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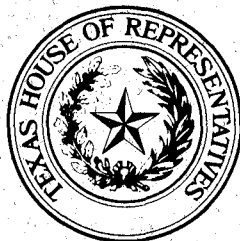
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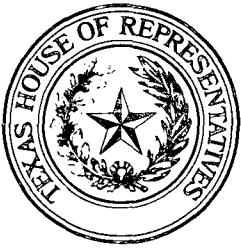
—special legislative report—

1989 CONSTITUTIONAL AMENDMENTS

August 29, 1989



Number 151



HOUSE RESEARCH ORGANIZATION

P.O. BOX 2910 • AUSTIN, TEXAS 78769 • (512) 463-0752

Tom Whatley, Director

August 29, 1989

Number 151

1989 CONSTITUTIONAL AMENDMENTS

Twenty-one proposed amendments to the Texas Constitution will be submitted to the voters at a statewide election on Nov. 7, 1989. The 21 proposed amendments are analyzed in the order in which they will appear on the November ballot.

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

Anita Hill
Chairman

A handwritten signature in cursive script that reads "Larry Evans".

Larry Evans
Vice Chairman

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CONTENTS

	Page
INTRODUCTION	iv
Constitutional Amendment Process	iv
Joint resolutions	iv
Publication	v
Implementing legislation	v
1989 Constitutional Amendments by Subject Area	vi
State bonds	vi
Property tax exemptions	vii
The Legislature and other officials	viii
Criminal justice	viii
Local government	ix
RESULTS OF THE 1988 CONSTITUTIONAL AMENDMENTS ELECTION	x
ANALYSES OF 1989 CONSTITUTIONAL AMENDMENTS --	
AMENDMENT NO. 1 (HJR 102 by Rep. David Hudson Sen. Gonzalo Barrientos)	
<u>Raising legislative salary to one-fourth of governor's</u>	1
AMENDMENT NO. 2 (SJR 5 by Sen. John Montford Rep. Terral Smith)	
<u>\$500 million in bonds for water projects, colonias aid</u>	11
AMENDMENT NO. 3 (HJR 51 by Rep. Dudley Harrison Sen. Chet Edwards)	
<u>\$75 million in bonds for agriculture, new products and small business incubators</u>	20
AMENDMENT NO. 4 (HJR 13 by Rep. John Willy Sen. J.E. (Buster) Brown)	
<u>Property tax exemption for veterans groups</u>	30

AMENDMENT NO. 5	(SJR 11 by Sen. Bob McFarland Rep. Hugo Berlanga)	
	<u>Tax break for goods in transit ("freeport" exemption)</u>	34
AMENDMENT NO. 6	(HJR 4 by Rep. Sam Russell Sen. Bill Ratliff)	
	<u>Four-year term option for hospital district boards</u>	42
AMENDMENT NO. 7	(HJR 40 by Rep. Debra Danburg Sen. O.H. (Ike) Harris)	
	<u>Oath of office for elected and appointed officials</u>	45
AMENDMENT NO. 8	(SJR 24 by Sen. Bob McFarland Rep. Allen Hightower)	
	<u>\$400 million in bonds for corrections, mental health and law enforcement facilities</u>	49
AMENDMENT NO. 9	(HJR 101 by Rep. Allen Hightower Sen. Bob McFarland)	
	<u>Consolidation of criminal justice agencies</u>	58
AMENDMENT NO. 10	(SJR 4 by Sen. J.E. (Buster) Brown Rep. Dan Morales)	
	<u>Instructions to jury on parole and good conduct laws</u>	63
AMENDMENT NO. 11	(HJR 102 by Rep. David Hudson Sen. Gonzalo Barrientos)	
	<u>Tying legislators' per diem to federal tax deduction</u>	69
AMENDMENT NO. 12	(SJR 53 by Sen. Bill Haley Rep. Paul Colbert)	
	<u>Permanent School Fund guarantee of state school bonds</u>	75
AMENDMENT NO. 13	(HJR 19 by Rep. Bob Richardson Sen. J.E. (Buster) Brown)	
	<u>Constitutional rights for crime victims</u>	83

AMENDMENT NO. 14	(SJR 71 by Sen. J.E. (Buster) Brown Rep. Jim Tallas)	
	<u>Election of Fort Bend County district attorney</u>	88
AMENDMENT NO. 15	(HJR 32 by Rep. Terral Smith Sen. Bill Ratliff)	
	<u>Raffles for charity by nonprofit organizations</u>	92
AMENDMENT NO. 16	(SJR 34 by Sen. Ken Armbrister Rep. Mike McKinney)	
	<u>Local creation of hospital districts</u>	95
AMENDMENT NO. 17	(HJR 33 by Rep. Rick Perry Sen. Gonzalo Barrientos)	
	<u>State financial aid to local fire departments</u>	101
AMENDMENT NO. 18	(SJR 44 by Sen. John Montford Rep. Terral Smith)	
	<u>Removing time limit on sale of agricultural water conservation bonds</u>	107
AMENDMENT NO. 19	(SJR 59 by Sen. John Leedom Rep. Nolan (Buzz) Robnett)	
	<u>Broader investment of local government funds</u>	111
AMENDMENT NO. 20	(SJR 16 by Sen. Don Henderson Rep. Debra Danburg)	
	<u>Abolishing county surveyor in seven counties</u>	117
AMENDMENT NO. 21	(SJR 74 by Sen. Chet Edwards Rep. Wilhelmina Delco)	
	<u>\$75 million in bonds for college savings and student loans</u>	121

INTRODUCTION

Since its adoption in 1876, the Texas Constitution has been amended 307 times. This year's Nov. 7 ballot will include 21 proposed amendments to the Constitution. The order of the propositions on the statewide ballot was determined by the secretary of state in a random drawing held on July 28.

Since 1989 is an odd-numbered year, no federal, state, county or district offices will be on the ballot (other than possibly some special elections called to fill vacancies). Various local jurisdictions (the largest being the city of Houston) will hold elections on Nov. 7 along with the statewide election on the constitutional amendments.

This Introduction includes some general background on the constitutional amendment process. Since the order of the 21 amendments on the ballot was selected at random, and related amendments are scattered throughout the ballot, the Introduction groups the proposed amendments by general subject area.

Constitutional Amendment Process

Joint resolutions

All amendments to the Texas Constitution are proposed by the Texas Legislature in the form of joint resolutions (for example, HJR 51 refers to House Joint Resolution number 51). A joint resolution proposing a constitutional amendment must be approved by a two-thirds vote of the membership of each of the two houses of the Legislature (100 votes in the House of Representatives; 21 votes in the Senate). Joint resolutions cannot be vetoed by the governor.

A joint resolution includes the text of the proposed amendment and specifies the date on which the proposed amendment will be submitted to state voters. The joint resolution also includes wording of the proposition that is to appear on the ballot. The Legislature has almost complete discretion over when the statewide election is to be held and how the ballot proposition is to be worded.

One of the joint resolutions adopted by the Legislature in 1989 is unusual because it includes two separate amendments on the ballot. Both concern compensation paid to members of the Legislature: Amendment No. 1 would set the annual salary of

legislators, the speaker of the House and the lieutenant governor as a portion of the salary paid to the governor; and Amendment No. 11 would tie the per diem paid to legislators when the Legislature is in session to the amount allowed as a federal income-tax deduction for legislative expenses.

Unless a later date is specified, joint resolutions proposing constitutional amendments take effect when the majority vote approving the proposed amendment is canvassed. Statewide election results are tabulated by the secretary of state and must be canvassed by the governor 15 to 30 days following the election.

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 the notice must be made no sooner than 50 days and no later than 60 days before 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 the Texas Press Association. The estimated cost of publishing each proposed amendment twice in newspapers across the state is \$60,000.

Implementing legislation

Some constitutional amendments are self-enacting and require no additional legislation to implement their provisions. Other amendments grant general authority to the Legislature to enact legislation in a particular area or within certain guidelines. These amendments require implementing legislation to fill in the details of how the amendment will operate. The Legislature frequently adopts implementing legislation in advance, with the effective date of the legislation contingent on voter approval of a particular amendment. If the amendment is rejected by the voters, then the implementing bill, or at least those portions of the bill dependent on the constitutional change, does not take effect.

1989 Constitutional Amendments by Subject Area

State bonds

General obligation bonds are a means of using the state's credit to borrow money for a particular purpose. The state pledges its "full faith and credit" as a guarantee that the bond principal and interest will be repaid. Repayment of the bonds has first claim on revenue deposited in the State Treasury.

Art. 3, sec. 49 of the Texas Constitution prohibits the creation of state debt, with a few minor exceptions. In order for the state to use its credit to issue state general-obligation bonds, an amendment to the Constitution specifically authorizing issuance of those bonds must be approved.

All of the four proposed amendments on the 1989 ballot authorizing issuance of state general-obligation bonds require prior review and approval by the Bond Review Board, consisting of the governor, the lieutenant governor, the speaker of the House, the state treasurer and the comptroller.

The state also borrows money by issuing "revenue bonds," which generally are repaid with the revenue generated from the project or loans financed by the proceeds of the bonds. Since the state specifically provides that it is not obligated to repay these bonds, technically they are not considered to be state "debt." Because revenue bonds are not a general obligation of the state, and therefore do not carry a "guarantee" of repayment, the state usually must pay a higher interest rate on the money it borrows by issuing these bonds.

Four amendments on the Nov. 7 ballot would authorize the state to issue a total of \$1.250 billion in general-obligation bonds:

Amendment No. 2 -- \$500 million, for water development;

Amendment No. 3 -- \$25 million, for agricultural development;
\$25 million, for new product development;
\$20 million, for small business incubators;
\$5 million, for rural microenterprises;

Amendment No. 8 -- \$400 million, for prison, youth correction, and mental health/mental retardation facilities;

Amendment No. 21 -- \$75 million, for student loans.

Amendment No. 12 would allow the state to issue up to \$750 million (a larger amount if authorized by a two-thirds vote of both houses of the Legislature) in revenue bonds, guaranteed by the Permanent School Fund, to provide low-interest credit for local school districts to finance acquiring, constructing, improving or furnishing instructional facilities.

Amendment No. 18 would remove the Nov. 5, 1989 deadline for issuing \$200 million in general-obligation bonds for agricultural water conservation (authorized by constitutional amendment in 1985).

Property tax exemptions

Art. 8, sec. 1 of the Constitution provides that ad valorem taxation must be equal and uniform and that all real property and tangible personal property in the state, whether owned by natural persons or corporations, must be taxed in proportion to its value, unless specifically exempted elsewhere in the Constitution. Two amendments would allow new tax exemptions:

Amendment No. 4 would permit the Legislature to exempt from local taxation property owned by nonprofit veterans organizations;

Amendment No. 5, the "freeport" amendment, would exempt certain property acquired in, or imported into, the state for assembling, storing, manufacturing, processing or fabricating, if the property left the state within 175 days of being acquired or imported. Local governments could override the exemption and tax such property if they acted before specified deadlines.

The Legislature and other officials

Three amendments would affect the Legislature and other officials:

Amendment No. 1 would replace the \$600 per month salary for members of the Legislature and the lieutenant governor with an annual salary based on the salary paid to the governor. Legislators would receive one-fourth of the governor's salary, and the speaker of the House and the lieutenant governor would receive one-half;

Amendment No. 7 would revise the oath of office recited by elected and appointed officials to eliminate the provisions denying bribery to obtain the office. The bribery denial would be sworn to separately, in writing;

Amendment No. 11 would replace the \$30 per diem payment to legislators for each day that the Legislature is in session with whatever amount is allowed as a federal income-tax deduction for expenses in conducting legislative business in Austin.

Criminal justice

Four amendments deal generally with the area of criminal justice or criminal offenses:

Amendment No. 9 would create an exception to the constitutional separation of powers to allow the consolidation of agencies of different branches of government with criminal justice functions;

Amendment No. 10 would allow the Legislature to require that juries considering the sentence for convicted offenders be instructed about laws concerning early release from prison on parole or mandatory supervision;

Amendment No. 13 would specify the rights of victims of crime and allow prosecutors to enforce those rights;

Amendment No. 15 would allow the Legislature to legalize raffles conducted by nonprofit organizations for charitable purposes.

Local government

Six of the proposed amendments (in addition to the two dealing with local property taxation) would affect local government, either generally or in specific cases:

Amendment No. 6 would allow the Legislature to set a term of office of up to four years, rather than two years, for members of hospital district boards;

Amendment No. 14 would allow the new Fort Bend County district attorney to be elected in 1990 rather than in 1992, as are all other district attorneys in the state;

Amendment No. 16 would authorize the Legislature to generally allow county commissioners courts to initiate creation or dissolution of local hospital districts, without a special law being enacted for each district;

Amendment No. 17 would authorize the Legislature to make grants and loans of state money to assist local fire-fighting organizations;

Amendment No. 19 would allow the Legislature to establish by law how local governments may invest their money;

Amendment No. 20 would abolish the office of county surveyor in Cass, Ector, Garza, Smith, Bexar, Harris and Webb counties, if the amendment is approved both statewide and in the affected county.

RESULTS OF THE 1988 CONSTITUTIONAL AMENDMENTS ELECTION

All three proposed constitutional amendments on the Nov. 8, 1988 general-election ballot were approved by the voters. For additional information on the amendments, see House Research Organization Special Legislative Report No. 143, 1988 Constitutional Amendments, July 15, 1988.

Amendment No. 1 -- Dedicating federal highway money to
State Highway Fund

For	3,605,092	(86.9 percent)
Against	545,174	(13.4 percent)

Amendment No. 2 -- Establishing Economic Stabilization
("Rainy Day") Fund

For	2,457,703	(61.6 percent)
Against	1,530,572	(38.4 percent)

Amendment No. 3 -- Broadening investment authority of Permanent
School Fund and Permanent University Fund;
establishing Texas Growth Fund

For	2,585,280	(63.4 percent)
Against	1,492,078	(36.6 percent)

HOUSE
RESEARCH
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Constitutional amendment analysis Amendment No. 1 (HJR 102)

SUBJECT: Raising legislative salary to one-fourth of governor's

BACKGROUND: Art. 3, sec. 24 of the Texas Constitution sets the salary of members of the Legislature. Since 1975 the monthly salary has been \$600 (\$7,200 a year). Legislators also receive a per diem, or daily pay allowance, of \$30 for each day that the Legislature is in regular session (140 days in odd-numbered years) and special session (up to 30 days, whenever called by the governor), plus an allowance for travel mileage reimbursement at the rate set by law for state employees.

In addition to the per diem and travel allowance provided for in the Constitution for service when the Legislature is in session, the General Appropriations Act provides that legislators performing duties when the Legislature is not in session receive \$81 per day, as of Sept. 1, 1989. Members participating in certain organizational duties may instead receive reimbursement of actual expenses for meals, lodging and incidentals.

The speaker of the House, who is elected by the House members, receives the same pay as any other legislator. The lieutenant governor, who is elected statewide and presides over the Senate, receives the same salary as legislators. However, when substituting for the governor, the lieutenant governor receives the governor's pay.

The governor's salary is \$93,432, as of Sept. 1, 1989. The governor's salary formerly was set in the Constitution, but since a constitutional amendment adopted in 1954, the governor's salary has been set by the Legislature.

DIGEST: Amendment No. 1 would amend Art. 3, sec. 24 of the Constitution to replace the specific salary of \$600 per month for members of the Legislature with a salary of one-fourth of governor's salary. (Based on the current gubernatorial salary of \$93,432 set in the General Appropriations Act, the amendment would

HJR 102
Amendment No. 1
page 2

increase the legislative salary to \$23,358 per year, or \$1,946.50 per month.)

The speaker of the House and the lieutenant governor would receive one-half of the governor's salary (\$46,716 per year, or \$3,893 per month, for fiscal 1990-91). The lieutenant governor would no longer receive the governor's salary when serving as governor.

No law varying the salary for members of the Legislature could take effect until a general election had intervened.

The first salary increase for the speaker and other legislators would not take effect until the convening of the regular session of the 72nd Legislature (Jan. 8, 1991, under current law). The first salary increase for the lieutenant governor would not take effect until the first day of the new term for that office in 1991 (Jan. 15, 1991, under current law).

The amendment would specify that an increase in the emoluments (salary and benefits) of the office of lieutenant governor would not render members of the Legislature ineligible to serve in this office under Art. 3, sec. 18 of the Constitution. (Under this provision, if the Legislature increases the salary or benefits for a state office, members of that legislature may not serve in that office until their legislative term has expired. In effect, overriding this provision would allow senators with two years remaining on their terms to run for, and serve as, lieutenant governor regardless of whether the Legislature previously had raised the lieutenant governor's salary.)

The ballot proposal reads: "The constitutional amendment to limit the salary of the lieutenant governor and the speaker of the house of representatives to not more than one-half of the governor's salary and to limit the salary of a member of the legislature to not more than one-fourth of the governor's salary."

HJR 102
Amendment No. 1
page 3

SUPPORTERS
SAY:

The current salary of \$7,200 per year is inadequate to compensate members of the Legislature, the speaker of the House and the lieutenant governor for the many duties they perform and the financial sacrifices they must make on behalf of the state. The legislative salary was too low even when it was last raised in 1975 and has eroded considerably in value since then. In terms of 1975 dollars, adjusted for inflation, the annual legislative salary is now worth less than \$3,300. Take home pay for legislators is only around \$398 per month. This proposed amendment would at least make up for the losses caused by 15 years of inflation and provide a sensible way to initiate raises in the future: by tying legislative pay to the governor's salary.

The 10 most populous states pay their legislators an average of \$32,437 a year. Texas ranks dead last among them, even accounting for differences in the number of session days. Only 14 states pay their legislators less than Texas. Since the last pay increase for Texas legislators in 1975, legislative salaries have increased in every other state except New Hampshire and Rhode Island. Most other states compensate their legislative presiding officers for their additional leadership duties, which are full-time jobs with statewide significance.

Many capable people of modest income must leave the Legislature, or are discouraged from running in the first place, because they have no way of making a living that allows them to pick up and leave for Austin for a five-month regular session and any special sessions that might be called. Members who do not have substantial personal wealth or unusually lucrative and flexible employment face considerable financial pressures while they are away from home living and working in Austin.

The days of the part-time legislator are over. Serving in the Legislature has become a demanding, full-time job. Special sessions have occurred more frequently as issues facing state government have grown more complex; only one legislature in 20 years, the 66th, met for just 140 days. Interim work, such as serving on study committees and assisting constituents, has expanded in

scope and now requires the full attention of legislators even when the Legislature is not in session. The ideal of the part-time citizen legislator was more practical when Texas was largely rural and more citizens practiced flexible or seasonal occupations. Since the salary is so low, many legislators are forced to continue their non-legislative work even when the Legislature is in session.

Financial and time pressures hamper lawmakers striving to remain independent of lobbyists and political contributors. Legislators pressed for time because of outside work may rely too heavily on lobbyists' information. The struggle to make ends meet also facilitates the lobby's use of food and entertainment to gain access. Legislators also must rely on contributions to officeholder accounts to pay for non-reimbursable expenses.

The proposed salary increase is one in a series of reforms needed to reduce the influence of lobbyists and contributors. Although better reporting of gifts by lobbyists and lawmakers and stronger campaign finance regulation may be needed, the proposed salary increase should not be held hostage to the other proposals; it should be approved now, as a first step toward reform.

Raising legislative pay could be an important investment in better government. Higher pay would attract higher-caliber talent in government, as it does in the business world. This salary increase should not be considered a gift to the current Legislature but an investment in the quality of subsequent ones.

Many voters would be surprised to learn that Texas legislators are paid only \$7,200, not the the \$89,500 that members of the U.S. Congress receive. Although negative publicity stemming from an attempt to raise congressional pay to \$135,000 without a vote initially hurt efforts to raise Texas legislative pay, the comparison ultimately favors passage of this amendment, by pointing out the wide disparity in salaries.

The amendment is structured to allow for continued voter oversight of legislative pay. All House members

HJR 102
Amendment No. 1
page 5

and half the Senate seeking reelection would face the electorate in 1990 before receiving any salary increase. Any subsequent increases in legislator pay also would be delayed until after the November general election following any change in the law that would raise legislative salaries.

The constitutional prohibition against legislators serving in an executive position paying a salary that they had raised should not shut out state senators who wish to run for lieutenant governor in the middle of their four-year terms. The lieutenant governor's principal duty is to preside over the Senate, and it makes no sense to disqualify half of the senators from seeking a post for which they are uniquely qualified just because a pay raise for the governor indirectly raised the lieutenant governor's salary.

OPPONENTS
SAY:

Not only would this proposed amendment give Texas lawmakers a 224 percent pay raise, it also would eliminate voter approval of any future legislative salary increases. It would allow the Legislature to raise its own pay by indirection, simply by raising the governor's salary. An enraged electorate forced the U.S. Congress to back off when it tried a similar salary end-run earlier this year, and the voters should reject this pay grab as well.

Legislators receive plenty of other benefits besides their salary that are not set in the Constitution and subject to voter approval. Amendment No. 11, also on the Nov. 7 ballot, would increase per diem pay during legislative sessions, from \$30 to an amount (currently \$81) that would continue to float upward whenever the federal government allowed lawmakers to deduct more from their income taxes for legislative business expenses in Austin. The daily amount that legislators are paid for legislative business when the Legislature is not in session also was increased to \$81, in the General Appropriations Act. Also, legislative retirement benefits are tied automatically to the salary paid to district judges, who received a substantial pay raise this year.

Many of the states paying annual salaries exceeding \$7,200 also have legislatures that work more than 140

days every two years. When regular-session work days are considered, Texas legislators make \$51 a day in salary (\$102 if both years of salary are counted) and \$30 per diem, plus mileage. In off years, they receive a full legislative salary even if no special sessions are called and interim duties are light. Even when they are not in Austin, lawmakers benefit from intangibles such as greater access to potential employers, widespread name identification and enhanced business opportunities. The generosity of lobbyists and political contributors has allowed many legislators to stretch their income further still.

The concept of the part-time citizen legislator remains valid as long as pay constraints discourage from running those interested in public service only for the paycheck attached to it. Service in the Legislature should be considered the same as volunteering for charitable work or serving on the local chamber of commerce. Those in the Congress and other states who are paid enough to view themselves as professional lawmakers often lose sight of any local concerns beyond those necessary to hang onto their offices. Raising salaries also would discourage legislators from holding jobs in their communities, where they remain in touch with the problems of ordinary citizens.

Encouraging members to make a career out of being a state legislator could actually increase their reliance on big-money campaign contributors. More money would be needed to win and retain legislative seats if the pay became an attraction. Those who run for the Legislature already know that the pay is low before they seek office; no one forces them to run.

This amendment would take control over legislative pay away from voters. Legislators could manipulate the governor's salary to their own advantage, without the voters' knowledge. The governor's salary is only one item in a complex, multi-billion dollar state budget -- tying legislative pay to this single item would mean that an increase would receive far less attention. Moreover, no reasonable relationship exists between the amount that the governor should be paid and what legislators and their presiding officers should receive. The electorate has spoken clearly against pay

HJR 102
Amendment No. 1
page 7

raises in previous votes and deserve to retain the power to say "no."

The ballot language for the proposed amendment is misleading in describing it as a "limit" on legislative pay. Since the Legislature would remain free to increase gubernatorial pay without any limit, there would no longer be an effective constitutional "limit" on the legislative salary that would be tied to it. The ballot proposal also offers no hint of the substantial legislative salary increase that the amendment would authorize.

OTHER
OPPONENTS
SAY:

Legislators may indeed deserve an increase in compensation, but other methods would be more acceptable than that proposed by this amendment.

Raising the legislative per diem, instead of salary, might be a more appropriate way to address lawmakers' problems in meeting expenses. Per diem is paid only when the Legislature is in session, so any increase would be proportional to work performed.

Alternatively, a salary increase could be granted in a way that emphasized fiscal restraint. A lower base amount than has been proposed could be indexed to consumer prices to allow gradual increases. If indexing had been enacted in 1975, legislators today would be receiving more than \$15,800 per year.

Another method of setting pay would be to create an impartial salary commission that would study and recommend any salary increase. The commission could evaluate legislative pay proposals and set a reasonable limit on any increase that the Legislature might grant itself.

If legislative pay is to be increased, then the voters have a right to expect that other, potentially corrupting, outside sources of income resulting from legislative duties should be limited or eliminated or at least reported in greater detail. The Legislature could bolster public support for higher compensation by enacting stronger regulation of lobby gifts and campaign finance.

HJR 102
Amendment No. 1
page 8

Current members of the Legislature should not be exempted from the limits on running for lieutenant governor after raising the salary for that office. This constitutional ban is needed to prevent senators who are in the middle of their terms from seeking this higher office in order to take advantage of a pay raise that they had a hand in granting, without having to risk losing their current office if they should lose.

The amendment's requirement that pay raises for legislators not take effect until an election for office has "intervened" is ambiguous and could create a number of problems. It might be interpreted to allow a raise to take effect immediately after the November election, rather than in January, rewarding even lame ducks who had been ousted by their constituents for backing a pay raise. (This problem would not apply to the next Legislature since a specific provision says that any raise would not take effect until the Legislature convenes in January 1991, but no similar provision applies to future legislatures.) Furthermore, since no law varying the salary of the Legislature could take effect until after an intervening election, it could mean that any pay raise for the governor (the only law that could vary the salary) also could not take effect until after the next election.

NOTES:

Amendment No. 11, also on the Nov. 7, 1989 ballot, would eliminate the current \$30 per diem payment to legislators for each day the Legislature is in regular or special session. It would instead link the per diem payment to the federal income-tax deduction allowed for legislative business in the Capitol (currently \$81 per day). Amendment Nos. 1 and 11 are both contained in HJR 102 by D. Hudson.

The last increase in legislative salary, from \$400 to \$600 a month, was approved by voters in April 1975. The same amendment raised per diem from \$12 to \$30. A proposal to establish a nine-member commission to set maximum legislative pay, was rejected by the voters in November 1975, as part of a proposed new state constitution. In 1984 voters defeated a proposal to tie legislative per diem to the federal income tax deduction for travel to the state capital on

HJR 102
Amendment No. 1
page 9

legislative business (\$75 per day then, \$81 now); the 1984 proposal was the same as Amendment No. 11 on this year's ballot.

Since 1881 legislators have asked voters to approve higher legislative pay 21 times. Texas voters approved the requests four times: in 1930, 1954, 1960 and 1975.

Until 1960 legislators were not paid a salary, only per diem when the Legislature was in session. From 1876 to 1930 legislators received \$5 a day for the first 60 days of a session, then \$2 per day thereafter, plus travel compensation limited to \$5 per 25 miles. From 1930 to 1954, legislators received \$10 per day for the first 120 days, then \$5 a day thereafter, plus travel compensation of \$2.50 per 25 miles. From 1954 to 1960, legislators received \$25 a day for the first 120 days and no per diem thereafter; the mileage rate remained as before.

In 1960, when legislators first received a regular monthly salary of \$400 per month, the per diem was reduced to \$12 a day but was allowed for every day the Legislature was in session. The most recent change, in 1975, increased the salary to \$600 per month and per diem to \$30 and set the mileage rate at that established by the Legislature for state employees.

Legislators receive contingency expense allowances to cover costs of operating a legislative office. The House for 1990-91 has allocated to each representative \$7,000 a month during sessions, and \$6,000 a month between sessions, for staff, postage, printing, travel, telephone, office supplies and equipment and other expenses. The Senate has allocated \$15,500 a month to each senator for staff and intrastate staff travel. Other Senate office operating costs are not subject to specific limits.

Per diem rates for duties undertaken when the Legislature is not in session are not limited by the Constitution. As of Sept. 1, 1989, House and Senate members receive per diem of \$81 for living expenses incurred in connection with interim legislative duties. The amount will rise with any increase in the federal income tax deduction for these expenses. Members whose

travel is associated with service on boards, councils, committees or commissions may instead receive reimbursement of actual expenses, for meals, lodging and incidentals.

The current mileage reimbursement rate is 24 cents a mile for auto travel, 35 cents a highway mile for single-engine aircraft, 55 cents a mile for twin-engine planes, and \$1 a mile for turbine-powered aircraft.

Legislators are included in the state Employees Retirement System and, if they serve at least eight years, may receive retirement benefits. Retirement pay is 2 percent of the salary of a district judge, multiplied by the years served in the Legislature, subject to certain limitations. An ex-legislator with 12 or more years of service may start receiving retirement pay at age 55; those with eight years' service may start receiving retirement benefits at age 60.

Texas is one of seven states that sets legislative salaries in its constitution. The U.S. Constitution and the constitutions of the other states allow legislative pay to be set by statute.

During the past two years, 22 states have increased legislative salaries, according to data compiled by the National Conference of State Legislatures. New York legislators currently receive the highest salary (\$57,500), followed by Pennsylvania (\$47,000), Michigan (\$42,670), California (\$40,816), Ohio (\$36,650), Illinois (\$35,661), and Wisconsin (\$31,204). Massachusetts salary declined to \$30,000 from \$40,992.

New Hampshire pays \$100 a year, the lowest annual salary. Rhode Island pays the lowest daily salary: \$5. Other states paying relatively small daily salaries include Alabama (\$10), Montana (\$52.12), Idaho (\$30 in session; \$15 out of session), Kansas (\$57), Utah (\$65), New Mexico (\$75) and Wyoming (\$75). Vermont pays a weekly salary of \$400.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis Amendment No. 2 (SJR 5)

SUBJECT: \$500 million in bonds for water projects, colonia aid

BACKGROUND: Art. 3, sec. 49 of the Texas Constitution prohibits the creation of state debt, under most circumstances, while Art. 3, sec. 50 prohibits the Legislature from lending the credit of the state. Both sections have been amended several times to permit the state to issue general-obligation bonds for various purposes.

As part of the state water plan adopted by the Legislature in 1985, Texas voters approved three constitutional amendments authorizing sale of general-obligation bonds for water projects administered by the Texas Water Development Board (TWDB).

In 1985 the TWDB was authorized to issue \$980 million in water development bonds. Voters also approved sale of up to \$200 million in bonds for agricultural water conservation (see Amendment No. 18). Of the \$980 million in water development bonds, \$400 million was earmarked for state participation in reservoirs, water conveyance, water supply and wastewater treatment facilities; \$190 million for wastewater treatment projects in "hardship" political subdivisions (i.e., cities or other units that could not otherwise sell their own water bonds) and regional wastewater treatment facilities; \$190 million for "hardship" water supply projects and water supply projects in areas that are converting from groundwater to surface water supplies; and \$200 million for flood control projects.

In 1987 Texas voters authorized the TWDB to issue an additional \$400 million in water development bonds. Of that amount, \$200 million was allocated to water supply projects and groundwater-conversion projects; \$150 million was allocated to wastewater treatment projects; and \$50 million was allocated to flood control projects.

Of the \$1.38 billion in bond debt authorized by the 1985 and 1987 amendments, \$290.5 million has been used. About \$1.09 billion in bond authority remains unissued.

SJR 5
Amendment No. 2
page 2

Texas voters previously approved constitutional amendments authorizing issuance of water development bonds in 1957 (\$200 million) and in 1976 (\$200 million) and of bonds for "water quality enhancement" (sewage-treatment plants) in 1971 (\$200 million) and in 1976 (\$200 million).

DIGEST:

Amendment No. 2 would authorize the issuance of \$500 million in additional water development bonds. Of the \$500 million, the amendment would earmark \$250 million for financial assistance to water conservation and development projects, \$200 million for wastewater projects, and \$50 million for flood control projects. The TWDB would issue the bonds and deposit the proceeds in the Texas Water Development Fund.

In addition to the water conservation and development purposes now allowed for bond proceeds, Amendment No. 2 would authorize new uses for financial assistance to local government entities and to nonprofit water supply corporations. Financial assistance could be used for acquiring, improving, extending or constructing water supply projects to improve the distribution of water to points where it is delivered to wholesale or retail customers.

The Legislature could authorize use of up to 20 percent of the bonds (\$100 million) for subsidized loans and grants to provide wholesale and retail water and wastewater facilities to economically distressed areas. A separate account and a separate interest and sinking fund would be established to administer the proceeds of bonds used for these purposes.

The Legislature could require review and approval of bond issuance, the use of bond proceeds, or the rules adopted by an agency to govern their use. A body created for such review and approval could include appointees from the executive, legislative and judicial branches of state government (the Bond Review Board under current law).

The ballot proposal reads: "The constitutional amendment to authorize issuance of an additional \$500

SJR 5
Amendment No. 2
page 3

million of Texas water development bonds for water supply, water quality, and flood control purposes."

SUPPORTERS
SAY:

Amendment No. 2 would continue and expand the comprehensive approach to development and conservation of the state's water resources based on the 1985 state water plan. The low-interest, tax-exempt general obligation bonds would be used to back more loans to small communities that cannot otherwise finance their water projects.

Although the state has not yet issued all of the water bonds currently authorized, it will soon need additional bond authority. The TWDB estimates that by the start of fiscal 1992, the state will have exhausted its existing authority to sell bonds for water quality, flood control and water supply projects. Information about the state financial assistance provided for in the 1985 water plan, only gradually reached local authorities, who then needed lead time to prepare their applications. New water quality standards and changes in federal programs have recently created new demand for state aid for water projects. Applications for bond-financed state loans are expected to accelerate markedly, quickly exhausting existing authority to sell bonds for the specified types of projects. Amendment No. 2 would help ensure that local needs are satisfied.

The sale of general-obligation bonds is the most cost-effective way of raising the large sums needed to finance expensive water projects that promote economic development and better living conditions throughout the state. The state uses its superior credit rating to borrow money, which is in turn loaned to local governments to finance water projects at a lower interest rate than they would otherwise have to pay on their own bonds. The local governments then pay back the loans, which cover the cost of debt service on the state bonds. The bonds are "self-supporting," since the money the state loans out is returned with interest. The program is enormously helpful to local communities and costs the state relatively little.

In addition to increasing bond authority for existing programs, Amendment No. 2 would authorize borrowing up to \$100 million to be spent on water and wastewater

facilities for the residents of economically distressed areas across the state, particularly in the unincorporated "colonia" subdivisions along the Rio Grande.

Most of the colonias were established by unscrupulous developers preying on low-income residents seeking inexpensive housing. The home buyers were promised water and sewer hook-ups that often have not been made. These developments sprang up in unincorporated areas where it is difficult to enforce minimum sanitation standards and land-use controls. An estimated 200,000 Texans now live in colonias with inadequate water and sewer facilities.

This relatively small investment of state money would finance low-interest state loans and grants to provide water and wastewater facilities to improve basic living conditions in the colonias. The residents of these areas have been trying to solve their problems on their own, but they do not have a large enough tax base to support repayment of local bonds issued by municipal utility districts. The residents have an excellent record of paying their debts, but they need a way to finance water and sewer systems in order to raise their living conditions to a level that most people take for granted.

Diseases spread rapidly in the colonias due to the improper disposal of raw sewage. Outbreaks of tuberculosis, dysentery, encephalitis and hepatitis are frequent in these communities because of improper public sanitation. Infectious disease can spread rapidly among school children and create a public health crisis.

To start eradicating these conditions, the state should help establish basic water and wastewater systems; Amendment No. 2 would provide the seed money to begin. Once the state demonstrates its commitment, the federal government is expected to boost its support. Various safeguards in the amendment's implementing legislation, SB 2 by Santiesteban, would prevent the program from draining the Water Development Fund and also would establish controls to prevent creation of new substandard housing developments.

SJR 5
Amendment No. 2
page 5

Development of regional water systems to serve communities across the state also would be enhanced by the new bond authorization. Expanded funding of the programs administered by the TWDB would permit local water management to continue, yet also allow state coordination of use of this important, limited resource.

The expansion of the TWDB's authority to finance water projects in the retail area would permit small and rural communities to get needed help. Prohibitions on aid to retail purchasers were originally intended to block abuses stemming from use of state funds to aid land developers. TWDB agency rules would still prohibit use of bond proceeds for new housing developments, but the agency now sees a justification for assisting aging neighborhoods that need to replace 30- and 40-year-old water lines. Authorization in the Constitution to finance retail system improvements would meet this need and assist those neighborhoods with the most pressing problems.

OPPONENTS
SAY:

Only four years ago, the voters authorized sale of \$980 million in water bonds. Only two years ago, the voters approved the Legislature's request to authorize another \$400 million. Now, even though \$1.09 billion remains authorized but unsold, the voters are being asked to authorize sale of another \$500 million in water bonds. The water promoters should make use of the \$1.38 billion in state bond authority they already have before going to the well for another \$500 million, inflating the state's burgeoning bond debt. Too many public programs, such as prison construction and public education, are already competing for bond financing to justify a huge additional amount for water development, before it is even needed.

Voters also are being asked to expand the authorized uses of borrowed funds. The proposed amendment would constitutionally authorize use of state funds to construct water lines to retail customers -- opening a clear avenue of abuse by land developers looking for a handout. The amendment would also authorize use of borrowed state funds to subsidize water and sewer facilities for customers in "economically distressed"

SJR 5
Amendment No. 2
page 6

areas. The state should not add to its already substantial debt to finance more water projects to benefit private developers and individual homeowners.

Expanding the water-development bond program to provide grants to clean up the colonias could undermine the "pay-as-you-go" nature of the current water development program. Recipients of these subsidized loans are unlikely to be able to repay the full amount, requiring that other state funds be used to make up the difference when the state bonds must be repaid. The state cannot afford to add to its debt burden by authorizing general-obligation bonds that would not be self-financing.

The colonias are primarily the product of a failure of local regulation and should be dealt with on that level, rather than requiring taxpayers throughout the state to pick up part of the tab for cleaning up the mess. If homeowners in these areas need water and sewer facilities, they should organize municipal utility districts or find some other means of local financing, as do residents of unincorporated areas in other parts of the state.

NOTES:

During its regular session the 71st Legislature enacted SB 61 by Montford, which would allow the TWDB to issue an additional \$500 million in bonds, if Amendment No. 2 is adopted. The bill also would eliminate the current restrictions on use of water development bond proceeds to finance retail water distribution.

SB 2 by Santiesteban, also enacted by the Legislature during the 1989 regular session, would implement the provisions of Amendment No. 2 that would authorize up to \$100 million of the bonds to be used for grants and loans to economically distressed areas. These provisions will take effect only if Amendment No. 2 is approved by the voters.

SB 2 would establish a financial aid program for distressed areas in those qualifying counties with residents who cannot pay for adequate water and sewer services. The Texas Water Development Board could issue up to \$25 million per year in general obligation bonds for the program, up to a total of \$100 million.

SJR 5
Amendment No. 2
page 7

An annual amount greater than \$25 million could be issued with the approval of the Bond Review Board, if justified by a risk to public health and safety.

The Legislature also could authorize funding for the program from sources other than the bond proceeds. SB 222, the General Appropriations Act for fiscal 1990-91, appropriates \$10 million to the TWDB for projects in economically distressed areas, with \$500,000 of that amount earmarked for establishing and operating the new program. The TWDB is to report to the 72nd Legislature on how the money was used and the potential demand for additional funding.

Counties eligible for the program would include all those bordering on Mexico and those with a per capita income and an unemployment rate averaging 25 percent below the state average for the prior three years (30 counties currently would qualify).

The TWDB would use the bond proceeds to purchase bonds issued by qualifying local entities (counties, cities, districts and nonprofit water supply corporations) or to provide more direct assistance. The TWDB could not waive repayment of more than 50 percent of the assistance it provided to a local entity, unless the Texas Department of Health determined that a nuisance caused by water and sewer problems was dangerous to public health and safety. The total amount of unreimbursed assistance could not exceed \$75 million.

The county in which a project was located would have to guarantee repayment of the bond debt or finance a minimum of 2.5 percent of the total project cost or \$500,000, whichever was less.

Residents of communities receiving financial assistance would repay as much as they could afford to local governments, which would in turn repay the TWDB. The TWDB would determine the required repayment, based on such factors as the local customers' ability to pay and a comparison with what similarly situated families of similar income pay for comparable service. It would also determine whether other funding sources, such as federal grants, were available for use by the local entity seeking assistance. The TWDB would provide

financial assistance for sewage treatment plants only if it determined that use of septic tanks would not be a suitable option for the area and if other, more cost effective, treatment alternatives had been considered.

Money for the new program would be deposited in a special new Economically Distressed Areas Account in the Texas Water Development Fund, separate from the rest of the fund (in order that the new account could not become a drain on other money in the fund). A separate clearance fund would also be established to receive repayments of financial assistance, and a separate interest and sinking fund would be established to pay debt service on bonds issued for the program.

SB 2 would authorize counties to issue bonds for construction and repair of water and sewer systems, secured by pledging the revenues derived from operation of the projects. Before approving financial assistance through purchase of bonds issued by counties or other local entities, (in effect, a loan to the local governments), the TWDB would first consider whether the affected area was able to form a conservation and reclamation district to issue bonds to finance the proposed projects.

As a condition of granting financial assistance, the TWDB would require that the applicant charge a special fee on undeveloped property in the affected area, if the fee would be cost effective in reducing the amount of assistance requested or in retiring the local government's debt to the state. The fee would be paid by the landowner, and a lien for payment would attach to the property.

Counties and cities where a project was located would be required to adopt model rules, developed by the TWDB, the Texas Water Commission and the Texas Department of Health, establishing minimum standards for safe and sanitary water supply, sewer services, septic tanks, drinking water and other waste disposal systems in residential areas. They would have to prohibit locating more than one single-family, detached dwelling on each subdivision tract or establishing residential subdivisions with tracts of one acre or less without adequate water supply or sewer services.

SJR 5
Amendment No. 2
page 9

The rules would also set the distance that structures would have to be set back from roads or property lines, in order to ensure proper operation of water and sewer services and to reduce fire hazards. The rules could be enforced by local prosecutors or the attorney general through injunctions or civil penalties of \$50-\$1,000 per violation, per day, up to a total of \$5,000 per day.

To apply for assistance, a local entity would have to be located in a county or city that had adopted the model rules. To be eligible, 80 percent of the houses in the affected area would have to have been occupied as of June 1, 1989 (in order to restrict assistance to existing subdivisions, rather than to new developments). The area to be served would have to have an average per capita income 25 percent below the state average for the prior three years. An application would have to include, among other requirements, the total project cost, the amount of state assistance sought, the repayment terms, the ability of local customers to pay for the services, and how water conservation would be incorporated into the project.

Other provisions of SB 2, not contingent on adoption of Amendment No. 2, would establish new minimum standards for subdivision development and grant counties expanded authority to require that water and sewer service be provided to subdivisions in unincorporated areas.

HOUSE
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Constitutional amendment analysis

Amendment No. 3 (HJR 51)

SUBJECT: Bonds for agriculture, new products, small business

BACKGROUND: Art. 3, sec. 49 of the Texas Constitution prohibits the creation of state debt, under most circumstances, while Art. 3, sec. 50 prohibits the Legislature from lending the credit of the state. Both sections have been amended several times to permit the state to issue general obligation bonds for various purposes.

In 1987 the 70th Legislature adopted HJR 4 by Colbert, which proposed amending the state Constitution to authorize issuance of \$125 million in general obligation bonds to provide capital for the Small Business Incubator Fund (\$10 million), the Texas Product Development Fund (\$15 million) and the Texas Agricultural Fund (\$100 million). Although the Legislature established all of these funds by statute, their funding depended on voter approval of HJR 4. On Nov. 3, 1987 the voters rejected HJR 4 (Amendment No. 6) by 986,500 (46.8 percent) in favor to 1,121,792 (53.2 percent) against.

DIGEST: Amendment No. 3 would amend the Constitution to authorize the Legislature to issue \$75 million in general obligation bonds. The bond proceeds would provide venture financing for agricultural production, processing and marketing, family-owned rural businesses, new products and small businesses.

The Legislature could authorize issuance of up to \$25 million in general obligation bonds to provide initial funding for the Texas Agricultural Fund and 5 million in general obligation bonds for a new Rural Microenterprise Development Fund. The Texas Agricultural Fund would foster the production, processing, marketing or export of Texas agricultural products grown by small Texas agricultural businesses. The Rural Microenterprise Development Fund would foster and stimulate the creation and expansion of small businesses in rural areas. The financial assistance offered by both funds could include direct and indirect loans, loan guarantees, purchases and acceptances of loans, insurance and coinsurance. Both funds would use

bond proceeds, loan repayments, other receipts from loans and any other money deposited by the Legislature or other parties.

The Legislature could authorize issuance of up to \$25 million in general obligation bonds to establish a Texas Product Development Fund to assist the development and production of new or improved products through loans, loan guarantees and equity investments. Revenue for the product development fund would come from the proceeds of the bonds, royalties, dividends, loan paybacks, fees paid for loan guarantees, investment and loan income and other amounts that the Legislature could deposit.

The Legislature also could authorize issuance of up to \$20 million in general obligation bonds to establish a Texas Small Business Incubator Fund to stimulate small business growth through loans and grants. The fund also would receive income from loan repayments, other receipts from the loans and grants and any other revenue deposited by the Legislature.

A small business incubator backed by the fund would be exempt from ad valorem taxation in the same manner that public charities are now exempted.

The Legislature could require that the issuance of the bonds, the use of the bond proceeds and the rules adopted by an agency governing the use of bond proceeds be reviewed and approved by an entity that could include members of the executive, legislative and judicial branches of state government (the Bond Review Board, under current law).

Bonds authorized by the proposed amendment would be general obligation bonds, backed by a pledge of the first money coming into the Treasury each fiscal year that was not constitutionally dedicated to other purposes.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to provide for the recovery and further development of the state's economy, with goals of increasing job opportunities and other benefits for Texas residents, through state

financing of the development and production of Texas products and businesses."

SUPPORTERS
SAY:

Amendment No. 3 would clear the way for a needed injection of capital to help the state promote and preserve its agricultural economy and foster the development of new small businesses and products. The economic development programs it would finance would provide a foundation for new business activity that would have a ripple effect throughout the state. New businesses provide two-thirds of the new jobs created, and the programs that this proposed constitutional amendment would help finance would pay economic dividends far exceeding any cost to the state.

The Texas Agricultural Fund would provide financial assistance to small Texas agricultural businesses to produce, process and market crops and products grown or produced primarily in Texas. The \$74 billion-a-year agricultural sector has been the cornerstone of the Texas economy for generations and still provides 20 percent of all jobs in Texas. However, the farm crisis of recent years has eliminated jobs, closed rural banks, bankrupted seed stores and equipment dealers and devastated rural communities. The Texas Agricultural Fund was established in 1987 to provide loans to agricultural businesses that would otherwise be unable to get such financing, but it currently lacks the capital to provide these loans.

The size of the proposed state bond issue has been markedly scaled back from the proposal put before voters in 1987 -- from \$125 million to \$75 million. The bond amount earmarked for the agricultural fund has been reduced from \$100 million proposed in 1987 to only \$25 million. As a result of detailed studies made during the past two years, the Agriculture Department has determined that a minimum of \$25 million in bond money would be adequate for the start-up of the Texas Agricultural Fund.

Amendment No. 3 also would authorize the issuance of bonds for a Rural Microenterprise Development Fund to provide a source of capital to encourage the establishment and expansion of small family-owned and operated businesses in rural areas. By promoting the

small enterprises that provide a large portion of the jobs in rural areas, this program would help boost employment. This type of program has been extremely successful in other states in providing an extra source of financing targeted at job-producing enterprises.

The \$25 million in general obligation bonds for the Texas Product Development Fund would provide loans and equity investments in carefully screened projects with a good chance of success. The Texas Product Development Fund would provide the capital necessary to help new businesses develop new products and get them into the marketplace. Private capital would flow to successful products, the state's loans would be repaid with interest, and the seed money in the fund would be recycled to nurture development of other new products.

Finally, the \$20 million in general obligation bonds for the Texas Small Business Incubator Program would finance office space, equipment, secretarial help and a variety of technical and management advice for new businesses trying to get off the ground. The small business incubator program is now part of the Texas Department of Commerce, but its ability to provide grants depends on the bond money that would be authorized by this amendment.

These economic development programs would not be a limitless drain on state resources. A specific amount of revenue would be raised from issuing the bonds and used to establish the programs. Once started, the programs would have to stand on their own and rely on other sources of revenue, including royalties, dividends, repayments and interest. The state would receive royalties and dividends too, and the success of even a handful of applicants could bring in revenue that could exceed the initial expense.

These programs would be governed by strict safeguards that would ensure that money made available would be limited to smaller businesses that otherwise would have difficulty in obtaining financing. Venture funding would be available only for production and processing by small agricultural businesses, development of new products and services and support of job creation by small businesses. Applicants to all these programs

would face exhaustive examination of their financial soundness to ensure that any investment of state dollars would be safe.

Even though the voters failed to approve a similar bond issue in 1987, the concept of using general obligation bonds to aid economic development should be reconsidered, for several reasons. In 1987 the amendment proposal was one of several on the ballot involving large sums of money, which may have prejudiced voters against the individual merits of the proposal. Also, in 1987, there was very little effort to educate voters about this particular bond proposal. The ballot language also was somewhat confusing, which may have led to some misunderstanding. The fact that voters approved a closely related constitutional amendment (HJR 5) that generally authorizes public support for private enterprise, suggests that there may have been some misunderstanding about the bond proposal. Whatever the reason for defeat of the earlier proposal, a scaled-down version should be presented again to the voters. The programs that would be funded by this bond money are already in place, awaiting the capital that would be provided by the proposed bond issue.

OPPONENTS
SAY:

Less than two years ago, the voters rejected a proposed constitutional amendment almost exactly the same as Amendment No. 3, not because they did not understand it but because they disagreed with it. The Legislature should not ask the voters to reconsider so soon what they have already rejected -- increasing state debt in order to subsidize private business.

The state could better spend its money by investing in public and higher education, which provide a firm foundation for future economic growth. By providing additional support for job training and research, the state could promote new business without competing with banks, private investors and other sources of private capital.

Any plan to have the state lend money where traditional financial institutions fear to tread should be viewed with considerable caution. The state should not become a lender of last resort for those who want backing for

some hare-brained invention that private financial experts have already spurned as unworkable or unsound. Calling an expenditure of state funds a "development fund" does not make it any less dangerous or fiscally irresponsible.

The managers of these programs inevitably would have to pick and choose among businesses applying for these funds. Every time a government dollar went to one of these new businesses, it would give that business a competitive edge. A program financed by state money would be tainted with the suspicion that it had been selected on the basis of political clout rather than intrinsic merit -- the recent HUD scandal is only the latest example of how public subsidies of private sector projects can go wrong.

Small businesses have a failure rate of 80 percent within five to seven years; the state should not invest tens of millions of borrowed money in businesses practically guaranteed to fail. The marketplace has served us well in weeding out businesses that cannot succeed and in making room for those that will grow and prosper; the state should not interfere with the free market.

Recent economic studies indicate that the job-generating ability of small businesses has been greatly overstated in the past and that in truth only about 6 percent of the small firms studied employed more than 100 people after three years of existence. Three years after start-up, 65 percent had not added any new employees.

The state already has approximately \$7 billion in outstanding bond debt and may be about to add more, which future generations will have to retire. Adding so much state-bond debt could drive up interest rates generally and compete with local bonds sold to finance vital public works projects such as water and sewer systems. The Texas "pay as you go" philosophy has been eroded enough; rejecting inappropriate bond schemes such as this one would help stop the state's slide into serious debt difficulty.

The ballot language for the amendment is vague and misleading -- no where does it mention that \$75 million in new state bond debt would be authorized. The ballot proposal, in fact, makes no mention at all of granting the Legislature authority to issue bonds. If part of the rationale for allowing a second vote on this amendment is to have the opportunity to educate the voters, then the ballot should at least say what the amendment would really do.

NOTES:

The Texas Product Development Fund and the Small Business Incubator Fund were established by the 70th Legislature in 1987 in HB 4 by A. Smith, which created the Texas Department of Commerce. HB 49 by Harrison, enacted during the second called session in 1987, established a Texas Agricultural Finance Authority to finance projects promoting agricultural diversification.

The issuance of bonds for these three programs, as well as the Rural Microenterprise Development Fund, would be contingent on the adoption of Amendment No 3. SB 222, the General Appropriations Act for fiscal 1990-91, also includes appropriations for administering the programs that would be funded if the bonds are approved.

During its 1989 regular session, the Legislature enacted HB 1111 by Harrison, the implementing legislation for the Texas Agricultural Fund and the Rural Microenterprise Development Fund, and HB 362 by Williamson, the implementing legislation for the Texas Product Development Fund and the Small Business Incubator Fund. The provisions of both bills concerning issuance of general obligation bonds will not take effect if Amendment No. 3 is rejected by the voters. HB 1860 by Colbert made statutory changes to the Texas Product Development Fund and the Small Business Incubator Fund but is not contingent on the passage of the proposed amendment.

Texas Agricultural Fund

The Texas Agricultural Finance Authority was established to raise capital to provide financial assistance to promote agricultural diversification. If Amendment No. 3 is approved, the authority would issue

the general obligation bonds for the Texas Agricultural Fund and the Rural Microenterprise Development Fund. The authority may also issue up to \$500 million in revenue bonds, which do not require constitutional authorization.

Agricultural diversification enterprises that can be supported by the fund include production, processing, marketing or export of Texas crops. The authority can loan money directly to eligible agriculture businesses or to lenders on their behalf, insure or guarantee such loans, and administer or participate in programs by others to provide such financial assistance.

The commissioner of agriculture, with the consent of the Agricultural Diversification Board, (consisting of the agriculture commissioner, the director of the Prairie View A & M Institute for International Agribusiness Studies, and four members appointed by the governor, with one representative appointed by the House speaker and one senator appointed by the lieutenant governor as nonvoting members) administers the program and makes loans. Loans are to be made to agricultural businesses not otherwise able to obtain such financing and must represent a reasonable risk.

Rural Microenterprise Development Fund

This fund would provide loans to rural microenterprises, defined as family-owned or family-operated small businesses. The commissioner of agriculture, with the consent of the Agricultural Diversification Board, would administer the microenterprise support program and make loans. Applicants could receive loans of up to \$15,000 to begin operation of a microenterprise or up to \$30,000 to expand, modernize, or otherwise improve an existing microenterprise. The loan could not be used to refinance an existing debt. Preference would be given to microenterprises that demonstrated potential for expansion that would provide jobs in economically depressed rural communities or to unemployed rural residents. The program would be run cooperatively with local lenders.

Texas Product Development Fund

The Texas Product Development Fund currently operates as a resource and referral program for small businesses. If Amendment No. 3 is approved, the governing board of the Department of Commerce would be authorized to issue up to \$25 million in general obligation bonds to provide grants and loans. In providing loans, an Product Development Advisory Committee would consider the likelihood of success of the applicant and the effect of the financing on job creation and retention in the state.

The department would be required to give preference to Texas residents doing business in the state, then to applicants who could demonstrate that the financed activities would take place predominantly in Texas. Funding could go to projects in such areas as biotechnology, biomedicine, energy, materials science, microelectronics, aerospace, marine science and telecommunications. Applicants would submit a business plan, which would have to include proof of efforts to obtain private financing. Applicants would have to agree to provide the state with an appropriate portion of royalties, patent rights and equitable interests in the product.

Small Business Incubator Program

The Small Business Incubator Program provides space, equipment, secretarial and legal services and management and technical consultants to help new businesses get off the ground. New or existing businesses receive advice on commercialization and marketing of their product, ways to obtain private financing, how to deal with taxation and regulations and basic management skills.

The program is currently funded primarily by local sponsors, including municipalities, educational institutions, development corporations created by state law and private organizations. The state may make loans or grants of as much as \$250,000 to enable sponsors to acquire or lease land and buildings or to purchase equipment and furnishings.

The state may also award challenge grants to provide seed capital to tenants of a small-business incubator. Every \$1 in state money for challenge grants would have to be matched by \$3 in private investment. The small business incubator program is overseen by the Texas Department of Commerce, but the incubators themselves are run by local sponsors.

If bonds are approved by voters, the governing board of the Department of Commerce would have the authority to make up to \$20 million in grants and loans to these small businesses. Local sponsors would evaluate applicants to determine the likelihood that their businesses would be profitable, whether their products or services would be new or improved, the potential market for the product or service, whether the business would generate new jobs but not eliminate old ones and whether the business were a new plant start-up or a new venture opportunity and not just a relocation of an existing business.

The ballot proposal for the version of the similar amendment (No. 6) rejected by the voters in 1987 read: "The constitutional amendment authorizing the legislature to provide for state financing of the development and production of Texas products and businesses."

HOUSE
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Constitutional amendment analysis

Amendment No. 4 (HJR 13)

SUBJECT: Property tax exemption for veterans groups

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

Sec. 11.23 (a) of the Tax Code provides a property-tax exemption for property owned by certain veterans organizations (American Legion, American Veterans of World War II, Veterans of Foreign Wars of the United States, Disabled American Veterans, Jewish War Veterans, Catholic War Veterans and the American G.I. Forum) if the property is not used to produce revenue or gain.

The Constitution does not specifically authorize the Legislature to exempt from taxation property owned by veterans organizations. In 1982 the attorney general ruled, in Opinion MW-436, that Tax Code sec. 11.23(a) was unconstitutional. The opinion cited the lack of constitutional authorization for the veterans organization exemption.

In 1983 the Legislature asked Texas voters to approve a constitutional amendment to authorize local taxing units to exempt from property taxes the property of certain fraternal organizations engaged in charity works and of veterans organizations chartered by Congress and organized for patriotic and public-service purposes, specifically naming the American Legion, the Veterans of Foreign Wars and the Disabled American Veterans. The proposed amendment, No. 8, failed by a vote of 346,337 (47.2 percent) in favor and 388,197 (52.8 percent) against.

Tax Code sec. 11.18 exempts real and tangible personal property of certain "charitable organizations" that are

HJR 13
Amendment No. 4
page 2

organized exclusively to perform certain charitable functions listed.

DIGEST:

Amendment No. 4 would amend the Constitution to permit the Legislature by general law to exempt from ad valorem taxation property owned by nonprofit organizations composed primarily of members or former members of the armed forces of the United States or its allies and chartered or incorporated by the U.S. Congress.

The ballot proposal reads: "The constitutional amendment to authorize the legislature to exempt property of nonprofit veterans organizations from ad valorem taxation."

SUPPORTERS
SAY:

Amendment No. 4 would allow the Legislature to exempt veterans groups from local property taxes. Since the statutory tax exemption for veterans groups was declared unconstitutional by the attorney general in 1982, these organizations have been receiving exemptions on a county-by-county basis. This crazy-quilt of variations among 254 counties is unfair and irrational; the state should have a uniform policy.

Local tax appraisers grant exemptions to groups they feel qualify as public charities or whose property has been designated as historical. Many veterans groups do not meet the "purely public charity" standard imposed by the courts and used by tax appraisers to decide whether they qualify for an exemption under Tax Code sec. 11.18. Since some of the groups have membership restrictions and their benevolent deeds do not affect "indefinite numbers of people," local authorities do not exempt their property. The proposed amendment would allow the state to apply the Tax Code exemption uniformly, achieving a clear, consistent policy regarding taxation of property belonging to properly chartered organizations of men and women who have proudly served in their country's armed forces.

Many veterans organizations operate on a shoestring and desperately need tax-exempt status. Without it, some may not survive, and others may be forced to curtail their charity work, placing an additional burden on governmental resources to aid the needy. Nonprofit

veterans organizations deserve a tax exemption not only because of the fine work they do but also as a recognition of the many sacrifices made by their members who served our country as members of the armed forces.

This proposed amendment is quite different than the one that was narrowly rejected in 1983. First, it would apply only to veterans groups, not to fraternal organizations. Second, it would authorize the Legislature, not local taxing authorities, to grant the exemption.

Veterans groups do not own enough property to make an exemption for them a burden on any local authority's budget. Yet the exemption would give significant help to the organizations affected. Veterans organizations could not be used by others to shelter property from taxation because current law requires that the property exempted not be used to produce revenue or gain. Also, to qualify for the exemption, a veterans organization would have to be nonprofit.

The tax exemption for veterans organizations authorized by this constitutional amendment is permissive, not mandatory. The Legislature would have broad discretion to establish conditions for allowing the exemption for those organizations that qualify.

OPPONENTS
SAY:

The existing tax exemption for charitable groups is perfectly adequate to assist those veterans organizations that are devoted primarily to worthwhile benevolent activities. The proposed amendment would open the door to allow exemptions for veterans groups that devote most of their time and energy to purely private, or even political, purposes. Our veterans already receive many well-deserved benefits from the government; this additional blanket benefit to all veterans organizations would provide a public subsidy that cannot be justified, particularly in light of the fiscal problems faced by many local governments in areas where property values have dropped.

Broadening the tax exemption to encompass all veterans groups would merely shift the local property tax burden onto other taxpayers who are already hard pressed.

Granting a special tax exemption to these groups would amount to forcing taxpayers to subsidize private groups to which they might not choose to contribute if given a free choice.

The property owned by veterans groups that would be exempted consists mainly of meeting halls, such as the state's many VFW halls. Many of these buildings are used for purely recreational purposes, such as serving alcohol to members or parties, wedding receptions and bingo nights. These buildings should not be exempt just because they are owned by a veterans group -- their purpose and use should be the deciding factor, as it is now in granting a tax exemption for property used exclusively for charitable purposes.

The proposed amendment is so broad that it would be subject to misinterpretation and abuse. For example, veterans organizations could be used as "fronts" by landowners seeking a shelter from local property taxes. The amendment should limit the types of property that could be exempted, set a dollar-value cap on any single group's exemption and require that organizations meet certain levels of charity work in order to qualify for an exemption. These restrictions should be put in the Constitution, rather than in an implementing statute that can too easily be changed.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 5 (SJR 11)

SUBJECT: Tax break for goods in transit ("freeport" exemption)

BACKGROUND: Art. 8, sec. 1 of the Constitution provides that taxation must be equal and uniform and that all real property and tangible personal property in the state, whether owned by natural persons or corporations, shall be taxed in proportion to its value, which is determined as provided by law. Art. 8 also includes several specific provisions either requiring or permitting the Legislature to grant tax exemptions for certain categories of property.

Sec. 11.01 of the Tax Code exempts from ad valorem taxation goods passing through Texas that remain for no longer than 175 days for the purpose of assembling, storing, manufacturing, processing or fabricating (known as the "freeport" exemption). The Dallas Court of Appeals, in Dallas County Appraisal District v. L.D. Brinkman, 701 S.W. 2d 20 (1985), held that the freeport provision unconstitutionally attempted to grant by statute an exemption that was not specifically authorized by the Constitution. The Texas Supreme Court let stand the appeals court decision invalidating the freeport exemption.

In 1987 the Legislature proposed an amendment to include the freeport exemption in the Constitution and to allow certain local taxing units the option of overriding the exemption. The voters rejected the proposed amendment (No. 11) on Nov. 3, 1987 by 990,374 for (48.9 percent) to 1,034,714 against (51.1 percent).

DIGEST: Amendment No. 5 would amend the Texas Constitution to specifically exempt from local property taxes goods, wares, merchandise, tangible personal property, and ores -- except oil, gas and petroleum products -- acquired in, or imported into, the state for the purpose of assembling, storing, manufacturing, processing or fabricating by the person who acquired or imported them. To be exempt, the property would have to leave the state within 175 days of being acquired or imported. Property covered by the amendment would specifically include aircraft and aircraft parts

brought into the state or acquired in the state to repair or maintain aircraft operated by a certificated air carrier.

Local taxing districts could continue to tax property qualifying under the freeport exemption, under certain conditions. A city, county, school district or junior college district could tax otherwise exempt property for the 1990 tax year if it took official action before Jan. 1, 1990. It could tax the property for subsequent tax years if it took official action before April 1, 1990. A local taxing entity choosing to tax freeport property subsequently could rescind that action, but any rescission would be irrevocable.

Any of the local government entities specified could choose to exempt freeport property from taxation for 1989. Granting such an early exemption would mean that the local government would waive 1989 taxes already imposed and would refund 1989 taxes already paid on the property exempted.

Amendment No. 5 also would amend Art. 8, sec. 1(b) of the Constitution to provide specifically that all real property and tangible personal property in the state shall be taxed in proportion to its value, "unless exempt as required or permitted by this Constitution."

The ballot proposal reads: "The constitutional amendment promoting economic growth, job creation and fair tax treatment for Texans who export goods to other states and nations by restoring and allowing, on a local option basis, an ad valorem tax exemption for certain personal property that is in Texas only temporarily for the purpose of assembling, storing, manufacturing, processing or fabricating."

SUPPORTERS
SAY:

Amendment No. 5 would reinstate a tax exemption that has been a proven incentive for economic development. Property brought into Texas temporarily to be processed before shipment to other states or countries -- such as cloth to be sewn into blue jeans or microprocessing chips to be assembled into computers -- was exempted from taxation under the freeport statute earlier enacted by the Legislature. Under the protection of the statute, many billions of dollars of

goods were brought into the state each year, providing jobs for Texans and contributing to the economic strength of the state. Since the constitutional validity of the freeport statute has been called into question, a constitutional amendment is required to clarify beyond question that this economic development incentive is permissible.

Texas is one of only 10 states that provide no tax exemption for business personal property. Six states have no tax on business personal property. Thirty states have a full or partial exemption for business inventories, while four allow a local-option exemption. Texas is the only state that provides neither a tax exemption for inventory nor a goods-in-transit exemption in some form. An increasing number of states have extended their exemptions to promote economic development. The Select Committee on Tax Equity recommended that the Legislature reinstate its successful freeport law to better compete with these states. Texas should not leave itself at a disadvantage in attracting the new business investment it needs to sustain its fragile economic recovery.

Amendment No. 5 would allow cities, counties, school boards and junior college boards the option of taxing freeport property in the 1990 tax year, if they acted before Jan. 1, 1990. If they acted by April 1, 1990, they could continue to tax this property during future years. This would prevent those taxing units that have relied on taxing freeport property from suffering an unanticipated drop in property tax revenue. These taxing units are aware of the potential impact of a freeport exemption and could act quickly to maintain the tax, if they chose.

Taxing units that have not taxed property that is temporarily in the state, or that decide that the cost of identifying such property would make imposing the tax unprofitable, would not have to take any action to maintain the exemption in their jurisdiction. The exemption would be automatic, unless the unit took affirmative action to impose the tax.

Amendment No. 5 is different from the 1987 proposed amendment because it would apply to property acquired

within Texas as well as to property imported into the state, as long as it was exported within 175 days. This would avoid any discrimination against Texas-produced goods that are kept in the state for processing -- for example, circuit boards used in personal computers or oranges squeezed into juice. Amendment No. 5 would also explicitly make eligible for an exemption aircraft, aircraft parts, and equipment used to repair and maintain aircraft. This provision would encourage the expansion of airline facilities in Texas, such as the newly announced American Airlines maintenance base at the Fort Worth Alliance Airport, that will boost the Texas economy and create new jobs.

Amendment No. 5 also differs from the 1987 proposal in excluding oil, gas and petroleum products from the exemption. Making oil, gas and petroleum products eligible for the freeport tax exemption could impose extraordinary strains on the budgets of local governments in those jurisdictions dominated by large refineries. Although these taxing units could, in theory, exercise their option to tax freeport property, including petroleum products, it might be very difficult for a local government to stand up to the political pressure that could be exerted by a large local employer such as a refiner.

It is not necessary to include oil, natural gas and other petroleum products among the products eligible for the freeport exemption. The limited purpose of this tax exemption is to promote new economic development and remain competitive with other states that have granted a freeport exemption. The oil and gas industry is not likely to leave Texas or limit its investment if it is not granted a freeport tax exemption, since companies have invested large amounts of money to build modern refineries in Texas that cannot easily be moved. Moreover, the implementing legislation, HB 2959, would restrict the petroleum products not eligible for the freeport exemption to only the immediate derivatives of refining, in order that plastics and similar petrochemical products could be exempted. This definition would cover chemical manufacturers and other companies at the later stages of the oil and gas refining process.

Amendment No. 5 also would add an important clarification of the constitutional requirement that all real property and tangible personal property be taxed according to its value. No property could be exempted from taxation without specific authorization in the Constitution. This would ensure that the Legislature and local taxing units could not exempt property from taxes simply by enacting a statute or establishing local policy -- any new exemption would have to be specified in the Constitution.

OPPONENTS
SAY:

This proposed amendment would deprive cities, counties and school districts of a substantial portion of their tax base. A freeport exemption would deprive local governments of billions of dollars of taxable property, reducing property tax revenue by tens of millions of dollars a year. Additional costs would be forced on these taxing units to pay for investigations to distinguish between "freeport" and "non-freeport" property.

The lost revenue and increased costs for local entities would have to be made up with higher taxes on other property or further reductions in municipal services or educational programs. Those adversely affected by higher taxes or reduced services would be paying to subsidize those businesses that would benefit from the tax break, with no differentiation among those that need help and those that do not.

School districts across the state would be particularly vulnerable to the adverse effects of a freeport exemption. The implementing legislation purports to protect each district by adjusting state aid to reflect the decline in taxable property value in the district caused by an exemption. However, almost every district could lose some of its tax base to a freeport exemption. The state would be unable to replace the lost revenue of hundreds of districts without a large increase in appropriations to the Foundation School Program.

The provisions of Amendment No. 5 allowing local taxing units to opt out of the freeport exemption are too restrictive. Only six weeks would pass between the adoption of this proposed amendment and the deadline

for official action by a city, county, school district or junior college district to tax freeport property in 1990. Many taxing units would be unable to meet this rigid requirement and would lose significant revenue as a result. This proposed amendment would operate backward -- local taxing units should have to act to exempt freeport property rather than have the exemption forced on them unless they act to impose the tax.

The property-tax exemption for aircraft and aircraft parts and other property owned by a certified air carrier and brought into the state for aircraft repair and maintenance was designed mainly to benefit a single corporation -- American Airlines. Various pieces of legislation were amended in the closing days of the regular legislative session to give special subsidies to induce American Airlines to locate its new aircraft maintenance facility in Fort Worth. The fundamental legal document of our state should not be changed to provide a special tax break.

OTHER
OPPONENTS
SAY:

Oil, natural gas, and other petroleum products should be included among the products eligible for a freeport exemption. The oil and gas industry has played a vital role in the growth of the Texas economy, and is still responsible for many thousands of jobs. A local-option exemption from property taxes would help those refineries to continue their contributions to the state.

Oil-producing countries, which have historically sent their crude oil to Texas for refining, have started to refine their own crude and export only gasoline and other refined products. A tax exemption would allow Texas refineries, which operate on a very small profit margin, to compete with these countries. Without the exemption, refinery may more likely be cut back, and local taxing units could lose even more of their tax base. Even with the exemption, local taxing units could, if they wish, continue taxing local refineries.

The Select Committee on Tax Equity found that making the inventory tax subject to local option was the least desirable approach because it would create a patchwork of local policies. Localities that need the revenue from taxing freeport property would be pressured to

exempt it by competition from neighboring jurisdictions. Instead of a local option, it would be better to follow the committee's recommendations and have one freeport policy statewide, offsetting any adverse revenue effects with a local motor-fuels tax or with local sharing of a revised franchise tax.

NOTES:

HB 2959 by Schlueter, the implementing legislation for Amendment No. 5 (SJR 11), would take effect Jan. 1, 1990 if the voters approve the proposed amendment.

HB 2959 would add to the Tax Code the freeport exemption provided for in Amendment No. 5 and establish the procedure for determining the value of freeport goods. The chief tax appraiser would determine the percentage of the market value of a taxpayer's inventory or property owned in the preceding calendar year that consisted of freeport goods. The appraised value of freeport goods in the current year would be determined by multiplying that preceding-year freeport percentage times the market value of the taxpayer's inventory or property owned in the current year.

If the taxpayer or chief appraiser demonstrated that his method significantly understated or overstated the market value of the freeport goods, the chief appraiser would calculate the market value of the freeport goods by determining the market value of the freeport goods owned by the taxpayer on Jan. 1 of the current year.

The petroleum products not eligible for consideration for the freeport exemption would be limited to liquid and gaseous materials that are the immediate derivatives of oil or gas refining, in order to ensure that plastics and similar petroleum products would be exempt.

HB 2959 would exclude from the definition of "lost property levy," used to calculate a local taxing unit's effective tax rate, those taxes levied in the prior year on freeport goods that were exempted from taxation in the current year. This change would prevent the freeport exemption from triggering a rollback election.

HB 2959 also would exclude the value of freeport exemptions from the state's determination of the value

of taxable property in each school district. Since this value is used to calculate the district's share of state public-school aid, those school districts that maintain the freeport exemption would not be penalized.

HB 2959 also provides for calculating the taxable value of commercial aircraft that are used both inside and outside of the state. This provision is not contingent on voter approval of Amendment No. 5.

The ballot proposal for the version of the freeport exemption amendment (No. 11) rejected by the voters in 1987 read: "The constitutional amendment providing for the exemption from ad valorem taxation of certain property that is located in the state for only a temporary period of time."

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis Amendment No. 6 (HJR 4)

SUBJECT: Four-year term option for hospital district boards

BACKGROUND: Art. 16, sec. 30 of the Texas Constitution limits the terms of government officers to two years, unless the Constitution itself elsewhere authorizes a longer term. Numerous exceptions have been added throughout the Constitution.

DIGEST: Amendment No. 6 would allow the Legislature to set terms of up to four years for hospital district board members, by special or general law.

The ballot proposal reads: "Authorizing the members of a hospital district governing board to serve four-year terms."

SUPPORTERS SAY: Amendment No. 6 would give the Legislature the option of setting longer terms for hospital district board members. The terms of service of hospital district board members could be brought into line with those of most other state and district offices. So many exceptions already exist that the two-year term now is more of the exception than the rule. Most recently, the Constitution was amended (in 1982) to permit the Legislature to set four-year terms for water district boards.

The two-year limit makes it hard to find candidates to run for office, because they must run so often. Most hospital district board members serve staggered terms; because terms are only two years long, most hospital districts must hold elections every year. Frequent elections drain district budgets because each election costs several thousand dollars. This money could be spent for more worthy purposes, especially in rural districts that are now suffering great economic hardship. Further savings would result because four-year terms would allow hospital district elections to coincide with county elections.

There is no need to make a blanket exception for the two-year term limit for all government officials. The

Legislature, and the voters, should review those exceptions that are justified on a case-by-case basis.

The proposed amendment would not require four-year terms for hospital district board members. The Legislature would have the flexibility to provide for shorter terms, depending on local circumstances. Unless the Legislature decides that a general change is needed, most hospital districts would retain the current two-year terms for their board members.

OPPONENTS
SAY:

Two-year terms make board members more accountable to the public. Voters need a way to oust incompetent or indifferent board members without waiting four years. Health care and health costs are sensitive matters, and the board members supervising the provision of health care, and the raising of revenue to finance it, should have frequent voter review.

OTHER
OPPONENTS
SAY:

The two-year limit on the terms of all governing boards should be removed altogether, not just whittled down with another special exception. Most states allow their legislatures the flexibility to fix the terms of all state-created offices; Texas should also take that approach, by completely eliminating the two-year limit from the Constitution. The many exceptions to this provision adopted over the years have demonstrated that its original purpose is no longer valid.

NOTES:

If Amendment No. 6 is approved, HB 1724 by Russell will take effect, and the board of managers of the Titus County Hospital District will serve four-year terms.

Art. 9, sec. 9 of the Constitution allows the Legislature to provide by law for the creation and operation of hospital districts. Before the adoption of this provision in 1962, a separate constitutional amendment was required to authorize each hospital district. Another proposed constitutional amendment, Amendment No. 16 (SJR 34 by Armbrister), would allow the Legislature to authorize the creation of hospital districts by general or special law. SB 907 by Armbrister, which would allow voters in proposed hospital districts to create new hospital districts on

HJR 4
Amendment No. 6
page 3

their own, without the Legislature having to enact a special law, would take effect if Amendment No. 16 is approved. Board members of hospital districts created under SB 907 would serve two-year terms.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 7 (HJR 40)

SUBJECT: Oath of office for elected and appointed officers

BACKGROUND: Art. 16, sec. 1 of the Texas Constitution requires that members of the Legislature and other state and local elected officers take the following oath:

"I _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution of the United States and of this State; and I further solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward for the giving or withholding a vote at the election at which I was elected. So help me God."

The secretary of state and other appointed state and local officers take a similar oath, which substitutes a denial of offering rewards to secure appointment or confirmation.

Oath provisions relating to bribery first appeared in the 1876 Texas Constitution. Until a 1938 amendment, officers were required to swear or affirm that they had not participated in duels. The 1938 amendment replaced a promise to perform duties "agreeably" to the federal and state Constitution and laws with the current pledge to "preserve, protect and defend" the constitutions and laws. That amendment also removed a separate ending to the oath for appointed officers, which was restored in a 1956 amendment.

DIGEST: Amendment No. 7 would shorten the oaths or affirmations required of elected and appointed officers and require officers to sign separate statements swearing or affirming that they had not bribed anyone to obtain office.

Language concerning bribery would be omitted from the spoken oath or affirmation, which would read as follows:

"I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect and defend the Constitution and laws of the United States and of this State, so help me God."

Written statements containing the bribery-denial provision would be signed and filed with the secretary of state prior to taking the spoken oath or affirmation.

The written statement for elected officials would read as follows:

"I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected, so help me God."

The written statement for appointed officers would read as follows:

"I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, or promised to pay, contributed, or promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or confirmation thereof, so help me God."

The ballot proposal reads: "The constitutional amendment to require that a member of the legislature, the secretary of state, and an elected or appointed officer, before assuming office, sign a written oath stating that the member, the secretary of state, or the officer did not engage in bribery to obtain the office."

SUPPORTERS
SAY:

Amendment No. 7 would enhance the dignity of swearing-in ceremonies for Texas officials while preserving in a written statement the provisions relating to bribery that are now in the spoken oath of office.

The bribery provisions, added to the 1876 Constitution in reaction to official corruption during the Reconstruction period, are outdated and inappropriate for the spoken oath taken in settings such as opening-day ceremonies in both chambers of the Legislature and official convening of presidential electors to cast Texas' votes for president and vice president.

The proposed oath would be half as long as the current oath and similar to the 35-word oath taken by the president of the United States and the oaths taken by officials in most other states.

The first portion of the current oath properly reminds officials of the seriousness of their responsibilities and of their subordination to the constitution and laws of the nation and the state. But the lengthy recitation concerning methods of corruption -- more a public denial of guilt than an oath -- overwhelms this affirmation with negativity. Family, friends and other citizens who gather for swearings-in are sometimes jolted when the oath takes this abrupt shift of tone.

Retaining the bribery provisions in a written statement, signed prior to taking the oath, would allow more serious consideration and reflection on these provisions, away from the glowing faces of proud supporters and the glare of television lights.

Removing these words from the public oath would not absolve officials of any misdeeds, nor would it change their legal responsibilities. Maintaining and improving election laws and other laws concerning officials' conduct, before and after assuming office, would continue to provide the best safeguard for honest government.

The words of the oath of office, revised twice since 1876, are hardly sacrosanct. In 1938, long after the

practice of dueling had ended, voters removed a provision requiring officials to swear or affirm that they had not participated in a duel. Like the 1938 change, this amendment would only update the current oath to reflect modern sensibilities.

OPPONENTS
SAY:

Texas officials have been reciting oaths that contain public denials of bribery for more than a century, without apparent harm. There is no need to "fix" something that is not broken by hiding half of the current oath in a written rather than a spoken statement; it serves well the way it is. Ethical considerations and oaths of office are not fads to be discarded or altered when fashions or tastes change. In any event, now, of all times, when recent incidents have spotlighted the ethics of public servants, is not the season for such a change.

Frivolous amendments such as this one clutter the November ballot, detracting from the electorate's consideration of more important matters. Moreover, the ballot language for this proposed amendment is misleading because it suggests that the bribery denial would be a new requirement.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 8 (SJR 24)

SUBJECT: \$400-million in bonds for corrections, mental health and law enforcement facilities

BACKGROUND: Art. 3, sec. 49 of the Texas Constitution prohibits the creation of state debt, under most circumstances, while Art. 3, sec. 50 prohibits the Legislature from lending the credit of the state. Both sections have been amended several times to permit the state to issue general-obligation bonds for various purposes.

In 1987 the 70th Legislature proposed, and the voters approved, an amendment to the Constitution (now Art. 3, sec. 49-h) authorizing issuance of \$500 million in general obligation bonds to finance construction and renovation of corrections and mental health and mental retardation facilities. The voters approved the proposed amendment (No. 8) by 1,389,479 (65.7 percent) in favor to 725,482 (34.3 percent) against.

The General Appropriations Act for fiscal 1988-89 appropriated almost \$342 million of the \$500 million to be raised by the bonds. About \$276 million was allocated to the Texas Department of Corrections, \$47 million to the Texas Department of Mental Health and Mental Retardation (TDMHMR) and \$19 million to the Texas Youth Commission (TYC).

In its 1989 regular session, the 71st Legislature enacted HB 1477 by Hightower, which appropriated from the remainder of the \$500 million bond authority more than \$142 million to TDC to acquire, construct and equip two maximum-security prisons and one psychiatric facility, which will add 5,000 new prison beds, and to TYC for construction, repair and renovation of youth corrections facilities.

DIGEST: Amendment No. 8 would add a new subsection to Art. 3, sec. 49-h of the Constitution, allowing the Legislature to authorize issuance of up to \$400 million in general obligation bonds, in addition to bonds previously authorized, for acquiring, constructing, equipping, repairing or renovating corrections, mental health and

mental retardation, youth corrections and statewide law enforcement facilities.

The Legislature could require review and approval of bond issuance, the use of bond proceeds or the rules adopted by an agency to govern their use. A body created for such review and approval could include appointees from the executive, legislative and judicial branches of state government (the Bond Review Board under current law).

The ballot proposal reads: "The constitutional amendment authorizing the issuance of general obligation bonds for projects relating to facilities of corrections institutions, youth corrections institutions, and mental health and mental retardation institutions and for the expansion of statewide law enforcement facilities."

**SUPPORTERS
SAY:**

Texas desperately needs new prison beds and other correctional facilities in order to relieve the current prison overcrowding crisis, which has spilled over into county jails. The Legislature already has authorized use of bond financing to expand prison capacity by an additional 5,800 beds (which will be added to the 5,000 new beds, approved earlier this year, that are being financed with the general obligation bonds approved by the voters in 1987). If the voters approve the additional general obligation bonds that would be authorized by Amendment No. 8, the state's credit could be used to back this vital phase in the prison expansion program and thereby reduce our long-term borrowing costs.

The general obligation bonds that would be authorized by Amendment No. 8 would go toward financing much-needed construction and renovation projects not only for TDC, but for TYC, TDMHMR and the Department of Public Safety (DPS) as well. The state would be able to continue its prison expansion and renovation program and also upgrade youth corrections, mental health and public safety facilities, without raising taxes.

The expansion of prison capacity is part of the comprehensive reform of the entire criminal justice system approved by the 71st Legislature. New programs

will make more effective use of a wide range of prison alternatives for non-violent offenders. But the fact remains that prison capacity badly needs to be expanded. A chronic overcrowding crisis, stemming in part from a federal lawsuit that successfully challenged substandard prison conditions, has forced the governor repeatedly to declare a prison emergency under the 1983 Prison Management Act, closing the prison doors and accelerating inmate parole eligibility to make room for new admissions.

More than 10,000 convicted felons are now being held in county jails, waiting for admission to the state prison system, because there is no room for them in TDC. As the prison overcrowding crisis has spread to the counties, it in turn has caused severe jail overcrowding and has cost county taxpayers millions of dollars.

The lack of prison space is distorting the criminal justice process, reducing the time that criminals spend in prison. In 1987 the average stay for an inmate entering TDC was 98.5 months. Now the average length of stay has shrunk to around 20 months -- among the lowest in the nation. Adding new prison space, and repairing and maintaining existing facilities, would help alleviate this problem.

Lack of prison capacity is impeding law enforcement and undermining the deterrent effect of prison on criminal activity. Prosecutors and law enforcement officers are frustrated when felons choose prison time instead of probation, knowing their time behind bars is likely to be shorter than any probation supervision period.

New prison space is needed above all to ensure public safety. The recidivism rate in Texas, measuring inmate tendency to return to crime, is 43 percent. Rehabilitation can only do so much to persuade hardened criminals to change their ways. If the state cannot alter the violent nature of inmates, it should at least keep them off the streets.

Bonds make fiscal sense as a way of raising money to pay for long-term capital projects such as prison facilities. A bond sale would allow the state to

stretch its payments over many years, avoiding a big tax increase to pay the costs up front. Just as local governments finance long-term capital construction of streets, parks, buildings and sewers by issuing bonds, so the state should use this financing tool to expand prison capacity. Texas' per-capita bond debt is one of the lowest among the states, and this necessary expenditure would add relatively little to it.

The decision to expand prison capacity, and to finance that expansion by issuing bonds, has already been made by the Legislature. It will be implemented regardless of whether Amendment No. 8 is approved. But using general obligation bonds, backed by the State Treasury, to finance this expansion would reduce the long-term borrowing cost to the state. If Amendment No. 8 is rejected, then the state instead will have to issue revenue bonds to raise the money needed to finance these projects. Since general obligation bonds are a direct pledge of the state's credit (which is why a constitutional amendment is required), they are more attractive to investors and therefore may be issued at a lower interest rate than revenue bonds. (Revenue bonds technically are not a direct obligation of the state and require a higher interest yield to attract investors.) Since the state will use debt financing in any case, its use of general obligation bonds would save the taxpayers millions of dollars in lower interest costs over the years.

Although the Legislature has authorized an additional 10,800 prison beds this year alone, some want to expand prison capacity even more. But adding too many prison beds too quickly would not be fiscally prudent. By the end of 1991, prison capacity will have increased almost 50 percent in only four years. New guards and staff will be required to operate these facilities, which will raise costs even more. As new prison capacity comes on line, and the comprehensive new community corrections program begins to have an impact, prison capacity needs will constantly be reviewed to determine if more new beds are needed. Since the projects already approved would not exhaust the bond authorization in Amendment No. 8, it would provide a continuing financing source for future construction requirements, not only for the prison system but for

youth corrections, mental health/mental retardation, and state law enforcement facilities as well.

OPPONENTS
SAY:

The state cannot build its way out of its prison problem. Even the 10,800 new beds authorized by the Legislature this year will stretch the average time served by an inmate to only two years, just five months more than now. After the new facilities are completed, the state will spend millions more on operating costs, as the prison system takes an ever bigger bite out of the state budget, without solving the problem.

Although the Legislature has tried to lock in bond financing of new prison beds, the voters, by rejecting Amendment No. 8, would send a message that this is the wrong approach to the problem. The 10,800 new prison beds authorized this year will cost around \$350 million, but borrowing the money to pay for them by issuing bonds will double the cost over 20 years, to over \$700 million. The 20-year cost of operating these new units will be an estimated \$4 billion. The state prison budget already has soared to \$620 million per year, almost five times what it was when the decade began. Yet with all this new prison construction and its added cost to the taxpayer, the state crime rate, especially for property offenses such as burglary and theft, has soared.

Money spent on expensive new prisons would be better used to divert non-violent offenders to alternative types of correction facilities, such as trusty camps and regional rehabilitation facilities, which would free more maximum-security space for those violent offenders who should be kept off the streets. Also, the Legislature this year enacted a comprehensive criminal justice reform law that will allow more effective use of innovative, cost-efficient alternatives to prison, such as boot camps and electronic monitoring. These new prison-diversion techniques should be given a chance to work before wasting more money on a massive prison expansion program.

The state should devote more of its limited resources to cost-effective measures that will prevent crime, such as education, job training, alcohol and drug abuse

treatment and behavioral counseling programs. Recent studies show that almost 90 percent of Texas' felons are school dropouts; 37 percent are illiterate. Close to 90 percent abuse alcohol or other chemicals. Programs to treat these root causes of crime have been proven effective. To cite just one small example, behavioral counseling for hot-check writers in one county reduced their recidivism rate from 45 percent to less than 12 percent. Moreover, locally managed alcohol and drug treatment, education and "boot camp" programs cost considerably less than the \$40 daily upkeep of a nonviolent offender in prison.

OTHER
OPPONENTS
SAY:

The state may need more prison beds, but authorizing another \$400 million in state debt is not the way to meet that need. A "pay as you go" construction program would be preferable to piling more bond debt on the \$7 billion that the state already owes. Adding huge interest payments to the cost of construction would more than double the long-term cost. With federal debt already soaring, Texans should not further mortgage their children's future. These capital costs should be paid up-front, as the state used to do until it discovered "credit card" financing a few years ago. A relatively painless tax increase, such as 10-cent per pack increase in the cigarette tax, would raise an additional \$221 million, for instance, almost enough to satisfy immediate needs for prison expansion.

Most of the general-obligation bond debt incurred by the state in the past has been "self-supporting" -- debt paid back by those who directly benefit from the borrowing. Examples include money borrowed by the state to make loans to veterans, college students or local governments undertaking water development projects. Yet this amendment would bring to \$900 million the total bond-debt authorization to finance construction for TDC and other agencies -- programs that bring in no revenue. State bonds to support the superconducting super collider project eventually will add another \$1 billion in state debt that is not self-supporting. The money to repay this debt will come directly from state taxpayers, out of general revenue, cutting the funding available for other state services such as public education and health care.

SJR 24
Amendment No. 8
page 7

The counties need help now, not months from now, to alleviate the overcrowding in their jails caused by convicted felons awaiting transfer to the state prison system. If the state will not directly reimburse counties for holding state prisoners, then it should provide other emergency means of reducing overcrowding, either by financing jail expansion or authorizing new pre-release facilities for those eligible for parole release. What is being proposed is too little, too late and too costly.

The proposal increase in prison beds will not go far enough to expand the capacity of the system. The new beds added this year only will allow the system barely to stay even with expected demand. Rather than tie the hands of local prosecutors trying to crack down on crime, the state should do whatever it takes to provide the prison space needed to keep convicted criminals off the streets.

NOTES:

SB 558 by McFarland and HB 2335 by Hightower, enacted by the Legislature during its 1989 regular session, both would allow the Texas Public Building Authority to issue the \$400 million in general obligation bonds, if Amendment No. 8 is approved, to build, acquire or repair correctional facilities and mental health and mental retardation facilities and to buy and renovate the Austin Independent School District administration building, adjacent to DPS headquarters, for expansion of DPS office space. Both bills also raise, from \$500 million to \$900 million, the total amount of general obligation bonds or state revenue bonds (revenue bonds do not require a constitutional amendment) that may be issued for those purposes.

The bond provisions of HB 2335 are contingent on approval of Amendment No. 8 (SJR 24). But the provision of SB 558 raising to \$900 million the combined (general obligation or revenue) state bond authorization is not contingent on approval of Amendment No. 8; it has an effective date of Sept. 1, 1989.

The bonds issued under authority of Amendment No. 8 would require approval by the Bond Review Board, which is composed of the governor, lieutenant governor,

speaker of the House, state treasurer and comptroller. TDC would submit to the board a master plan for construction of corrections facilities, to be revised annually, before any bond proceeds could be distributed for corrections projects. The agencies receiving bond proceeds also would submit specific plans for their projects to the Legislative Budget Board (LBB) and, if required by the General Appropriations Act, receive LBB approval before spending any of the proceeds. Also, the amount of the bonds authorized by Amendment No. 8 that could be issued during the current budget period would be limited -- no more bonds could be issued than would require the state to pay \$24 million for debt service prior to Sept. 1, 1991 (in order to prevent the state budget from going into deficit by spending more than anticipated on bond debt).

SB 222, the General Appropriations Act for fiscal 1990-91, would use new state-bond (general obligation or revenue) authority to finance a total of \$257.9 million in capital improvements for the Texas Department of Corrections, the Texas Department of Mental Health and Mental Retardation and the Texas Youth Commission.

A total of \$205.1 million was appropriated to TDC for construction, repair and renovation, of which \$197.8 million would be financed through state bonds. Authorized projects include a 2,250-bed Michael-type (maximum security) unit, three 1,000-bed regional centers, a 500-bed Northern Regional Psychiatric Facility and a new 59-bed dormitory for geriatric inmates, a total of 5,809 new prison beds.

For TDMHMR, SB 222 appropriated \$48,479,200 in bond-funded construction funds, including \$5,242,500 from the 1987 bond authority, to establish an 80-bed psychiatric facility in the Killeen area and to acquire computer equipment and software. A total of \$56.9 million in capital improvements for TDMHMR would be financed from all sources.

For the TYC, \$16.9 million in bond money is designated for construction, repair and renovation of seven designated projects, out of a total of \$17.5 million for capital expenditures financed from all sources.

TDC currently has a number of construction projects underway that were financed with the general obligation bonds authorized in 1987. These include two 2,250-bed maximum security prisons, at Gatesville and Amarillo; four 1,000-bed medium to minimum-security facilities, near Marlin, Snyder, Woodville and Dayton; and seven 200-bed trusty camps.

TDC officials estimate that prison construction projects authorized by the Legislature for fiscal years 1988 through 1991, including those that would be paid for with borrowing authorized by Amendment No. 8, will increase TDC's total bed space by nearly 50 percent. Current capacity is 41,480, while the four-year building program will bring TDC capacity to 60,780. (TDC is required to operate at no more than 95 percent capacity.) An additional 2,000 beds will be available for TDC prisoners in private prison facilities that are now under construction.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 9 (HJR 101)

SUBJECT: Consolidation of criminal justice agencies

BACKGROUND: Art. 2, sec. 1 of the Texas Constitution provides for the separation of powers of state government into three distinct departments -- the legislative, the executive and the judicial. No department may exercise "any power properly attached" to either of the other departments, except as expressly permitted by the Constitution.

The power to pardon or parole convicted criminals has long been reserved to the executive branch. Art. 4, sec. 11 of the Constitution requires the Legislature to establish a Board of Pardons and Paroles. It also expressly permits the Legislature to enact laws setting the conditions and procedures for granting paroles. The Board of Pardons and Paroles, appointed by the governor, functions as part of the executive branch, determining whether to grant early release to convicted felons sentenced to prison. The prison system is operated by the Texas Department of Corrections (TDC), also part of the executive branch.

Art. 4, sec. 11A of the Constitution authorizes the courts to grant probation to convicted criminal defendants by suspending the imposition or execution of their sentence. It also expressly permits the Legislature to enact laws setting the conditions and procedures for granting probation. The probation system is administered by local departments overseen by the district judges of each judicial district. The Texas Adult Probation Commission, which is considered part of the judicial department, is appointed by the chief justice of the Supreme Court and the chief judge of the Court of Criminal Appeals; it oversees the distribution of state funds to the local probation departments.

During its 1989 regular session, the Legislature enacted HB 2335 by Hightower, establishing the new Texas Department of Criminal Justice by combining the functions of the Board of Pardons and Paroles, the Texas Adult Probation Commission and the Texas

Department of Corrections. The new department will be overseen by a nine-member board, appointed by the governor.

DIGEST: Amendment No. 9 would authorize the Legislature to organize and combine state agencies dealing with criminal justice. The Legislature could combine agencies that confine or supervise convicted persons, that set standards or distribute money to political subdivisions that confine or supervise convicted persons and that gather information related to the administration of justice. The Legislature could authorize the appointment of members of more than one government department to serve on the new governing body.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to organize and combine various state agencies that perform criminal justice functions."

SUPPORTERS SAY: Amendment No. 9 would establish a firm constitutional foundation for the consolidation of state criminal justice agencies under HB 2335, the new criminal justice reform act. Specifically authorizing the Legislature to enact this part of its criminal justice reform plan, aimed at reducing chronic overcrowding in state prisons and county jails, is simply a precautionary move, designed to eliminate any possible constitutional challenge that the agency consolidation conflicts with a strict interpretation of the separation of powers requirement.

The courts have ruled that parole is a purely executive function, while probation is granted and administered by the judicial branch. Although the Board of Pardons and Paroles and the Texas Adult Probation Commission will be consolidated under HB 2335, the probation departments will still be run by local judges, and judges and juries will still determine who should receive probation. The Adult Probation Commission would be shifted from the judicial to the executive branch, but its primary function -- distribution of state money to local probation departments -- is more appropriately an executive function anyway. But should

this needed change be challenged, Amendment No. 9 would clear up any constitutional ambiguity in advance.

Uniting under a single agency the functions of operating the prisons, overseeing probationers and recommending pardons and paroles will be a major step in streamlining the administration of the state criminal justice system, more than justifying this limited exception to the separation of powers. Each of the agencies that will become divisions of the new Texas Department of Criminal Justice will retain its former responsibilities. The new department will allow legislators, penal and parole officials in the executive branch and judges and probation officials in the judicial branch, to coordinate their efforts toward achieving the common goals of protecting the public and providing fair, efficient and effective punishment of convicted criminals. Amendment No. 9 would simply ensure that such coordination does not run afoul of any strict interpretation of the separation of powers requirement and scuttle a central part of the criminal justice reform.

The checks and balances already inherent in the criminal justice system would remain unchanged by the proposed amendment. The Legislature would still control the purse strings and set broad policy for the new executive agency; it could eliminate the agency entirely if it chose. The judicial branch would retain undiluted responsibility for trying those accused of criminal offenses and sentencing those convicted. If either the legislative branch -- in granting authority to a consolidated criminal justice agency -- or the executive branch -- in administering the new agency -- infringed on the individual rights guaranteed by the Texas or U.S. constitutions, the judicial branch would correct the abuse.

OPPONENTS
SAY:

The separation of powers among the three branches of government was established by the Founding Fathers of the United States, and of this state, to provide checks and balances to protect the individual against the unrestrained power of government. Limitations on the power of government to restrict individual freedom are especially crucial in the criminal justice area. Yet in the name of government efficiency this proposed

constitutional amendment would sweep away many of those checks and balances by combining agencies with clearly defined executive and judicial authority, without sufficient consideration of the potential implications of that change.

The exception to the constitutional separation of powers doctrine granted by the proposed amendment would be far broader than is needed to implement the law establishing the new Department of Criminal Justice. For example, it could be used to transfer to the executive department such functions as the local administration of the probation system, which has traditionally been reserved for the judicial branch.

NOTES:

HB 2335 by Hightower establishes the Texas Department of Criminal Justice. The administrative changes, which are not contingent on adoption of Amendment No. 9, established the new department as of Sept. 1, 1989, with sunset review by the Legislature in 1995.

The department will be overseen by a board of nine gubernatorial appointees, which will hire an executive director. The board members will be appointed by the governor to six-year terms. The board, to be based in Austin, is to hire a director by Jan. 1, 1990.

The department will absorb the Texas Department of Corrections (the new institutional division) as of Sept. 1, 1989 and the Texas Adult Probation Commission (the new community justice assistance division) and the Board of Pardons and Paroles (the new board of pardons and paroles division) as of Jan. 1, 1990.

A Legislative Criminal Justice Board -- consisting of the lieutenant governor or his designee, two senators appointed by the lieutenant governor, the speaker or his designee, two representatives appointed by the speaker, and the chairs of the House Corrections Committee, the House Appropriations Committee, the Senate Criminal Justice Committee and the Senate Finance Committee -- will review policy implementation by the new department. The chief justice of the Supreme Court and the chief judge of the Court of Criminal Appeals will each appoint six members of a new

advisory council for the community justice assistance division and the department.

Local district judges with criminal jurisdiction will continue to administer local probation departments, now called community supervision and corrections departments, and employ department personnel. Local county court-at-law judges with criminal jurisdiction will also be entitled to participate in the management of the department.

If new community or county corrections facilities for probationers are established, the district judges will have to appoint a community justice council to oversee the development of a local criminal justice plan. The council must consist of the following persons or their designees: a county sheriff, chosen by the sheriffs of the counties served by the facility; a county judge or commissioner, chosen by the counties served; a city council member of the most populous city served, chosen by the cities in the counties served; no more than two state legislators, chosen by the legislators from the counties served; a presiding district judge, chosen by judges from the districts served; a county court-at-law judge with criminal jurisdiction, chosen by those judges from the counties served; a county attorney with criminal jurisdiction, chosen by the county attorneys of the counties served; a district attorney or criminal district attorney, chosen by the D.A.s or criminal D.A.s in the counties served; and an elected school board trustee, chosen by the trustees of the independent school districts in the counties served. Each council in turn will be required to appoint a local community justice task force, with certain specified members, to develop a local community justice plan.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis Amendment No. 10 (SJR 4)

SUBJECT: Instructions to jury on parole and good conduct laws

BACKGROUND: Under state criminal procedure, a felony trial has two stages. In the first stage, the jury (or a judge if a jury trial is waived) determines the guilt or innocence of the defendant. If the defendant is found guilty, the next phase of the trial determines what sentence the defendant should receive.

In 1985 the Legislature enacted SB 37 by Brown, requiring that in the penalty phase of a felony trial the judge must instruct the jury regarding state law on parole and good conduct time and their potential impact on release of prison inmates in general, unless the conviction was for a capital felony.

In a decision issued on Nov. 12, 1987 and reaffirmed on rehearing on June 15, 1988, the Texas Court of Criminal Appeals struck down the jury-instruction law (art. 37.03, sec. 4(a) of the Code of Criminal Procedure) as unconstitutional. The court, ruling in Rose v. State (752 S.W. 2d 529, 552), said the law violated the constitutional provisions regarding due process of law (Art. 1, secs. 13 and 19). The court said that the law violated requirements for due process because it created a risk that punishment would be based on considerations other than those developed at trial.

The court also determined that the jury-instruction law violated the constitutional separation of powers (Art. 2, sec. 1) among the three branches of state government. The court described the statute as an attempt by the legislative branch of government to direct another branch, the judiciary, to interfere with a power held exclusively by the executive branch -- the power to grant paroles. The court noted that although a constitutional amendment in 1983 changed the Board of Pardons and Paroles from an agency created by the Constitution to one created by statute (Art. 4, sec. 11(a)), giving the board exclusive power to revoke pardons and removing that authority from the Governor's Office, parole power remains exclusively a function of the executive branch.

DIGEST: Amendment No. 10 would add to Art. 4, sec. 11(a) of the Constitution a provision authorizing the Legislature to enact laws that would require or permit courts to inform juries about the effect of good conduct and eligibility for parole or mandatory supervision on the length of the prison term of a convicted felon.

The ballot proposal reads: "The constitutional amendment authorizing the Legislature to require or permit courts to inform juries about the effect of good conduct time and eligibility for parole or mandatory supervision on the period of incarceration served by a defendant convicted of a criminal offense."

SUPPORTERS SAY: Amendment No. 10, the "truth in sentencing" amendment, would restore honesty and integrity to jury deliberations over the sentencing of convicted offenders. When jurors recommend a prison sentence for a criminal they have found guilty as charged, they often tailor it to fit their view, often erroneous, of the laws on parole and good conduct time. Working from a vague understanding of these laws and their effect on early release, juries may impose sentences that are either too harsh or too lenient. Clear written instructions from the judge explaining the parole and good conduct laws would prevent such miscarriages of justice.

Justice based on full knowledge of the law was what the Legislature hoped to accomplish when it originally enacted the jury-instruction law in 1985. Since that statute has been ruled unconstitutional, this constitutional amendment would accomplish the same end.

The proposed amendment and its implementing legislation, SB 54 by Brown, would lead to the imposition of sentences that would better fit the crimes they punish, since jurors would recommend sentences on the basis of facts, not guesses and misinformation. The due process rights of defendants to a fair trial would not be infringed because the jury would be specifically instructed not to speculate on how the parole laws would be applied in the defendant's case. Allowing juries to evaluate the facts in an objective, informed manner would help prevent

speculation about the parole and good conduct laws that can hurt as well as help defendants.

Adding a few paragraphs of instructions on parole and good conduct laws would not necessarily lengthen the penalty phase of trials. The implementing legislation would specifically prohibit the introduction of evidence on the actual operation of the parole and good conduct laws. The jury-instruction law did not lengthen prison sentences imposed by juries when it was in use before its invalidation by the Court of Criminal Appeals, and the same law would again take effect if this proposed amendment is approved.

The jury-instruction law would add an element of rationality to sentencing. The effect on the total criminal justice system of reenacting the jury-instruction law would not be significant overall, especially since cases in which the jury sets punishment are relatively uncommon. But adding an element of rationality to sentencing by juries, without biasing a jury one way or another concerning the particular case before it, could only benefit both defendants and prosecutors.

OPPONENTS
SAY:

Requiring that jurors in criminal trials be instructed about the operation of the parole and good conduct laws would only increase confusion. The instructions required by law would leave juries foundering in contradictory messages. They would be told that they may "consider the existence" of parole and good-conduct time, but they would also be told not to consider the effect of those laws on the particular case before them. These contradictory instructions are almost impossible to reconcile. The jurors' confusion would lead either to more hung juries or to the imposition of longer sentences, exacerbating the prison overcrowding crisis.

Providing only general information on the parole and good conduct laws to a jury would skew the sentencing process by introducing a purely speculative element. It is extremely difficult to forecast how the various parole laws might affect a particular defendant's prison term. The many subjective variables include the defendant's future behavior and how the Texas

Department of Corrections and parole board will regard that behavior, as well as the degree of prison overcrowding affecting whether parole officials may delay or accelerate release of borderline cases.

The internal contradiction in the instructions to the jury would invite charges of jury misconduct and the overturning of cases on appeal, further clogging the courts and delaying justice. If juries are informed about parole and good conduct laws in their sentencing instructions, it would be easy to allege that they also had considered the effect of those laws on the defendant, introducing an extraneous, speculative element that would violate the defendant's due process right to a fair trial. It would be like pointing to an object, then forbidding anyone to look at that object -- once a jury was instructed about the parole and good conduct laws, it could not help but consider how they would be applied to the defendant.

If the jury-instruction law were reenacted, defense attorneys would be sorely tempted to introduce evidence explaining how the parole and good conduct time laws actually are applied. Although the implementing statute does not authorize introduction of new evidence on this issue, the defense could cite constitutional due process grounds for offering this information. The defense would certainly want to show, for example, that parolees can be immediately sent back to prison for misconduct, to serve out their full sentence. The result would be a long, drawn-out punishment phase in each criminal trial and added expense for the state.

Fear of early releases due to parole or awards of good conduct time inevitably would cause jurors to recommend longer prison sentences. The result would be more prison overcrowding and ultimately shorter time served to make room for new admissions.

Those who believe that convicts are serving too little time in prison should work to change the parole laws and the laws that set the penalties for various crimes, not work backwards to try to generate change through jury instructions.

SJR 4
Amendment No. 10
page 5

OTHER
OPPONENTS
SAY:

Amendment No. 10 would not go far enough to address the concerns raised by the Court of Criminal Appeals when it overturned the jury-instruction law. Amending the Constitution to grant specific authorization for the Legislature to enact laws governing jury instructions may settle the separation of powers problem, but it would not address the concern raised by the court about interference with the due process rights of the defendant. The court cited a consistent history of findings that "the parole law is not for the jury's consideration" in determining that the jury-instruction statute violated due process by allowing the jury to consider matters not introduced at trial. The jury-instruction law might be overturned again because it would still tend to encourage the jury to consider factors extraneous to the evidence presented at trial in sentencing the defendant.

NOTES:

SB 54 by Brown, the implementing legislation for Amendment No. 10 enacted by the Legislature during the 1989 regular session, would reenact Code of Criminal Procedure art. 37.07, sec. 4(a), requiring judges in the penalty phase of the trial of a non-capital felony case to instruct the jury in writing concerning the parole and good conduct laws. SB 54 would take effect only if Amendment No. 10 is approved by the voters.

The jury would be told that the defendant could earn time off the period of incarceration through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior and is diligent in carrying out work assignments and attempting to rehabilitate. Good conduct time may be taken away for misconduct.

The jury also would be told that the length of time the defendant would be imprisoned might be reduced by the award of parole. The defendant would not be eligible for parole until actually having served one-fourth of the sentence (plus other conditions, depending on the offense) without consideration of any good conduct time earned. The instruction would say that eligibility for parole does not guarantee that parole will be granted.

The instruction would tell jurors that it cannot be accurately predicted how parole and good conduct laws

might be applied to the defendant because the application of these laws depends on decisions made by prison and parole authorities. Jurors would be instructed that although they may consider the existence of the parole law and good conduct time, they may not consider "the extent to which good conduct time may be awarded to or forfeited by this particular defendant" or the "manner in which the parole law may be applied to this particular defendant."

SB 54 also provides that it is not meant to permit the introduction of evidence on the operation of parole and good conduct time laws.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 11 (HJR 102)

SUBJECT: Tying legislators' per diem to federal tax deduction

BACKGROUND: Art. 3, sec. 24 of the Texas Constitution grants legislators per diem (daily) pay of \$30 during regular sessions (140 days in odd-numbered years) and special sessions (up to 30 days, whenever called by the governor). The Constitution also sets legislators' salaries at \$600 a month (\$7,200 a year). Legislators are reimbursed for travel mileage at the rate they set by law for state employees.

The session per diem amount was last raised in April 1975, from \$12 to \$30, at the same time that legislative salaries were raised from \$400 a month to \$600 a month.

The constitutional limit on per diem pay applies only to days when the Legislature is in session. During the interim period between sessions, legislators who undertake official duties may receive a higher per diem, set by law. The General Appropriations Act for fiscal 1990-91 increased interim per diem pay from \$70 to \$81, as of Sept. 1, 1989. The amount will automatically increase along with any increase in the federal tax deduction for living expenses connected with legislative duties. Members whose travel is associated with boards, councils, committees or commissions may instead receive reimbursement of actual expenses.

Sec. 162 of the Internal Revenue Code allows state legislators to deduct from their income for each "legislative day" either the per diem reimbursement amount the federal government pays its executive employees for expenses while serving away from home or the amount of per diem the state generally allows its employees. The greater amount applies, except that the state per diem option cannot exceed 110 percent of the federal per diem. "Legislative day" is defined as any day the Legislature is in session, is out of session for four or fewer consecutive days, or is out of session but the individual legislator is physically present at a committee meeting.

Since Jan. 1, 1981, the tax deduction for legislative business has not been allowed for legislators whose district residence is within 50 miles of the state capitol.

DIGEST:

Amendment No. 11 would eliminate from Art. 3, sec. 24 of the Constitution the specific per diem pay of \$30 to state legislators for each day the Legislature is in session. It would instead set legislative per diem during regular and special sessions at the amount of the federal income-tax deduction for living expenses of state legislators in connection with legislative business. Any exception in federal law concerning legislators residing near the capitol would be disregarded as it pertains to legislative per diem.

Legislative per diem for a calendar year would be the amount allowed as a federal income-tax deduction as of Jan. 1 of that year.

The ballot proposal reads: "The constitutional amendment to set the amount of per diem received by a member of the legislature at the amount allowed for federal income tax purposes as a deduction for living expenses incurred by a state legislator in connection with official business."

**SUPPORTERS
SAY:**

Amendment No. 11 would provide a reasonable means of keeping in line with the cost of living the per diem paid to state legislators for their service during legislative sessions. It would tie per diem to an objective standard -- the federal income-tax deduction allowed for legislative business in Austin.

The constitutional limit on session per diem has not been raised since 1975. The current limit of \$30, barely adequate when approved 14 years ago, now equals only \$13.64 in 1975 dollars. The state per diem is less than 40 percent of the conservative IRS estimate of what it costs a legislator to pay living expenses during a session.

Like legislative salaries, Texas' current per diem is well below that of most other states. The state's per diem is the lowest among the seven most populous states

HJR 102
Amendment No. 11
page 3

that pay per diem. (Ohio and New Jersey, states whose legislative salaries far exceed anything proposed in Texas, pay no per diem. Michigan, which also pays a high salary, offers \$8,100 per year in expenses and thus is not directly comparable.)

When the Legislature is in session in Austin, legislators cannot cover their living expenses (rent, meals, laundry, etc.) on only \$30 a day. They must either tap their own personal resources or find another source of funding. Recent media reports indicate that lobbyists spent \$1.86 million on entertainment and gifts during the regular session, which would amount to \$10,300 per legislator or a "per diem" of nearly \$74 if lobbyists gave equally to all members. Allowing lobbyists to pick up the tab for legislative expenses is counter-productive in the long run -- Texas consumers ultimately pay for these lobby expenditures one way or the other.

HJR 102, adopted by the Legislature in its 1989 regular session, established two independent ballot questions on salary and per diem; voters may choose to approve one, both, or neither. Although the per diem issue is related to the question of legislative salaries, it deserves separate consideration. Increasing salary alone would not reimburse lawmakers for the expense of living in Austin for five months in odd-numbered years, plus any special sessions.

The federal tax deduction is a reasonable and stable measure of actual costs. The deduction, based in part upon the per diem federal employees receive when they travel to Austin, increases gradually. The rate has increased only \$6 since 1984, including a \$1 increase in September 1988.

The Legislature could not abuse the amendment by raising state employee per diem for its own benefit. Federal law limits the deduction for state lawmakers to 110 percent of federal employee per diem, which would indirectly cap the legislative per diem. Moreover, state lawmakers would be accountable to voters for any decision to increase state employee per diem above the federal rate. (Currently, federal employee per diem is \$1 higher than state employee per diem.)

Legislators should continue to be paid per diem for every day that the Legislature is in session, regardless of whether the House or Senate is actually "meeting" on a particular session day. Most legislators must rent a house or apartment for the entire period of a session. During a session, legislators spend many hours on legislative business, such as attending committee hearings or briefing constituents on legislation, on days when the Legislature is not actually "meeting." Also, paying legislators for each day that the Legislature is in session would be consistent with the definition of "legislative day" in the federal tax code.

OPPONENTS
SAY:

Voters should reject this attempt to boost the per diem paid to legislators by 170 percent. This proposed amendment would allow the equivalent of a pay increase of \$51 a day. If both Amendment No. 11 and the salary increase in Amendment No. 1 are approved, legislators would reap a double bonus.

Increasing session per diem is inappropriate for many of the same reasons a salary increase is not justified. Both the per diem and the salary increase proposals would hasten the end of the part-time citizen legislator and usher in an era of professional politicians. The Legislature has already helped itself to other goodies, such as more retirement pay and higher interim per diem, at a time when many Texans are barely breaking even. As with salary, many of the states paying higher per diem rates have legislatures that meet more often than does the Texas Legislature. Some states pay no per diem at all, figuring that the legislative salary, office and staff, expense reimbursement, federal income-tax deduction, pension benefits and other perquisites of office are sufficient compensation for elected public servants.

Higher per diem would not eliminate the influence of lobbyists and contributors. Some legislators would continue to accept gifts as long as they are not thoroughly regulated. For example, registered lobbyists spent a reported \$1.35 million on entertainment and gifts in 1988, when the Legislature was not even in session. Any per diem increase should

at least be tied to stricter limits or reporting requirements for lobbyists' largess.

OTHER
OPPONENTS
SAY:

An increase in session per diem pay for Texas legislators may well be justified, but tying the per diem amount to a federal income-tax deduction would remove from Texas voters any control over the amount paid. The U.S. Congress and the federal IRS, rather than the Texas Legislature and the voters, would set per diem pay for Texas legislators. What if the tax deduction is abolished, leaving state lawmakers with no per diem, or is increased to an unacceptably high level? Either way, state voters would lose their power to evaluate any proposed per diem increase and to reject it if they chose, as they did overwhelmingly in 1984.

Although only the federal government could alter the formula establishing Texas per diem, state lawmakers could manipulate the amount paid to them by increasing state employee per diem as much as 10 percent higher than that received by federal employees. (Under current federal law, Texas legislators could increase their own per diem to \$89 and stay within the tax deduction limit.) Such an indirect procedure, like legislative pension benefits tied to the salaries of district judges, would not likely generate enough attention for voters to hold legislators accountable for raising their pay.

As with salaries, lawmakers might find more public acceptance for their proposal if they chose a more reasonable amount and provided for gradual increases through price indexing. The current \$30 per diem, for example, would have been worth \$65.97 by 1988 if inflation indexing had started in 1975.

If per diem pay is to be increased and tied to the federal income-tax deduction based on the expense of doing business while in Austin, then it should be paid only when the Legislature is actually meeting, not when it is technically "in session" but no business is being conducted. The House and Senate usually meet no more than four days a week until the closing weeks of the regular session. Legislators frequently are back home doing private business on days when the Legislature is

not actually "meeting." Another alternative would be to base per diem pay on legislative attendance, allowing payment only when legislators are actually present when the House or Senate is meeting on a particular day.

NOTES:

Amendment No. 1, also on the Nov. 7, 1989 ballot, would eliminate the \$600 per month legislative salary and instead tie the annual salary to one-fourth of whatever salary the Legislature sets for the governor. The speaker of the House and the lieutenant governor would receive a salary of one-half of the governor's salary. An intervening election would have to occur before any law changing legislative salaries could take effect. Both Amendment No. 11 and Amendment No. 1 are contained in HJR 102 by D. Hudson.

In 1984 the voters rejected a proposed constitutional amendment (No. 8) almost identical to this year's Amendment No. 11 by 1,233,314 (33 percent) in favor, 2,504,733 (67 percent) against. The ballot proposal for the 1984 proposed amendment read: "The constitutional amendment to provide a per diem for members of the legislature equal to the maximum daily amount allowed by federal law as a deduction for ordinary and necessary business expenses incurred by a state legislator."

(For additional discussion of legislative compensation, see the analysis of Amendment No. 1 in this report.)

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 12 (SJR 53)

SUBJECT: Permanent School Fund guarantee of state school bonds

BACKGROUND: The state provides assistance to local school districts for school operations, such as administration and teacher salaries, but not for acquisition, construction or improvement of school buildings and related facilities. School districts typically issue bonds, approved by district voters, to finance the cost of facilities. School district bonds usually are repaid from local property-tax revenue.

Art. 7, sec. 5(b) of the Texas Constitution, adopted in 1983, authorizes use of the Permanent School Fund (PSF) and its income to guarantee the repayment of bonds issued by local school districts. The Permanent School Fund is a perpetual trust fund supported by income from public lands constitutionally set aside for the state's public schools. The land produces income primarily through grazing and mineral leases and royalties on production of oil and natural gas. As of Aug. 31, 1988, the PSF had a book value of \$6.44 billion and a market value of \$7.72 billion.

The PSF is invested in government and corporate bonds and in common stock. The interest and dividends from these investments, along with revenue from certain taxes, constitute the Available School Fund (ASF). In fiscal 1988 the ASF received almost \$572.7 million from the PSF. The ASF is used to purchase state-supplied textbooks and is distributed on a per-student basis to the school districts each year through the Foundation School Program for district operating expenses.

During fiscal 1988 the PSF guaranteed the bond issues of 21 school districts with a total par value of almost \$57 million. In fiscal 1987 the PSF guaranteed 26 issues totaling \$126.1 million. From the inception of the bond guarantee program in fiscal 1984 through the end of fiscal 1988, the PSF guaranteed a total of \$1.56 billion in school district bonds.

The 71st Legislature during its 1989 regular session enacted SB 951 by Haley, the Public School Facilities

Funding Act, which established a School Facilities Aid Fund. The fund will be financed by up to \$750 million in state revenue bonds and will be used to provide low-interest loans to local school districts to reduce their cost of financing facilities. Repayment of the state bonds would be guaranteed by the PSF, contingent on adoption of Amendment No. 12. Only the PSF guarantee of the state bonds is contingent on approval of Amendment No. 12; the remainder of the program will take effect regardless.

DIGEST:

Amendment No. 12 would amend Art. 7, sec. 5(b) of the Texas Constitution to authorize the Legislature to use the Permanent School Fund to guarantee repayment of up to \$750 million in bonds issued by the state. The bond proceeds would be used to make loans to, or purchase the bonds of, school districts for buying, building, improving or furnishing instructional facilities.

The total amount of state revenue bonds authorized could exceed \$750 million if two-thirds of both houses of the Legislature approved by a record vote.

Should any payment from the PSF have to be made because of its guarantee of the state-issued bonds, the payment would be reimbursed from the State Treasury, and the amount owed to the PSF would be a general obligation of the state until paid.

If state bonds guaranteed by the PSF are used to make a loan to a school district, and the district becomes delinquent on its loan repayments, the amount of the delinquent payment would be deducted from the district's state-aid entitlement.

The ballot proposal reads: "The constitutional amendment to provide for using the permanent school fund and its income to guarantee bonds issued by the state for the purpose of aiding school districts."

SUPPORTERS
SAY:

Amendment No. 12 would help save local school districts up to \$10 million a year by lowering their cost of borrowing to finance construction and improvement of school facilities. It would allow the state to use the Permanent School Fund (PSF) to guarantee up to \$750 million in state revenue bonds and loan the bond

proceeds to school districts to buy equipment, construct buildings or repay outstanding bonds. The bond proceeds could also be used to purchase local district bonds. Because repayment of the money raised by issuing state bonds would be guaranteed by the \$7 billion PSF, the bonds would receive higher ratings from Wall Street credit-agencies -- and therefore lower interest costs -- than state bonds backed solely by revenue from school-district loan repayments.

Amendment No. 12 would not place the Permanent School Fund at risk, since the State Treasury would immediately reimburse the PSF if a school district defaulted on a loan financed with state bonds. The amount owed by the state to the PSF would be a general obligation of the state, so it would have to be paid from the first money coming into the treasury. However, it is highly unlikely that this provision would ever be needed, since no school district has defaulted on its bond-debt payments since the 1930s. In addition, districts would be deterred from becoming delinquent on payments by the threat of losing their state aid.

Amendment No. 12 would not open the door to the unlimited issuance of general-obligation bonds, nor would it allow direct construction aid to school districts. Repayment of the bonds would remain a general obligation of the local school districts, not the state. The state's obligation would accrue only if a school district defaulted on bonds guaranteed by the Permanent School Fund. In that unlikely event, the state would have a general obligation only to repay the PSF for any costs resulting from its guarantee of the defaulted bonds.

Two-thirds of both houses of the Legislature would have to approve raising the \$750 million ceiling on the amount of revenue bonds that the state could issue under this program. Although the voters would not have to approve an increase in the \$750 million cap, the support of a "super-majority" of two-thirds of the Legislature to raise the limit could be obtained only if the demand from school boards reflected a justified need. If Amendment No. 12 is not approved by the voters, the amount of revenue bonds that the state

could issue without a PSF guarantee, also \$750 million, could be increased by only a simple majority of the Legislature.

The proposed amendment would limit the financial assistance that could be provided by the state to making loans to, and purchasing bonds issued by, qualifying school districts. It would not authorize direct spending of state funds for construction of local school facilities and could not be used to expand the scope of state aid.

The existing program of using the PSF to guarantee repayment of bonds issued by individual school districts has been curtailed recently by the "arbitrage" restrictions in the 1986 federal tax reform act. The arbitrage regulations prohibit government entities from issuing tax-exempt bonds at a low interest rate, then reaping a profit by investing the proceeds of those bonds at higher rates, rather than using the money immediately for the purposes intended. The federal Internal Revenue Service is considering whether the use of the high-yield assets of the PSF to guarantee low-interest bonds issued by local school districts is a violation of the arbitrage rules. Until a final ruling, only those few PSF assets with yields lower than local district bond rates can be used to back these bonds, severely limiting the extent of the current local-bond guarantee program.

The state bond program, which will be implemented under SB 951 (the Public School Facilities Funding Act) also will be subject to the arbitrage rules. However, the state-bond program will offer several advantages over the local-bond program, regardless of the final IRS arbitrage ruling concerning the PSF guarantee. Since the state will be able to issue a larger amount of bonds at one time than almost any single school district could, it will have relatively lower issuance costs, such as attorneys' and underwriters' fees. The state-bond proceeds may also be used to make loans to school districts to refund outstanding bonds that were issued by the districts during the early 1980s at very high interest rates, enabling the districts to substantially lower their interest costs. If Amendment No. 12 is approved and the PSF is used to guarantee

repayment of these state bonds, it would further enhance the savings for local school districts.

The School Facilities Aid Program will be structured to minimize administrative costs and maximize the amount of bond proceeds that go to the school districts. Under SB 951, the Texas Education Agency will review school district applications for assistance and monitor their annual financial reports, using financial data that it already collects. The State Treasurer's Office will handle the details of bond issuance, using the expertise it now applies daily to state finances. The Bond Review Board will select the recipients of state assistance and oversee the entire program, allowing the elected leadership of the state to determine its direction. A facilities study, which will be financed by bond proceeds, will give the state a complete inventory of local school facilities and their condition, allowing the state to allocate future assistance more effectively.

The School Facilities Aid Program is not meant to be a panacea for the problem of inadequate school facilities in Texas. It is intended to complement the existing PSF guarantee program for local school district bonds approved in 1983 and to extend economies of scale to the districts by lowering their credit costs. It will not eliminate the problems of districts that are too poor to afford much debt, but even these districts will save some money from lower interest costs and will have first priority in obtaining assistance.

OPPONENTS
SAY:

This proposed amendment would give the state a way of evading the constitutional requirement for voter approval of all state debt created through issuance of general obligation bonds. Since the State Treasury ultimately would be responsible for repaying any bonds issued under the School Facilities Aid Program and guaranteed by the Permanent School Fund, those bonds would, in effect, be the same as general obligation bonds. Since the proposed constitutional amendment would permit the Legislature to increase the \$750 million authorization limit on these bonds, for the first time the Legislature would be able to expand state general-obligation debt without the approval of the voters.

Amendment No. 12 would expose the assets of the Permanent School Fund to unnecessary risk, since a local school district could trigger the guarantee provisions by missing a single bond payment. The PSF is the cornerstone of the entire state school-finance program and should be protected from such risks.

Amendment No. 12 would do little to improve local school finances. The primary weakness of the current PSF guarantee program for local school district bonds is the federal arbitrage limitation. Using the PSF to guarantee repayment of state bonds would be subject to the same federal restrictions. It would offer no advantage with respect to arbitrage and only marginal savings in issuance costs.

The PSF guarantee authority proposed by this amendment, and the School Facilities Aid Fund it would support, would be a first step toward expanding state aid to local school districts to include state payments for acquisition, construction and improvement of local school facilities. The state has no business expanding its involvement to financing school construction and other capital needs, which should be determined according to the willingness of local voters to tax themselves to finance those facilities.

Using state bonds to purchase the bonds issued by a school district to finance new facilities, or loaning state money for that purpose, will require state review of local building programs before the state assistance is granted. This additional state supervision will be one more means of forcing school districts to surrender local control.

The School Facilities Aid Program may end up creating a pool of state bond proceeds with no takers. The existing PSF local-bond guarantee program is larger than the proposed new state-bond guarantee program. It has been well-accepted by school districts and is sufficient to meet school district needs without the state adding to its growing debt burden by issuing another \$750 million in state bonds.

OTHER
OPPONENTS
SAY:

The School Facilities Aid Program, with or without a PSF guarantee, does not address the problem of equalizing the financing of education facilities. Those districts that need the most help are too poor to participate in this bond cost-saving program; they need direct state aid. The current state-aid system, which supports only local operating costs, should be expanded to finance directly at least part of the cost of facilities. If the state is going to force local districts to provide extra classroom space in order to reduce teacher-pupil ratios, it should help pay those costs. The proposed financial assistance program may even increase the disparity between the poorest districts and those districts that can afford to issue bonds.

NOTES:

During its 1989 regular session the Legislature enacted SB 951 by Haley, the Public School Facilities Funding Act, establishing a School Facilities Aid Fund to provide financial assistance to school districts. The fund will receive the proceeds of up to \$750 million in revenue bonds, which will be used to provide loans to local school districts to help finance their facilities. The new state bonds would be guaranteed by the Permanent School Fund, contingent on the approval by the voters of Amendment No. 12. (Only the bond guarantee by the PSF is contingent on approval of Amendment No. 12; the remainder of the program will take effect regardless.)

The School Facilities Aid Fund will be governed by the Bond Review Board (composed of the governor, lieutenant governor, speaker of the House, state treasurer and comptroller) and administered by the treasurer.

The fund may be used to make loans to a school district to buy, build, fix or improve equipment and buildings for classroom teaching, refund a district's outstanding bonds or purchase a district's bonds. It may also be used to pay the costs of a study of the needs of school districts for equipment and buildings.

The School Facilities Aid Fund may receive bond proceeds, federal, state and private funds, aid repayments, investment earnings and other amounts transferred to the fund. The fund may be used to pay

the administrative costs of the program and to pay the interest and principal on the bonds issued for the fund. The fund may not be used to pay the general administrative expenses of a school district or pay salary or benefits of a school district employee.

The Bond Review Board may make loans for a district to buy, build or improve items used for classroom teaching or required by state law, including buildings, permanent fixtures, mechanical or electrical equipment, and other permanent improvements, except computers, that have a life at least as long as the district's loan from the fund or the district's bonds purchased by the fund. The fund may not be used to buy land or build or improve facilities used predominantly for extracurricular activities. The board may require a district to provide matching funds and may limit the amount of aid received by one district.

The Bond Review Board must consider whether a school district seeking assistance has inadequate facilities, failed to meet a required teacher-to-student ratio, has a rapidly growing number of students or expects rapid growth in the future, had a greater-than-average increase in tax burden or local debt service tax, has inadequate property-wealth per student and has the ability to repay the aid granted. The Texas Education Agency will assist the board in evaluating applications, review the financial condition of applicants and report on the capacity of an applicant to repay the loan.

The amount of any delinquent loan payment by a district will be deducted from the district's next Foundation School Fund payment.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 13 (HJR 19)

SUBJECT: Constitutional rights of crime victims

DIGEST: Amendment No. 13 would add to Art. 1 of the Texas Constitution, the state Bill of Rights, a new sec. 30 listing the rights of crime victims. These rights would include fair treatment, respect for dignity and privacy and reasonable protection from the accused throughout the criminal justice process.

The Constitution would guarantee that, upon request, a crime victim would be notified of court proceedings related to the offense and be allowed to attend those proceedings, unless the victim were to testify and the court found that the victim's testimony would be "materially affected" by hearing other testimony. A victim would have the right, upon request, to confer with the prosecutor's office, receive restitution and receive information about the accused's conviction, sentence, imprisonment and release.

The Legislature could enact laws defining the term "victim" and enforcing the rights listed in the proposed amendment and other rights of crime victims.

The state, through the prosecuting attorney, would be given the right to enforce crime victims' rights.

The Legislature could provide that judges, state attorneys, peace officers and law enforcement agencies would not be liable for their failure or inability to provide crime victims' rights.

A defendant could not appeal a conviction on the grounds that a victim's rights had been denied.

A guardian or other representative of a crime victim, as well as a victim, would have standing to enforce a victim's rights, but would have no right to participate as a party in a criminal proceeding.

The ballot proposal reads: "The constitutional amendment providing a bill of rights for crime victims."

SUPPORTERS
SAY:

Amendment No. 13 would make it clear that victims of crime, like those accused of committing crimes, have rights that should be recognized when they become involuntarily involved in the criminal justice system. A crime occurs every 5 seconds, and an estimated 83 percent of all 12-year-olds will become crime victims at some point in their lives. Yet victims are often forgotten and their rights unheeded in the long aftermath of crime -- arrest, trial, sentencing, appeal and release. By including in the Constitution a specific list of victims' rights, the state would signal that it acknowledges and protects those rights.

Enshrining the rights of victims in the Constitution would provide victims stronger legal standing in enforcing those rights. Statutes establishing victims' rights are often not enforced and may be easily amended to dilute provisions such as providing notice to victims of the release of an offender. For example, in 1988 there were approximately 1.5 million crime victims. Following existing statutory law, prosecutors distributed over 26,000 "victim impact statements," which request notice when a convicted offender is released from custody. Yet only 3,200 of these notice requests actually were sent to the parole board, and only 1,389 victims were actually notified as they had requested.

The targets of crime should not be victimized twice -- once by the criminal, then again by the state. The steadily rising crime rate and the prison overcrowding crisis have turned the prison gate into a revolving door. Too often convicts thought to be safely locked away in prison are released without notice and return to the community they once preyed upon. Regardless of whether these offenders have been rehabilitated, their presence -- if it comes as a surprise -- can be profoundly disturbing to their victims. This amendment would guarantee victims a constitutionally enforceable right both to receive and to provide information about an offender at each stage of the criminal-justice process.

The proposed amendment would provide a counterpart for victims to the existing rights of those accused of crimes, yet it would in no way impinge on a defendant's

HJR 19
Amendment No. 13
page 3

right to a fair trial or fair treatment by the state. For example, victims could still be excluded from the courtroom if attending the trial of an accused offender would affect the victim's testimony.

In addition to recognizing the rights of crime victims, this proposed amendment would help enlighten the public not only about the rights of victims but also about about the purpose and nature of the criminal justice system. By raising public awareness about crime and its consequences, the amendment would create a better climate for law enforcement and crime prevention. It also would serve as clear notice to the entire criminal justice community that victims have rights that must be recognized and would help potential victims to know, and demand, their rights.

OPPONENTS
SAY:

The proposed amendment not only is unnecessary, it also could introduce confusion and uncertainty into our state Bill of Rights. The rights of crime victims are contained in the entire body of Texas criminal law that protects the state's citizens. These rights are also explicitly enumerated in the Texas Crime Victims' Act, enacted by the Legislature in 1985. They need not be restated in the Constitution.

The state protects the rights of victims by bringing its full authority to bear in indicting, prosecuting and imprisoning those accused of committing criminal offenses. While victims should be given every courtesy and consideration, their rights should not be allowed to conflict with, or undermine, the fundamental, overriding principle that those accused are innocent until proven guilty and should be free from official harassment once they have paid their debt to society.

OTHER
OPPONENTS
SAY:

This proposed constitutional amendment does not go far enough. It should spell out the rights of the state, as represented by its prosecuting attorney, as well as those of the victims of crime, in criminal proceedings. As it was originally introduced, the amendment would have given the state the right to due process of law. However, the proposed amendment was watered down in the Legislature to eliminate any reference to the rights of the state, making it less meaningful and less necessary. The prosecution,

representing the interests of all law-abiding citizens, including crime victims, deserves the right to a fair trial as much as the defendant.

The proposed amendment would give with one hand and take away with the other. It would recognize that the state could enforce the rights of crime victims, but it also would absolve all criminal justice officials of civil liability to victims if they fail to enforce their rights. Victims should be able to have a mechanism for enforcing their own rights when the state cannot, or will not, act for them.

NOTES:

Chapter 56 of the Code Criminal Procedure, enacted in 1985, specifies the rights of victims of violent crime. Victims and their guardians and the relatives of deceased victims have the right: (1) to receive adequate protection from harm and threats arising from their cooperation with prosecutors; (2) to have a magistrate take their family's safety into account in setting bail; (3) to be informed, upon request, of relevant court proceedings and any rescheduling or cancellation of those proceedings; (4) to an explanation, upon request, by law enforcement personnel and prosecutors of criminal justice procedures; (5) to provide pertinent information to probation departments in any pre-sentencing investigation; (6) to be informed about the crime victims compensation program and, upon request, to be referred to social service agencies offering additional assistance; (7) to be informed, upon request, of parole procedures, to participate in the parole process, to be notified, upon request, of parole proceedings, to provide information to be placed in the offender's file prior to parole and to be notified, upon request, of the offender's release; (8) to be provided a separate and secure waiting area before testifying concerning the offender or to have other actions taken to minimize contact with the offender and the offender's relatives and witnesses; (9) to have returned promptly any property held as evidence; and (10) to have the prosecutor notify, upon request, their employer of the need for absence from work in connection with criminal proceedings. Victims are also entitled to be present at all public court proceedings related to the offense, subject to the approval of the judge.

Prosecutors and law enforcement agencies must ensure, to the extent practicable, that victims and others are afforded their rights and, upon request, must explain those rights. Judges, prosecutors, peace officers and law enforcement personnel are not civilly liable for failure or inability to provide victims their rights, nor may failure or inability to provide these rights be a ground for appeal by a defendant. Victims and other affected parties have no standing to participate as parties in a criminal proceeding or to contest its disposition.

Victims and other affected parties may complete a victim impact statement, recording the effect of the offense and providing the information needed to contact the victim and others at any stage of the prosecution or punishment. Upon sentencing, but not prior to the determination of guilt or innocence, the judge must consider the information in the victim impact statement and allow the defendant time to examine it and provide refuting information.

Local prosecutors must designate a victim assistance coordinator to ensure that victims are afforded their rights. A new provision, effective Sept. 1, 1989, requires each law enforcement agency to designate a crime victim liaison with the duty of ensuring that victims and other affected parties are afforded their rights.

VACS art. 8309-1, the Crime Victims Compensation Act, allows victims suffering personal injury, or the dependents of victims killed, to receive compensation for those injuries. A Compensation to Crime Victims Fund, administered by the Industrial Accident Board, dispenses compensation, which is derived from court costs paid by persons convicted of crimes. Courts may also require as a condition of probation that offenders provide restitution to crime victims.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis Amendment No. 14 (SJR 71)

SUBJECT: Election of Fort Bend County district attorney

BACKGROUND: The Texas Constitution provides for election of a county attorney to represent the state in criminal and civil matters over which the office is given jurisdiction by statute. Most counties also have a district attorney, who represents the state in matters involving the district court (which may have jurisdiction over more than one county). In some counties, a criminal district attorney exercises the functions of both a county attorney and a district attorney.

Art. 16, sec. 65 of the Texas Constitution staggers the terms of all county and district elected officials. The four-year terms of all criminal district attorneys in the state will end in 1990, while the four-year terms of all district attorneys and county attorneys in the state will end in 1992.

The same section of the Constitution contains a "resign-to-run" provision applying to a list of local officials. It requires those local officials to forfeit their offices if they announce their candidacy for another office when they have more than one year left to serve in their current position.

Unless otherwise specified by law, the governor fills any vacancy in the office of district attorney, including a newly created office. The county commissioners court fills any vacancy in the office of county attorney.

Fort Bend County currently has a criminal district attorney, who represents the state in all criminal and civil cases in the county and has all powers, duties and privileges conferred by law on county attorneys and district attorneys. During its 1989 regular session, the 71st Legislature enacted SB 1033 by Brown, which would eliminate the office of criminal district attorney in Fort Bend County, creating instead separate offices of district attorney and county attorney.

SJR 71
Amendment No. 14
page 2

The term of the new district attorney would begin on Jan. 1, 1991, and the new office would be filled in the 1990 election. The Fort Bend County commissioners court would fill the new office of county attorney, whose term also would begin on Jan. 1, 1991.

DIGEST:

Amendment No. 14 would add to Art. 16 of the Constitution a new sec. 65A, providing that the election and term of a district attorney serving a judicial district composed entirely of Fort Bend County would be governed by the law relating to criminal district attorneys.

(This exception to the provisions of Art. 16, sec. 65 would mean that an election for the four-year term of the Fort Bend County district attorney would occur in 1990 rather than in 1992, when all other district attorneys in the state will be elected.)

The amendment would take effect Jan. 1, 1990.

The ballot proposal reads: "The constitutional amendment requiring a district attorney serving in Fort Bend County to be elected and serve a term in the manner provided by general law for criminal district attorneys."

SUPPORTERS
SAY:

Amendment No. 14 would create a special exception for Fort Bend County to ease the transition as it divides the office of criminal district attorney into two new offices of district attorney and county attorney.

Without a constitutional amendment, the new office of district attorney would be filled by an appointee of the governor, because under Art. 16, sec. 65 no election for district attorney may be held until 1992. Fort Bend County voters might object to the two-year "free ride" given to the gubernatorial appointee. These concerns are important enough to Fort Bend County that SB 1033, the bill to establish the two new offices, will not take effect unless this constitutional amendment is adopted by the voters statewide.

An exception to the constitutional rules is justified in this case. The transition from a criminal district attorney to a district attorney would amount to little more than a name change. Since the office of district attorney would retain most functions of the criminal district attorney, the district attorney's office would not really be a "new" office, and there is no need for the governor to make a special appointment to fill the office.

The position of county attorney, on the other hand, would be a new office. Filling it by an interim appointment made by the county commissioners court would be appropriate, since the vacancy would be a new one. Thus, no constitutional amendment is being proposed in the case of the county attorney, and the election for that office would not be held until 1992, the same as for county attorneys in all other counties.

Replacing the office of criminal district attorney would allow separation of criminal and civil functions in Fort Bend County. Blending these functions in a single office sometimes can lead to conflicts of interest. The problem is particularly acute when the criminal district attorney prosecutes county officials, who are represented by the civil division of the criminal district attorney's office.

Unlike county attorneys in most other counties, the Fort Bend County attorney would not have jurisdiction over criminal misdemeanors, under the provisions of the bill creating the office. It is appropriate that one office retain authority to prosecute felonies and misdemeanors in order that criminal episodes involving both types of crimes can be handled more efficiently. The proposed constitutional amendment would ensure that the local official prosecuting all criminal offenses in the county will be chosen by the voters.

OPPONENTS
SAY:

This proposed constitutional amendment is unnecessary and would set a bad precedent. The voters statewide do not need to decide this local matter. The reason for this proposed amendment is merely to avoid a gubernatorial appointment for the new office of district attorney. Yet appointment is the usual method of filling new offices -- there is little

SJR 71
Amendment No. 14
page 4

justification for amending the state Constitution just to satisfy the whims of a handful of officials in one out of 254 counties.

Dividing the office of criminal district attorney into two new offices would not necessarily be cost-effective. Making two offices out of one could result in duplication and could lead to increased costs as two new elected officials seek to upgrade and expand their operations.

The proposed amendment could possibly be construed as exempting the incumbent criminal district attorney from the "resign-to-run" provision should he decide to run for district attorney. Delaying until January an announcement of candidacy for the new office would not pose a serious political hardship.

OTHER
OPPONENTS
SAY:

Rather than make a single exception in the Texas Constitution for the election of the district attorney of Fort Bend County alone, the artificial staggering of local office terms in Art. 16, sec. 65 should be repealed altogether.

The staggering provision was necessary as a transitional measure in 1954, when the terms of all county and district officials were increased from two years to four years. This requirement serves no purpose now, especially since the adoption of the "resign-to-run" provision, which discourages office-hopping. Adding a special exception to a useless provision would just further clutter the Constitution.

It makes no sense to avoid appointing the district attorney but not the county attorney. If filling one position by appointment is undesirable, then the voters should be given the chance to fill both positions.

NOTES:

During its 1989 regular session the Legislature enacted SB 1033 by Brown, which would divide the office of criminal district attorney in Fort Bend County into two new offices of district attorney and county attorney. SB 1033 will not take effect unless Amendment No. 14 is approved by the voters.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 15 (HJR 32)

SUBJECT: Raffles for charity by nonprofit organizations

BACKGROUND: Art. 3, sec. 47(a) of the Texas Constitution requires the Legislature to enact laws prohibiting lotteries and gift enterprises. Sec. 47(b) allows the Legislature to authorize certain nonprofit organizations to conduct bingo games if the money raised is used for charitable purposes and if bingo is approved by a local vote.

DIGEST: Amendment No. 15 would add to Art. 3, sec. 47 of the Constitution a provision allowing the Legislature to permit certain qualified nonprofit organizations to conduct raffles for charitable purposes. Religious societies, volunteer fire departments, volunteer emergency medical services, or other nonprofit organizations would be eligible to conduct raffles.

Any law authorizing raffles would have to require that all proceeds from the raffle be spent for the charitable purposes of the organization and that the raffle be conducted, promoted, and administered exclusively by members of the qualified organization.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to permit and regulate raffles conducted by certain nonprofit organizations for charitable purposes."

SUPPORTERS SAY: Amendment No. 15 would grant constitutional recognition to the fact that hundreds of legitimate nonprofit groups now hold raffles for charity. Yet most of these groups are not aware that they are violating the Penal Code's gambling prohibitions and could be prosecuted for a third-degree felony, which carries a maximum penalty of 10 years in prison and a \$5,000 fine. Local prosecuting attorneys generally do not interfere with these raffles because of a natural reluctance to prosecute charities for unintended violations of the law. Nevertheless, a disregarded law like this one undermines public respect for all laws and should be modified to be consistent with common sense, current practice and prevailing public opinion.

HJR 32
Amendment No. 15
page 2

The Legislature as long ago as 1971 recognized the wisdom of giving churches and other nonprofit organizations a statutory exemption from the prohibition against lotteries, including raffles, but that exemption was declared unconstitutional. This constitutional amendment would clear away constitutional hurdles to legislation permitting limited, well-controlled raffles for charitable purposes.

The people of Texas, by overwhelmingly adopting the bingo amendment in 1980, have already shown their support for the use of games by community groups to raise funds for worthy causes. This proposed amendment would merely make raffles another legal form of charitable fund-raising. Under the proposed amendment and its implementing legislation, raffles would be far more restricted than bingo and would require no state or local regulation, so there would be no need to force local communities to pay the cost of a local-option election to permit raffles, as they do for bingo.

The churches, synagogues, veterans groups, volunteer fire departments and other organizations that rely on raffles to raise money for good works are assets to their communities and assist public agencies in caring for the needy. These groups should not have to be outlaws in order to do good.

The proposed amendment and its implementing legislation have been tightly worded to avoid some problems that have been encountered in regulating bingo. Unlike bingo, outside parties could not contract with a nonprofit group to run raffles -- only the group benefiting from the raffle could promote, administer or conduct the raffle. An organization could hold no more than two raffles per year. Prizes could not be in cash and would be limited in value to no more than \$25,000. These and other restrictions would ensure that this limited exception to the lottery prohibition would not be abused.

OPPONENTS
SAY:

First bingo, then pari-mutuel wagering on horse and dog races, now raffles -- each new exception opens the door a little wider to public acceptance of legalized gambling in Texas. Legalizing raffles would only whet

the public appetite for a state lottery, using the same arguments being offered to support this change. The only place to draw the line is at the start, by refusing to permit any more exceptions to the constitutional prohibition against any form of lottery.

The bingo law has been subject to multiple abuses, enriching a few commercial operators and doing relatively little to help charities. It may also be necessary to enact another complex set of laws and regulations to enforce the restrictions on raffles. While the implementing legislation would place more restrictions on raffles than on bingo, laws can be easily amended.

OTHER
OPPONENTS
SAY:

Some communities in the state may wish to allow legalized raffles, but other areas may prefer to continue to exclude gambling of any kind. If gambling by raffle is to be legalized in Texas, then it should only be allowed on a local option basis, like bingo and pari-mutual wagering. Also like bingo, a local-option provision should be included in the Constitution.

NOTES:

HB 240 by T. Smith, the implementing legislation for Amendment No. 15 (HJR 32), was enacted by the Legislature during the 1989 regular session and would take effect on Jan. 1, 1990 if the proposed amendment is approved by the voters.

HB 240 would limit qualified nonprofit organizations to conducting two raffles a year for charitable purposes. A raffle prize could not be money and could not exceed \$25,000 in value. The organization conducting the raffle would have to either have the prize in its possession or ownership or post bond with the local county clerk for the value of the prize.

A raffle could not be promoted or advertised statewide, nor could tickets be sold statewide. A raffle could not be promoted through paid advertising in any medium of mass communication. No person could be compensated directly or indirectly for organizing or conducting a raffle or for selling tickets. Only members of the qualified organization conducting the raffle could sell or offer to sell tickets.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 16 (SJR 34)

SUBJECT: Local creation of hospital districts

BACKGROUND: Art. 9, sec. 9 of the Texas Constitution allows the Legislature to provide by law for the creation and operation of hospital districts. Adoption of sec. 9 in 1962 eliminated the need to amend the Constitution each time local authorities sought to create a hospital district, but the Legislature enacts a separate, special law to create or change each local district.

Art. 9, sec. 9 establishes certain requirements for any law that would establish a local hospital district. Hospital districts may be composed of one or more counties or parts of counties. They may issue bonds for hospital purposes, and any existing city, county or other public hospital can be transferred to the district. Any property tax levied by the district must be authorized by the voters and cannot be more than 75 cents per \$100 property valuation. If a hospital district tax is levied, no other city or county within the district may levy taxes or issue bonds for hospital purposes or for providing medical care. The district must assume the full responsibility for providing medical care for its medically needy residents.

In 1957 the Legislature enacted a law (now VACS art. 4494o) granting general authority to commissioners courts in counties with fewer than 75,000 residents to establish hospital districts in their respective counties.

DIGEST: Amendment No. 16 would change Art. 9, sec. 9 of the Constitution to allow the Legislature to authorize, either generally or by special law, the creation and dissolution of hospital districts. A majority of the qualified voters who voted in the district election would have to approve either action.

Amendment No. 16 would also add a new sec. 9B, authorizing the Legislature to enact laws providing for creation of hospital districts in counties with 75,000 or fewer residents. The Legislature could authorize a county commissioners court to levy an ad valorem

property tax for the district, and the Legislature could by law set a maximum property-tax rate for such districts.

The ballot proposal reads: "The constitutional amendment granting to the people the right to decide whether to create and maintain hospital districts to protect the public well-being in a manner independent of the legislature."

SUPPORTERS
SAY:

Amendment No. 16 and its implementing legislation, SB 907, would allow the Legislature to turn over to county commissioners courts and local voters the power to create and dissolve hospital districts. The Legislature would no longer have to enact a special law to create or abolish each local hospital district or to make some change in the authority of a local district. The responsibility for creating or dissolving hospital districts would be placed where it really belongs -- in the hands of the people to be served by the district and pay its taxes.

Creating a hospital district with local taxing authority is a local concern, as the Legislature has recognized in the past by requiring local petitions and elections to create districts. The Legislature need not become involved every time local citizens want to create, abolish or change a hospital district -- a general law could deal with these matters, leaving the implementation to local discretion.

Requiring the Legislature to authorize creation of every new hospital district, and to make any subsequent changes in that authority, wastes time and creates problems for local residents. Rather than being able to respond immediately to local medical needs, residents must wait until the Legislature happens to be in session before they can create a hospital district or amend its structure. With the dramatic increase in rural hospital closings and other problems with indigent health care, a long wait to create a district to provide a stable source of financing or to change some facet of the district's operations can be a severe impediment.

SJR 34
Amendment No. 16
page 3

The proposed requirements in Amendment No. 16 and in SB 907 for creating a hospital district would be the standard ones now routinely included in the special laws creating individual districts. Other than allowing the process to be initiated locally rather than by the Legislature, the long-standing procedures for creating districts would remain unchanged.

The Legislature has long treated hospital district legislation as a purely routine matter, deferring to the wishes of local legislators unless some provision varies substantially from the standard format. Allowing the Legislature to enact a law that applies generally, with the standard provisions that now appear in most of the special bills, would not be a substantial change from current practice. Any special local provision that deviated from the uniform standards of the general law would still have to be reviewed by the Legislature and enacted as a special law.

Under the proposed amendment, what local citizens could create, they could also abolish. Local problems with a district can be dealt with more appropriately by the persons closest to the situation. The existing constitutional provisions, and the additional statutory guidelines that would be provided by SB 907, would ensure that all locally created districts meet certain uniform standards.

Amendment No. 16 would also solve another problem, by clarifying that hospital districts in counties with 75,000 or fewer residents that were created under a 1957 law (VACS art. 4494(o)) are legitimate. Questions have been raised about whether there was proper constitutional authorization for the Legislature to enact this law in 1957, so this special constitutional provision is needed to put to rest any question about districts that may have been created under that law, should their legality ever be challenged. Districts established under this provision would have broader discretion to set a higher property tax rate, with the approval of local residents, than districts in more populous counties. But the hospital closing crisis in rural counties and the difficulty in obtaining adequate medical care in rural areas justifies granting hospital

districts in those counties greater flexibility to raise more revenue. If needed, the Legislature could set a maximum property-tax rate for these counties as well.

OPPONENTS
SAY:

The creation of any hospital district -- with extensive authority to tax property, issue bonds, seize property through eminent domain and care for the medically indigent -- should be reviewed individually by the Legislature. Many bills are considered "local," but that is no reason for broadly delegating the Legislature's authority in those areas.

The proposed amendment could cause a proliferation of hospital districts established in haste to handle some immediate problem that might not justify establishing a full-blown taxing district. Requiring that a separate bill be introduced by local legislators and reviewed and enacted by the Legislature means that a local consensus of public sentiment must be formed before any action is taken.

The Legislature recently authorized hospital districts to impose a sales tax, as well as a property tax, as long as the combined sales-tax rate for all local entities does not exceed 2 percent and if local voters approve the tax. Giving this new taxing authority to hospital districts, then removing legislative oversight of those districts, would be a mistake.

Amending the Constitution in order to validate past legislative action, which is the objective of adding Art. 9, sec. 9b, would turn the constitutional amendment process upside down. If a statute has an ambiguous constitutional foundation, then the statute should be changed, not the Constitution. Also, this special provision would give the Legislature wide latitude to allow hospital districts in counties with a population of 75,000 or less to set a property-tax rate higher than the current maximum rate of 75 cents per \$100 valuation. A maximum limit on the tax rate should be established in the Constitution for these districts, the same as for districts in counties with over 75,000 population, in order to restrain excessive taxes on local citizens.

SJR 34
Amendment No. 16
page 5

NOTES:

SB 907 by Armbrister, which would implement Amendment No. 16 (SJR 34), was enacted by the Legislature during the 1989 regular session, contingent on voter approval of the proposed amendment. SB 907 requires that in order to create a hospital district, at least 100 registered voters would have to petition the county judge. A local election would have to be held on creation of the district and its proposed tax rate. The tax rate could not exceed 75 cents per \$100 valuation. SB 907 sets out the powers of hospital districts that would be created under its authority, makes provisions in case of overlapping of hospital district boundaries, provides that general obligation bonds may be issued only with voter approval, limits the state's obligations for supporting hospital districts and makes other stipulations.

In 1949 Texas voters rejected a proposed constitutional amendment to allow hospital districts to be created in any county. From 1954 to 1962 the Constitution was amended several times to create individual hospital districts in particular areas. In 1954 an amendment was adopted allowing the Legislature to create countywide districts in counties with a population of 190,000 residents or more and in Galveston County. Districts were authorized in the city of Amarillo, Wichita County and part of Jefferson County by constitutional amendments in 1958. In 1959 three amendments were added, creating districts in Lamar and Hidalgo counties and in part of Comanche County. An amendment adopted in 1962 authorized creation of districts in Ochiltree, Castro, Hansford and Hopkins counties.

Art. 9, sec. 9, added in 1962, granted general authority to the Legislature to create hospital districts anywhere in the state but specified that no district may be created except by act of the Legislature. Since 1962 the Legislature by special law has authorized creation of almost 200 districts and has enacted scores of other bills to change the authority for, or dissolve, those districts.

In 1957 the Legislature made a general grant of authority to commissioners courts in counties with fewer than 75,000 residents (VACS art. 4494o) to

initiate creation of hospital districts, despite an apparent lack of constitutional authority for the statute when it was enacted. According to the 1980 census, 220 of the state's 254 counties have fewer than 75,000 residents.

In its first called session, the 71st Legislature enacted HB 95 by Schlueter, which permits hospital districts and emergency services districts to impose a local sales tax, subject to voter approval. The sales-tax rate can be 0.5 percent, 1 percent, 1.5 percent or 2 percent. A district or county cannot adopt or increase a sales tax if the resulting combined local sales-tax will be more than 2 percent anywhere in the district.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 17 (HJR 33)

SUBJECT: State financial aid to local fire departments

BACKGROUND: Art. 3, sec. 51 of the Texas Constitution forbids the Legislature from authorizing or making grants of public money to any individual, association or corporation. Various exceptions are included in the Constitution.

Art. 3, sec. 48-d of the Constitution authorizes counties to form rural fire-prevention districts that may levy taxes of up to three cents per \$100. State law allows the districts to provide emergency fire-fighting, rescue and ambulance service. Texas municipalities generally fund fire service through city tax levies. Volunteer fire departments serve certain areas not otherwise protected.

DIGEST: Amendment No. 17 would add sec. 51-a-1 to Art. 3 of the Constitution, authorizing the Legislature to use public money for loans, grants, scholarships and other financial assistance to public fire-fighting organizations. The money could be used to purchase fire-fighting and other equipment and facilities required to comply with federal or state law. The money also could be used for scholarships and grants to educate and train fire fighters in public fire-fighting organizations. Some of the funding could be used to administer the loan and grant program.

The ballot proposal reads: "The constitutional amendment authorizing the state to provide scholarships, grants, loans, and other financial assistance to local fire departments and other public fire-fighting organizations to purchase fire-fighting equipment, to aid in providing necessary equipment and facilities to comply with federal and state law, and to educate and train their members."

SUPPORTERS SAY: Amendment No. 17 would ensure that smaller public fire departments can adequately protect the citizens they serve by providing local departments a secure source of funding for needed projects. Half of the local communities with fewer than 10,000 people have no

fire protection at all, while many other small communities are served by fire departments that operate with outmoded equipment and untrained personnel. New hazards, such as hazardous-waste fires, have exacerbated the problem.

Many small communities cannot raise sufficient revenue to support fire services. While larger cities have tax bases broad enough to adequately finance their fire departments, some rural areas are so poor that the three-cent per \$100 property-tax cap for rural fire-prevention districts is inadequate, while a higher rate would be too great a burden on local taxpayers. Rural areas may be too sparsely populated to incorporate and create a municipal fire department.

Modern fire fighting equipment is so costly that it is beyond the reach of districts with limited tax revenue or local fire departments that raise funds through bake sales and other community projects. A fire engine, for instance, may cost \$100,000 or more. While the Forestry Service makes certain fire-fighting equipment available to local fire departments at a discount, this equipment is generally unsuited for fighting residential fires.

By enhancing fire protection in sparsely populated areas, this amendment would help cut the state's fire losses and thereby could help reduce fire insurance premium rates statewide. A similar program in New Mexico lowered insurance costs there.

The Legislature would see to it that state aid for fire services was distributed only where needed. The implementing legislation for the amendment would require that assistance be based on need, as determined by a board that would include nominees of the Firemen's and Fire Marshals' Association and the Association of Fire Fighters, who would have the expertise to evaluate aid requests, and representatives of the public. No department could get state aid unless it was found unable to raise the money itself.

The new fire-fighting financial assistance program would not require any new state taxes or fees. The implementing legislation proposes use of revenue

HJR 33
Amendment No. 17
page 3

already being collected by the State Board of Insurance. A rider in the General Appropriations Act for fiscal 1990-91 authorizes transfer of \$1 million into the Fire Department Emergency Fund, if the voters approve Amendment No. 17. Moreover, the implementing legislation would create a revolving fund to receive money from loan repayments and to make new loans.

The amendment does not specify how the aid program would be funded, leaving that choice to the Legislature, as is appropriate. If funding the program through the State Board of Insurance Operating Fund proves inadequate, the Legislature could choose another method, without asking the voters to amend the Constitution again.

The Constitution already contains numerous exceptions to the prohibition on grants of public funds, as well as many court decisions and attorney general opinions holding that state funds may be used by municipal and political corporations for governmental purposes. Fire protection by municipal or rural fire departments is clearly a governmental purpose that should be made eligible for state assistance.

OPPONENTS
SAY:

Amendment No. 17 would create a state subsidy for local fire departments instead of requiring local residents to finance their own fire protection. Counties already are authorized by the Constitution to form rural fire-protection districts that can levy a property tax of up to three cents per \$100 valuation to provide and contract for fire-fighting and emergency services. Municipalities already have adequate authority to raise tax revenue for fire services, as well as other city services.

State revenues should not be used to subsidize rural taxpayers who are unwilling to pay higher property taxes to support their local fire department. Alternative financing sources such as local support, charitable contributions and county assistance should be used rather than state money.

Amendment No. 17 not only is unnecessary, it could invite new taxes. While the implementing legislation for the amendment would provide initial funding from

taxes and fees already collected by the State Board of Insurance, nothing in the proposed amendment would prevent future legislatures from levying new or higher taxes to finance the program. If state taxes are not raised to finance this new program, then local fire departments would be competing for state funds with state programs.

Municipalities that received state money to support their fire departments could simply reduce their local tax support for the department. The fire department would have no net gain, but the cost of supporting it would be shifted from local taxpayers to the state.

The subsidy proposed by Amendment No. 17 and its implementing legislation would have a negligible effect on fire insurance premiums statewide. Relatively few policies are written in rural areas compared to urban areas, so any decrease in fire losses in rural areas would have little impact on the base rate. In any case, the statewide base rate is not as important in determining a homeowner's fire insurance premium as other rates based on local experience of fire losses or local fire-fighting capacity.

The New Mexico state aid program cited by supporters ties state grants to local efforts to issue bonds to improve local water systems. Any improvement in premium rates from the program came from localized reductions for limited areas.

The Fire Department Emergency Board that would be created under the implementing legislation would be controlled by members of two private associations -- one representing fire marshals and the other representing fire fighters. State tax money should be allocated by disinterested representatives of the public, not by private special interests.

OTHER
OPPONENTS
SAY:

Amendment No. 17 and its implementing legislation would create a fire department emergency program without ensuring adequate financing. Creating a program without guaranteed funding would be a sham. The current General Appropriations Act would transfer a mere \$1 million to the program for fiscal 1990-91 if

the proposed amendment is approved -- hardly enough to address the problem. The Legislature could appropriate even less for the next biennium.

An earlier proposal would have pumped about \$30 million a year into the fund, demonstrating the inadequacy of \$1 million for two years. This new program needs a solid, dependable source of revenue large enough to provide a cushion to respond to unanticipated emergencies, such as hurricanes and ice storms. A 1 percent tax on insurance premiums, for instance, would cost most homeowners less than \$10 per year. Since insurance rates are higher for unprotected homes than for those served by a fully equipped and trained fire department, those who would gain the most from the tax would pay it.

The standards for demonstrating need, set out in the implementing legislation, are too restrictive. A city would almost never be able to qualify, even if it had an emergency that overwhelmed the city treasury. A hardship standard would make more sense, allowing a city with an immediate need for equipment or training to apply for a loan.

If the Fire Department Emergency Board is to include allotted seats for representatives of volunteer and union firefighters, then the fire chiefs' association should be represented as well.

NOTES:

HB 708 by Perry, the implementing legislation for Amendment No. 17, would take effect if voters approve the amendment. HB 708 would create the fire department emergency program to provide loans and grants to public fire-fighting organizations.

The program would be administered by a seven-member Fire Department Emergency Board, created as an adjunct to the State Fire Marshal's Office. Unless continued under the Texas Sunset Act, the board would be abolished on Sept. 1, 2001.

Board members would be appointed by the governor and would serve two-year terms, expiring on Feb. 1 of each odd-numbered year. The governor would appoint five members involved in fire service activities -- three

members from nominations submitted by the State Firemen's and Fire Marshals' Association of Texas and two members from nominations submitted by the Texas State Association of Fire Fighters. The governor would also appoint two public members.

The board would establish eligibility guidelines for loans, scholarships and grants. A fire-fighting organization would be required to prove to the board that, without the requested financial assistance, it could not purchase necessary fire-fighting equipment or could not train and educate members adequately. Scholarships and grants could be used only for fire-fighting education and training.

The board would establish the types of equipment and facilities an organization could purchase with a board loan. All loan payments collected by the board would be deposited into a revolving fund account in the State Treasury that would be used to make other loans under the program.

Applicants for funds would have to specify the purpose and the amount of aid sought, with a plan for repayment of any loans. The board would consider factors such as the applicant's financial need and the availability of other financial resources.

No single applicant could receive more than 5 percent of the total appropriated to the program for the fiscal year in which the assistance was provided. Upon the board's request, the attorney general would have to take all necessary legal action to assist the board in recovering amounts of a defaulted loan.

SB 222, the General Appropriations Act for fiscal 1990-91, contains a rider in the State Board of Insurance budget that would appropriate \$1 million for the Fire Department Emergency Board if HB 708 becomes effective. The appropriation would come from the State Board of Insurance Operating Fund, which consists of money the State Board of Insurance collects from taxes, fees, sales, reimbursements and other sources authorized by statute.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 18 (SJR 44)

SUBJECT: Removing time limit on sale of agricultural water bonds

BACKGROUND: Art. 3, sec. 49 of the Texas Constitution prohibits the creation of state debt, under most circumstances, while Art. 3, sec. 50 prohibits the Legislature from lending the credit of the state. Both sections have been amended several times to permit the state to issue general-obligation bonds for various purposes.

As part of the state water plan adopted by the Legislature in 1985, the voters on Nov. 5, 1985 approved a constitutional amendment authorizing the Texas Water Development Board (TWDB) to issue up to \$200 million in general obligation bonds for agricultural water conservation. Issuance of the bonds requires approval by two-thirds of both houses of the Legislature. The amendment also includes a provision, Art. 3, sec. 50-d(e), that prohibits the Legislature from approving the bonds, and the TWDB from issuing them, after Nov. 4, 1989.

The Legislature established a pilot agricultural water conservation program to determine whether it should authorize the TWDB to issue all or part of the \$200 million in general obligation bonds. The program was authorized in 1985 and renewed and expanded in 1987. The Legislature appropriated \$5 million for a pilot program of loans to certain water and conservation districts, which in turn made loans to farmers and ranchers to purchase and install more efficient irrigation equipment and to implement more efficient irrigation techniques. If a farmer defaulted on a loan, the district was responsible for foreclosing and collecting any collateral to secure the loan. The state agreed to pay one-half of any unpaid balance remaining after the district sold the collateral. Loans also were made directly to local districts to improve their own water distribution systems and to evaluate irrigation systems and water conservation systems on dryland and rangeland.

During its 1989 regular session, the Legislature by the necessary two-thirds vote of both houses (133-0 in the

House, 31-0 in the Senate) enacted SB 1117 by Montford, allowing the TWDB to issue the \$200 million in agricultural water conservation bonds authorized by Art. 3, sec. 50-d of the Constitution. SB 1117 takes effect Sept. 1, 1989.

DIGEST:

Amendment No. 18 would repeal Art. 3, sec. 50-d(e) of the Constitution, which provides that the authorization to issue \$200 million in agricultural water conservation bonds expires Nov. 5, 1989, the fourth anniversary of the adoption of the provision.

The ballot proposal reads: "The constitutional amendment to eliminate certain time limitations relating to the issuance of Texas agricultural water conservation bonds."

SUPPORTERS
SAY:

The agricultural water conservation loan and grant program first authorized in 1985 has been proven successful. To ensure its continued operation, the deadline for issuing the \$200 million in state general-obligation bonds to finance the program should be removed. The nine-week "window" now available for issuance of the bonds is too narrow to allow the TWDB enough time to arrange for a bond sale in the most cost-effective and prudent manner.

Texas voters in 1985 overwhelmingly approved the original authorization for these bonds -- almost 70 percent of those voting on the proposition favored it. Before issuing the bonds for this innovative program, the Legislature prudently established a pilot program to determine the best way to make agricultural water conservation loans and grants. After reviewing the results of the successful pilot program, the TWDB recommended to the Legislature that the bonds be issued to finance a full-scale program. The Legislature followed that recommendation, voting unanimously to authorize issuance of the bonds. But that authorization takes effect on Sept. 1, 1989, and the last day to issue the bonds is Nov. 4, 1989. Rather than force the hurried issuance of the bonds, the arbitrary deadline should be eliminated.

The state needs the bond revenue to carry out its comprehensive water plan and conserve precious

groundwater. Groundwater provides as much as 70 percent of the agricultural irrigation in Texas, so it is vital that this limited resource be conserved. New conservation techniques would allow less groundwater to be drawn to irrigate current acreage. Technological advances can put more agricultural land into production without increasing the current rate of groundwater pumpage. The agricultural water conservation bonds would provide the capital to finance these necessary measures. Since most of the program involves loans, repaid with interest, it would be self-financing.

The pilot program for low interest loans to finance agricultural water conservation equipment was implemented by the TWDB in 1985 and renewed in 1987. The program was designed to determine whether access to low interest capital would encourage agricultural water users to install water-saving devices. The program has loaned nearly \$5.3 million to 12 borrowers, already saving a large volume of water. The original \$5 million appropriation has earned interest, and about \$1.3 million was on hand this summer for additional applicants.

The program has successfully saved groundwater and has been sound financially. Use of the \$200 million in bond proceeds would allow this proven program to be expanded to agricultural land users statewide, stretching limited water resources and greatly benefiting the Texas economy.

OPPONENTS
SAY:

The voters now have a second chance to decide whether to add another \$200 million to the state's soaring bond debt. The authority to issue the agricultural water conservation bonds should be allowed to expire. Adding another \$200 million to the state's \$7 billion bond debt to finance this subsidy program would not only saddle future generations with more debt but would also give this program far more money than it is ever likely to use.

The pilot program did not demonstrate a need for a \$200 million loan subsidy program. The pilot program funded only about a dozen local water-conservation programs. Farmers and ranchers cannot afford more debt to buy new equipment, and the local conservation districts have

not been hesitant to finance conservation equipment. The Legislature should take another look at this program and scale it back to a more justifiable level.

NOTES:

SB 1117 by Montford, the legislation implementing the issuance of the \$200 million in agricultural water conservation bonds authorized in Art. 3, sec. 50-d of the Constitution, is effective as of Sept. 1, 1989 and is not contingent on voter approval of Amendment No. 18.

The TWDB is authorized to loan bond proceeds directly to political subdivisions or conservation and reclamation districts for use on their facilities or to loan the proceeds to the districts, which would in turn make loans to individuals for use on private property. Such loans are to be used to improve the efficiency of existing irrigation systems, for preparing irrigated land for conversion to dryland conditions and for preparing dryland for more efficient use of natural precipitation.

In making loans, the TWDB is required to consider a borrowing district's ability to manage a loan program, its ability to repay defaulted loans and its overall water conservation program. If an individual borrowing from a lender district defaults, the district is responsible for foreclosure. In the event of a default, the state will assume 50 percent of the outstanding amount after liquidation of the secured assets. The state is entitled to recover its pro rata share of any money recovered on a defaulted loan on which the state has made payments.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 19 (SJR 59)

SUBJECT: Broader investment of local government funds

BACKGROUND: Art. 3, sec. 52(a) of the Texas Constitution prohibits the Legislature from authorizing a county, city, town or other political subdivision to become a stockholder in a corporation, association or company, except as otherwise provided in that section. Art. 11, sec. 3 of the Constitution prohibits counties, cities and other municipal corporations from becoming subscribers to the capital of any private corporation or association.

In an Oct. 31, 1988 opinion (JM-975), the attorney general held that Art. 3, sec. 52(a) prohibits the Legislature from authorizing a political subdivision to invest public funds in bank-oriented money market mutual funds or bank common trust funds. According to the opinion, participation in these funds is similar to the participation of shareholders in corporations organized for public gain, and "units of participation" in a mutual fund are the equivalent of shares of stock in a corporation. The attorney general concluded that the section of the Public Funds Investment Act of 1987 (VACS art. 842a-2) that purports to authorize political subdivisions to invest public funds in bank-oriented money market funds or other securities of private entities was unconstitutional.

DIGEST: Amendment No. 19 would add a new subsection (e) to Art. 3, sec 52 of the Constitution to permit a county, city, town, or other political subdivision to invest its funds as authorized by law.

The proposal also would amend Art. 11, sec. 3 of the Constitution to specify that the section would not prevent a county, city or other municipal corporation from investing its funds as authorized by law.

The ballot proposal reads: "The constitutional amendment to authorize local governments to invest their funds as provided by law."

SJR 59
Amendment No. 19
page 2

SUPPORTERS
SAY:

Amendment No. 19 would give local governments new options for investing their funds that are safe and convenient and would benefit local taxpayers by increasing the return on local investments. Under the proposed amendment and implementing legislation, local governments could invest in money-market mutual funds and bank common trust funds, but only in those that purchase nothing but investments that local political entities are already authorized to purchase for themselves, under current law. (Money-market mutual funds invest only in short-term debt instruments; bank common trust funds may invest in any securities.)

A principal reason for allowing local governments broader investment authority is to simplify their compliance with new federal tax-law requirements. The federal Tax Reform Act of 1986 requires issuers of tax-exempt bonds to rebate to the federal government any "arbitrage" profits (those profits made by investing the proceeds of bonds in investments that pay a higher interest rate than the issuer pays on its bonds). The rebate calculations are so complex, and the costs of complying with them are so great, that local political subdivisions would generally prefer to avoid arbitrage profits.

Local governments that issue tax-exempt bonds are exempted from the arbitrage-rebate calculations if they invest their bond proceeds in other tax-exempt securities. However, investing in tax-exempt securities can be difficult, especially for a local government with a relatively small amount to invest. The limited market in these securities can make it hard to locate and purchase a tax-exempt issue that meets the precise size, maturity and quality needs of an investor. A money-market fund that invests in tax-exempt securities would offer local governments an opportunity to make tax-exempt investments that would be totally liquid and nearly risk-free. The local government could sell its shares in a money-market fund at any time and be assured of receiving a fixed price per share. The problem of anticipating when the invested bond proceeds would be needed -- to pay a construction contractor, for example -- would be eliminated, as would the expense and trouble of calculating any arbitrage rebate.

The proposed amendment also would give political subdivisions the option of investing their bond proceeds in taxable money-market funds. Some of these funds offer free automatic arbitrage-rebate calculations as well as the liquidity and stability advantages of a money-market mutual fund. (Bank common trust funds, another local government investment option that the amendment would allow, have not yet been established for local governments by Texas banks because of legal questions about whether the local government or the bank trust department would have fiduciary responsibility for invested bond proceeds.)

Money-market mutual funds would be the type of low-risk investment that would be appropriate for local government funds. The investments made by these funds are limited to only those of sound quality that political subdivisions could make directly on their own. Yet because a mutual fund pools money from many investors, it can diversify its purchases to assure that any unanticipated loss in one security represents only a small proportion of the fund's total assets. The professional management of a fund can choose investments more knowledgeably than could the finance officers of all but the largest Texas cities.

The investments that would be authorized by the amendment and its implementing legislation would be thoroughly safe and liquid. The governing body of the political subdivision would retain final authority over its investments. The Public Funds Investment Act requires that all investments be made in accordance with written policies approved by the governing body that address liquidity, diversification, safety of principal, yield, maturity, and quality and capability of investment management, with primary emphasis on safety and liquidity. In addition, registration with the Securities and Exchange Commission offers additional supervision by federal authorities.

Certain investment practices that have caused local government losses in the past, such as trading in volatile bonds with long maturities or speculating in options, would not be permitted by the implementing legislation for the proposed amendment. Money market funds may not hold long-maturity investments or

purchase options, so adding that investment option would not expose local government funds to any greater risk.

Requiring local governments to invest their money exclusively within the state not only would be financially impractical but also would severely limit the return on their investments. The Texas banks in which local governments currently deposit their bond proceeds do not necessarily invest the money in Texas. The largest bank holding companies are now owned by out-of-state banks or investors. Even smaller Texas banks often prefer to place their investments in other states or overseas, rather than make local loans. Certificates of deposit purchased by local governments must be fully collateralized, so that investment is not really available to be loaned out to in-state businesses in any case. Money invested in money market funds, therefore, would not leave the state any faster than does money now put into Texas banks.

OPPONENTS
SAY:

This proposed amendment would open the door to investment in risky money-market mutual funds by local governments that lack the sophistication to evaluate such investments. Although the largest cities might benefit from greater latitude in choosing investments, most political subdivisions covered by the Public Funds Investment Act -- such as small cities, school districts and conservation districts -- are not capable of handling broad investment discretion. Local taxpayers ultimately would bear the burden of poor investment choices.

The proposed amendment and its implementing legislation would allow local governments to invest in mutual funds and other investments that are too risky for public funds. Local governments would be allowed to invest in mutual funds, which are not federally insured. An investment that initially appears to be blue-chip, like a purchase of commercial paper from Exxon Corp., can easily fall in value because of an unanticipated event, like a mammoth oil spill requiring vast clean-up efforts. Even a U.S. government bond can be a risky investment if incorrectly handled by an inexperienced local government, as shown by the losses suffered by the city of Beaumont when it failed to take possession

of a Treasury note used in a routine direct security repurchase agreement. An unsophisticated local government could be conned into an unsafe, speculative investment by one of the horde of sales representatives that would descend on small towns across the state.

Local governments have done perfectly well in the past by making safe investments and holding them until maturity. An investing unit can calculate the return on its investment in advance and be assured that the full amount of its principal will be returned at maturity. The risk that a poorly managed fund's net asset value could drop, despite its ostensible objective of maintaining a stable value, could lower a local government's credit rating, even if no disaster actually befell the investment.

If local government money was allowed to be invested in money-market mutual funds, it would be drained out of the local banks and savings and loans that now hold these funds. These institutions are already losing assets to well-financed, out-of-state competitors that have moved into Texas. Dwindling public confidence caused by wide-spread financial failures and government rescues has sapped deposits. The withdrawal of local government funds could be final blow, destroying a source of loan capital that has supported Texas consumers and small businesses through boom and bust.

NOTES:

The Public Funds Investment Act of 1987 (VACS art. 842a-2) specifies the types of investments that may be made by cities, towns, counties, public school districts, conservation and navigation districts, state-supported institutions of higher education, hospital districts, fresh water supply districts, and nonprofit corporations acting on behalf of these entities.

During its 1989 regular session the Legislature enacted SB 1342 by Leedom, amending the Public Funds Investment Act to permit political subdivisions whose investments are subject to the act to invest up to 20 percent of their average fund balance (excluding bond proceeds) in SEC-registered, no-load money-market mutual funds with a maximum dollar-weighted average portfolio maturity of 120 days and with assets consisting exclusively of

investments permitted by the act and whose investment objectives include seeking to maintain a stable net asset value of \$1 per share. The amount invested in any one money-market fund by an entity could not account for more than 10 percent of the fund's total assets. Because money-market fund investments were prohibited by the attorney general's opinion, the money-market fund investments by local governments authorized by SB 1342 could be made only if Amendment No. 19 is approved by the voters.

Local government investments currently permissible under the Public Funds Investment Act include: obligations of the U.S. government and its agencies; direct obligations of the state; any obligation whose principal and interest are insured by the U.S. government, federal agencies or the state; and obligations of the states, agencies, counties, cities and other political subdivisions of any state that have an investment rating of A or above. Other permissible investments include certain restricted types of certificates of deposit, prime domestic bankers' acceptances, commercial paper, and fully collateralized direct or reverse security repurchase agreements,

As enacted in 1987, the Public Funds Investment Act permitted cities, towns, counties and public school districts to invest bond proceeds (including debt-service reserves and funds), and institutions of higher education to invest local revenue in certain common trust funds or comparable investment devices owned or administered by Texas banks and that consist exclusively of investments permitted by the act. This is the section of the act that the attorney general found to be a violation of the state constitutional ban against political subdivisions becoming corporate stockholders. Adoption of Amendment No. 19 would permit cities, towns, counties and public school districts to invest in bank common-trust funds.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 20 (SJR 16)

SUBJECT: Abolishing county surveyor office in seven counties

BACKGROUND: Art. 16, sec. 44 of the Texas Constitution requires each county to elect a county surveyor and a county treasurer. County surveyors are responsible for receiving, examining and keeping all field notes of surveys made in the county, certifying those records and recording field notes in the necessary books of record. The surveyor also determines the boundaries of real property within the county and keeps the county survey records.

Of the 254 counties, 92 have an elected county surveyor, according to the Secretary of State's Office and the Texas Board of Land Surveyors. In the rest, the elected post has been left unfilled, filled by appointment or formally abolished.

In 1985 the Legislature proposed, and the voters approved, a constitutional amendment abolishing the county surveyor post in Collin, Dallas, Denton, El Paso, Henderson and Randall counties. Under the terms of the amendment, the county survey records were transferred to the county clerk. The county commissioners courts can employ or contract with qualified persons to perform needed surveyor functions.

DIGEST: Amendment No. 20 would abolish the office of county surveyor in Cass, Ector, Garza, Smith, Bexar, Harris and Webb counties on Jan. 1, 1990. To take effect in a particular county, the amendment must be approved by a majority of the voters both statewide and in that county.

The powers, duties, and functions of the office would be transferred to a county officer or employee designated by each county's commissioners court. The commissioners courts subsequently could change the designation.

The ballot proposal reads: "The constitutional amendment to abolish the office of county surveyor in

Cass, Ector, Garza, Smith, Bexar, Harris and Webb counties."

SUPPORTERS
SAY:

The office of county surveyor has gone unfilled for decades in many counties. The Constitution's archaic requirement that 248 of the state's 254 counties elect a surveyor every four years is a leftover from the 1800s, when large land tracts were being given away or sold by the state. County surveyors once filled an important function, but in the 1980s county surveyors generally have little to do except to be official caretakers of the county survey records.

Approval of this proposed amendment would allow the seven counties included in it to more efficiently manage their business, without the threat of being found in violation of a constitutional requirement. A statutory requirement to provide the elected surveyor with office space is a further impediment to efficient government that would be removed by this amendment for the seven named counties. Some counties have found that it is more efficient to have the duties of the county surveyor performed by a road and bridge superintendent. Others allow the county clerk to keep the county survey records. Yet as long as the post of elected county surveyor exists, someone can file for the office at the next election, run unopposed and fill it, regardless of whether the county wants or needs an elected surveyor.

In the case of county treasurers and similar county offices, it can be argued that maintaining an elected post serves as a check and balance on the actions of other county officials in fiscal or other important matters. But the county surveyor performs no such function. The fact that the elected post is not even filled in most counties demonstrates that it is no longer needed.

While it might be desirable to amend the Constitution to grant all counties the option of abolishing the elective job of county surveyor, that proposal is not before the voters at this time. It would make little sense to turn down the reasonable request of seven counties that want to abolish the surveyor job just

SJR 16
Amendment No. 20
page 3

because of a belief that the amendment should go further. At least the seven counties named in this amendment should be allowed to determine how to best handle county business and not be saddled with an antiquated constitutional office.

OPPONENTS
SAY:

The trend toward abolition of constitutionally created offices is unfortunate. The voters should not be denied the opportunity to directly elect their county officials rather than give the duties to an appointed official or a private individual hired by the commissioners court.

The county surveyor's functions are limited, it is true, but the office is far from obsolete. The county surveyor records and examines field notes of surveys made in the county. Maintaining the surveyor job assures public access to the county survey records -- in some counties that have allowed the job to remain empty, the whereabouts of the county surveyor records are unknown. The county surveyor also has traditionally acted as an impartial judge to resolve disputes among private surveyors.

If the argument against having a county surveyor hinges on the cost of maintaining office space, why not just amend the relevant statutes? Abolishing the surveyor's post is not necessary to achieve this economy.

Those who want to keep the office of county surveyor to which they were elected by the voters, and those who want to run for the office in the future, should not be thwarted by a piecemeal abolition of the office in certain counties. State law and recent attorney general opinions (see MW-541, 1982) require that county surveyors be properly licensed or registered, so there should be no concern that an unqualified person would fill the job.

OTHER
OPPONENTS
SAY:

This constitutional amendment should simply allow all counties to decide by local option whether to fill the county surveyor job. Calling a statewide election each time a few counties decide to change things is a waste of time and money. With 254 counties, attacking the question for six or seven counties every two years could become a wearisome duty for Texas voters and

election officials. It would add more special exceptions to a state constitution that is already cluttered by extraneous detail and special exceptions.

NOTES:

The proposed amendment began as seven different proposed constitutional amendments -- one for each county -- in the 1989 regular session of the Legislature. As originally adopted by the Senate, SJR 16 would have included only Harris County. The House County Affairs Committee added Webb, Cass, and Ector counties; the resulting resolution was amended on the House floor to include Garza, Smith and Bexar counties.

Despite the constitutional requirement, in 1969 the Legislature sought to abolish by law the job of county surveyor in any county with a population of 39,800 to 39,900 (Angelina County). The law (VACS 5298a) was repealed in 1977. In 1987 the Legislature passed a law stating that any county that had abolished the surveyor post under the 1969 law could employ a qualified person to fulfill the surveyor's function (Natural Resources Code 23.017).

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 21 (SJR 74)

SUBJECT: State bond issue for college savings and student loans

BACKGROUND: Art. 3, sec. 50 of the Texas Constitution prohibits the Legislature from lending the credit of the state without specific authorization in the Constitution, while Art. 3, secs. 51 and 52 prohibit use of public funds for grants and loans to individuals. Art. 3, sec. 50b, adopted in 1965, authorized the Legislature to allow the Texas Higher Education Coordinating Board to issue general obligation bonds of up to \$85 million (another \$200 million was authorized by sec. 50b-1, added in 1969) for loans for Texas residents who attend public or private institutions of higher education in Texas.

The student loan program, known as the Hinson-Hazelwood College Student Loan Program, is administered by the coordinating board through the Texas Opportunity Plan Fund. Of the \$285 million in authorized bonds, \$205.5 million had been issued as of 1977, and last June the Bond Review Board approved the coordinating board's request to issue the remaining \$79.5 million.

DIGEST: Amendment No. 21 would authorize the Legislature to allow the Higher Education Coordinating Board to issue up to \$75 million in general obligation bonds, in addition to those authorized in Art. 3, secs. 50b and 50b-1.

The bonds would be issued as college savings bonds. Proceeds from the sale of the bonds would be credited to the Texas Opportunity Plan Fund to be used for student loans. The interest rate of the bonds would be set by law.

The ballot proposal reads: "The constitutional amendment providing for the issuance of general obligation bonds to provide educational loans to students and to encourage the public to save for a college education."

SUPPORTERS
SAY:

Amendment No. 21 would authorize the issuing of an additional \$75 million in bonds to finance student loans and to promote long-term saving for college education costs. The Hinson-Hazelwood loans financed by the bonds would go to students who wish to attend college but have insufficient resources to finance their education and cannot obtain a guaranteed student loan from a private commercial lender. The entire authorized amount of student loan bonds already has been approved for issuance, yet demand for these loans still is growing. The bonds issued under the proposed amendment would have an additional feature -- they would be issued as college savings bonds, making them attractive investments for families saving for a child's future education. The result would be a double benefit -- increasing the ability of the state to provide loans to its most needy students and facilitating saving for a college education.

The proposed amendment would allow more Texans to attend college by creating a new way for parents to save for their children's education. The whole state would benefit from having more young people get the education they need to join the workforce of the 1990s and beyond. This amendment, in tandem with implementing legislation contained in SB 457, would clear away financial hurdles to higher education that have been created by increasing costs, unstable federal aid programs and student assistance programs that often saddle graduates with huge amounts of debt.

Recent regulatory changes have made Hinson-Hazelwood loans more financially attractive because they are direct loans from the state rather than private loans guaranteed by the state and federal governments, on which there are greater restrictions. The demand for new loans more than doubled in 1988 and is expected to remain at high levels in the future. The coordinating board will reach the limit of its current bond authorization with the issuance of new bonds this year, and anticipated demand will soon absorb the proceeds of these bonds. In seeking the authorization now for more bonds, the Legislature acted correctly in anticipating future need rather than waiting until the proceeds of the current authorization are exhausted. Also, since these bonds finance a revolving loan fund, those

borrowers who repay the loans, with interest, would pay for these bonds, not state taxpayers.

To encourage families and individuals saving for a college education to invest in these bonds, the additional \$75 million in student loan bonds would be issued in the form of college savings bonds in small denominations, in order to promote savings set aside for college costs. The investment return would be guaranteed by the state and would be free of all federal income taxes. In addition, the purchaser's proceeds from the bonds (up to \$10,000) could not be considered in determining the type or amount of state financial aid for which the student might be eligible.

The savings bonds would offer a safe investment to Texans who may lack the expertise to make other investments that might have marginally higher yields. Like U.S. savings bonds, which are popular with small savers, Texas college savings bonds would be easy to understand and convenient to buy. Making the bonds available would encourage college saving by families that ordinarily might not be able to plan far in advance for higher education.

The savings bonds sold to families would be zero coupon bonds or similar instruments that pay no interest until maturity. These are excellent vehicles for savings for a large expense at a definite point in the future. Most small savers are unaware of the advantages of zero coupon bonds for college planning; these bonds would provide a means of savings geared specifically to that purpose.

College savings bonds would be sold in smaller denominations than other state bonds, without adding to the state's costs. Competition among underwriters is so intense that the state could require an underwriter to offer bonds in units as small as \$100 and not lose any bids for a bond issue. Underwriters would be willing to bear the extra cost of smaller denominations in order to win the bid.

The proposed amendment would authorize issuance of \$75 million in general obligation bonds in a form specifically designed to encourage college savings.

While another new law authorizes certain state agencies to issue general-obligation bonds in the form of college savings bonds, they are not required to do so. The bonds authorized by Amendment No. 21 would be issued by the Texas Higher Education Coordinating Board, which has the greatest incentive to issue college savings bonds. The other savings bond program would supplement, not duplicate, this program.

OPPONENTS
SAY:

This proposed amendment is unnecessary. It would authorize an additional \$75 million in state debt that is not needed. The Texas Higher Education Coordinating Board has only recently received permission to issue the remaining \$79.5 million in new student-loan bonds, the first issued by the board since 1977. Demand for Hinson-Hazelwood direct loans has been low because the state and federal governments now guarantee repayment of student loans; almost all such loans are now made by private commercial lenders. It would be premature to approve a new bond authorization until the proceeds of the bonds issued this year are exhausted. If demand for such loans increases to the degree projected, then a future legislature can determine if a new bond authorization is justified.

The college savings bonds that would be made available by the proposed bond issue and the implementing legislation would provide no real incentive for prudent investors. The only advantage of college savings bonds over any other state-issued tax-free bond would be that bond proceeds would not be considered in determining a student's eligibility for financial aid. However, interest rates on state bonds, which are not subject to federal income taxes, are so much lower than rates available on taxable investments that most Texans would do better to purchase certificates of deposit than college savings bonds. Only those in the highest tax bracket would have a higher after-tax return from a state-issued bond. However, the child of a person in the highest tax bracket would probably be ineligible for any state financial aid program and therefore would not receive the full benefit of a college savings bond. In other words, there may be no one for whom the college savings bond would be a good investment.

SJR 74
Amendment No. 21
page 5

State bonds have recently paid investors about 7 percent. A person investing \$1,000 in college savings bonds would receive the equivalent of \$70 per year tax-free (although the interest would not actually be distributed until the bonds reach maturity). A person in the 15 percent tax bracket, which includes the majority of taxpayers, can purchase a certificate of deposit paying around 9 percent. An investor of \$1,000 per year would receive \$90 in interest, pay about \$13 in taxes, and still have \$77 left.

Setting the college savings bond denomination at \$1,000, to make them affordable to most Texans, would increase the costs of issuance by multiplying the number of bonds that would be issued. The benefit to those Texans with excess income to save would be passed on in the form of higher costs for those Texans who require student loans to finance their college education.

OTHER
OPPONENTS
SAY:

It is not necessary to authorize another \$75 million in state general-obligation bond debt in order to finance a college savings bond program. SB 94 by Henderson, enacted by the 71st Legislature during its 1989 regular session, allows any state agency to issue authorized general-obligation bonds, such as veterans land bonds and water development bonds, in the form of college savings bonds. There is no need to amend the Constitution to duplicate a program that is already provided for by statute.

Unlike the bonds issued under Amendment No. 21, the college savings bonds issued under SB 94 would have the additional incentive of a bonus, paid at maturity. Although the bonus would have to be used to pay for tuition, it would still make these bonds a more attractive investment, and a better way to save for college costs, than the savings bonds authorized under the proposed amendment.

NOTES:

The implementing legislation for the college saving bond program that would be authorized by Amendment No. 21 was added as an amendment (sec. 2.08) to SB 457 by Vowell, the sunset legislation for the Texas Higher Education Coordinating Board. Sec. 2.08 of SB 457 will

SJR 74
Amendment No. 21
page 6

become effective only if Amendment No. 21 is approved by the voters.

Sec. 2.08 of SB 457 would allow the coordinating board to issue up to \$75 million in bonds to finance a college savings bond program. Savings bonds in denominations of \$1,000 or less would be sold to investors. Up to \$10,000 per year in proceeds from the bonds would be exempted from calculations of income for purposes of receiving state college financial aid. The law would require that the savings bonds be zero-coupon bonds or similar instruments that encourage investors to hold them long-term in order to collect interest.

A related bill, SB 94 by Henderson, the College Opportunity Act, permits state agencies authorized to issue state general-obligation bonds to designate those bonds as college savings bonds, with the approval of a special committee and of the Bond Review Board. Most of the college savings bond provisions of SB 94 are the same as those in sec. 2.08 of SB 457, except that SB 94 provides for special financial incentives, including bonus payments paid at maturity to holders who own the bonds for the five years preceding maturity. The bonus payment must equal at least 0.4 percent of the face amount of the bond per year and may only be applied to pay tuition costs at post-secondary educational institutions.