to the new fund.

The amendment should require the permanent funds to divest, or avoid future investment in, companies that do business with the racist regime in South Africa. Other states have found alternative investments in companies that refuse to do business with South Africa, and they have not suffered any loss in income. Also, it makes no sense to require that companies in which the Texas Growth Fund invests reveal any business connection with South Africa or the illegal colonial regime in Namibia and then not bar growth fund investment in those companies.

Many other cities and states have enacted South Africa divestment measures. The board of regents of the University of Houston System has voted to divest the system's private endowment from businesses operating in South Africa. Unless our state joins in taking concrete steps to oppose apartheid, it will be tacitly endorsing racial segregation. Many U.S. corporations, most recently Ford and Citicorp, have announced plans to withdraw their operations from South Africa, so the trustees of the permanent funds should have no trouble

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finding worthy investments in firms with no South Africa connection.

It is completely unclear at this point whether the law enacted by Congress in 1986 restricting U.S. companies from doing business in South Africa preempts stricter state efforts to divest holdings in companies that do business in South Africa. Until this matter is resolved, Texas should proceed with its own divestment measures.

NOTES:

Similar constitutional amendment proposals had failed to receive the necessary two-thirds vote of approval in the House and the Senate in earlier sessions of the Legislature, mostly due to controversy over prohibiting investments in companies doing business in South Africa.

In 1983 a proposed constitutional amendment that would have allowed the Veterans' Land Fund and the Permanent University Fund to make any type of investment, subject to the prudent-person standard, failed. The amendment passed the House by 130-4 after it had rejected by 52-78 an amendment to limit investments in South Africa. But the House refused to concur with a Senate amendment that would have allowed the Legislature to restrict by statute the investment discretion of the boards.

In 1985 a proposal identical to the one introduced in 1983 passed the House by 109-29 after it had tabled by 77-59 an amendment restricting investment in South Africa. However, the proposal died in the Senate State Affairs Committee.

During the September 1986 special session, the Legislature considered a proposal to establish a Texas Growth Fund and also to allow the PUF and PSF to make any type of investment, subject to the prudent-person standard. The House by non-recorded vote added an amendment to prohibit investment in companies doing business in South Africa, but then the proposal failed to pass.

During the 1987 regular session, the Legislature considered HJR 3, a proposal to establish a Texas

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Growth Fund and to allow the PUF and PSF to make any type of investment, subject to the prudent-person standard. The proposal initially passed both houses, but the House refused by a tie vote of 71-71 to concur with a Senate amendment restricting investment in South Africa. A House-Senate conference committee deleted the Senate amendment, and the House adopted the conference committee report by 100-43. However, the session ended before the Senate acted on the conference report.

During the 1987 second special session, the House finally approved the proposal on this year's ballot, HJR 5, by 144-0 after adopting an amendment to limit Texas Growth Fund investments to businesses submitting an affidavit disclosing whether they have direct financial investments in or with South Africa or Namibia. The proposal was approved by the Senate by 29-0.

For additional information on the South Africa investment issue, see House Research Organization Special Legislative Report No. 133, Assets and Apartheid: The South Africa Divestment Dilemma, Feb. 24, 1987.

RESULTS OF THE NOV. 3, 1987 ELECTION

According to complete, official returns from the Secretary of State's Office, around 30 percent of Texas' registered voters turned out on Nov. 3, 1987 to vote on a record 25 proposed constitutional amendments and two statewide referendum propositions. Seventeen of the proposed amendments and one of the two referendum propositions (pari-mutuel wagering on horse racing and greyhound racing) were approved.

For additional information on each of the 25 proposed constitutional amendments and the two referendum proposals on the Nov. 3, 1987 ballot, see House Research Organization Special Legislative Report No. 138, 1987 Constitutional Amendments and Referendum Proposals, Aug. 17, 1987.

1987 Statewide Election Results

Proposals that passed are designated by (*)

* Amendment No. 1 -- State guarantee of grain warehouse insurance

For	1,162,195	55.1 percent
Against	948,051	44.9 percent

Amendment No. 2 -- Maximum tax-rate increase for certain rural fire districts

For	1,010,704	47.9 percent
Against	1,098,623	52.1 percent

* Amendment No. 3 -- School tax freeze extension for surviving spouses between age 55 and 65

For	1,858,769	84.6 percent
Against	338,387	15.4 percent

* Amendment No. 4 -- Public loans and grants for economic development

For	1,089,136	51.7 percent
Against	1,019,428	48.3 percent

Amendment No. 5 -- State and local assistance for toll roads

For	951,130	46.1 percent
Against	1,111,903	53.9 percent

Amendment No. 6 -- Bonds for agriculture, new products,
small business

For	986,500	46.8	percent
Against	1,121,792	53.2	percent

Amendment No. 7 -- Bonds for local public works projects

For	827,235	39.8	percent
Against	1,251,876	60.2	percent

* Amendment No. 8 -- Bonds for prisons, youth corrections,
and mental health/retardation facilities

For	1,389,479	65.7	percent
Against	725,482	34.3	percent

Amendment No. 9 -- Eligibility of legislators for other offices

For	977,464	46.8	percent
Against	1,112,888	53.2	percent

* Amendment No. 10 -- Local-option taxation of non-income
producing personal property

For	1,066,476	51.3	percent
Against	1,014,318	48.7	percent

Amendment No. 11 -- Tax break for goods in transit
(freeport exemption)

For	993,889	48.8	percent
Against	1,043,986	51.2	percent

* Amendment No. 12 -- Community property with right of
survivorship

For	1,823,183	84.7	percent
Against	328,391	15.3	percent

* Amendment No. 13 -- Creation of emergency-services districts

For	1,339,654	64.3	percent
Against	743,806	35.7	percent

* Amendment No. 14 -- Appeals by the state in criminal cases

For	1,417,545	67.9 percent
Against	668,786	32.1 percent

* Amendment No. 15 -- Abolishing Fayette, Gregg and Nueces county treasurers

For	1,324,009	69.4 percent
Against	582,472	30.6 percent

Returns for Amendment No. 15 in:

Fayette County --

Gregg County --

For	2,749	67.3 percent	For	10,228	79.5 percent
Against	1,338	32.7 percent	Against	2,632	20.5 percent

Nueces County --

For	27,630	82.7 percent
Against	5,779	17.3 percent

* Amendment No. 16 -- Two justices of the peace in certain precincts

For	1,366,576	66.3 percent
Against	693,717	33.7 percent

* Amendment No. 17 -- Limits on lawsuits against cities

For	1,083,139	54.5 percent
Against	904,989	45.5 percent

* Amendment No. 18 -- Authorization for jail districts

For	1,134,209	55.7 percent
Against	903,072	44.3 percent

* Amendment No. 19 -- Bonds for superconducting super collider

For	1,347,362	64.1 percent
Against	754,445	35.9 percent

* Amendment No. 20 -- Tax exemption for off-shore rigs in storage

For	1,032,013	50.1 percent
Against	1,026,768	49.9 percent

Amendment No. 21 -- Speaker on executive committees

For 857,837 42.9 percent
Against 1,140,646 57.1 percent

* Amendment No. 22 -- Limits on appointments by lame-duck governors

For 1,287,090 61.5 percent
Against 806,419 38.5 percent

* Amendment No. 23 -- Bonds for water projects

For 1,348,322 64.1 percent
Against 755,791 35.9 percent

Amendment No. 24 -- County work for other governmental entities

For 1,005,039 49.2 percent
Against 1,036,342 50.8 percent

* Amendment No. 25 -- Amarillo Hospital District jurisdiction in Randall County

For 1,358,338 71.5 percent
Against 541,344 28.5 percent

Returns for Amendment No. 25 in:

Potter County --

Randall County --

For	9,168	85.3 percent	For	10,389	71.9 percent
Against	1,586	14.7 percent	Against	4,060	28.1 percent

Referendum No. 1 -- Appointed State Board of Education

For 1,032,458 47.6 percent
Against 1,137,305 52.4 percent

* Referendum No. 2 -- Pari-mutuel wagering on horse races and greyhound races

For 1,276,350 56.9 percent
Against 966,889 43.1 percent