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1993
CONSTITUTIONAL AMENDMENTS: THE NOVEMBER 2 ELECTION

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1993 CONSTITUTIONAL AMENDMENTS: THE NOVEMBER 2 ELECTION

Sixteen proposed amendments to the Texas Constitution will be submitted for voter approval at an election to be held on Tuesday, November 2, 1993. The proposed amendments are analyzed in this special legislative report.

Three other proposed constitutional amendments were considered at an election held on May 1, 1993; the results of that election are found on page vi of this report. These proposed amendments were analyzed in House Research Organization Special Legislative Report Number 181, 1993 *Constitutional Amendments: The May* 1 *Election,* April 2, 1993.

Henry Cuellar
Chairman

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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 the general election on Tuesday, November 2, 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 49 on this year's ballot refers to Senate Joint Resolution 49. 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 proposed two amendments on the May 1, 1993, ballot (Propositions 1 and 2). If more than one amendment is submitted the voters at the same election, the secretary of state conducts a random drawing and assigns a proposition number to each proposed amendment.

The Legislature may submit the same proposed amendment an unlimited number of times. For example, a proposition 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 an election for voter consideration of proposed constitutional amendments on any date, as long as election authorities have sufficient time to provide notice to the voters and print the ballots. Although this year the Legislature set a special election on three proposed constitutional amendments for May 1 due to the special circumstances involving school finance, the usual practice is to submit most proposed amendments to the voters at the November general election in odd-numbered years.

Publication

Art. 17, sec. I, 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 MAY 1,1993 CONSTITUTIONAL AMENDMENTS ELECTION

Three proposed constitutional amendments were adopted by the Legislature early in the 1993 regular session and submitted to the voters at a special election held on Saturday, May 1, 1993. The voters rejected all three. (For additional infonnation on the proposed amendments, see House Research Organization Special Legislative Report No. 181, 1993 *Constitutional Amendments: The May 1 Election,* April 2, 1993.) No proposed constitutional amendments were submitted to the voters in 1992.

According to the Secretary of State's Office, the fmal statewide results of the May 1, 1993, election were:

PROPOSITION 1 -
Public-school fmance

For:	755,417 (36.9 percent)
Against:	1,293,224 (63.1 percent)

PROPOSITION 2 -
Requiring state educational mandates to be fully funded by the state

For:	956,056 (48.7 percent)
Against:	1,007,084 (51.3 percent)

PROPOSITION 3 -
$750 million in state bonds for school facilities

For:	869,014 (44.1 percent)
Against:	1,099,828 (55.9 percent)

SUBJECT: $50 million in bonds for historically underutilized businesses

BACKGROUND: The Texas Constitution has various provisions prohibiting the use of public funds for private purposes: Art. 3, sec. 50, of the Texas Constitution prohibits the state from aiding an individual or a corporation by lending money, providing land, goods or services on credit or guaranteeing payment to a third party who provides aid to an individual or corporation; Art. 3, sec. 51, states that the Legislature has no power to make or authorize grants of public funds to an individual or corporation; Art. 3, sec. 52, prohibits the Legislature from authorizing any political subdivision or political corporation from lending its credit or granting public funds to an individual or corporation; Art. 8, sec. 3, states that taxes may be collected for public purposes; and Art. 16, sec. 6, prohibits any appropriation for private or individual purposes, unless authorized by the Constitution.

In 1987 the voters amended the Constitution to permit the Legislature to adopt laws to create programs and make loans and grants of public money for economic development and diversification, the elimination of unemployment or underemployment, the stimulation of agricultural innovation, the growth of agricultural enterprises and the expansion of transportation or commerce. In 1989, the voters authorized the Legislature to issue $75 million in general obligation bonds for venture financing for agricultural production, processing and marketing ($25 million), family-owned rural businesses ($5 million), new products ($25 million) and small businesses ($20 million).

Art. 3, sec. 49, prohibits the Legislature from creating state debt without specific authorization in the Constitution. Voters have approved numerous amendments to sec. 49 authorizing state debt in the form of state general-obligation bonds for a wide range of purposes. Repayment of debt from general-obligation bonds is guaranteed by the state, and payments are made from the first money coming into the state Treasury each fiscal year.

According to the U.S. Department of Commerce, there were 394,842 Texas businesses with employees in 1990. Commerce department figures for 1987 (the most recent available) showed that Texas had 40,421 women-owned businesses employing 143,861 people; 5,570 black-owned businesses

employing 12,374 people; and 20,845 hispanic-owned businesses employing 49,942 people.

DIGEST:

Proposition 1 would amend the Texas Constitution to add sec. 72 to Art. 16, authorizing the Legislature to issue up to $50 million in general obligation bonds to aid in the start-up costs of a historically underutilized business (HUB) as defined by the Legislature. The proposed amendment would permit the Legislature to establish a Texas Historically Underutilized Business Capital Growth and Start-up Fund and would allow money in the fund to be used without further appropriation for the historically underutilized business program set up by the Legislature. The fund would contain proceeds of the bonds, loan guarantee fees, other amounts received from loan guarantees and any other amount required to be deposited in the fund by the Legislature.

The Legislature could require the review and approval of bond issuance and rules governing use of the bond proceeds. The reviewing entity created by the Legislature (such as the existing Bond Review Board) could include members of the executive, legislative and judicial departments or their appointees.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to provide for the issuance of $50 million of general obligations bonds for the recovery and further development of the state's economy and for increasing job opportunities and other benefits for Texas residents through state fmancing of the start-up costs of historically underutilized businesses."

SUPPORTERS SAY:

Past discrimination and persistent prejudice against minority-owned and women-owned businesses has created substantial obstacles, such as limited availability of capital, that stop such businesses before they can even get started. Proposition 1 would allow the Legislature to establish an economic development program geared SPecifically toward encouraging the growth of minority-owned and women-owned businesses and the new jobs they would produce. The proposed amendment would allow the state to provide a source of start-up capital to help eliminate the economically crippling and demeaning disparities between minority-owned and women-owned businesses and other Texas businesses.

An important part of promoting economic growth in Texas involves fostering economic diversification through the development of new industries and the expansion of existing businesses. Texas now has more than 70,000 historically underutilized businesses (HUBs). The economic health of minority-owned and women-owned businesses is central to the overall welfare of the Texas economy. Small, locally owned businesses have historically provided a foundation for community stability and are the principal generators of new jobs.

Proposition 1 would provide new HUBs with the start-up costs necessary to allow them to compete with more established companies in the financial market place. Assisting qualified minority-owned and women-owned business in obtaining loans and loan guarantees would help eradicate existing market barriers that impede their development.

It is becoming more difficult for small businesses of all kinds to get loans. The percentage of loans to deposits in Texas banks is at an all time low of 40 percent, compared to the traditional figure of 65 percent. Small businesses, the category into which most historically underutilized businesses fall, are receiving fewer loans, and some banks have stopped making small business loans altogether. Venture capital, another primary source for starting new businesses, has virtually dried up.

Women-owned and minority-owned businesses are often unable to establish the necessary relationships in the traditional networks of commerce, such as financial lending institutions. A targeted program would allow HUBs to get a head start that may not be available in the traditional marketplace.

Successful strategies to advance business development and create jobs should reduce crime and social dependence, save state resources in the long run, and enhance self-esteem and quality of life among Texas minorities and women.

House and Senate interim committee reports examining barriers, practices and policies that have deterred and/or denied opportunities for small, socially and economically disadvantages businesses have found that it is difficult for small businesses, particularly for HUBs, to locate start-up capital. The relatively small amount of bonds authorized by Proposition 1

would provide a source of capital that does not now exist. The loans and loan guarantees fmanced through the bonds would likely provide enough to payoff the bonds without using any taxpayer dollars.

This program would be part of a state coordinated effort to support small and minority businesses. Since 1991, the Legislature has had a policy of encouraging state agencies to make a good faith effort to award at least 10 percent of the total value of all contracts awarded to HUBs, and the 73rd Legislature increased the goal to 30 percent, beginning September 1, 1993.

The program would be part of an on-going effort to support state economic development through state grants and loans supported by general obligation bonds. Voters approved the use of $75 million in general obligation bonds to support financing of agricultural production, processing and marketing, family-owned rural businesses, new product development and small business in 1989.

OPPONENTS SAY:

There is no need to increase the state's bond debt to fund programs that already have adequate funding sources. The state administers the federally-funded Small and Minority Business Program. which enables small and minority businesses to acquire machinery and equipment and working capital. The state also has special programs aimed to help women and minority-owned businesses: for example. state agencies are asked to award at least 30 percent of their total contracts to HUBs.

The state government should be wary of lending money or guaranteeing loans where traditional fmancial institutions fear to tread. The state should not become a lender of last report for new businesses for no other reason than they are "historically underutilized." Promoting high-risk enterprises that cannot stand on their own feet does no one any good.

Small businesses have a failure rate of 80 percent within five to seven years; the state should not borrow $50 million and invest it in businesses practically guaranteed to fail. The marketplace efficiently weeds out businesses that cannot survive and makes room for those that will grow and prosper. The state should not interfere in this process.

The managers of the state bond program inevitably would have to pick and choose among businesses applying for these funds. A business financed by state money could be tainted with the suspicion that it has been selected on the basis of political clout rather than intrinsic merit. Government assistance to a minority and women-owned businesses would give them an unfair competitive edge not enjoyed by others who lack state subsidies.

A better use of state funds would be to invest in higher education, vocational education and community colleges, which provide a firm foundation for future economic growth. By providing job training and research dollars, the state can promote new business without competing with banks, private investors and other sources of private capital.

Proposition 1 would just add to the state's outstanding bond debt. As of the end of May 1993, state bond debt outstanding totaled $9.1 billion, of which about $3.5 billion was in general-obligation bonds. This is up from $2.7 billion at the end of fiscal 1990 and $2.9 billion at the end of fiscal 1991 and 1992. Adding another $50 million to general obligation debt would compete with local bond sales to fmance public works projects, such as water and sewer systems and school facilities.

Voters are being asked to approve $50 million in bonds without having the details of the program that the bond proceeds would finance. The implementing legislation for Proposition 1 failed to pass the Legislature during the regular session, so the specifics of any program to assist historically underutilized businesses would be left wide open.

NOTES:

The implementing bill for Proposition 1, SB 225 by Lucio, West et al., passed the Senate but died in the House during the 1993 regular session. SB 225 would have established a capital growth and start-up fund to provide loans and loan guarantees to historically underutilized businesses. The policy board of the Texas Department of Commerce (TDOC) would have been authorized to issue up to $50 million in general obligation bonds, but the amount of bonds that could have been issued during the fiscal 1994-1995 biennium would have been limited to $25 million.

The loan program would have been administered by TDOC and would have been used to provide loans or loan guarantees to be used for the initial costs of starting a business for historically underutilized businesses. Loans and loan guarantees could have been used to construct new facilities, renovate existing facilities, acquire any interest in real or personal property, and provide initial working capital to pay the cost of salaries, rents, supplies, inventories, mortgage payments, legal services and utilities and telephone, travel and other incidental costs normally considered as working capital according to standard accounting practices.

The fund could not have guaranteed repayment of more than 90 percent of a loan or made a loan for more than 90 percent of the total amount. An applicant would have to have had funds or property of an amount or value equal to at least 10 percent of the start-up costs. Loans or loan guarantees would have been between $10,000 and $500,000.

If a historically underutilized business defaulted on a loan and TDOC was required to honor its guarantee, TDOC would have been required to sue the business as soon as practicable. moe could have taken title to any property of the business if it was necessary to protect a loan or loan guarantee. The state comptroller would have been prohibited from issuing a warrant to a historically underutilized business that was in default.

SB 225 would have provided in the definition of "historically underutilized business" that minorities and women must have proportionate interest and demonstrate active participation in the control, operation, and management of the corporation's affairs. Persons with a personal wealth of $750,000 or more would not have been considered owners of a historically underutilized-business, unless the TDOC determined at least 51 percent of all stock or partnership interest of the business was owned by one or more socially disadvantaged persons or that the entire business was owned by a socially disadvantaged person.

A related proposal, SJR 10 by Lucio, West et al., and its implementing bill, SB 223 by Lucio, West et al., proposed a constitutional amendment to authorize $50 million in general obligation bonds to fmance sureties for historically underutilized businesses. (Sureties guarantee that contractors

will pay their bills and complete a project.) SJR 10 failed to receive the necessary 100 votes in the House to be placed on the November ballot. SB 223 was set on the House calendar, but was not taken up in the last days of the session.

On March 24, 1993, Governor Ann Richards signed an executive order (AWR 93-7) that directs all state agencies to implement policies and practices to maximize contracting opportunities for women-owned and minority-owned businesses.

SUBJECT: Property-tax exemption for certain pollution control devices

DIGEST: Proposition 2 would amend the Texas Constitution to permit the Legislature to exempt from property taxation all or part of property used, constructed, acquired or installed wholly or partly to meet federal, state or local regulations for the prevention, monitoring, control or reduction of air, water or land pollution.

The exemption would apply only to pollution control property that would otherwise be taxable for the frrst time on or after January 1, 1994. No exemption would be granted for property subject to a tax abatement agreement executed before January 1, 1994.

The ballot proposal reads: "The constitutional amendment to promote the reduction of pollution and to encourage the preservation of jobs by authorizing the exemption from ad valorem taxation of real and personal property used for the control of air, water, or land pollution."

SUPPORTERS SAY: Proposition 2 would promote voluntary compliance with environmental regulations and help preserve jobs by offering a property-tax exemption for pollution control. No property value would be removed from existing local tax rolls because the proposed constitutional amendment would apply only to new pollution control property added after 1993.

The amendment would leave on the tax rolls any pollution control equipment currently subject to property taxes, exempting only new installations. Under HB 1920 by Stiles, Earley et al., the implementing legislation for Proposition 2 approved by the Legislature this year, only land acquired after January 1, 1994, and devices built, bought or installed after January 1, 1994, would be eligible for the exemption. No property previously taxed would be exempt.

By encouraging businesses to stay in Texas, Proposition 2 might actually increase net tax collections. The proposed constitutional change would bring Texas into line with the 33 other states that already offer similar tax incentives. Without this inducement, companies forced by environmental regulations to make large investments in pollution control facilities might find it economical to abandon their Texas facilities and shift their output to

plants in states such as Louisiana that offer the exemption. Losing a large manufacturing facility would have a far greater negative impact on tax collections than granting a tightly restricted pollution-control exemption.

It is impossible to forecast with any degree of certainty the value of investments that might qualify for the proposed exemption. The proportion of any such pollution control equipment that would be reflected on the tax rolls also cannot be precisely predicted. Since this equipment does not add to the profitability of a plant, many appraisers do not even add the cost of environmental devices to the tax value of a business. Because pollution control devices are commonly added along with other improvements, the value of the devices is rarely determined independently. One estimate, by Drs. M.A.M. Anari and Jared Hazelton of Texas A&M University, indicates that the amount spent by the Texas chemical industry on pollution abatement measures in 1989 accounted for .04 percent of the statewide property value. The total value of property that would be exempted by Proposition 2 would never be more than a tiny fraction of the state's tax base, but it still could be enough to tip the balance as businesses decide where to locate.

The proposed tax exemption could not be granted to property that already benefits from a tax abatement agreement - an agreement between a business and local taxing districts intended to promote economic development by reducing property taxes on specified new investment. Businesses could not add the proposed exemption to existing tax breaks on the same property.

It is unfair to tax businesses on property they are required by law to purchase. There is a growing public consensus that businesses should be required to minimize pollution, but most companies that must buy pollution control devices now were doing nothing illegal in the past. They should not face the double burden of mandatory expenses and increased taxes paid on the property value added by those expenses.

Proposition 2 is not some benefit just for big business. Small companies would be entitled to seek the same exemption as a large refinery. Many small businesses - including dry cleaners, gas stations, auto body shops, dentists, printers and photo labs - face large expenses to comply with

new environmental regulations. The tax exemption would provide an economic incentive for these small companies, which generate a large proportion of all pollution, to comply fully with all environmental requirements. Also, small companies that might not have enough clout to receive a special tax abatement would qualify for this exemption.

Only the value of that part of a new device that actually relates to pollution control would receive an exemption. A device that only increased a plant's productivity or capacity would not qualify for an exemption. All applications for exemption would have to be certified by the state and go through a state permit process, assuring that application of the exemption would be uniform and nondiscriminatory.

OPPONENTS SAY:

Proposition 2 proposes what could ultimately be a mammoth giveaway of property tax revenue that hard-pressed local jurisdictions can ill afford over the years ahead. The exemption would shift the tax burden away from the businesses that receive it to other taxpayers.

Proposition 2 would exempt from taxation potentially billions of dollars worth of property statewide, primarily in the areas of the state in which petrochemical and industrial plants are concentrated - Harris County, Jefferson County, Dallas/Fort Worth, Corpus Christi and EI Paso. For instance, the Harris County Appraisal District has estimated that Proposition 2 could exempt from property taxes approximately $2.8 billion in property value that otherwise would be added to the county tax rolls in the next five years. The district estimates that one-quarter of the value of all new industrial construction in the county would be exempted from taxation by Proposition 2. At current tax rates, the property that would be exempted would generate some $84 million in tax revenue to Harris County's school districts, cities and special districts. The Jefferson County Appraisal District similarly has calculated that Proposition 2 could exempt from property taxes $950 million in property value in the next five to ten years, which could generate some $24 million in annual tax revenue for local taxing units at current tax rates.

The fiscal drain of the proposed tax exemption would increase over time. Technological obsolescence of current equipment and environmental regulations that require purchase of new equipment would ensure that

almost all pollution control devices in the state eventually would be exempt from property taxes. Proposition 2 would pennit a constantly expanding tax break that could eventually exempt from taxation a significant portion of the value of all industrial and manufacturing projects in the state.

The value of pollution control equipment should be included in the taxable value of a plant, regardless of whether it actually increases the profitability of the enterprise. Pollution control devices add to the value of a plant by maintaining its marketability - a plant is worth more to a potential buyer if it complies with environmental regulations. A plant that lacks the pollution control devices required for legal operation would be worth little. Because many pollution control devices also increase the productivity of a plant, a company may reap economic benefits from pollution control and does not need an extra benefit in the fonn of a government subsidy.

Polluters have no right to pollute, so controlling pollution is merely another cost of doing business. Laws that require installation of pollution control equipment attempt to prevent unacceptable harm to the air, land and water. According to a projection by the Legislative Budget Office, Proposition 2 could force local taxpayers to absorb approximately 26 percent of the cost of all new pollution-control equipment. Companies that would damage the environment should pay the cost of operating a clean business out of their own pockets. Businesses should not be granted tax incentives to coax them into complying with mandatory governmental regulations.

Other special tax considerations given to property, such as deductions for depreciation, reflect the diminishing value of aging buildings and equipment. Proposition 2, in contrast, would grant a tax benefit to businesses merely for obeying the law.

Tax exemptions skew the equality of the tax system. When businesses are granted an exemption, homeowners have to bear more of the tax burden or public services have to be cut. The latest school finance plan, which eliminated the homestead exemptions granted by the county education districts, has already shifted a significant portion of public-school property taxes onto homeowners. Over time Proposition 2 would further increase the proportion of property taxes that are paid by homeowners, straining family budgets while increasing the profits of large corporations.

NOTES:

lIB 1920 by Stiles, Earley, et al., the implementing legislation for Proposition 2, would grant a property-tax exemption for any facility, device or method used wholly or partly to control air, water or land pollution. The sections of the bill granting the exemption would take effect January 1, 1994, contingent on adoption of Proposition 2.

A person would not be entitled to an exemption solely on the basis of producing a product or providing a service that prevents, monitors, controls or reduces pollution. Property used for residential purposes or for recreational, park or scenic uses would be ineligible for an exemption, as would motor vehicles.

The exemption would apply to land acquired after January 1, 1994, and any structure, machinery, attachment, replacement or improvement to property used wholly or partly to meet federal, state or local pollution control or monitoring regulations that is constructed, acquired or installed after January 1, 1994. A facility that was subject to a tax abatement agreement executed before January 1, 1994, would not be eligible for an exemption.

A person seeking an exemption would present a permit application or permit exemption request to the executive director of the Texas Natural Resource Conservation Commission (TNRCC). (TNRCC was created by SB 2 by Parker (72nd Legislature, special session), effective September 1, 1993. The agency incorporates the functions of the Texas Water Commission, the Texas Air Control Board and certain smaller agencies.) The application would detail the purpose, anticipated environmental benefits and estimated cost of the facility, device or method and the proportion of the installation that was pollution control property. The director would issue a letter to the chief appraiser stating whether the facility was used wholly or partly to control pollution and the proportion of the installation that was pollution control property. The chief property-tax appraiser would accept the letter as conclusive evidence that the facility was pollution control property.

SUBJECT: Relinquishing state interest in land in Fort Bend and Austin counties

BACKGROUND: Under the Colonization Law of 1823 Mexico gave Stephen F. Austin permission to grant Mexican land to settlers. In 1824 Austin granted a league of land (4,428 acres) in what is now Fort Bend and Austin counties to three men on the condition that they occupy and farm the land for two years. (Austin was allowed to grant land only to heads of families, and often grouped two or more single men into a "family.") Contrary to common practice at the time, the grantees never partitioned the league among themselves - each held a one-third interest in the entire league. The land is now known as the Shelby, Frazier and McCormick League, after the original grantees.

In 1991 during a title search on property within the league, the American Trading and Production Company (ATAPCO), a Houston-based oil discovered a title defect on the property and raised the land title question with the General Land According to fmdings of the Austin Colony's governing council in 1830, McCormick abandoned the land prior to the conditions of the grant. The governing council returned the forfeited interest "to the mass of land of the state," which at that time was Mexico. Later, in a case in which McCormick's son was petitioning for rights on another piece of land granted to his father, the Texas Supreme Court found, in *Marsh* v. *Wier* (21 Texas 97 (1858» that the Austin Colony's 1830 fmdings of abandonment were properly reached.

Since becoming aware of the title defect, the General Land has not been able to fmd any documents or subsequent legislation demonstrating that McCormick's interest was regranted or that the title was cleared or reconveyed. Consequently, the state claims that under then-prevailing Mexican law McCormick's interest was voided and reverted to the government in 1830, and that Texas as the subsequent government inherited the one-third interest in the league. In addition, the *Marsh* v. *Weir* decision bars McCormick's heirs and others from attacking the fact of the forfeiture of McCormick's interest.

Landowners contest the state's claim to the land. They contend that the *Marsh* case is not relevant to the Shelby, Frazier and McCormick League because it addresses a separate tract of land in Brazoria County. Some also

claim that McCormick did not abandon the land, but instead gave or sold his one-third interest to Shelby and that the records of the sale have been lost or are filed somewhere in Mexico City. They also contend that this grant of land was confirmed when the state failed to declare that the land was available for regrant, which it normally did in cases of abandonment.

Under Art. 7 of the Texas Constitution, and various land acts during the late 18oos, certain state-held lands are dedicated to the Permanent School Fund - a fund created to receive the revenues from the sale or lease of the land, with the income used to help support the Texas public school system. The state regards its interest in the Shelby, Frazier and McCormick League to be part of the Permanent School Fund, overseen by the General Land Office. In April 1992 the Land Office leased its one-third interest in a 600-acre tract within the league to ATAPCO of Houston.

In 1991 voters approved an amendment to Art. 7, sec. 4a, of the Constitution, allowing the General Land Office to issue patents for land from the Permanent School Fund to qualified applicants whose land title was defective. (A patent is the original title to land granted by the state. A similar amendment, adopted in 1981, had expired in 1990.) Applicants had until January 1, 1993, to for a patent under this section. However, the General Land Office concluded that patents could not be issued for the Shelby, Frazier and McCormick League. The GLO cited an 1850 state law prohibiting any grant or patent on land in the original Austin's Colony, the existing oil and gas lease and the previous judgments of the Austin Colony governing council and the Texas Supreme Court.

DIGEST:

Proposition 3 would add to Art. 7 of the Constitution sec. 2A, in which the state would relinquish all claim to a one-third interest in the lands and minerals of the Shelby, Frazier and McCormick League in Fort Bend and Austin counties and confmn the title of the owners of the remaining interests in such lands and minerals.

The ballot proposal reads: "The constitutional amendment providing for the clearing of land titles by the release of a state claim in a fractional interest, arising out of the voiding of an interest under a Mexican land grant, to the owners of certain property in Fort Bend and Austin counties."

SUPPORTERS SAY:

Proposition 3 is needed to clear the title to land held by innocent parties, resolve an inequity and save the state an expensive court fight. The current landowners purchased the land in good faith but now face the prospect of having to buy it again because of a dispute over events that occurred 160 years ago. At issue are approximately 144 acres in the original Shelby, Frazier and McCormick League and 146 families, mostly family farmers whose ancestors have owned the land for generations. They have paid taxes on the land in its entirety, not on a two-thirds interest, and have made improvements to the land. Yet because they lack clear title, the landowners cannot sell the land or use it for other purposes, such as to secure a loan.

Although the state has no wish to strip the landowners of their titles, attorney general opinions have indicated that the state may not set the precedent of simply surrendering its rights to Permanent School Fund land without constitutional authorization. The only way landowners can claim full title to their land is through a constitutional amendment or a contest in court. Due to early land grant requirements and previous Mexican and Texas laws, the state and certain landowners find themselves in a unique situation that does not fall under current constitutional or statutory provisions designed to clarify land titles.

This amendment would save the state money in the long run. Potential litigation costs could be large and burdensome for all parties involved. The attorney general has estimated that 2.5 additional employee positions and hundreds of attorney hours would be needed to assert the state's interest in this land.

The state of Texas and the Permanent School Fund would lose very little future revenue, **if** any, because of this amendment. Land in these counties has been extensively surveyed and tested for mineral deposits for years; it is most likely that any oil or gas source found would be limited and contribute a negligible amount of revenue to the Permanent School Fund.

OPPONENTS SAY:

Approval of Proposition 3 would mean that Texas and its public school system would be giving away public land rights and potential future revenue for the Permanent School Fund. The public school system is in

need of additional funding and cannot afford to make a gift of even the smallest source of revenue.

Texas voters should not have to judge individual land title disputes - the courts can best decide these matters. Similar amendments to remove clouds over land titles affecting relatively few landowners had to be placed on the statewide ballot in 1981 and 1991. Rather than continue to clutter the state Constitution with special exceptions for a few individuals with arcane legal problems, an ongoing mechanism should be established to settle these matters.

SUBJECT: Income tax referendum, dedication to education and school tax relief

BACKGROUND: Art. 8, sec. l(c), of the Texas Constitution permits the Legislature to "tax incomes of both natural persons and corporations other than municipal."

DIGEST: Proposition 4 would amend the Texas Constitution to require approval by a statewide referendum of any statute that imposed a state personal income tax. The referendum ballot would have to specify the rate of the tax.

Voter approval would be required of any law increasing the income tax rate or changing the tax in a manner that resulted in an increase in the combined income tax liability of all persons subject to the tax. The referendum ballot would have to specify how the proposed law would increase the combined income tax liability. Whether a tax change would trigger a referendum would be determined by comparing the proposed change with the income tax law for the most recent year in which collections had been made.

The Legislature could amend or repeal an income tax without submitting the change to the voters. If the Legislature repealed the tax, it could reenact the tax within one year without voter approval.

The Legislature could provide for income taxation in a manner consistent with federal law.

At least two-thirds of all net revenue from an income tax (after payment of refunds and collection expenses) would be used to reduce the rate of public-school maintenance-and-operations (M&O) property taxes.

The maximum M&O tax rate that a school district could levy would also be reduced, by the same amount that the district's M&O tax rate was reduced by income tax revenue dedicated to property tax relief. A school district could later increase its maximum M&O tax rate with voter approval.

The net revenue remaining after school property-tax relief would have to be used for the support of education, subject to legislative appropriation, allocation and direction.

The ballot proposal reads: "The constitutional amendment prohibiting a personal income tax without voter approval and, if an income tax is enacted, dedicating the revenue to education and limiting the rate of local school taxes."

SUPPORTERS SAY:

Proposition 4 would allow the people of Texas to decide whether they want a veto over the establishment of a state personal income tax. The voters have had an opportunity to determine whether the state should permit a lottery, wagering on horse races and greyhound races and liquor by the drink; they should be given the right to vote on an income tax. Under this proposed amendment, an income tax could not be implemented unless the majority of Texans showed they wanted one. Voters also would have to approve any increase in the tax rate or change that could increase the aggregate amount that income tax payers would owe.

Imposition of an income tax would be a radical change in state policy that would personally affect almost every Texan. Proposition 4 would recognize the unique and emotional nature of the income tax issue by allowing voters to participate directly. It would ensure that an income tax would be adopted only in a deliberate, orderly process by the voters in partnership with the Legislature. The mandatory dedication of income-tax revenue to property-tax relief and education spending would ensure that the use of income tax proceeds would be tightly controlled and that lawmakers could not divert the revenue to unnecessary or wasteful state spending.

The assurance that the public could veto the imposition of a state personal income tax, plus the required dedication of any potential revenue to education and to school district property-tax relief, would allow for a reasoned review of the shortcomings of the current state tax structure and the advantages or disadvantages of alternatives, including the income tax. There is a consensus that the current patchwork of taxes, haphazardly assembled over the years in response to various fiscal crises, has led to an inequitable system that has pushed property and sales taxes to their limits. The proposed amendment would provide the safeguards necessary to permit a rational debate of the state's tax options, giving the voters the final word.

Two-thirds of the net revenue from a state personal income tax would be used to reduce school-district M&O property taxes and the maximum tax rate that a school district could impose. In order to maintain local control and allow for flexibility in the school-finance system, Proposition 4 would permit local voters to choose to allow their district's property tax rate to exceed the new limit. The proposed amendment would *not* require an automatic, two-thirds reduction in school district M&O tax *rates.* The revenue raised by school taxes would be replaced by at least two-thirds of the state income tax revenue, and school tax rates would be lowered to reflect that amount.

The precise reduction in school taxes could not be calculated until after an income tax was levied, its structure and tax rate determined, and the distribution of its revenue established. Specific formulas and equations on the mechanics of school property tax reductions would be too cumbersome to put into the Constitution, especially in light of the frequent shifts in school-fmance statutes.

The remaining one-third of income-tax revenue would not be dedicated solely to the support of primary and secondary education. The revenue raised could be used for other educational purposes, including higher education.

OPPONENTS SAY:

Approval of Proposition 4 would create the false impression that a state income tax had been constitutionally prohibited. In fact, the amendment would set up a scenario in which an income tax could be approved by a simple majority of the Legislature and then sold to the voters as property tax relief. Businesses, which now pay more than 60 percent of property taxes, could be expected to pour money into any campaign that would shift their tax burden onto individuals. The average voter would face emotional appeals to help poor schoolchildren.

Proposition 4 would just help insulate the Legislature from the political heat that would result from instituting a state income tax. It would allow lawmakers to say they were voting for a referendum on an income tax rather than for the tax itself.

The proposed amendment is less a requirement of voter approval for an income tax than an open inducement for voters to adopt one. Constitutionally dedicating income tax revenue to support the public schools and promising a substantial reduction in school property taxes would make an income tax a much more attractive option for many voters. Legislative actions that force large increases in school property taxes would make an income tax a more appealing alternative.

The Legislature should instead propose a constitutional amendment to unconditionally prohibit the imposition of a personal state income tax. A constitutional ban could be overturned only by a two-thirds vote of each house of the Legislature, along with voter approval. Proposition 4 would allow the Legislature to adopt an income tax by only a majority vote.

OTHER OPPONENTS SAY:

Proposition 4 is a shortsighted attempt to remove the income tax as an issue in the 1994 elections at the cost of locking in the state's current inequitable tax structure and inadequate level of state spending. The general distrust of government and cynicism about government spending ensure that voters will be unwilling to unlock a potentially lucrative source of state revenue anytime soon. Texas' huge unmet needs in education, health and human services cannot be addressed without the revenue that only an income tax could provide.

The revenue from an income tax should not be dedicated to a particular function. The Legislature has tried to reduce the amount of dedicated revenue in the state budget to increase its flexibility to respond to changing needs and economic conditions. An income tax, which could be a primary source of state revenue, should be available to support any state function that the Legislature deems necessary.

The members of the Legislature are elected to represent their constituents and make the hard decisions affecting the state. Sending important policy issues to the voters is a way for state lawmakers to duck their constitutional responsibility to enact laws even at the risk of political unpopularity. The state has an immediate need for the revenue that an income tax would provide. The schoolchildren of Texas should not have to wait any longer to receive an adequately funded education.

SUBJECT: Authorizing the Legislature to prescribe qualifications for sheriffs

BACKGROUND: Art. 5, sec. 23, of the Texas Constitution requires that the voters of each of the 254 counties elect a sheriff for a four-year term. It authorizes the Legislature to prescribe the duties, perquisites and fees of office of the sheriff. Vacancies in a sheriff's office between elections are filled by appointments made by the county commissioners court.

DIGEST: SJR 18 would amend the Constitution to authorize the Legislature to establish qualifications for sheriffs.

The ballot proposal reads: "The constitutional amendment to allow the legislature to prescribe the qualifications of sheriffs."

SUPPORTERS SAY: Proposition 5 would clarify the Legislature's authority to set minimum qualifications for county sheriffs. Texas law currently sets no minimum qualifications for a sheriff, the chief law enforcement officer of a county, despite the considerable responsibilities and increasing complexity of the job. Constables, who are elected by voters to serve county precincts, and deputy sheriffs, who are employed to assist a sheriff, both are required by state law to be licensed as peace officers by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). Sheriffs, however, are not, although most incumbents have chosen to become licensed. Neither the Legislature nor the Constitution sets any minimum age, education or training requirements for this important office.

Some argue that the Legislature lacks authority to set minimum qualifications for sheriffs without a constitutional provision specifically granting that power; this amendment would settle that question. The state sets minimum requirements for many elected officers and for certain public employees, including deputy sheriffs, who must be licensed peace officers. Sheriffs also should be held to minimum standards, since they work for counties, which are political subdivisions of the state.

Even in counties where sheriffs perform mainly administrative duties, a requirement for TCLEOSE licensing would be a benefit. This would assure that sheriffs have a core of knowledge about jail standards, constitutional law and arrest, search and seizure. At the very least a sheriff should be

21 or older, have a high school education and no history of felony convictions - among the minimal requirements that the proposed amendment would allow to be imposed. Furthermore, in most of the 254 counties sheriffs are working peace officers as well as administrators and need law enforcement training.

The implementing law for the proposed amendment (SB 339 by Parker), which would take effect upon the amendment's adoption, would require sheriffs to be licensed by TCLEOSE within two years of taking office, just as constables are. A "grandfather clause" would exempt from the requirement any sheriff who held office before January 1, 1994. TCLEOSE would be required to establish requirements for licensing sheriffs. Sheriffs elected after the law took effect would have to have a high school-level education and be eligible for TCLEOSE licensing under current statutory requirements that applicants have no history of felony convictions and be - in most cases - at least 21 years old. Current TCLEOSE licensing requirements for peace officers include 400 hours of training, a licensing examination, 40 hours of continuing education every two years, psychological testing and drug screening. All counties would benefit by having such standards in place for their chief law enforcement official.

The Legislature at least twice has enacted provisions dealing with training of elected peace officers, but in neither case required training for sheriffs. A 1989 law *allows* TCLEOSE to require sheriffs who are not "commissioned peace officers" to attend up to 40 hours of instruction in law enforcement. However, since all sheriffs are "commissioned" to enforce the law - though not necessarily licensed - the provision has no effect. TCLEOSE does, however, offer such instruction for those who want it. A Government Code provision requiring licensing of law enforcement officers elected to constitutional or statutory office is in a chapter that specifically exempts sheriffs.

Minimum standards for sheriffs would increase the professionalism of law enforcement in Texas, part of a trend to ensure that officers with a commission to enforce the law are property trained and are well qualified to do their jobs in a professional manner. The proposed amendment is supported by the sheriffs' statewide professional association, which fully

understands the need for law enforcement professionalism. Most Texas sheriffs already are licensed as peace officers - more than 90 percent meet or exceed the licensing requirements.

While the Constitution does contain a provision for removing incompetent sheriffs from office, a preventive approach would be vastly preferable. It would be better to ensure that all sheriffs are qualified to begin with than to on a time-consuming and difficult court procedure for removing an unqualified sheriff from office.

OPPONENTS SAY:

A county's voters alone should decide who is competent to serve as sheriff in that county. The Constitution allows local county voters, not the Legislature, to decide who is qualified to serve. The Legislature should not be involved in setting qualifications for a constitutional office.

The Legislature could set sheriff qualifications so that only a select few could serve. The 254 counties of Texas are diverse, with special needs. It would be difficult for the Legislature to set any fair, meaningful statewide standards for sheriffs. In many counties, the sheriff's job is primarily an administrator's job that may require little law enforcement experience.

Restricting the pool of qualified persons would not necessarily ensure election of more qualified candidates. Allowing the Legislature to set sheriff qualifications could pose problems for some sparsely populated rural counties that may have few residents who are both willing and eligible to serve under statewide criteria. Requiring TCLEOSE licensing would unfairly discriminate against well-qualified persons such as career FBI agents, who might make excellent sheriffs but lack a TCLEOSE license. While the qualifications contained in SB 339, the implementing bill for Proposition 5, are minimal, stricter eligibility requirements could easily be added in the future if this amendment opened that door.

A constitutional amendment is not necessary to ensure that sheriffs are competent. Art. 5, sec. 24, of the Constitution provides for the removal of county officers by district courts for incompetency, official misconduct, habitual drunkenness or other causes defined by law. This authorizes the Legislature to set grounds for removal. Proposition 5 would grant the

Legislature open-ended authority to set whatever qualifications for sheriffs it wishes, without taking unique local circumstances into consideration.

Most Texas sheriffs already meet the requirements set out in the implementing law for this amendment. The proposed amendment addresses what is a non-issue for most Texans, at the risk of creating unforeseen problems.

NOTES:

SB 339 by Parker, the implementing law enacted by the 73rd Legislature contingent on approval of Proposition 5, would require sheriffs to be licensed by TCLEOSE as peace officers within two years of taking office and require TCLEOSE to establish requirements for licensing sheriffs and for the revocation, suspension, cancellation or denial of a sheriff's license. Licensing would not be required for sheriffs holding office before January 1, 1994. SB 339 would require that sheriffs have a high school diploma or equivalency certificate and meet statutory licensing requirements as to age and criminal history. Under current law TCLEOSE licensees generally must be at least 21 years old (licensing of applicants who are at least 18 is allowed if they meet certain education or military-service requirements) and have no record of felony convictions. The requirements would not apply to sheriffs who assumed office before adoption of the amendment.

Local Government Code sec. 85.0025 currently authorizes TCLEOSE to require sheriffs who are not "commissioned peace officers" to attend up to 40 hours of instruction in law enforcement. The law requires TCLEOSE to allow sheriffs two to four years to complete the instruction, but it currently does not formally require the instruction.

SUBJECT: Abolishing the elected office of county surveyor office in Jackson County

BACKGROUND: Art. 16, sec. 44, of the Texas Constitution requires the voters of each county to elect a county surveyor and a county treasurer. The Constitution stipulates that county surveyors and treasurers "have an office at the county seat, and hold their office for four years, and until their successors are qualified; and shall have such compensation as may be provided by law."

Chapter 23 of the Natural Resources Code makes county surveyors responsible for receiving and examining all field notes of surveys made in the county on which patents are to be obtained, certifying those records, recording field notes in the necessary books of record and keeping the county survey records. The county surveyor's office is to be located in the courthouse or other suitable building in the county seat. A county surveyor must be a registered professional land surveyor and may appoint a deputy surveyor.

The office of elected county surveyor has been abolished in Denton, Randall, Collin. Dallas. El Paso, Henderson, Cass, Ector, Garza, Smith, Bexar, Harris and Webb counties by constitutional amendment approved by voters both statewide and in the affected counties. County commissioners courts are allowed to employ or contract with qualified persons to perform needed surveyor functions in counties in which the elected surveyor position has been abolished.

Of the 254 Texas counties, 90 have an elected county surveyor, according to the Secretary of State's Office (although the secretary of state does not necessarily receive notice of every county surveyor election).

DIGEST: Proposition 6 would amend Art. 16. sec. 44, of the Constitution to abolish the elected office of county surveyor in Jackson County.

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

The ballot proposal reads: "The constitutional amendment abolishing the office of county surveyor in Jackson County."

SUPPORTERS SAY:

The Jackson County surveyor retired in 1988 and has never been replaced. If Proposition 6 were approved, Jackson County would no longer be saddled with an antiquated constitutional office. The proposed constitutional amendment would allow Jackson County to more efficiently manage its business without the threat of being found in violation of a constitutional requirement.

The elected office of county surveyor has gone unfilled for decades in many counties. The Constitution's archaic requirement that 241 of the 254 counties elect a surveyor every four years (in 13 counties the office has been abolished) is a leftover from the 1800s, when large land tracts were being given away or sold by the state. County surveyors once an important function, but in the 1990s it is unnecessary and needlessly expensive to have an elected county surveyor. A county employee can handle any record-keeping duties, and the county can hire or contract with a qualified surveyor to perform any surveyor functions as needed.

As long as the post of elected county surveyor exists, anyone with minimal qualifications can for the office at an election, run unopposed, be elected and assume office, regardless of whether the county or the majority of voters want or need an elected surveyor. The county would then be obligated to provide office space and books of record, which could be an unnecessary expense. If an office were not available at the courthouse, the commissioners court could be obligated to pay rent for an office outside the courthouse.

While it may be desirable to amend the Constitution to grant all counties the option of abolishing the elective job of county surveyor, that proposal, which is on this year's ballot as Proposition 15 (SJR 37), might not be approved. It is therefore reasonable to approve a separate amendment for Jackson County, as state voters have done for 13 other counties, to abolish the county surveyor's office as the county desires.

OPPONENTS SAY:

County voters should not be denied the opportunity to directly elect their county officials rather than having them appointed or hired by the commissioners court. The trend towards abolishing constitutionally created offices is unfortunate; abolishing elected county offices erodes the

foundation of independent county government. Elected officials are more accountable to the public than appointed officials.

The county s office is not obsolete - county surveyors can act as impartial judges to resolve disputes among private surveyors or disputes between counties over boundaries.

County surveyor records are valuable historical documents. Some of these documents are the original and only copy and when the job of county surveyor is vacant or these records may be lost or improperly filed. Proposition unlike Proposition 8 concerning abolition of the office of county surveyor in McLennan does not explicitly state where the county surveyor records would be transferred if that office were abolished.

If some counties have a concern about providing office space to county surveyors, the relevant statute could be amended to free the counties from this obligation without having to amend the Constitution to abolish the office.

OTHER OPPONENTS SAY:

Proposition unlike Proposition 8 concerning abolition of the elected office of county surveyor in McLennan would simply abolish the county surveyor office in Jackson County without authorizing the county commissioners court to call an election to allow local voters to decide whether the office should be eliminated. Voters statewide have no idea what the local issues are in Jackson County and should not have the [mal say about the termination of an office in an individual county. The previous constitutional amendments abolishing the office of county surveyor in individual counties also required that the proposal be approved by county voters as well.

Proposition 15 (HJR also on the November 2 ballot, would amend the Constitution to allow the commissioners court of any county in the state to by local whether to abolish the elected office of county surveyor. Approval of Proposition 15 would render Proposition 6 and other amendments like it unnecessary and wasteful. Calling a statewide election each time an individual county wants to abolish an office is a

waste of time and money. It would add more special exceptions to a state constitution that is already cluttered by extraneous detail.

NOTES:

Two other proposed constitutional amendments concerning the abolition of the elected office of county surveyor are also on the November 2 ballot. Proposition 8 would allow McLennan County to abolish its office of county surveyor. Proposition 15 would allow the commissioners court of any county to call an election to abolish the office of county surveyor in that county.

Art. 16, sec. 44(e), of the Constitution, adopted in 1985, allowed the county commissioners court in each of six designated counties to call an election to allow local voters to decide whether to abolish the office of county surveyor. (Proposition 8 would add McLennan County to this section.) Under Art. 16, sec. 44(t), adopted in 1989, the office of county surveyor was automatically abolished in seven designated counties when voters in each of those counties also approved the proposed constitutional amendment on the statewide ballot. Proposition 6 would abolish the county surveyor position in Jackson County if adopted by voters statewide, without separate provision for approval by the voters in Jackson County.

SUBJECT: Repeal of corporate requirements for issuing stocks and bonds

BACKGROUND: Art. 12, sec. 6, of the Texas Constitution prohibits corporations from issuing stock or bonds except for money paid, labor done or property actually received. The section voids all "fictitious increase" of stock or indebtedness.

DIGEST: Proposition 7 would repeal Art. 12, sec. 6, of the Constitution.

The ballot proposal reads: "The constitutional amendment repealing certain restrictions on the ability of corporations to raise capital."

SUPPORTERS SAY: Proposition 7 would repeal an obsolete section of the Constitution. The provision was adopted by the 1875 Constitutional Convention in response to a contemporary scandal involving "stock watering" - issuing stock with a face value greater than the amount paid for it. In 1868 a construction company called the Credit Mobilier was formed to build the Union Pacific railway. For every $1,000 that was invested in the company, $3,500 of stock was issued. A congressional investigation of the Credit Mobilier Scandal revealed that stock watering was a common business practice among all large corporations, defrauding those stockholders who paid full value for their shares and misleading creditors who relied on the stated capital of a corporation in extending credit.

The Credit Mobilier scandal was partly responsible for the Panic of 1873, which resulted in an economic depression. However, Congress did little to ban stock watering or control fraudulent corporate practices. As a result, Texas and other Southern states enacting post-Reconstruction constitutions included a provision outlawing stock watering to ensure that, even if Congress did not act, each state could protect stockholders and corporation creditors.

The abuses this provision was intended to prevent are now thoroughly treated by current law regulating securities and business associations. The Texas Business Corporation Act, Insurance Code and Banking Code all contain detailed rules on stock issuance, as do modem accounting principles and federal securities regulations. Art. 12, sec. 6, provides little or no additional protection. Knowledgeable lawyers can easily structure most

transactions to avoid the requirements of sec. 6. The section acts only as a trap for the unwary; by remaining on the books it can continue to give rise to unnecessary litigation.

This section of the Constitution can restrict the ability of Texas corporations to raise capital. The section prevents Texas from enacting certain modem legislation involving stock issuance that other states have adopted to give more financial flexibility to corporations, all within the context of current securities regulation. Businesses often desire to issue stock or debt that do not fit the provision's categories of allowable assets. For example, a failing corporation that wishes to attract a new chief executive by immediately giving the prospect a substantial number of shares could be barred by Art. 12, sec. 6, since no labor would yet have' been done. Similarly, a movie star could not sign a contract to receive partial ownership in a film, since the labor of acting would not yet have been performed.

The Texas Legislative Council recommended repeal of this provision as part of the 1969 "deadwood" amendment (IUR 3, 61st Legislature, regular session) that removed obsolete sections from the Constitution. Sec. 6 has been cited in court cases only five times in the past 20 years; it is time for this obsolete provision to go.

OPPONENTS SAY:

Art. 12, sec. 6, offers protection against certain shady business practices and should be retained in the Texas Constitution. Although this provision has been cited relatively rarely by the courts in recent years, in three of the five recent cases in which sec. 6 was an issue the courts invalidated the issuance of stock certificates as a violation of the constitutional prohibition. The rights of the prevailing parties in these cases were not safeguarded by other statutes or regulations, and the injured parties would have suffered unfair losses except for the protection of Art. 12, sec. 6.

Texas corporations have been able to grow and prosper for more than 100 years through fmancial transactions that satisfy the requirements of sec. 6. Eliminating this constitutional provision would add little to the ability of Texas companies to raise capital, but would remove a time-tested protection against stock watering and similar fmancial manipulations.

SUBJECT: Abolishing the elected office of county surveyor in McLennan County

BACKGROUND: Art. 16, sec. 44, of the Texas Constitution requires the voters of each county to elect a county surveyor and a county treasurer. The Constitution stipulates that county surveyors and treasurers "have an office at the county seat, and hold their office for four years, and until their successors are qualified; and shall have such compensation as may be provided by law."

Chapter 23 of the Natural Resources Code makes county surveyors responsible for receiving and examining all field notes of surveys made in the county on which patents are to be obtained, certifying those records, recording field notes in the necessary books of record and keeping the county survey records. The county surveyor's office is to be located in the courthouse or other suitable building in the county seat. A county surveyor must be a registered professional land surveyor and may appoint a deputy surveyor.

Art. 16, sec. 44(e), of the Constitution, adopted in 1985, allowed the county commissioners court in each of six designated counties - Denton, Randall, Collin, Dallas, El Paso and Henderson - to call an election to allow local voters to decide whether to abolish the office of county surveyor. Under Art. 16, sec. 44(t), adopted in 1989, the office of county surveyor was automatically abolished in of Cass, Ector, Garza, Smith, Bexar, Harris and Webb counties when voters in each of the counties also approved the proposed constitutional amendment on the statewide ballot allowing the office to be abolished in those counties. Counties where the county surveyor office has been abolished are allowed to employ or contract with qualified persons to perform needed surveyor functions.

Of the 254 Texas counties, 90 have an elected county surveyor, according to the Secretary of State's Office (although the secretary of state does not necessarily receive notice of every county surveyor election).

DIGEST: Proposition 8 would amend Art. 16, sec. 44(e), of the Constitution to abolish the elected office of county surveyor in McLennan County if approved by county voters in an election called by the county commissioners court.

If the office of county surveyor were abolished, the maps, field notes, and other records held by the county surveyor would be transferred to the county clerk. Mter abolition of the office, the commissioners court could employ or contract with a qualified person to perform any of the functions that would have been performed by the county surveyor if that office had not been abolished.

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

SUPPORTERS SAY:

McLennan County has not had a county surveyor for four years. If Proposition 8 is approved, the commissioners court in McLennan County would have the option of calling an election to allow county voters to abolish an antiquated constitutional office. This would allow McLennan County to more efficiently manage its business without the threat of being found in violation of a constitutional requirement.

The elected office of county surveyor has gone unfIlled for decades in many counties. The Constitution's archaic requirement that 241 of the 254 counties elect a surveyor every four years (in 13 counties the office has been abolished) 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 1990s it is unnecessary and needlessly expensive to have an elected county surveyor. A county employee can handle any record-keeping duties, and the county can hire or contract with a qualified surveyor to perform any surveyor functions as needed.

As long as the post of elected county surveyor exists, anyone with minimal qualifications can for the office at an election, run unopposed, be elected and assume office, regardless of whether the county or the majority of voters want or need an elected surveyor. The county would then be obligated to provide office space and books of record, which could be an unnecessary expense. If an office were not available at the courthouse, the commissioners court could be obligated to pay rent for an office outside the courthouse.

While it may be desirable to amend the Constitution to grant all counties the option of abolishing the elective job of county surveyor, that proposal,

which is on this year's ballot as Proposition 15 (SJR 37), might not be approved. It is therefore reasonable to approve a separate amendment for McLennan County, as state voters have done for 13 other counties, to ensure that the county can abolish the county surveyor's office as it desires.

OPPONENTS SAY:

County voters should not be denied the opportunity to directly elect their county officials rather than having them appointed or hired by the commissioners court. The trend towards abolishing constitutionally created offices is unfortunate; abolishing elected county offices erodes the foundation of independent county government. Elected officials are more accountable to the public than appointed officials.

The county surveyor's office is not obsolete - county surveyors can act as impartial judges to resolve disputes among private surveyors or disputes between counties over boundaries. County surveyor records are valuable historical documents. Some of these documents are the original and only copy, and when the job of county surveyor is vacant or abolished, these records may be mislaid, lost or improperly filed.

If some counties have a concern about providing office space to county surveyors, the relevant statute could be amended to free the counties from this obligation without having to amend the Constitution to abolish the office.

OTHER OPPONENTS SAY:

Proposition 15 (HJR 37), also on the November 2 ballot, would amend the Constitution to allow the commissioners court of any county in the state to decide, by local option, whether to abolish the elected office of county surveyor. Approval of Proposition 15 would render Proposition 8 and other amendments like it unnecessary and wasteful. Calling a statewide election each time an individual county wants to abolish an office is a waste of time and money. It would add more special exceptions to a state constitution that is already cluttered by extraneous detail.

NOTES:

Two other proposed constitutional amendments concerning the abolition of the elected office of county surveyor are also on the November 2 ballot. Proposition 6 would abolish the office in Jackson County. Proposition 15 would allow the commissioners court of any county to call an election to abolish the office of county surveyor.

SUBJECT: Limiting the right to redeem property sold at a tax sale

BACKGROUND: The Texas Constitution, Art. 8, sec. 13, directs the "ftrst Legislature" to provide for the speedy sale, "without the necessity of a suit in court," of real property for taxes due. (Foreclosure of a tax lien by a court is currently required. Iudicial interpretation has allowed the Legislature to make sale by court order the exclusive method.)

Sec. 13 also creates a "right of redemption," which permits the former owner to redeem, within two years of the date the purchaser's deed is filed for record, any real property sold to payoff a tax debt. The purchaser cannot take possession of property bought at a tax sale until the redemption period has expired. If the right of redemption is exercised within one year, the former owner must pay to the purchaser the amount that the purchaser paid for the property, a one-dollar tax deed recording fee, the amount paid by the purchaser as taxes, penalties, interest and costs on the property, plus up to 25 percent of the aggregate total. If the right is exercised in the second year, the former owner must pay up to 50 percent of the aggregate total in addition to the purchase price plus costs. (The Legislature has set the redemption payments at the maximum levels allowed by the Constitution.)

The original provision required the former owner to pay *double* the purchase price in order to redeem land. A 1932 amendment, adopted in the depths of the Depression, lowered this cost to the current requirements. Texas is one of three states that guarantees to those who lose property at a tax sale the right of redemption.

DIGEST: Proposition 9 would amend Art. 8, sec. 13, of the Texas Constitution to permit the Legislature to limit the constitutional two-year right of redemption to apply only to former owners of a residence homestead or land designated for agricultural use. The Legislature could limit the two-year redemption right to property used as a residential homestead or for agricultural use as of the date the suit to collect the unpaid taxes was fued.

Former owners of other types of property would have six months to exercise a right of redemption, which would require payment of the purchase price and costs, plus up to 25 percent of the total.

Proposition 9 also would remove the mandate that the Legislature provide for tax sales without court foreclosure.

The amendment would take effect January 1, 1994, and would apply to redemption of real property sold at a tax sale for which the purchaser's deed was for record on or after that date.

The ballot language reads: "The constitutional amendment to modify the provision for the redemption of real property sold at a tax sale."

SUPPORTERS SAY:

Proposition 9 would allow the Legislature to facilitate the sale of certain property seized for nonpayment of taxes, while retaining the Constitution's two-year guaranteed right of redemption for those who lose homesteads or farms at a tax sale. In the case of homesteads and land used for agricultural purposes such as farms, ranches and orchards, the constitutional right of redemption would remain essentially unchanged. A repurchaser's costs would remain at the same levels as at present: a maximum 25-percent premium the year, a 50-percent limit the second.

The real change made by the proposed amendment would be to promote the sale of abandoned and vacant property offered for sale to settle tax debts. The redemption period would be reduced from two years to six months. This change would encourage more investors and developers to purchase land at tax sales, which would permit cities, counties, school districts and other political subdivisions to more easily sell abandoned buildings, vacant lots or failed developments that are seized for nonpayment of taxes. Under current law, a purchaser must wait two years before having a truly secure title to property bought at a tax sale. Most purchasers are unwilling to wait that long before beginning to improve a property. Nor do they want to risk losing any improvements made before the right of redemption expires.

If the right of redemption were limited to six months, more bidders would likely be attracted to tax sales. This would allow cities and other local governments to get property back onto the tax rolls more quickly, sparing them the expense of maintaining unproductive property. It would encourage redevelopment of abandoned property, stimulating economic growth and a healthy tax base.

Statutory changes permitted by Proposition 9 would primarily affect tax sales of run-down apartment buildings and seized crack houses. Fonner owners of these properties would still receive plenty of notice prior to sale, guaranteeing them a chance to exercise their rights: They would have been sued by the city, taken to court, foreclosed upon and been notified of the tax sale before the six-month right-of-redemption period even started.

OPPONENTS SAY:

Proposition 9 could allow the state to deprive taxpayers of modest means of their property by restricting the right of redemption. There are numerous cases of persons who own a rent house or an undeveloped lot who fall behind on their property taxes because of personal financial difficulties or an economic downturn. A person might inherit property in a distant area and not receive notification until long after the property had been sold for taxes. For more than a century the Texas Constitution has given these property owners an extra layer of protection against loss of their property to the government through tax sales by guaranteeing a two-year right of redemption; this right should not be diluted.

NOTES:

SB 355 by Ellis and Leedom, the implementing legislation, for Proposition 9, would amend the Tax Code to restrict the two-year right of redemption of property sold for unpaid taxes to fonner owners of land that was sold for unpaid taxes and that was a residence homestead or designated for agricultural use when the suit to collect the tax was filed. Fonner owners of other types of property would have six months to exercise a right of redemption, which would require payment of the purchase price and costs, plus 25 percent of the total. The bill would take effect January 1, 1994, if voters approve Proposition 9.

SUBJECT: Authorizing the Veterans' Land Board to issue $750 million in bonds

BACKGROUND: Art. 3, sec. 49, of the Texas Constitution prohibits the Legislature from creating state debt. However, voters have approved numerous amendments to sec. 49 to authorize the state to borrow money by issuing general obligation bonds to finance a wide range of projects. Sec. 49-b and sec. 49-b-1 authorize bond debt for the Veterans' Land Fund.

The Veterans' Land Board and the Veterans' Land Fund were created in 1946 originally to purchase land for resale to veterans of World War II, using money borrowed by the state by issuing general obligation bonds. General obligation bonds are backed by the full faith and credit of the state, and the state guarantees that it will repay its debt to bondholders, with interest, with the money coming into the state Treasury each fiscal year. Some general obligation bonds, like the veterans' land bonds, are paid off with revenues from the programs they support and are thus considered self-supporting. The state's other principal debt instrument, revenue bonds, are paid off solely with specified sources of state revenue. Because the state does not directly guarantee repayment, revenue bonds do not require constitutional authorization and require a higher interest rate in order to attract investors.

The constitutionally created land board consists of the commissioner of the General Land who is elected statewide, and two gubernatorial appointees. The board frrst was authorized to issue up to $25 million in bonds for the veterans program, but the Constitution has been amended numerous times to authorize issuance of additional bonds for the program. Amendments also have extended to veterans of subsequent wars, altered the calculation of bond interest rates and reorganized the membership of the board. The current bond authorization for the land program totals $1.25 billion: $950 million in Art. 3, sec. 49-b, and $300 million in sec. 49-b-1.

An additional $1 billion in bond debt is authorized to fund a veterans' *housing* program. Art. 3, sec. 49-b-1, adopted in 1983, established a separate Veterans' Housing Assistance Program to provide low-interest loans to help veterans buy homes.

DIGEST:

Propo'sition 10 would amend the Constitution by adding to Art. 3 a sec. 49-b-2, to authorize the Veterans' Land Board to issue up to $750 million in general obligation bonds in addition to those authorized under secs. 49-b and 49-b-l. The amendment would require $250 million to be used to augment the Veterans' Land Fund and $500 million to be used for the veterans' housing program through a new fund, the Veterans' Housing Assistance Fund II. This second housing assistance fund would be separate and distinct from the housing fund established under sec. 49b-l, and would also be used to make home mortgage loans to veterans.

The Veterans' Housing Assistance Fund II would consist of the board's interest in, or proceeds from the disposition of, home mortgage loans issued to veterans; money attributable to bonds issued and sold for the fund; income and other benefits received as a result of making loans; money received by way of indemnity or forfeiture from a bond bidder; payments received under a bond enhancement agreement and interest from investments of money.

Proposition 10 also would require that the Veterans' Housing Assistance Fund consist of the same kinds of money and proceeds as required in the Veterans' Housing Assistance Fund II. (This would add to fund assets money received from bond enhancement agreements and from the sale or disposition of the board's interest in contracts for the sale of land).

Appropriations out of the money coming into the treasury each year would be designated to pay the principal and interest on general obligation bonds that become due if there is not enough money in the Veterans' Land Fund, the Veterans' .Housing Assistance Fund or the Veterans' Housing Assistance Fund II to meet the obligation.

The Constitution would state that, notwithstanding provisions of sees. 49-b or 49-b-l to the contrary, receipts of the Veterans' Land Fund, the Veterans' Housing Assistance Fund or the Veterans' Housing Assistance Fund II that are not required for the payment of principal and interest on the bonds issued under each fund could be used to make temporary transfers among funds to avoid a temporary cash deficiency and to pay the principal and interest on general obligation bonds or revenue bonds.

If the board determined that assets from the Veterans' Land Fund, the Veterans' Housing Assistance Fund or the Veterans' Housing Assistance Fund II were not required for the purposes of the particular fund, the board could transfer the assets to another fund or use the assets to secure revenue bonds. Revenue bonds could only be issued to raise funds to purchase and sell land to veterans or make home mortgage loans to veterans. The revenue bonds would be special obligations of the board payable only from and secured only by receipts of the funds, assets transferred from the funds and other revenues and assets as determined by the board and would not constitute indebtedness of the state or the board.

All bonds authorized by secs. 49-b, 49-b-l and 49-b-2 would be issued in a manner detennined by the Veterans' Land Board. The amendment states that it is intended only to establish a basic framework and not a comprehensive treatment of the land and housing programs. The Legislature would be given full power to implement and effectuate the design and administration of the programs.

The ballot proposal reads: "The constitutional amendment authorizing issuance of $750 million in general obligation bonds to augment the Veterans' Land Fund and the Veterans' Housing Assistance Fund and to fund the Veterans' Housing Assistance Fund ll."

SUPPORTERS SAY:

Proposition 10 would authorize a new $750 million infusion of capital into the veterans' housing and land programs to satisfy the projected demand for low-interest loans, without costing the taxpayers any additional money. The Veterans' Land Board is nearing the current constitutional limit on its ability to borrow funds through bonds, yet demand for the low-interest loans continues. The housing program issued $125 million in bonds in January and has already used half of the proceeds. A planned new issue in the fall would exhaust the program's authorization. The land program is not as close to its limit, but could run out before the next likely opportunity for a constitutional authorization.

Texas veterans receive few state benefits for the sacrifices they made serving their country. The Veterans' Land Board programs to assist with land and housing purchases are a way of compensating veterans at little cost and almost no fmancial risk to the state while providing a financing

source that benefits state and local economies. The programs are designed to be self-supporting, and since 1949 have never had to rely on general revenue. Principal and interest payments made by veterans on their loans are used to pay debt service on the state bonds. Any risks in issuing the loans are computed within the loan rate.

About 1.8 million veterans reside in Texas. Since inception of the loan programs, the Veterans' Land Board has issued 26,734 housing assistance loans, 2,343 home improvement loans and over 100,000 loans to buy land. The foreclosure rate on veterans land board loans is very low - only 32 home foreclosures out of more than 26,000 mortgage loans. The land foreclosure rate is higher, but well within the ability of the program to absorb. Foreclosed property is sold, and the proceeds remain in the program.

In 1983 the land board was given constitutional authority to issue revenue bonds for the land program and the housing fund, and Proposition 10 would extend the same authority to the Veterans' Housing Assistance Fund II. Although the state has yet to issue any revenue bonds (because of the higher interest payments they command), revenue bonds could provide the board with an alternative source of program funds should they be needed. Any possible state or veteran program risk would be minimized because all revenue bonds must be approved by the Bond Review Board prior to issuance.

The authority to transfer money among the three Veterans' Land Board funds would allow the board to manage the money in the funds more effectively. Allowing each fund to draw on the assets of the other two would help assure investors that their interests would be protected. Transferring receipts not required to pay bond principal and interest obligations is already constitutionally authorized between the land fund and the housing assistance fund - Proposition 10 would just expand existing transfer authority to include the new housing assistance fund that would be established **if** the proposed amendment is approved. All transfers would be recorded and would have to follow appropriate accounting practices, federal law and bond covenant requirements. Also, the administration of the Veterans' Land Board funds is subject to an annual audit by the State Auditor's Office.

By creating a new housing program fund, the amendment also would give the board additional flexibility in how it invests the proceeds of bond sales. Investment of the new Veterans' Housing Assistance Fund II would not be tied to previous bond resolutions that limited investments of fund proceeds only to bonds and obligations backed by the U.S. government. The Veterans' Housing Assistance Fund II could take advantage of expanded investment options for the land program authorized by the voters and the Legislature in 1991 (see Notes). The Veteran's Land Board is now authorized to invest bond proceeds in investments authorized for the state Treasurer in Government Code, sec. 404.024. If these investments are considered stable and conservative enough to secure state funds, they should also be considered secure enough to protect veterans' land fund and housing fund proceeds; they would boost investment income for the funds in a prudent manner.

The additional bonds to be issued over the next few years would be a drop in the bucket in the multibillion-dollar, nationwide bond market. They would certainly not be enough to distort interest rates on other bonds or materially affect state or federal tax receipts.

OPPONENTS SAY:

Proposition 10 would authorize a large increase in state debt and a greater government intrusion into the capital markets to expand a government subsidy for one special interest group. As of May 1993 the state's outstanding bond debt already totaled $9.1 billion, of which about $3.5 billion was in general-obligation bonds. As popular as the veterans' land and housing programs may be, Texas voters should be wary about authorizing any more state debt.

Texas veterans are already eligible for a wide variety of benefits, including federal Veterans Administration housing loans, college tuition assistance, and certain state and federal hiring preferences. The last constitutional amendment to increase bond issuance for the land and housing programs was in 1985; the state does not need to increase in its growing indebtedness for a special interest group that already receives many generous benefits from the state and federal governments.

The establishment of the Veterans' Housing Assistance Fund ll, which would allow the Veterans' Land Board to utilize recently expanded

investment options, could place at greater risk the program providing access to affordable housing for veterans. The broad range of investments that the state treasurer is authorized to make are not as secure as U.S. government-backed bonds and obligations.

Proposition 10 would give the Veterans' Land Board too much flexibility to transfer money among the three funds supporting the land and housing programs. Transferring money from one fund to cover cash deficits in another could obscure fmancial or programmatic problems and has the potential for abuse.

NOTES:

SB 819 by Turner, enacted by the Legislature in its 1993 regular session, revises Veterans' Land Board provisions in the Natural Resources Code and would implement establishment of the Veterans' Housing Assistance Fund IT if Proposition 10 is approved by the voters. Among other provisions, the bill allows the land board to issue revenue bonds to buy back or refund general obligation bonds. Revenue bonds also could be issued for other purposes, but only up to the amount of $250 million. The board also could issue refunding bonds and enter into bond enhancement agreements, such as interest rate swaps, currency swaps and forward payment conversion agreements. The board would not be required to take competitive bids for land improvements, repairs or maintenance with a value of less than $10,000. Transfers among the three veterans' funds would be permitted.

In 1991 voters approved Proposition 3 (SJR 26 by Tejeda), which permitted the Legislature to determine how to invest Veterans' Land Board bond proceeds. Legislation implementing *SIR* 26 allows the board to make any investment authorized for the state Treasury under the Government Code, 404.024. Authorized investments include: direct and reverse repurchase agreements, direct obligations guaranteed by the U.S. government and certain international development banks and certain bankers' acceptances and commercial paper.

SUBJECT: Duties of trustees of local public pension systems

BACKGROUND: Art. 16, sec. 67, of the Texas Constitution authorizes the Legislature to enact general laws establishing public pension systems to provide retirement, disability and death benefits to public employees. It requires that financing of benefits be based on actuarially sound principles and that the assets of a pension system be held in trust for the benefit of the members and not be diverted for other purposes. Sec. 67 establishes the state Employees Retirement System, the Teacher Retirement System and the Judicial Retirement System and allows the Legislature to create city and county pension systems and voluntary statewide, county (including other political subdivisions) and city systems.

The Legislature has created two statewide umbrella systems for local government retirement systems - the Texas Municipal Retirement System (TMRS), which has about 600 participating municipalities, and the Texas County and District Retirement System (TCDRS), which has about 460 participating counties and subdivisions. More than 250 local public pension systems, including those covering public employees of major Texas cities like Houston, Dallas, San Antonio, El Paso and Austin, are not members of either statewide umbrella system.

DIGEST: Proposition 11 would amend Art. 16, sec. 67, of the Texas Constitution, to stipulate that the boards of trustees of public retirement systems that do not belong to a statewide public retirement system must:

• administer the pension system or program of benefits;

• hold assets of the pension system or program for the exclusive purposes of providing benefits to members and their beneficiaries and paying reasonable costs to administer the system;

• select legal counsel and an actuary; and

• adopt sound actuarial assumptions to be used by the retirement system.

The ballot proposal reads: "The constitutional amendment providing that the trustees of a local public pension system must administer the system for the benefit of the system's participants and beneficiaries."

SUPPORTERS SAY:

Proposition 11 would clarify in the Constitution the duties and fiduciary responsibilities of the trustees of public pension systems that do not belong to the statewide retirement systems. It would give blanket constitutional protection to all public pension funds that have not affiliated with a statewide system. Setting out the responsibilities of trustees in the Constitution would help avert future questions or misunderstandings.

The proposed amendment would protect the members of all public pension systems that are not affiliated under a statewide system such as the Texas County and District Retirement System or the Texas Municipal Retirement System. The more than 300 unaffiliated public pension systems include employees of all types of political subdivisions - from tiny water districts to large cities such as Houston and Dallas. Proposition 11 would stipulate that the boards of trustees, not the governmental entities, should have fiduciary responsibility for system assets. It would give the trustees the exclusive right to administer the system and assure that the local governmental entity cannot raid a pension fund when facing an economic crisis.

Giving the boards of trustees explicit authority to choose their own legal counsel and the system's actuary would alleviate any possibility of a conflict of interest with the governmental entity. Some local governments have insisted on choosing a pension system's legal counsel and actuary, who have broad authority in administering pension systems. Actuaries assess the actuarial soundness of systems and determine the rate of contributions needed to pay current and future benefits. System actuaries should have as their first priority the best interest of the members of the pension system, not the fiscal well being of the governmental entity that employs them.

Proposition 11 would set out the fiduciary responsibilities and duties of the trustees. The trustees administer the system for the benefit of all the members. It would be poor pension policy to have members of the system

involved in its management - the trustees are chosen to act on behalf of the members and have the legal and fiduciary duty to act in their interest.

The duties of pension trustees need to be specified in the Constitution so they cannot be easily changed by the Legislature in response to possible political pressure. Placing the authority in the Constitution would give it more standing than just having it in the statutes, which can be changed whenever the Legislature meets. It also would establish uniform standards for all the unaffiliated systems rather than a hodgepodge of different duties and responsibilities.

OPPONENTS SAY:

The governmental entities that create and help fund local public pension systems should have a say in how they are administered and funded. Proposition 11 would tip the balance in favor of the pension systems by giving the boards of trustees too much autonomy. Governmental entities must live within their projected budgets, and contributions to pension systems can represent a large portion of their expenditures; how those expenditures are managed should be subject to their control.

OTHER OPPONENTS SAY:

A constitutional amendment addressing local public pension systems is not needed because statutes already govern all public pension funds in Texas and the conduct of their trustees. Government Code, sees. 802.201 and 802.202, state that the trustees as the governing body of a public retirement system hold the assets of the system in trust for the benefit of the members and retirees and are responsible for the management and administration of the funds of the system.

Rather than just restate the obvious, legally recognized, fiduciary duties of retirement system trustees, the proposed amendment should clearly establish the authority of system members to protect their own rights. It should permit pension system members to vote on changes in the terms, numbers or methods of selecting the trustees or program changes. Members should have some say in who represents them on the board and what benefits are provided.

SUBJECT: Bail denial to persons on probation or parole charged with certain offenses

BACKGROUND: Persons accused of non-capital crimes generally are guaranteed the right to post bail to secure release from jail pending trial. However, Art. 1, sec. 11a, of the Texas Constitution allows courts to deny bail for up to 60 days in some cases when the accused has a previous criminal history. A longer delay is allowed if the accused has requested a continuance to postpone legal proceedings. A court may deny bail to a person accused of a non-capital felony:

• who already has had two successive felony convictions;

• who has previously been indicted for another felony and was free on bail at the time of the alleged new offense; or

• who has a prior felony conviction, and the alleged new offense involved use of a deadly weapon.

Bail may be denied only after a hearing and upon presentation of evidence substantially showing the guilt of the accused.

DIGEST: Proposition 12 would amend Art. 1, sec. 11a, of the Constitution to authorize a judge to deny bail to a person accused of certain violent and/or sexual offenses committed while under supervision of a state or local criminal justice agency for a prior felony - that is, on probation (community supervision), parole or mandatory supervision. The term "violent offense" and "sexual offense" would include: murder; aggravated assault, if the accused used or exhibited a deadly weapon during the commission of the assault; aggravated kidnapping; aggravated robbery; aggravated sexual assault; sexual assault or indecency with a child.

The ballot proposal reads: "The constitutional amendment permitting the denial of bail to certain persons charged with certain violent or sexual offenses committed while under the supervision of a criminal justice agency of the state or a political subdivision of the state."

SUPPORTERS SAY:

Various tragic crimes committed by repeat offenders who were free on bail have highlighted the need to authorize judges to delay setting bail in certain additional cases. The 1990 rape and strangulation death of a Fort Worth teenager by a parolee free on bail after being accused of another sexual assault is but one example of why courts need authority to see that certain accused repeat offenders stay locked up pending trial for the protection of the public.

The use of "blue warrants" is inadequate to restrain all parolees accused of new crimes. The Code of Criminal Procedure allows a parole panel to issue a "blue warrant" for a parolee who commits another crime or otherwise violates the conditions of parole. These warrants prevent a judge from setting bail before a parole revocation hearing is held, as long as the hearing is held within 70 days of the warrant's issue date. However, serious jail overcrowding and other administrative problems often cause criminal justice authorities to fail to issue, fail to accept or withdraw blue warrants. In these cases a newly accused parolee may post bond and go free - despite the potential danger to society.

Proposition 12 would expand the current constitutional provisions allowing bail to be denied under limited, justifiable circumstances to include another serious situation. Judges would have the option of denying bail to certain persons on probation, parole or mandatory supervision who were accused of violent and/or sexual offenses, even when the offense involved no deadly weapon. This would mean that even without a valid blue warrant a judge could deny bail and therefore deter further crimes against children, the elderly and other defenseless individuals who are often the victims of these types of crimes.

Due process would still be assured, since the Constitution would allow denial of bail only after a hearing and upon presentation of substantial evidence indicating the guilt of the accused. In addition, an order denying bail would have to be set aside unless a trial was held or a continuance granted at the request of the accused within 60 days.

OPPONENTS SAY:

Proposition 12 would create yet another exception to the basic tenet that a person is presumed innocent until proven guilty in a court of law. This proposal also would strain the guarantees of the Eighth Amendment of the U.S. Constitution, which prohibits setting excessive bail, since denial of bail altogether could certainly be considered excessive. The form of preventive detention created by exceptions to the guarantee of bail would prevent relatively few offenses; the main effect would be a useless increase in county jail overcrowding. Federal rules initiated in the mid 1980s that allow denial of bail in certain circumstances have increased overcrowding in federal facilities without seriously curbing crime.

The purpose of requiring bail is to ensure the defendant's appearance at a subsequent hearing or trial, not to deter hypothetical future crimes. The state should not expand the authority of judges to keep people in jail to guard against crimes that may never be committed.

The problem that this proposed amendment seeks to solve is a very limited one that does not justify adding a new exception to the Texas Constitution. A mechanism already exists for keeping persons on probation, parole or mandatory supervision behind bars when they violate the conditions of their release. Alternately, a court can set bail as high as is appropriate to the case at hand.

SUBJECT: Higher Education Assistance Fund aid for Texas State Technical College

BACKGROUND: The Higher Education Assistance Fund (HEAP) was created in 1984 in Art. 7, sec. 17, of the Constitution. The fund provides aid to Texas public universities that are outside the University of Texas and Texas A&M University systems. Until 1984 UT and A&M system schools alone had a constitutionally dedicated source of funding for capital needs: the Permanent University Fund (PUP). The HEAP was created to provide a similar constitutional fund for all other state universities.

The HEAP is funded with a constitutionally mandated annual legislative appropriation. The annual appropriation, originally set at $100 million, will be raised to $175 million in September 1995, under lIB 1207 by Rudd, enacted by the 73rd Legislature during the 1993 regular session. HEAP funds may be used to buy land, to construct, equip or repair buildings and to buy capital equipment and library books and materials. Twenty-six institutions are eligible to receive HEAF money. The Constitution requires that the funds be distributed by an equitable allocation formula designed by the Legislature or a designated agency. Requirements for the formula, and the dollar amount that each institution receives, currently are specified by the Legislature in Education Code sec. 62.021.

The Constitution authorizes the Legislature to adjust the amount of the constitutional appropriation to the HEAP every five years, by a vote of at least two-thirds of the members of each house. This must take place "during the regular session of the Legislature that is nearest, but preceding, the beginning of each fifth fiscal year," starting September 1, 1985. The Legislature meets in regular session only in odd-numbered years.

The HEAP implementing statute had prohibited spending HEAP money on buildings or equipment used solely by auxiliary enterprises, such as dormitories, cafeterias, student union buildings, stadiums and alumni centers, that are not strictly educational. Due to questions and confusion surrounding the expenditure of HEAP money on buildings used jointly for educational and auxiliary activities (such as for roof repairs for dormitories that also house classrooms), an attorney general's opinion, JM-999, was issued outlining when an institution could and could not apply HEAP money. The implementing statute was amended in 1989 to allow HEAP

money to be used for buildings and equipment used jointly by auxiliary enterprises and educational activities for the proportion used for educational activities.

The HEAP is distributed to:

East Texas State University, including ETSU at Texarkana;
Lamar University, including LU at Orange and LU at Port Arthur;
Midwestern State University;
University of North Texas (formerly North Texas State University);
University of Texas - Pan American (formerly Pan American University);
University of Texas at Brownsville (formerly Pan American University at Brownsville);
Stephen F. Austin'State University;
Texas College of Osteopathic Medicine;
Texas State University System Administration;
Angelo State University;
San Houston State University;
Southwest Texas State University;
SuI Ross University, including Uvalde Study Center;
Texas Southern University;
Texas Tech University;
Texas Tech University Health Sciences Center;
Texas Women's University;
University of Houston System Administration;
University of Houston;
University of Houston - Victoria;
University of Houston - Clear Lake;
University of Houston - Downtown;
Texas A&M University - Corpus Christi (formerly Corpus Christi State University);
Texas A&M International University (formerly Laredo State University);
Texas A&M University - Kingsville (formerly Texas A&I University);
West Texas A&M University (formerly West Texas State University)

The Texas State Technical College System (TSTC) originated with the 1965 establishment of the James Connally Technical Institute in Waco, under the administration of Texas A&M University. TSTC became

independent in 1969 and now has four campuses - in Amarillo, Harlingen, Sweetwater and Waco - and four extension centers - in Abilene, Brownwood, Marshall and McAllen. TSTC offers technical and vocational education, not academic degrees.

TSTC operations are funded primarily through state appropriations under an allocation formula designed for two-year academic and vocational/technical institutions. Capital expenses are funded through special appropriations.

DIGEST:

Proposition 13 would add the Texas State Technical College System and its campuses, but not its extension centers or programs, to the Constitution's list of institutions that receive HEAF funds. The annual allocation to TSTC could not exceed 2.2 percent of the annual HEAF appropriation.

Proposition 13 also would expand the authorized uses of HEAF funds to include buildings, facilities, other permanent improvements and capital equipment used jointly for educational and general activities and for auxiliary enterprises to the extent of their use for educational and general activities.

Proposition 13 would specify that, as of the five-year period starting September 1, 2000, the Legislature could increase (not "adjust") the amount of the HEAF appropriation during the regular legislative session that is "nearest but preceding a five-year period" (1999 session for 2000, etc.).

The proposed amendment also would delete language that refers to the use of a single bonding agency to issue bonds and would correct references to HEAF institutions whose names have changed.

The section of Proposition 13 adding the TSTC system campuses to the HEAF and revising the names of other HEAF institutions would take effect September 1, 1995. The remainder of the proposed amendment would take effect upon the canvass of votes, should the voters approve it.

The ballot proposal reads: "The constitutional amendment relating to the amount and expenditure of certain constitutionally dedicated funding for public institutions of higher education."

SUPPORTERS SAY:

Texas State Technical College (TSTC) system is the only higher education institution in the state without a dedicated revenue source for capital expenditures. Unlike universities, it gets no help from a constitutional fund. Unlike community colleges, it has no local tax base. Allowing the TSTC system to receive HEAP funding would provide it with a steady source of needed income for construction and related needs. The recent increase in funds set aside annually for the HEAP (from $100 million to $175 million) and the 2.2 percent cap on TSTC fund allocations would ensure that adding TSTC would not adversely affect fund allocations to universities already receiving HEAP money. Also, because TSTC now receives funds for capital expenditures directly from the state's General Revenue Fund, making TSTC a HEAP institution would free general revenue funds for other purposes.

When the HEAP was created TSTC had no opportunity to join, since TSTC was then supervised by the Texas Education Agency, not the Higher Education Coordinating Board as it is now. Including TSTC among other higher education institutions would be entirely appropriate because TSTC provides college-level programs in highly specialized technical and vocational fields. Unlike community or junior colleges, TSTC is designed to serve statewide and regional educational needs. TSTC also is required by statute to emphasize "advanced and emerging technologies," programs not commonly offered by public junior colleges. This type of training is critical in shaping the Texas workforce to fill for jobs of the future and deserves dependable state support. Like the HEAP-supported universities, TSTC relies heavily on the state for financing, since it has no local tax base. The only qualification that Art. 7, sec. 17, of the Constitution makes for institutions to be included in the HEAP is that they not be entitled to participate in the PUP. TSTC meets this requirement.

TSTC currently must compete against all other state interests for general revenue to fund its capital improvements. Several of TSTC's campuses are located on decommissioned military bases in buildings that are old, high-maintenance, energy-inefficient, in need of repair and not designed to serve as education facilities. Not having a constant source of capital funding impedes planning for and meeting Texas' future technical and vocational education needs.

The 2.2 percent funding cap would ensure that TSTC's capital renovation and repair needs would not disproportionately absorb HEAF revenues. At the HEAF's current level of $175 million a year, the TSTC annual share would be limited to no more than $3.85 million.

Because of TSTC's importance to the Texas economic future and its lack of a dedicated funding source, the Texas Performance Review of the Comptroller's Office, in its report *Against the Grain*, recommended that TSTC be included in the HEAF, as did a study done for the Higher Education Coordinating Board. The comptroller estimated that the result would be a saving of $1.6 million a year for the General Revenue Fund, because the Legislature would no longer need to make special appropriations from that fund for capital expenditures at TSTC.

Art. 7, sec. 17, currently is unclear as to precisely when the Legislature may adjust HEAF appropriations. Additionally, some people interpret the authority to "adjust" HEAF appropriations to mean that the Legislature is authorized to either increase or decrease appropriations. Proposition 13 would clarify that the Legislature may only *increase* the amount of the HEAF and also clarify when such an increase could occur. By changing the word "adjust" to "increase," Proposition 13 would establish a floor for HEAF appropriations upon which long-term capital planning could be based.

In 1985 it was thought that a single agency would be created to issue HEAF bonds, but this never occurred. Deleting this language from the Constitution would merely reflect reality.

Proposition 13 would add a provision specifically authorizing the use of HEAF dollars for buildings and equipment used jointly for educational and general activities and auxiliary enterprises to conform the Constitution to current statutory authorization and legislative intent. This language would clearly allow HEAF money to be used *only* for educational and general (Le., classroom and library) purposes, while recognizing that the efficient use of university facilities often results in some facilities being used jointly for both educational and auxiliary purposes.

OPPONENTS SAY:

TSTC should continue to receive capital expenditures through the appropriations process on an as-needed basis rather than divert HEAF money more appropriately dedicated to [mance capital expenditures at state universities. TSTC is not four-year institution with the same structure and mission as the HEAF institutions. TSTC had an opportunity to participate in the HEAF in 1985 and chose not to because the school was getting higher funding directly through the appropriations process. Now that appropriations have dried up, TSTC officials are seeking a steady source of constitutionally dedicated money to finance their capital construction program.

Any "savings" to the state from Proposition 13 would be illusory. Instead of appropriating general revenue directly to TSTC, the state would be fmancing TSTC capital needs through the HEAF, which also receives its funding from general revenue appropriations. .

Proposition 13 would reduce legislative control over the HEAF. The Legislature's authority to adjust the annual HEAF appropriation should not be restricted only to increasing the appropriation; the Legislature needs the flexibility to raise or lower the spending for fund as fiscal circumstances warrant.

OTHER OPPONENTS SAY:

TSTC fund allocations should not be arbitrarily capped at 2.2 percent of the annual HEAP appropriation. The current allocation formula for HEAF money is based primarily on three elements: space deficit, condition of the facilities and institutional complexity. TSTC should be able to compete for funds to the same extent as other HEAP institutions with similar capital needs.

NOTES:

The 73rd Legislature (in lIB 1207 by Rudd, effective September 1, 1995) will increase the annual constitutional HEAP appropriation from $100 million to $175 million. It also will require an annual dedication of $50 million toward establishment of a $2 billion higher education fund. The higher education fund will serve as an endowment for future capital expenditures for HEAF institutions and will replace the annual dedicated appropriation once the fund reaches $2 billion.

Education Code sec. 62.021(a) specifies that the allocation of funds from the HEAF be made in accordance with an equitable formula consisting of the following elements: space deficit, facilities condition, institutional complexity, separate allocation for medical units and additional allocation for compliance with the Texas Desegregation Plan. Sec. 62.022 requires that before the 1995 legislative session the Higher Education Coordinating Board make a recommendation to the Legislature about allocation of HEAF funds from fiscal 1995 to fiscal 2005.

SUBJECT: Authorizing $1 billion in bonds for corrections facilities

BACKGROUND: Art. 3, sec. 49, of the Texas Constitution prohibits the Legislature from creating state debt. However, voters have approved numerous amendments to sec. 49 to authorize state debt in the form of general obligation bonds for a wide range of projects.

The state borrows money mainly by issuing bonds. General obligation bonds are backed by the full faith and credit of the state, and the state guarantees that it will repay its debt to bondholders, with interest, with the first money coming into the state Treasury each fiscal year.

State prison capacity now totals about 60,000 beds. In 1987 voters approved issuing $500 million in general obligation bonds, with most of the revenue used to finance construction of 15,128 corrections beds. In 1989 voters approved issuing $400 million in general obligation bonds, with most of the revenue used to finance construction of 11,109 corrections beds.

In November 1991 voters approved issuance of $1.1 billion in general obligation bonds to finance construction of adult and youth corrections and mental health and mental retardation facilities. The $1.1 billion has been appropriated for specific projects, mostly to add capacity to the corrections system. The capacity of the corrections system will be about 116,450 by fiscal 1996 when all currently authorized beds are completed.

DIGEST: Proposition 14 would add sec. 49-h(e) to Art. 3 of the Constitution, authorizing the Legislature to issue up to $1 billion in general obligation bonds to acquire, construct or equip new corrections facilities, youth corrections facilities and mental health and mental retardation institutions, or to repair or renovate existing facilities.

The ballot proposal reads: "The constitutional amendment authorizing the issuance of up to $1 billion in general obligation bonds payable from the general revenues of the state for projects relating to facilities of corrections and mental health and mental retardation institutions."

SUPPORTERS SAY:

Proposition 14 would authorize the issuance of bonds to fmance the needed construction of the state jails recently established by the 73rd Legislature in SB 532 by Whitmire, and would also help meet future adult and youth corrections and mental health and mental retardation construction needs. Under the 1993 revisions to the state Penal Code (SB 1067 by Whitmire, 73rd Legislature), persons convicted of newly designated "state jail felonies" can be confmed in state jails as a condition of probation.

A state-jail system will allow the state to keep nonviolent offenders in a corrections facility long enough for them to benefit from rehabilitation and other programs. By diverting nonviolent offenders from the prison system, state jails will allow violent offenders to be kept in the state prison system longer and help relieve the county-jail backlog of state prisoners. State jails would be another option in the range of criminal sanctions available to courts, including probation, community corrections facilities, substance abuse facilities and prison, allowing them to better tailor sentencing and rehabilitation programs to fit the offense and the offender.

The state would be better off spending money to build and operate state jails than making court-ordered payments to counties. Current law (lIB 93 by Hightower and Stiles, 72nd Legislature, second called session) now requires the state to pay the counties when their jails are overcrowded with prisoners awaiting transfer to state prison. The law sets up state payment standards for emergency overcrowding relief for the counties and acknowledges that as of September 1, 1995, the state has a duty to accept state inmates from county jails. The 73rd Legislature has already appropriated $71.9 million for continued payments to the counties to meet state obligations and $18.6 million for potential fines for not meeting an April 1 deadline for a cap on the Harris County Jail population. With the proposed construction of 22,000 state jail beds scheduled to be completed in 1995 and the new Penal Code revisions, by the end of 1995 the projected backlog of 26,000 inmates in county jails could be reduced to a few thousand.

By authorizing a bond issue of $1 billion the voters would give the Legislature the flexibility to meet future demands for adult and youth corrections and mental health and mental retardation facilities. Contingent on voter approval of Proposition 14, the Legislature has appropriated

$319.5 million for construction of state jail beds and other corrections facilities during fiscal 1994-95. The remainder of the $1 billion bond authorization would be used to handle future needs.

Because state jails would be cheaper to build and operate than standard they would use taxpayers' money more efficiently. While it costs about $24 million a year to operate a maximum-security the estimated cost of operating a state jail for a year is about $19.8 million.

Building space for state jail beds under somewhat less stringent conditions than for prisons would not violate the *Ruiz* v. *Estelle* lawsuit settlement approved by U.S. District Judge William Wayne Justice in December which ended federal court supervision of state prison management and set standards for prison conditions. The state jails would be run by a different division of the Texas Department of Criminal Justice than the one that runs the prison system. Offenders would not be sentenced to prison but instead would be confined in the state jails as a condition of probation. Strict limits would be imposed on the time an offender could spend in a state jail.

Long-term borrowing through bond sales is a good way to fmance capital investments such as prisons and jails. Stretching payments over many years allows the state to avoid imposing a massive tax hike to pay for these projects out of current revenues. Prisons and jails are designed for long-term use; it is only logical that they be paid for over the long term.

The state can afford to incur additional debt for a justified purpose without risking financial jeopardy. Texas ranks 38th among states in terms of overall state debt per capita and ninth among the 10 largest states. State bond debt service as a percent of general revenue collections at the end of May 1993 was about 3.1 substantially below the 5 percent cap imposed by the 72nd Legislature.

OPPONENTS SAY:

The state should stop trying to build its way out of its prison capacity especially by piling debt on future generations. Proposition 14 would bring to $3 billion the amount of debt approved within six years ($500 million in $400 million in $1.1 billion in 1991 and

$1 billion in 1993), devoted mainly to building prisons and other correctional facilities. Prison construction will always lag behind demand - the more prison beds the state adds, the more prisoners the courts will send to fill them. Counting the additional beds already authorized to be built using only a portion of the proceeds of the bonds in Proposition 14, the capacity of the corrections system would reach 128,455 by fiscal 1996. Moreover, by the end of fiscal 1998, using the bonds in Proposition 14, the state may authorize construction of a projected 42,000 state jail beds in addition to the proposed 22,000 state jail beds already scheduled for completion in 1995.

The prison-building binge must stop. The emphasis on bricks and iron bars to solve the crime problem shortchanges nonresidential corrections programs such as electronic monitoring, intensive supervision and community-based programs and facilities. Communities should be encouraged to use local sanctions to deal with nonviolent offenders. Continuing to lock up a high proportion of offenders - whether in a state jail or a prison - for nonviolent crimes just pours money into a faulty system. The state needs to spend its funds solving societal problems that cause cnme.

Borrowing another $1 billion for prisons and an untested system of state jails when state public education and social service needs go begging would just be another expensive and futile effort to control crime. If education and social services were adequately funded, the need for prisons might decrease. The state should support meeting the developmental needs of children and those judged to be "at risk" of committing future criminal acts. A larger portion of criminal justice funding should be directed to programs to treat some of the root causes of crime, such as abuse of alcohol and illegal drugs.

Bonds are a costly way to finance construction, generally doubling building costs. For example, the $319.5 million in bond funding appropriated by the 73rd Legislature (contingent on voter approval of Proposition 14) over a 20-year payback period would actually cost taxpayers about $585.2 million, due to the interest costs. Voters showed their opposition to increasing state bond debt last May by turning down a proposal to increase state debt to help local school districts pay for facilities.

Operating expenses for corrections facilities are another "hidden cost" of the proposal. Each new facility carries the need for future general revenue to operate it. Operating a single 2,000 state jail will cost an estimated $19.8 million annually. A $1 billion corrections building program would commit future legislatures to enonnous general revenue spending outlays for operating costs. If state jail facilities are needed, they at least should be built with current revenue on a pay-as-you-go basis.

In the past decade state expenditures on criminal justice have risen about 200 percent while total net state expenditures have risen about 116 percent. The state has continued to increase its expenditures on prisons without a significant impact on rising crime rates. Yet the state would continue to pursue the same failed, inefficient policy of constructing more corrections space, adding even more to operating costs.

Any new debt-creating measure needs to be examined in view of overall state debt. As of the end of May 1993 state bond debt outstanding totaled $9.1 billion, of which about $3.5 billion was in general-obligation bonds. This is up from $2.7 billion at the end of fiscal 1990 and $2.9 billion at the end of fiscal 1991 and 1992. Although Texas ranks relatively low among states in state government debt per capita, Texas has the second highest local debt per capita among the 10 most populous states and the fIfth highest state and local combined debt. Piling more state debt on top of this load would be unwise.

NOTES:

Of the proposed $1 billion bond issue, $319.5 million has been appropriated by the Legislature, contingent on adoption of Proposition 14, to finance construction of correctional facilities. SB 5, the General Appropriations Act for fiscal 1994-95, appropriated about $258.8 million for construction of new state jail facilities, about $39.2 million for corrections facilities for medical, holding, warehouse and agricultural uses, and approximately $21.5 million for youth corrections facilities.

The 22,000 state jail beds scheduled for completion by 1995 are expected to cost about $428 million, with a portion of the cost coming from the $1.1 billion bond authorization approved by voters in 1991 and a portion from the $1 billion bond authorization proposed by Proposition 14.

Of the $1.1 billion in general obligation bonds approved in 1991, the Legislature appropriated $672.1 million to the Texas Department of Criminal Justice (TDCJ) for fiscal 1992-1993 to build a maximum-security prison facility with at least 6,750 beds, six 1,000-bed regional centers, one 550-bed psychiatric center, 12,000 beds for substance-abuse felony punishment centers and to make other improvements and repairs to existing facilities. The appropriation was made in HB 93, 72nd Legislature, second called session. During the same session the Legislature enacted HB 64 by Vowell, appropriating $40.7 million from the bond proceeds to the Texas Youth Commission and $35.4 million to the Texas Department of Mental Health and Mental Retardation.

In February 1993 the 73rd Legislature, in SB 171 by Montford, appropriated $125 million in revenue from the $1.1 billion bond issue to IDCJ to build five, 2,OOO-bed facilities designated as transfer facilities to shift from county jails convicted felons awaiting transfer to prison. Two facilities are to be located at the fonner Chase Naval Air Station in Beeville, and the other three will be near existing prisons in Abilene, Huntsville and Palestine. SB 5, the General Appropriations Act for fiscal 1994-95, appropriated the remaining $226.8 million in funds from the 1991 $1.1 billion bond authorization for prison construction and repair.

The bill authorizing the bond sale, SB 1068 by Whitmire, would require the Texas Finance Authority to make a good faith effort to use historically underutilized businesses (HUBs) to assist in the issuance of at least 30 percent of the total value of the bonds. HUBs are defined as having at least 51 percent ownership by socially disadvantaged persons, including women and minorities. SB 1068 would take effect only if the voters approve Proposition 14.

SUBJECT: Local elections to abolish the elected office of county surveyor

BACKGROUND: Art. 16, sec. 44, of the Texas Constitution requires the voters of each county to elect a county surveyor and a county treasurer. The Constitution stipulates that county surveyors and treasurers "have an office at the county seat, and hold their office for four years, and until their successors are qualified; and shall have such compensation as may be provided by law."

Chapter 23 of the Natural Resources Code makes county surveyors responsible for receiving and examining all field notes of surveys made in the county on which patents are to be obtained, certifying those records, recording field notes in the necessary books of record and keeping the county survey records. The county surveyor's office is to be located in the courthouse or other suitable building in the county seat. A county surveyor must be a registered professional land surveyor and may appoint a deputy surveyor.

The office of elected county surveyor has been abolished in Denton, Randall, Collin, Dallas, El Paso, Henderson, Cass, Ector, Garza, Smith, Bexar, Harris and Webb counties by constitutional amendment approved by voters both statewide and in the affected counties. County commissioners courts are allowed to employ or contract with qualified persons to perform needed surveyor functions in counties in which the elected surveyor position has been abolished.

Of the 254 Texas counties, 90 have an elected county surveyor, according to the Secretary of State's Office (although the secretary of state does not necessarily receive notice of every county surveyor election).

DIGEST: Proposition 15 would amend Art 16, sec. 44, of the Texas Constitution to allow a county commissioners court to call an election to abolish the elected office of county surveyor in the county. If a majority of the county's qualified voters approved, the office would be abolished. If a local election were called, the ballot proposal would read: "Abolishing the office of county surveyor."

If the office of elected county surveyor were abolished, the maps, field notes and other records held by the county surveyor would be transferred to

a county officer or employee designated by the county commissioners court. The commissioners court could subsequently change the designation of the office.

The ballot proposal reads: "The constitutional amendment to permit the voters of a county to decide, at an election called by the commissioners court, whether to abolish the office of county surveyor in the county."

SUPPORTERS SAY:

Proposition 15 would allow each county to decide by local option whether to retain the elected office of county surveyor. The question of abolishing this locally elected office should be decided by the voters of the affected county. Currently, a statewide election must be called each time a county desires to abolish this obsolete office. (Two proposed amendments also on the November 2 ballot would abolish the elected county surveyor office in Jackson and McLennan counties). This waste of time and money undermines respect for the amendment process by asking voters to consider matters that are irrelevant to all but a few and clutters an already lengthy ballot. Proposition 15 would establish procedures to ensure that the abolition of a county surveyor position is properly handled at the local level.

The office of county surveyor has gone unfilled for decades in many counties. The Constitution's archaic requirement that 241 of the 254 counties elect a surveyor every four years (in 13 counties the office has been abolished) 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 1990s it is unnecessary and needlessly expensive to have an elected county surveyor. A county employee can handle any record-keeping duties, and the county can hire or contract with a qualified surveyor to perform any surveyor functions as needed.

As long as the post of elected county surveyor exists, anyone with minimal qualifications can fue for the office at an election, run unopposed, be elected and assume office, regardless of whether the county or the majority of voters want or need an elected surveyor. The county is then obligated to provide office space and books of record, which can be an unnecessary expense. If an office is not available at the courthouse, the commissioners court may be obligated to pay rent for an office outside the courthouse.

In the case of county treasurers - another constitutional county office often targeted for abolition - it can at least be argued that maintaining the office as an elected post serves as a check and balance on the actions of other county officials in important fiscal matters. But the county surveyor performs no such function. The fact that the elected post is not even in most counties (unlike the county treasurer) demonstrates that in those counties it may no longer be needed.

OPPONENTS SAY:

County voters should not be denied the opportunity to directly elect their county officials rather than having them appointed or hired by the commissioners court. The trend towards abolishing constitutionally created offices is unfortunate; abolishing elected county offices erodes the foundation of independent county government. Elected officials are more accountable to the public than appointed officials.

The county surveyor's office is not obsolete - county surveyors can act as impartial judges to resolve disputes among private surveyors or disputes between counties over boundaries. County surveyor records are valuable historical documents. Some of these documents are the original and only copy, and when the job of county surveyor is vacant or abolished, these records may be mislaid, lost or improperly filed.

If some counties have a concern about providing office space to county surveyors, the relevant statute could be amended to free the counties from this obligation without having to amend the Constitution to abolish the office.

Any constitutionally established office should be abolished only by specific constitutional amendment. The Legislature provides a neutral forum for reviewing local requests to abolish constitutional county offices. The abolition of a constitutional office should not be carried out solely on a local level, where personal feuds could result in an unnecessary election being held for the abolition of an office that was still useful to the county.

OTHER OPPONENTS SAY:

A local election to abolish the elected county surveyor position or any other constitutional office should only be called at the initiative of a substantial number of local registered voters through signing a petition, not at the

whim of a majority of the commissioners court. This would help ensure that a local election would not stem solely from courthouse politics.

NOTES:

Two related constitutional amendment proposals - Proposition 6 (HJR 21), which would abolish the office of county surveyor in Jackson County, and Proposition 8 (HJR 22), which would authorize the McLennan County commissioners court to call an election allowing county voters to abolish the county surveyor office - are also on the November 2 ballot.

SUBJECT: $75 million in additional bonds for agricultural business loans

BACKGROUND: The Texas Agricultural Finance Authority (TAFA) was created by statute in 1987 to provide financial assistance for the expansion, development and diversification of production, processing, marketing and export of Texas agricultural products. TAFA may make or guarantee loans to agricultural businesses to buy land, construct buildings, install machinery and perform research and development in connection with the production, processing and marketing and export of Texas agricultural products.

Art. 3, sec. 49, of the Constitution prohibits the Legislature from creating state debt without specific authorization in the Constitution. Voters have approved numerous amendments to sec. 49 authorizing state debt in the form of state general-obligation bonds for a wide range of projects.

In 1989 Art. 3, sec. 49-i, of the Constitution was amended to authorize the sale of $25 million in general obligation bonds to fmance the Texas Agricultural Fund (plus $5 million for a Rural Microenterprise Development Fund). (In 1987 the voters had rejected a proposed amendment that would have authorized the issuance of $100 million in general obligation bonds for the Texas Agricultural Fund, plus another $25 million for other business development programs.)

TAFA is allowed to issue up to $25 million in general obligation bonds and $500 million in revenue bonds. (General obligation bonds are a debt owed by the state and therefore require specific constitutional authorization or voter approval. Repayment is guaranteed by the state from the first money coming into the treasury each fiscal year. Revenue bonds are usually paid from revenue derived from a particular program, such loan repayments; since revenue bonds are not officially a state debt, they may be authorized by statute rather than constitutional amendment, but because the state does not guarantee repayment of revenue bonds, the money borrowed generally must be repaid at a higher interest rate than for general obligation bonds.)

TAFA provides fmancing for innovative, diversified or value-added agricultural businesses in Texas. The program guarantees repayment of up to 90 percent of loans ranging from $30,000 to $2 million. Once a guaranteed loan has been approved by a commercial lender, TAFA

purchases at least 72 percent of the total loan; the lender holds the other 28 percent of the total loan and retains the risk on only 10 percent of the total loan amount.

According to the Texas Bond Review Board, as of May 31, 1993, had funded 32 projects totaling over $28 million in loans and around $22 million in total loan guarantees. About 65 percent of the funded projects are with existing businesses and 35 percent with new enterprises. The guarantees have been for a variety of agricultural businesses including meat processing, cotton processing, food processing, nursery operations, aquaculture projects and production of exotic livestock such as ostrich, llama and elk. Two of the projects have defaulted on loan repayment.

DIGEST:

Proposition 16 would amend Art. 3, sec. 49-i, of the Texas Constitution to increase the amount of general obligation bonds that may be issued for the Texas Agricultural Fund from $25 million to $100 million. It also would authorize the Legislature to issue notes as well as bonds for the fund.

The ballot proposal reads: liThe constitutional amendment authorizing up to a total of $100 million in bonds and notes to be issued or sold to finance the Texas agricultural fund for providing fmancial assistance to develop, increase, improve, or expand the production, processing, marketing, or export of crops or products grown or produced primarily in this state by agricultural businesses domiciled in the state."

SUPPORTERS SAY:

Proposition 16 would provide a needed injection of capital to help the state preserve its agricultural economy. The Texas Agricultural Fund provides fmancial assistance to small Texas agricultural businesses to produce, . process and market crops and products grown or produced primarily in Texas. The agricultural sector has been the cornerstone of the Texas . economy for generations and still provides 20 percent of all jobs in Texas.

The Texas Agricultural Finance Authority (TAFA) has provided about$22 million in loan guarantees to 32 agricultural businesses across the state. Less than $3 million remains in the fund, and loan requests exceed $300 million. Proposition 16 would allow this extremely successful to expand and create new jobs to strengthen the Texas economy.

The projects the fund has already guaranteed have created an estimated 4,500 jobs; an additional $75 million could create thousands more jobs.

The jobs the guaranteed loans would generate would add value to Texas' raw products. Instead of shipping our raw products to other states and countries, the processing would occur here in Texas. Such agriculture-based businesses help preserve Texas farms and ranches and rural communities.

By guaranteeing repayment of loans, the agricultural fund makes it easier for financial institutions to make loans to small agricultural businesses. Federal regulations have made it more difficult for small banks to loan money for value-added enterprises, which has hurt many agricultural businesses, especially smaller ones. In addition, these agri-businesses are generally new businesses that use new technology unfamiliar to most bankers, who often are reluctant to make such loans unless they are backed by the state.

Texas agricultural businesses are in an excellent position to take advantage of opportunities that will be provided by the North American Free Trade Agreement (NAFTA). An expanded loan guarantee program would help provide the capital that Texas companies require for manufacturing and export.

The state can afford to incur additional debt for a justified purpose without risking financial jeopardy. Texas ranks 38th among states in terms of overall state debt per capita and ninth among the 10 largest states. State bond debt service as of the end of May 1993 was about 3.1 percent of total general revenue collections, substantially below the 5 percent cap imposed by the 72nd Legislature. As a loan program, the agricultural fund pays for itself, without diverting taxpayer dollars for debt service.

Proposition 16 would authorize sale of notes as well as bonds. This proposed change is merely technical in nature. Notes and bonds are both debt instruments, the difference being that notes are generally issued for a shorter time period. Commercial paper is a type of short-term note. TAPA already uses commercial paper to fund the program because the

interest rates are lower than for bonds. The constitutional change would simply remove any question that commercial paper can be issued to fund the program.

OPPONENTS SAY:

Proposition 16 would just add to the state's outstanding bond debt. As of the end of May 1993, state bond debt outstanding totaled $9.1 billion, of which about $3.5 billion. was in general-obligation bonds. This is up from $2.7 billion at the end of fiscal 1990 and $2.9 billion at the end of fiscal 1991 and 1992. Adding another $75 million to general obligation debt could drive up interest rates generally and compete with local bond sales to fmance public works projects, such as water and sewer systems and school facilities.

The state should not lend money where traditional financial institutions fear to tread. The state should not become the lender of last resort for those who want backing for projects that private experts have already decided are fmancially unsound. If borrowers default on the loans, taxpayers could be left holding the bag to retire the bond debt. Two of the 32 loans approved and guaranteed by TAFA have since defaulted and will represent a loss of more than $500,000.

Any new debt-creating measure needs to be examined in light of overall government debt. Texas currently ranks relatively low in state government debt per capita, but among the 10 largest states it is second highest in local debt per capita and fifth in combined state and local debt.

NOTES:

The implementing legislation for Proposition 16, lIB 1878 by Junell, would authorize TAFA to issue up to $100 million in bonds (the $25 million already authorized, plus the $75 million authorized by Proposition 16) in one or more installments, if Proposition 16 is approved by the voters. lIB 1878 also would require TAFA to make a good faith effort to award minority-owned businesses at least 20 percent of the contracts related to issuing the bonds and at least 10 percent to women-owned businesses and to make a good faith effort to award 20 percent of the total loan guarantees under the program to minority-owned businesses and 10 percent to women-owned businesses.

lIB 1309 by Counts, enacted during the 1993 regular session, increases the membership of the TAFA board from six to nine effective January 1, 1994. It caps the amount of a TAFA loan or loan guarantee to a single business at $2 million, unless approved by two-thirds membership of the board, in which case the loan can be up to $5 million for a single business. It also requires that TAPA give preference to loans or loan guarantees to value-added agricultural businesses and allows TAPA to decline financial assistance to businesses whose primary purpose is to establish or expand conventional agricultural production.

In 1991 the Bond Review Board approved a $25 million commercial paper program to fund the agricultural loan guaranty program. (Commercial paper is a short term obligation that is issued for up to 270 days at an interest rate lower than that of long-term bonds.) Revenues for the program are generated from the spread between the commercial paper rate (currently 3 to 4 percent) and the amount the borrower pays TAPA on its portion of the loan (about 8 percent on the current prime rate). TAFA makes about 4 to 5 percent on the loan. TAPA commercial paper is sold only when funds are needed for an approved project. The Texas Bond Review Board reports that as of May 31, 1993, TAPA had $19.2 million in commercial paper outstanding.