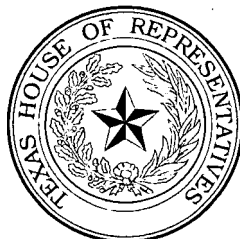
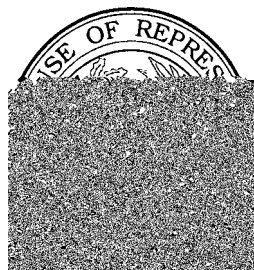


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Number 181

1993 CONSTITUTIONAL AMENDMENTS: THE MAY 1 ELECTION

Three proposed amendments to the Texas Constitution, all concerned with financing the public schools, will be submitted for voter approval at an election to be held on Saturday, May 1, 1993. The proposed amendments are analyzed in this special legislative report.

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CONTENTS

	Page:
CONSTITUTIONAL AMENDMENT PROCESS	11
Joint Resolutions	ii
Contents of joint resolution	ii
Wording of ballot proposition	111
Date of election	111
Publication	111
Implementing Legislation	IV
Effective Date	IV
RESULTS OF THE NOVEMBER 5,1991, CONSTITUTIONAL AMENDMENTS ELECTION	v
ANALYSES OF PROPOSED CONSTITUTIONAL AMENDMENTS- MAY 1, 1993, ELECTION:	
PROPOSITION 1 (SJR 7 by Sen. Bill Ratliff/ Rep. Libby Linebarger)	
Public-school finance	1
PROPOSITION 2 (SJR 7 by Sen. Bill Ratliff/ Rep. Libby Linebarger)	
Requiring state educational mandates to be fully funded by the state	11
PROPOSITION 3 (SJR 4 by Sen. Teel Bivins/ Rep. David Swinford)	
\$750 million in state bonds for school facilities	17

CONSTITUTIONAL AMENDMENT PROCESS

Since its adoption in 1876, the Texas Constitution has been amended 339 times. Three proposed constitutional amendments have been adopted by the Legislature and will be submitted to the voters at a special election on Saturday, May 1, 1993.

Joint Resolutions

All amendments to the Texas Constitution are proposed by the Texas Legislature in the form of joint resolutions, which must be submitted for voter approval. For example, SJR 4 on this year's ballot refers to Senate Joint Resolution 4. Under Art. 17, sec. 1 of the Constitution, a joint resolution proposing a constitutional amendment must be adopted 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). A 1972 amendment to Art. 17, sec. 1 allows proposed constitutional amendments to be adopted by the Legislature during special sessions. The governor cannot veto a joint resolution.

Contents of joint resolutions

Joint resolutions include the text of the proposed constitutional amendment and specify the date on which it will be submitted to the voters. A joint resolution may include more than one proposed amendment; for example, SJR 7 proposes two amendments on the May 1 ballot (Propositions 1 and 2). If more than one amendment is submitted to the voters at the same election, the secretary of state conducts a random drawing and assigns a ballot number to each proposed amendment.

The Legislature may submit the same proposed amendment an unlimited number of times. For example, Proposition 13, authorizing \$300 million in general obligation bonds for college student loans, was rejected by the voters at the August 10, 1991, election, then was approved at the November 5, 1991 election after being readopted by the Legislature and resubmitted in essentially the same form.

Wording of ballot propositions

The joint resolution specifies the wording of the proposition that is to appear on the ballot. The Legislature has broad discretion concerning how the ballot proposition is to be worded. In rejecting challenges to proposed amendments on the basis that the ballot language was vague, incomplete or misleading, the courts generally have ruled that ballot language is sufficient if it identifies the proposed amendment for the voters. The courts have assumed that voters are already familiar with the proposed amendments when they reach their polling place and do not rely solely on ballot language to make their decision.

Date of election

The Legislature may call a special election for voter consideration of proposed amendments on any date, as long as election authorities have sufficient time to provide notice to the voters and print the ballots. Although the Legislature set the special election on the three proposed constitutional amendments for May 1 due to the special circumstances involving school finance, the usual practice in recent years has been to submit most proposed amendments to the voters at the November general election in odd-numbered years.

Publication

Art. 17, sec. 1 of the Constitution requires that a brief explanatory statement of the nature of each 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 notice must be published 50 to 60 days before the election. The second notice must be published on the same day of the subsequent week. Also, the secretary of state is to send a complete copy of each amendment to each county clerk, who must post it in the courthouse at least 30 days prior to the election.

The secretary of state prepares the explanatory statement, which must be approved by the attorney general. The Secretary of State's Office also arranges for the required newspaper publication, often by contracting with the Texas Press Association. The average estimated cost of publishing a 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 sometimes 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 the part of the bill dependent on the constitutional change, does not take effect.

Effective Date

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

RESULTS OF THE NOVEMBER 5, 1991 CONSTITUTIONAL AMENDMENTS ELECTION

Thirteen proposed constitutional amendments were adopted by the Legislature during its regular and special sessions in 1991 and submitted to the voters at the general election held on Tuesday, November 5, 1991. The voters approved eleven of the proposed amendments and rejected two. (For additional information on the proposed amendments, see House Research Organization Special Legislative Report No. 172, 1991 *Constitutional Amendments, Part Two*, September 19, 1991.) No proposed constitutional amendments were submitted to the voters in 1992.

According to the Secretary of State's Office, the final statewide results of the November 5, 1991, election were:

PROPOSITION 1 -

Allowing cities of 5,000 or fewer to amend their charters

For:	1,563,840 (81.1 percent)
Against:	364,218 (18.9 percent)

PROPOSITION 2 -

State aid for toll road projects and highway fund repayment from tolls

For:	961,729 (50.6 percent)
Against:	938,017 (49.4 percent)

PROPOSITION 3 -

Removing limits on investment authority of Veterans' Land Board

For:	1,039,779 (54.3 percent)
Against:	875,732 (45.7 percent)

PROPOSITION 4 -

\$1.1 billion in bonds for corrections, mental health/retardation facilities

For:	1,341,169 (67.5 percent)
Against:	644,379 (32.5 percent)

PROPOSITION 5 -

"Freeport" property-tax exemption option for enterprise zones

For:	687,748 (37.2 percent)
Against:	1,162,961 (62.8 percent)

PROPOSITION 6 -

Appointing the Texas Ethics Commission, allowing it to set legislative pay

For:	1,040,731 (53.5 percent)
Against:	905,206 (46.5 percent)

PROPOSITION 7 -

Broadening the investment authority of state retirement system

For:	699,829 (36.7 percent)
Against:	1,205,240 (63.3 percent)

PROPOSITION 8 -

Allowing state bond debt without a constitutional amendment

For:	1,354,267 (72.1 percent)
Against:	523,800 (27.9 percent)

PROPOSITION 9 -

Giving title ("land patents") to state land to presumed owners

For:	1,169,115 (63.5 percent)
Against:	671,403 (36.5 percent)

PROPOSITION 10 —

Property-tax exemption for nonprofit water supply corporations

For:	1,015,965 (54.3 percent)
Against:	854,163 (45.7 percent)

PROPOSITION 11 -
Authorizing a state lottery

For:	1,326,154 (64.5 percent)
Against:	728,994 (35.5 percent)

PROPOSITION 12 -
Expanding bond authorization for colonias water and sewer projects

For:	1,024,318 (54.5 percent)
Against:	854,190 (45.5 percent)

PROPOSITION 13 -
Authorizing \$300 million in state bonds for student loans

For:	1,259,427 (65.0 percent)
Against:	677,831 (35.0 percent)

SUBJECT: Public-school finance

BACKGROUND: On January 30, 1992, the Texas Supreme Court held (in a decision known as *Edgewood III*, based on a lawsuit originally filed in 1984 by the Edgewood Independent School District) that the current Texas school finance law (SB 351, enacted in 1991) violates the Texas Constitution. The court gave the Legislature until June 1, 1993, to remedy the plan's defects. This decision was the third in little more than two years to strike down the state's school-finance system as unconstitutional.

The current school-finance system is based on property taxes levied by about 1,045 independent school districts. Wide variations in local school-district property wealth lead to disparities in the amount of revenue per student that districts can generate with the same property-tax rate. The state attempts to reduce this disparity by giving more state aid to relatively poor districts. More recently, the state has required some wealthier districts to share some local tax revenue with less wealthy neighbors through county education districts (CEDs).

Each CED constitutes a common tax base for the school districts within its boundaries. Some local school property taxes are levied by the CEDs, at a rate established by the Legislature. The revenue raised is distributed to districts within the CED according to enrollment. This means that some tax revenue collected on property in wealthier districts goes to poorer districts in the CED. School districts also levy taxes, solely on property within their boundaries; that revenue stays in the district.

In the 1991-92 school year CEDs collected \$4.54 billion - 32.2 percent of the \$14.1 billion in school district revenue raised by the state, CEDs and local districts - at an average tax rate of 79.7 cents per \$100 of property valuation. (School districts raised \$2.89 billion - 20.5 percent of the total, and the state provided \$6.68 billion - 47.3 percent.)

The Supreme Court's first two *Edgewood* decisions invalidating the school finance system hinged on Art. 7, sec. 1, of the Texas Constitution, which requires the Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools."

Proposition 1
House Research Organization
page 2

The court has found that to be "efficient" a school-finance system must be equitable by providing school districts with "substantially equal access to similar revenues per pupil at similar levels of tax effort."

A 1931 ruling, *Love v. City of Dallas*, reaffirmed by the Supreme Court in 1991, prohibits the state from "recapturing" local tax revenue raised by a school district and spending it for the education of students outside of the district. This decision appears to preclude taking local tax funds from property-rich school districts and distributing the funds directly to property-poor districts without a change in the Constitution.

In its most recent decision, the Supreme Court found that SB 351, the school-finance law enacted in 1991 and still in use, levies a state property ("ad valorem") tax, which is prohibited by Art. 8, sec. 1-e, of the Texas Constitution. The court said the CED taxes constitute a state tax since the CEDs have no discretion in setting the tax rate the Legislature requires them to levy. But even if CED property taxes were in fact *local* school taxes, they would still be unconstitutional, because they were not authorized by local voters, as any local tax must be.

Although it found the CED taxes unconstitutional, the Supreme Court did not require a refund of CED taxes already collected for 1991 or bar collection of CED taxes for 1992, giving the Legislature until June 1, 1993, to adopt a new plan. State District Judge F. Scott McCown of Austin, who has lower-court jurisdiction over the school finance lawsuit, has ordered state officials to prepare to cut off distribution to school districts of state funds, including CED funds, if a constitutional plan is not in effect by June 1.

DIGEST:

Proposition 1 would authorize the Legislature to enact laws redistributing property taxes levied and collected by a school district among other districts in the state ("statewide recapture").

The Legislature also would be authorized to create county education districts (CEDs), including multi-county districts, and to permit them to levy, collect and distribute property taxes at a rate of up to \$1.00 per \$100 of property valuation. A higher tax rate could be imposed if approved by CED voters. By statute the Legislature could set the tax rate imposed by a

CED or school district, or could authorize a CED or school district board to set the tax rate.

The amount redistributed, either statewide or within CEDs, could not exceed 2.75 percent of all state and local public-school revenue. For purposes of this provision, state revenue would not include revenue from ad valorem taxes, revenue for the provision of free textbooks or state contributions to a retirement system.

The proposed amendment would not affect the distribution of the Available School Fund (income from the Permanent School Fund endowment of state land that is distributed equally to all school districts solely on the basis of enrollment).

The ballot proposal reads: "The constitutional amendment allowing limited redistribution of ad valorem taxes for schools, authorizing the Legislature or local districts to set a minimum tax rate in county education districts, and placing a cap on the ad valorem tax levied by county education districts."

**SUPPORTERS
SAY:**

Adoption of Proposition 1 would give the Legislature the constitutional leeway needed to devise a school finance plan that the courts will accept and that will keep Texas schools open. Proposition 1 would provide enough flexibility for the Legislature to arrive at a workable plan that the courts will accept while keeping the most equitable elements of the current system. It also would set strict limits on any redistribution of locally raised revenue and cap the tax rate levied by CEDs without voter approval.

This proposed constitutional amendment represents the best way to prevent the June 1 funding cut-off that could close Texas public schools. Judge McCown has made it clear that if the Legislature fails to enact a constitutional school-finance plan by June 1, he will force the state to cut off state aid to the public schools. Approval of this proposition would give the Legislature the tools it needs to fashion an acceptable plan before its scheduled adjournment on May 31.

Other alternatives to solving the school finance problem have been rejected as undesirable or politically unfeasible. Little support exists for proposals to replace some school property taxes with revenue from a state income tax

or a state ad valorem tax on business property. Given the limited amount of time remaining in the legislative session after the May 1 election, consolidation of many independent school districts into larger districts - an idea that has found little favor - would be the only remaining realistic option for keeping the schools open if this proposition were to fail.

The most reasonable way to create the required equity in public school funding is to "recapture" a strictly limited amount of local property tax revenue in the most property-wealthy districts and spend it in the poorest districts. The Supreme Court has made it clear that only with a constitutional amendment can the state recapture local revenue or require local tax-base sharing through CEDs. Proposition 1 would let the Legislature devise a plan that pools revenue from a few rich districts and uses it to help poor districts ("statewide recapture"). The tax-base sharing within CEDs that has been tried is useful but limited; rich and poor districts are not necessarily found in the same CED, so some needy districts get very little help. A new plan could utilize statewide recapture as well as CEDs - possibly reconfigured to contain only one county each. To allow flexibility for the future, the proposal would authorize the Legislature to set tax rates in CEDs or school districts or to let local authorities decide the rates. A workable plan will create the necessary equity and also conserve elements of the basic system now in use, thereby limiting disruption of local school administration.

Statewide recapture and CED tax sharing would let the Legislature equalize funding among districts without a huge state or local tax increase. Proposition 1 would cap the amount of local tax revenue that could be redistributed within CEDs or through statewide recapture, thereby assuring the wealthiest districts that the state would not attempt to fund an inordinately large portion of the school finance system with their local tax dollars. The maximum amount recaptured under this limit - some \$407 million at current funding levels - would barely exceed the amount now redistributed through the CEDs. Finance plans currently being considered by the Legislature would recapture tax revenue only from the 10 percent of school districts with the most property wealth per student. All other districts, which educate the majority of the schoolchildren, would benefit from the shared income.

This proposition would *not* require any large increase in school-tax rates, as some have claimed. The intent of the Legislature has always been to maintain the current cap on school operating taxes of \$1.50 per \$100 of property valuation. Validating the CEDs would not change this cap; in fact, Proposition 1 would limit CED tax rates to \$1 per \$100, unless increased by local voter approval. Proposition 1's constitutional cap on redistribution of locally raised revenue also would limit the fiscal impact of any new school finance plan.

Nothing in Proposition 1 would compel local districts to change their tax rates. Some districts that lose state aid under whatever new formulas are enacted might *choose* to raise local revenue to maintain current spending, but the decision would be entirely up to the local school board accountable to local voters. If the CED tax rate were set above the current rate, many districts would receive more money from the higher CED tax and might choose to *lower* their own rates. The ballot language, which does not mention local tax rates, is clear and accurate; it does not have to recapitulate every facet of the proposed amendment.

Allowing the Legislature to limit the capacity of wealthy districts to generate revenue for their own use would help reduce the spending disparity between the richest and the poorest districts. Wealthy districts would have an incentive to increase their tax rates to maintain their accustomed level of spending, but some of the new revenue generated by these higher rates could be used to help ensure equity through statewide recapture.

Allowing recapture of some local revenue from the wealthiest districts would strike a balance between needs for local control and needs for equity and avoid more drastic options, such as massive consolidation of school districts or imposition of a statewide property tax or an income tax. The limited recapture option in Proposition 1 would allow revenue to be redistributed only from districts that can best afford a revenue loss.

Taxpayers in districts blessed with high-value property should share part of the bounty to advance public education. State taxes collected in areas of high property value are not earmarked to build roads or provide services solely in those areas, and high-wealth school districts have no exclusive

claim on the school taxes they raise. The future economic well-being of the entire state depends on an educated work force, and where students happen to reside should not determine the quality of their education. Children educated in one area of the state may provide the skills necessary to bring prosperity to another region. But children who are inadequately educated often grow up supported by taxpayers through welfare or prisons. Property-poor districts are not concentrated in anyone region of the state, but are scattered throughout - any revenue redistributed would not travel very far.

It is impossible to produce a computer printout of the financial consequences of this proposition for each school district in the state. The proposed cap on recapture guarantees that only a small minority of districts - one-tenth of all districts under a plan proposed by Sen. Bill Ratliff, R-Mt. Pleasant, the Senate author of Proposition 1 - would be subject to recapture. However, even if a detailed school-finance plan was adopted by the Legislature before the voters consider this proposition, the amount of state aid flowing to each district still would depend on the total amount of state spending on public education. Since public education must compete for funding with other pressing state responsibilities - like public health, prisons and highways - until an appropriations bill allocating money to all state functions is hammered out during the final days of the legislative session in May, and until updated property values and student enrollments are available to plug into the funding formulas, only the bare outlines of a school finance plan can be presented to the voters. Also, this constitutional amendment is intended to deal the school finance problem for years to come, so any local impact calculated now may be much different in five years. Presenting a detailed plan at this stage would only be misleading.

**OPPONENTS
SAY:**

Proposition 1 is an open-ended invitation for the Legislature to write a school-finance plan that could essentially create a state property tax, force up local property taxes and erode local control of schools.

The county education district (CED) system, which would be validated by Proposition 1, is a "soak-the-rich" Robin Hood scheme that forces involuntary redistribution of wealth on a countywide basis. Statewide recapture would expand this unfair notion to force taxpayers in richer districts to send local tax revenue outside their home counties. Taxpayers

owe their first allegiance to providing for the education of their own children and their neighbors' children, not to subsidizing spending by some distant school board. People who have worked hard to earn the money to buy a nice home in a good area are entitled to enjoy the fruits of their labors. Proposition 1 reflects the politics of envy that would use the state government to eliminate distinctions among communities.

Proposition 1 would allow CEDs to levy taxes at rates up to \$1 per \$100 of property valuation. Combined with operations taxes imposed by local school districts, which can run up to another \$1.50 (with taxes for school debt service on top of that), taxpayers could find themselves socked with a school-tax bill of \$2.50 per \$100 of property value - \$2,500 a year in school taxes alone on a \$100,000 house - plus school debt-service taxes. New taxes statewide could total \$2 billion if districts tried to maintain current spending levels, keep up with enrollment growth and inflation, and replace revenue siphoned off by the state. Almost all districts would be affected, not just the wealthy; more than 90 percent of the state's school districts would have to choose between increasing their local tax rates or cutting spending per pupil. Such astronomical tax levels would push many homeowners past the financial breaking point, stifle business expansion and devastate many communities.

The ballot language of Proposition 1 hides the critical fact that it would authorize the Legislature to set local property tax rates in every school district in Texas. Supporters are trying to fool the public into thinking that the proposed constitutional amendment applies only to CEDs, but it actually applies to *all* types of school districts. Voters cannot learn the true effect of their vote simply by reading the ballot language.

Proponents of Proposition 1 are presenting a scary scenario of shuttered schoolhouses in an attempt to panic voters into accepting their flawed plan. If the proposition were rejected, the Legislature will have more than four weeks left to prepare a plan before the June 1 court-imposed deadline. Any plan passed by the Legislature would be presumed constitutional, so the judge's order would be suspended pending a full hearing on any new plan, which could take weeks. Even after the deadline the judge is not going to force schools to close; he would just suspend state aid payments. Since the next payment is not scheduled until June 25, districts should have

enough money on hand to carry on at least until then without state aid and could operate even longer if they have local reserve funds or can borrow money. Since classes end before June 1 in most districts, the judge's actions would have no effect on most students in any case.

Voters should not be asked to vote on a constitutional amendment without knowing what impact the amendment would have on the finances of their own school districts. Proposition 1 would give the Legislature a blank check that could be written against the taxpayers' account. Until the Legislature actually adopts a final plan that spells out the costs of recapture and specifies exactly who wins and who loses, voters should not rely on blind faith in the Legislature's good intentions.

The limited amount of money recaptured under the proposed "Robin Hood" scheme would be too small to have much impact on the total level of school funding statewide, but could have a harmful effect locally. Rather than help truly needy districts, recapture would just punish wealthy districts. People who suffer the adverse consequences of having large power plants or refineries in their backyards would be deprived of the countervailing tax benefits. Suburban districts that have spent enough to create exemplary programs would be pulled down to mediocrity. Residents of rural districts in the Panhandle, the South Plains and West Texas, which contain about half of the wealthiest districts in the state, would be forced to send their local tax dollars hundreds of miles away. Recapture would have potentially damaging consequences for the economies of affected areas, as districts raised local taxes higher to offset the revenue taken from them.

Other sources of revenue for schools should be explored before a radical redistribution plan is adopted. The income from the successful state lottery could be dedicated to education, as is done in many other states. The gasoline tax, one-quarter of which currently goes to education, could be redirected to give a larger proportion to schools. Cuts in wasteful state spending could make more money available for education than all these convoluted recapture plans.

The school debate has focused only on the spending side of the problem, while ignoring the issue of what taxpayers are getting for their money. Before approving any proposed finance scheme, voters should demand

adoption of changes to require more accountability from the public school system. There is no reason to shift money around from one district to another unless schools can demonstrate that more money will lead to improved student achievement. Since "education reform" started in Texas, spending has consistently gone up, but test scores have just as consistently gone down.

Innovations such a voucher system - which would allow parents to choose the school, public or private, that their child will attend and would upgrade educational programs through open competition - should be tried before taking another step that will cost more money. If the Constitution is to be amended, then it should be changed to set a higher threshold of review by the courts for any school finance plan approved by the Legislature; this is the only sure way to eliminate unwarranted judicial interference with the schools.

OTHER
OPPONENTS
SAY:

The supposed improvement in equity of funding per student among the school districts resulting from limited recapture of local tax revenue and through the CEDs has been exaggerated. The improvement actually would be minimal. Although the range of funding available to districts of different property wealth would be somewhat reduced, the most important measure of a school-finance system is the *adequacy* of funding. Under the current school district structure, the only effective way to ensure funding per student that is adequate to provide a quality education is to increase *state* funding, not use another Robin Hood approach to redistribute locally raised school revenue. The state can no longer foist the problem of school-finance equity onto overburdened local taxpayers; it must raise the state revenue necessary to solve the problem.

A state income tax is the only revenue source that can provide enough revenue to adequately support public education and raise the revenue fairly from all parts of the state. An income tax could largely replace the local property tax as a source of school funding and eliminate the root cause of the recurring legal challenges to the school finance system - the wide disparity in property wealth among local school districts. Statewide polls have demonstrated that an income tax dedicated to education would be acceptable to voters, especially if it were coupled with a significant reduction in the property tax burden.

The *Edgewood* lawsuit has given poor school districts their best opportunity to seek just treatment. If the voters approve this proposition, which falls short of establishing a truly equitable system of school finance, the suit probably will be resolved, and poor districts will have missed their best chance for equity in a generation. Voters should not settle for this limited compromise proposal; they should demand a permanent solution to the decades-old struggle for justice in educational opportunity.

NOTES: Both Proposition 1 and Proposition 2 were contained in SJR 7, approved by 27-4 in the Senate and 102-43 in the House.

SUBJECT: Requiring state educational mandates to be fully funded by the state

BACKGROUND: The Legislature may enact legislation imposing state requirements, or "mandates," on school districts, either directly or by authorizing rules and regulations made by the State Board of Education and the Texas Education Agency. These mandates often involve costs to the school districts.

DIGEST: Proposition 2 would exempt school districts from complying with state educational mandates not fully funded by the state. School districts would not be required to comply with unfunded state educational mandates enacted after December 31, 1993, unless they were imposed in compliance with the state Constitution or federal law or enacted by a two-thirds vote of the members of each house of the Legislature.

The Legislature would provide a statutory procedure for determining whether a mandate was fully funded. If no procedure were enacted, a school board could request the comptroller to make the determination.

The ballot proposal reads: "The constitutional amendment exempting a school district from the obligation to comply with unfunded state educational mandates."

SUPPORTERS SAY: Proposition 2 would protect school districts and property taxpayers by forcing the Legislature to consider carefully the full cost of any legislation that would impose new educational mandates. Proposition 2 would free local school districts from the financial burden of new educational mandates imposed, but not paid for, by the state.

Much of the financial pressure on local school districts (and local property taxpayers) comes from the costs of conforming to the long list of mandates imposed on districts by the Legislature, the State Board of Education and the Texas Education Agency. For instance, the state-imposed class-size limit requires school districts to hire a teacher and find classroom space anytime more than 22 students enroll in an early elementary (kindergarten through fourth grade) class. Although compliance with this existing mandate would not be affected by Proposition 2, which would apply only to mandates imposed *after* December 31, 1993, this mandate provides an

example of how a well-intentioned educational reform can increase the financial squeeze on school districts.

The Texas Association of School Boards has compiled a list of some 175 state-imposed educational mandates, indicating how freely the Legislature creates rules for schools to follow when it can ignore the expense of compliance. For instance, nearly 100 of the largest school districts are required to undertake the costly conversion of their school buses to alternate fuels. All school districts must obtain criminal history record information on applicants to whom an offer of employment is being considered and pay the Department of Public Safety the statutory fee for criminal history inquiries. District employees who conduct any pest-control activities must be certified as noncommercial applicators by the Structural Pest Control Board, which involves a long and expensive training course. Similarly, state law permits only persons licensed by the Texas Department of Health to remove asbestos from public buildings, so school districts cannot use district employees who have met federal training and licensing requirements but have not registered with the state and paid its licensing fee. Other mandates involve the preparation of dozens of separate reports and plans for such things as discipline management, drop-out reduction, recycling programs, integrated pest management and records management.

Proposition 2 would apply the brakes to this out-of-control process by imposing fiscal responsibility for mandates on the body that creates them. One governmental body should not be able to determine another governmental body's spending by imposing costly requirements, then not providing any funding for them. The current process undermines local control of schools, since state requirements eat up any local revenue that could otherwise be spent on locally determined priorities. Proposition 2 would allow greater local experimentation with different educational approaches based on the conditions in each individual district.

Existing mandates would not be affected by Proposition 2, which would apply only to mandates imposed after December 31, 1993. However, the Legislature is currently considering legislation to ease the burden of current mandates, and the State Board of Education is reviewing all Texas Education Agency rules in the Texas Administrative Code to repeal those

that are not needed. Concerns about changes in *current* mandates should be focused on the Legislature and state board, rather than on Proposition 2. Concerns about *future* mandates would be alleviated by Proposition 2, which would constitutionally guarantee local school districts and taxpayers that they would be protected from the costs of any new mandates.

Proposition 2 would not negatively affect teacher salaries and benefits. Teacher salaries are set locally, and most districts pay their teachers above the minimum state salary schedule to remain competitive. Local school districts, not the Legislature, determine teacher salaries. Salaries for Texas teachers are funded better than the rest of the state's educational system. Texas ranks lower nationally in overall spending per pupil than it does in teacher salaries. Districts raised teacher salaries by an average of 5 percent in the past school year, even though many had to raise local taxes in order to pay for the increase. Nonetheless, the state should have to absorb the financial cost of any increase in statewide minimum salary levels.

The state and local school districts jointly share the costs of school finance, but this does not give the state the right to continually impose new costs on local taxpayers. The state has abused its power to regulate local schools to shift the burden of school funding onto local property taxes. Proposition 2 would at least keep the burden-sharing at its current proportions and allow the Legislature to impose unfunded mandates by a two-thirds vote of the House and the Senate in justifiable cases.

The statutory definition of "fully funded," which has yet to be determined by the Legislature, must fulfill the intent of the proposed constitutional amendment or it will be challenged in court. Although all the details have not been worked out, voters can rely on the plain meaning of the words to ensure that the state could not escape absorbing the costs of any new educational mandates.

OPPONENTS
SAY:

Proposition 2 could weaken the state educational reforms that have improved Texas schools since enactment of HB 72 in 1984. Many of the most successful changes in Texas education have been brought about by state mandates. The lowering of the teacher-to-pupil ratio has increased learning in the vital early years of each student's school career. The universal availability of kindergarten classes has helped ensure that all

children enter first grade ready to learn academic skills. Newer mandates increase accountability through parental and community involvement in schools by requiring a public report on the progress each school makes toward certain well-defined performance standards. Other mandates ensure fiscal responsibility by requiring accurate accounting for all expenditures. Yet Proposition 2 could halt this progress by forcing state taxpayers to bear the entire financial burden of any new quality standards.

Texas has a shared funding system for its schools, to which both the state and local school districts contribute. State aid - \$6.7 billion in the 1991-92 school year alone - accounts for nearly one-half of all local school district revenue. Local districts receive most of their state aid in unrestricted block grants and have broad discretionary authority over how to spend the money they receive from the state; the state should retain some say in how its money is spent. The state owes its taxpayers a duty to require accountability for how these funds are spent and to ensure that they are spent uniformly to meet certain minimum standards across the state. Full funding by the state of all mandates would provide no incentive to local districts to economize, cut back administrative bureaucracy or stretch local funds to meet minimum statewide standards.

Proposition 2 would freeze Texas public education in its tracks and stop statewide progress toward quality education. Some school districts might move forward with additional reforms; unfortunately, too many could take advantage of Proposition 2 to sink back into past practices. Proposition 2 might limit further mandates, but only at the cost of inhibiting improvement in the quality of education.

Proposition 2 would make it very difficult for the Legislature to require any increase in teacher pay or health benefits, since the state would be responsible for fully funding the total cost of any increase. Texas currently ranks 35th among the 50 states, and 10th of the 10 largest states, in average teacher salary. Texas schools need to increase salaries and benefits in order to attract the best qualified teachers possible. This proposition could freeze teacher pay scales at their current inadequate level, unless an individual school board decided to grant an increase on its own. The Legislature would be effectively eliminated as a source of relief for underpaid teachers.

Unfunded state requirements impose costs on school districts, but these can be curbed by statute without locking into the Constitution an inflexible restriction that fails to recognize that state *and* local funds are used to pay for public education. The Legislature is moving toward imposing a moratorium on new mandates until more state funding is available or giving districts more flexibility in meeting state requirements - without a constitutional amendment.

For instance, the current class-size requirement could be modified to permit more students per classroom if the enrollment increase occurred after the first 12 weeks of the school year, or to permit districts to satisfy the requirement through average districtwide class size. A special subcommittee of the House Public Education Committee is drafting several bills to allow more local flexibility; sweeping constitutional restrictions on mandates would only worsen the problem of inflexibility should circumstances change.

School boards should not be given unfettered control over education spending. Districts cannot be relied on to set priorities fairly, since they often favor spending on new buildings and more administrators over paying to lower teacher-student ratios or reward excellent teachers. For instance, over the past five years teachers' salaries have increased by 13 percent, while administrators' salaries have increased by 18 percent.

Proposition 2 could lead to legal challenges to any attempt by the Legislature to change a statute or regulation in order to improve instruction. Any local school board could claim that the proposed change would cost them money and sue the state, tying up the school-finance system in the courts even worse than it already is.

The Legislature has not passed the statutory definition of "fully funded." Voters are being asked to approve a constitutional amendment without being able to know its full meaning.

OTHER
OPPONENTS
SAY:

Proposition 2 would require full state funding only of mandates enacted after December 31, 1993. The current mandates that are already squeezing local taxpayers would not be affected by the proposed amendment. Local

Proposition 2
House Research Organization
page 6

taxpayers need constitutional protection against the costs of current mandates, too, since the costs of complying with them could continue to climb.

NOTES:

Proposition 2 and Proposition 1 were both proposed by SIR 7, which passed the Senate by 27-4 and the House by 102-43.

SUBJECT: \$750 million in state bonds for school facilities

BACKGROUND: Construction of school facilities generally is financed by school districts, which borrow money through issuing bonds approved by local voters and repay it with revenue from local property taxes.

As of August 31, 1992, Texas school districts had a total of \$8.27 billion in outstanding debt, with debt-service costs of approximately \$1.1 billion a year. Debt per student was \$2,677. Of 1,045 school districts with taxing authority, 724 (69.3 percent) had general-obligation debt outstanding.

According to the Texas Bond Review Board 83 of the 100 school districts with the lowest property wealth per student had outstanding debt, while 34 of the 100 districts with the most property wealth per student had debt. Of those districts with debt, the poorest had a debt per student of \$1,586, while the wealthiest had a debt per student of \$5,489. The average adopted debt-service tax rate among the poorest districts was 32.1 cents per \$100 of property valuation; the average debt-service tax rate in the wealthiest districts was 8.2 cents.

The state did not provide any assistance in financing school facilities until 1983, when the voters approved an amendment to Art. 7, sec. 5, of the Texas Constitution to permit creation of a program through which the Permanent School Fund guarantees the repayment of bonds issued by local school districts. The bond-guarantee program, by improving school districts' bond ratings, lowers the interest rate they must pay on bonds. The Permanent School Fund currently guarantees \$3.16 billion of local bonds under this program. (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.)

Art. 7, sec. 5, was again amended in 1989 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 could 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. If state bonds guaranteed by the PSF were used to make a loan to a school district, and the district became delinquent on its loan repayments, the amount of the delinquent payment would be deducted from the district's state-aid entitlement.

Due to an unfavorable ruling by the Internal Revenue Service that limited the tax-exempt status of the bonds, no PSF-guaranteed *state* bonds have been issued under this program.

The Guaranteed Yield Program, which is the second tier of the current school-finance system (SB 351, enacted in 1991), provides "equalized funding" that may be used by school districts to help payoff bond debt incurred for buildings and equipment, as well as to enrich their basic education program. To participate in second tier funding, an independent school district (ISD) imposes a school tax rate beyond the county education district (CED) rate. Each cent of ISD tax rate levied, up to a maximum, is guaranteed to yield a specified sum per weighted student. (The weights allocate more funding to students with special needs.) If the value of a district's property wealth per student is so low that one cent of its tax rate yields less than the amount guaranteed per pupil, the state makes up the difference. If a district has property wealth sufficient for its tax rate to yield revenue per student exceeding the guaranteed yield per student, the district may retain all of its second-tier revenue and receives no state guaranteed-yield aid.

For the 1992-93 school year the Legislature also appropriated \$50 million in construction aid to alleviate emergency needs for acquiring, constructing, renovating or improving capital assets and instructional facilities. Priority was given to districts with inadequate sources of funding for the education program and facilities needs, including debt-service obligations.

DIGEST:

Proposition 3 would amend Art. 7, sec. 5(b), of the Texas Constitution to authorize the Legislature to issue up to \$750 million in general-obligation or revenue bonds. The bond proceeds could be used to make loans to, or purchase the bonds of, school districts for buying, building, improving or furnishing instructional facilities. (General-obligation bonds are paid by the

first money coming into the state Treasury each fiscal year, other than constitutionally appropriated funds. Revenue bonds are supported by a dedicated source of income.)

The state could forgive the payment of principal and interest on all or part of a loan made to a school district to partially finance an instructional facility. If state bonds guaranteed by the PSF were used to make a loan to a school district, and the district became delinquent on its loan repayments, the amount of the delinquent payment would be deducted from the district's state-aid entitlement.

The Legislature would no longer be authorized to use the Permanent School Fund to guarantee repayment of \$750 million in state bonds.

The ballot proposal reads: "The constitutional amendment authorizing the issuance of \$750 million in state general obligation bonds or revenue bonds to assist school districts in partially financing facilities, authorizing the state to forgive payments of loans made to a school district for partially financing facilities, and repealing the authorization for \$750 million in state revenue bonds guaranteed by the permanent school fund."

**SUPPORTERS
SAY:**

The facilities aid program approved by the voters in 1989, intended to rely on state bonds guaranteed by the Permanent School Fund, has been short-circuited by an unfavorable ruling from the Internal Revenue Service. Proposition 3 would simply replace that PSF-guarantee program with the same amount of state general-obligation bonds, guaranteed by the full faith and credit of the state, or state revenue bonds, backed by loan repayments and other revenue sources.

The new \$750 million program would help poor and fast-growing districts reduce the debt service they must pay for building facilities, freeing revenue for other expenses. Such a program would give districts a more secure source of state support than the annual matching payment for school facilities under the current guaranteed-yield program, which is subject to being changed frequently. The program would help bring certainty to the long-term finances of many districts, which could then make needed long-range financial plans for new buildings or building repair.

Proposition 3
House Research Organization
page 4

The proposed bonds would not constitute outright gifts to districts, but could only *partially* fund facilities. Under the proposed implementing legislation, SB 131 by Bivens, which has already passed the Senate, even low-wealth districts would have to seek voter approval for, and pay at least 20 percent of, the costs of any bonds issued. Most of the districts that would receive aid have not been ducking their responsibilities; their taxable values are just too low to support bonds to finance construction of better educational facilities. Other districts would receive aid because, even with a high tax effort, they have been unable to keep up with rapid enrollment growth. High wealth would not disqualify a high-tax-effort, fast-growing district from qualifying for participation in the proposed program.

The bond proposal is a necessary cost of resolving the *Edgewood* school-finance litigation, since the courts have specified equal access to funding for facilities as a necessary part of a finance system that meets constitutional requirements. The courts recognize that crumbling buildings, insufficient lighting, improper heating or faulty plumbing can undermine a child's education as surely as underfinanced programs. It is not worth risking the court-ordered closure of the state's schools to avoid a justifiable increase in state debt. Texas state debt is still relatively low compared to other states, and a \$750 million program, with repayment spread over 20 years or more, would not be a substantial increase.

The amount of the bonds is reasonable and represents all the state can afford in its current financial situation. The total value of facilities that would be supported by these bonds is much greater than just the value of the bonds, since the proceeds would help leverage additional local spending to help meet the pressing needs that have been identified. Bond financing is the proper approach to supporting facilities, since long-term debt would be used to pay for long-lived facilities. The voters have been willing to undertake bond debt to pay for much-needed prisons; they should be willing to do the same to provide for public education, which can reduce the need for prisons.

The proposed constitutional amendment would limit the use of bond proceeds to buying, building or improving "instructional facilities." The implementing bill for the amendment, SB 131 by Bivins, carefully defines

Proposition 3
House Research Organization
page 5

the term to include only property used predominantly for teaching state-required curriculum. No money could be siphoned off to support athletics or other non-essential activities.

OPPONENTS
SAY:

Proposition 3 would permit state bond proceeds to be used in effect as outright grants to school districts, by forgiving entirely any repayment of a state loan to help finance construction of school facilities. It would allow the creation of a giveaway program to those districts that have ducked the responsibility to provide needed facilities. Only a minimal local contribution toward debt service would be required, so local voters would be happy to approve new bonds, since they would be spending mainly the state's money. In contrast, the PSF-guaranteed bond program that Proposition 3 would replace offers only loans, which must be fully repaid.

Proposition 3 would increase state debt at a time of fiscal austerity. Once all the bonds are issued, debt service on them would cost current and future taxpayers \$67.5 million a year for years to come, according to Comptroller's Office estimates. Districts that receive no aid under the proposed program would inevitably press to expand it further, which would push the state even deeper into debt. It would be better to draw the line now, before creating a sense of entitlement to a state subsidy.

Debt service should be dealt with like other school district expenses and funded through the guaranteed-yield program, which rewards districts that are willing to raise the taxes necessary to pay for bonds, or else the school-finance system should be restructured to eliminate the need for an expensive new state-aid program exclusively for facilities. If poor districts were treated more fairly under the school finance formulas, they would not need a special aid program exclusively for facilities.

Most high-wealth districts would receive nothing under the proposed implementing legislation. If a new school-finance system caps the amount of revenue a district could raise, wealthy districts will have no way to fund new facilities without sacrificing program expenditures.

Proposition 3
House Research Organization
page 6

This proposition would authorize three-quarters of a billion dollars in general obligation bonds without any blueprint for exactly how the proceeds would be spent. Voters do not know whether their district would be eligible for aid under a facilities program, but they can be sure that they would be responsible for repaying a huge state debt.

Proposition 3 does not include a definition of the "instructional facilities" that could be financed by the proposed state bonds. Districts might use their bond proceeds to buy land or build or improve facilities used predominantly for extracurricular activities. State taxpayers should not have to pay debt service so that some school district can purchase AstroTurf for its football field.

OTHER
OPPONENTS
SAY:

A 1991 study by the Texas Education Agency estimated that *immediate* school facilities needs totaled as much as \$5 billion. The proposed amendment would authorize only a fraction of the assistance necessary to meet these urgent needs. The Constitution puts the burden on the Legislature to make "suitable provision" for public schools; the Legislature should provide the full amount of necessary facilities aid to school districts.

NOTES:

SIR 4, which proposes Proposition 3, passed by 29-2 in the Senate and by 103-39 in the House.

Proposed implementing legislation for Proposition 3, SB 131 by Bivens, passed the Senate on January 28 by voice vote.