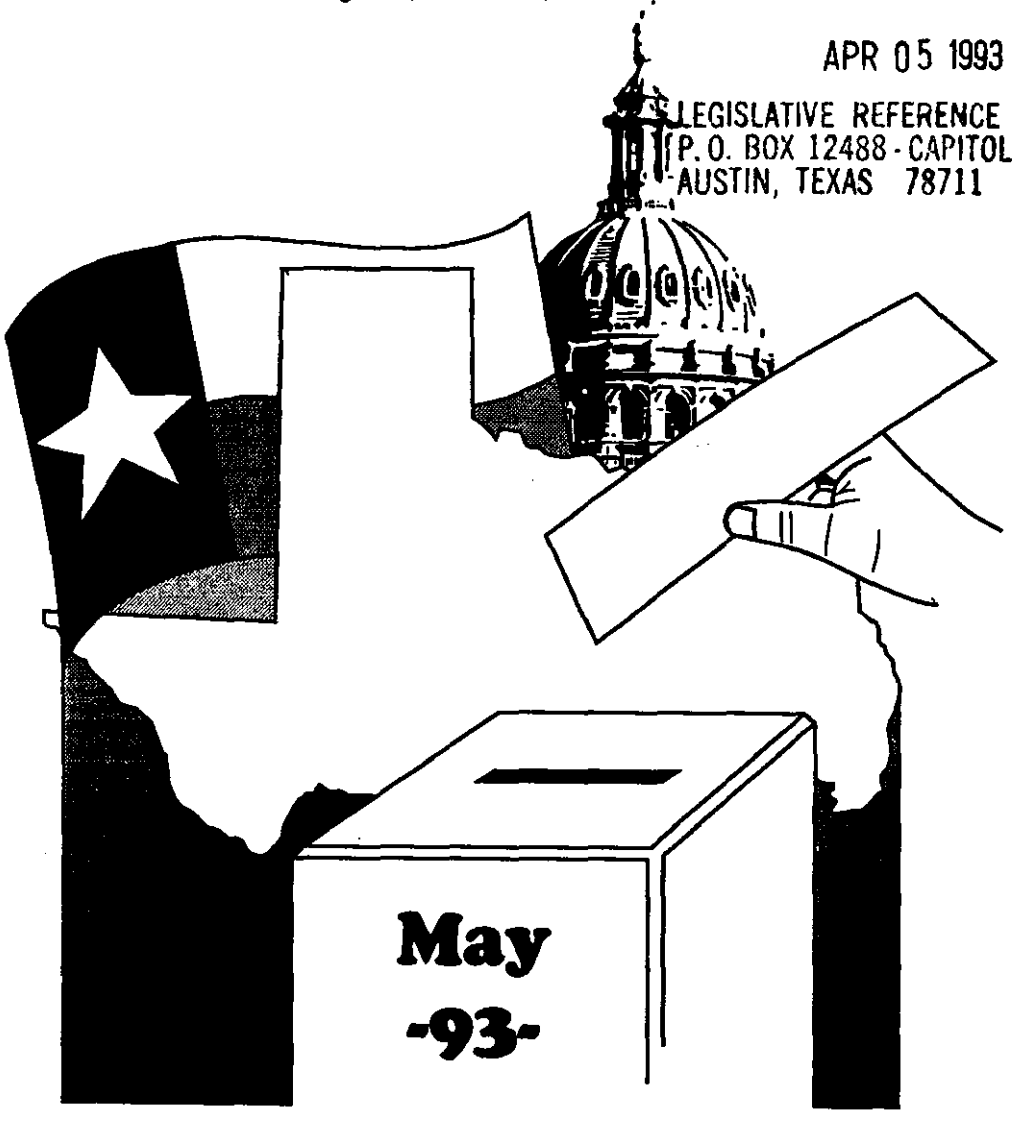
Analyses of Proposed Constitutional Amendments

May 1, 1993, Election



Texas Legislative Council
April 1993

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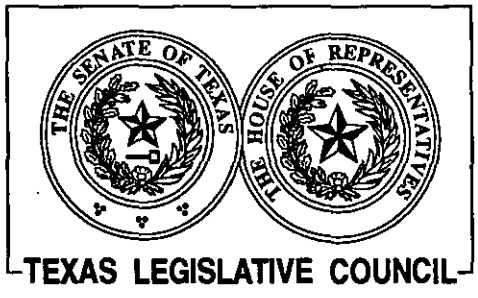

Prepared by the Staff
of the
Texas Legislative Council

Published by the
Texas Legislative Council
Austin, Texas

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April 1993

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INTRODUCTION

GENERAL INFORMATION

In the 1993 regular session, the 73rd Texas Legislature passed two joint resolutions proposing three constitutional amendments offered for voter ratification on a May 1, 1993, election ballot.

The Texas Constitution provides that the legislature, by a two-thirds vote of all members of each house, may propose amendments revising the constitution and that proposed amendments must then be submitted for approval to the qualified voters of the state. A proposed amendment becomes a part of the constitution if a majority of the votes cast in an election on the proposition are cast in its favor. An amendment approved by voters is effective on the date of the official canvass of returns showing adoption. The date of canvass, by law, is not earlier than the 15th or later than the 30th day after election day. An amendment may provide for a later effective date.

Since adoption in 1876 and through April 1993, the state's constitution has been amended 339 times, from a total of 502 amendments submitted to the voters for their approval. The three amendments on the May 1, 1993, election ballot bring the total number of amendments submitted to 505. The following table lists the years in which constitutional amendments have been proposed by the Texas Legislature, the number of amendments proposed, and the number of those adopted. The year of the vote is not reflected in the table.

TABLE
1876 CONSTITUTION
AMENDMENTS PROPOSED AND ADOPTED

year proposed	number proposed	number adopted	year proposed	number proposed	number adopted
1879	1	1	1943	3**	3
1881	2	0	1945	8	7
1883	5	5	1947	9	9
1887	6	0	1949	10	2
1889	2	2	1951	7	3
1891	5	5	1953	11	11
1893	2	2	1955	9	9
1895	2	1	1957	12	10
1897	5	1	1959	4	4
1899	1	0	1961	14	10
1901	1	1	1963	7	4
1903	3	3	1965	27	20
1905	3	2	1967	20	13
1907	9	1	1969	16	9
1909	4	4	1971	18	12
1911	5	4	1973	9	6
1913	8*	0	1975	12‡	3
1915	7	0	1977	15	11
1917	3	3	1978	1	1
1919	13	3	1979	12	9
1921	5**	1	1981	10	8
1923	2†	1	1982	3	3
1925	4	4	1983	19	16
1927	8**	4	1985	17**	17
1929	7**	5	1986	1	1
1931	9	9	1987	28**	20
1933	12	4	1989	21**	19
1935	13	10	1990	1	1
1937	7	6	1991	15	12
1939	4	3	1993	3**	(a)
1941	5	1			

TOTAL PROPOSED 505 — TOTAL ADOPTED 339

NOTES

* Eight resolutions were approved by the legislature, but only six were actually submitted on the ballot; one proposal that included two amendments was not submitted to the voters.

** Total reflects two amendments that were included in one joint resolution.

† Two resolutions were approved by the legislature, but only one was actually submitted on the ballot.

‡ Total reflects eight amendments that would have provided for an entire new Texas Constitution and that were included in one joint resolution.

(a) Three amendments approved by the 73rd Legislature during the 1993 regular session will appear on the May 1, 1993, election ballot.

WORDING OF BALLOT PROPOSITIONS

The ballot wording of a proposal to amend the state constitution is prescribed in the joint resolution adopted by the legislature that authorizes the submission of the proposed amendment to the voters for ratification. The wording of the ballot propositions offered at the May 1, 1993, election is provided below.

AMENDMENT NO. 1

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

AMENDMENT NO. 2

The constitutional amendment exempting a school district from the obligation to comply with unfunded state educational mandates.

AMENDMENT NO. 3

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

ANALYSES
OF
PROPOSED AMENDMENTS

AMENDMENT NO. 1

Senate Joint Resolution No. 7, Section 1, proposing a constitutional amendment allowing the limited redistribution of ad valorem taxes for schools, authorizing the legislature or local districts to set a minimum tax rate in county education districts, and placing a cap on the ad valorem tax levied by county education districts. (SENATE AUTHOR: Bill Ratliff; HOUSE SPONSOR: Libby Linebarger)

The proposed amendment amends Article VII of the Texas Constitution by adding Section 3-c. The amendment: (1) authorizes the legislature to redistribute among other school districts the property taxes levied and collected by a district (commonly called "recapture"); (2) authorizes the creation of county education districts with the power to levy property taxes as provided by law; (3) authorizes the legislature to set the tax rate for school districts or county education districts; (4) limits county education district taxes to a rate not to exceed $1 per $100 valuation of taxable property; and (5) limits the amount of recapture, either directly from school districts or effectively through imposition of county education district taxes, to an amount not to exceed 2.75 percent of the total state and local revenue in the public school system, excepting from that total funds for free textbooks or retirement system contributions. The amendment expressly provides that it does not affect the distribution of the available school fund under Article VII, Section 5, of the Texas Constitution.

BACKGROUND

In a series of decisions known as the Edgewood cases, the Texas Supreme Court has held the Texas system of public school finance unconstitutional. That system relies on a combination of state funds (about $7 billion for the 1992-1993 school year, including both general revenue and constitutionally dedicated funds), local property tax revenue (about $8 billion for the 1992-1993 school year), and federal funds (about $1 billion for the 1992-1993 school year). The lawsuit was originally filed in 1984, and the legislature went into special session almost immediately. That special session produced

what many considered landmark reforms in public education, including public school finance, in the form of H.B. No. 72.

The reforms of H.B. No. 72 notwithstanding, the plaintiff school districts took the case to trial in 1987. In October 1989, the Texas Supreme Court unanimously held the school finance system unconstitutional and ordered the enactment of a new system (Edgewood I). The primary basis for the court's holding was that the statutory system was not an "efficient" system, as required by the express language of Article VII, Section 1, of the Texas Constitution, because the system failed to provide substantially equal access to similar revenues per pupil at similar levels of tax effort. At the core of this inefficiency was the extent of reliance on local property taxes under circumstances in which there were such great disparities among districts in property wealth. In the words of the court, those disparities allowed high-wealth districts to "tax low and spend high" while low-wealth districts were required to "tax high merely to spend low."

In response to Edgewood I, the legislature met in four special sessions from February to June 1990, finally enacting S.B. No. 1 on June 5. That bill established a standard that 95 percent of the pupils in the state would be in a wealth-neutral system by 1995 and reformulated the funding formulas to achieve that standard. The bill provided an immediate funding increase of $528 million, primarily through a state sales tax increase. The bill also included various accountability and program reforms.

The validity of S.B. No. 1 also was challenged and was held unconstitutional by the Texas Supreme Court in January 1991, which found that S.B. No. 1 failed to restructure the system (Edgewood II). The court noted that some districts were still wealthy tax havens resulting in an overall loss of revenue in the funding system. The court suggested that tax base consolidation would be an efficient method of achieving equity and noted that the constitution permitted it. The court went so far as to cite existing statutory authority for tax base consolidation as an example of the broad discretion of the legislature in creating school districts. In a clarifying ruling a month later, the court added that (1) "recapture," the distribution of tax funds from one school district to another, was prohibited by the

constitution (upholding the 1931 case of Love v. Dallas); and (2) some unequalized local enrichment of the basic program was permissible.

The legislature was in regular session at the time of Edgewood II. Following the court's lead, the legislature quickly moved to enact S.B. No. 351. That bill created 188 county education districts ("CEDs"), a form of tax base consolidation in which a countywide district (in some cases a multicounty district) was superimposed over existing school districts to levy a property tax for distribution among all school districts within the county education district. The CED was required by law to raise a minimum amount of tax revenue. The bill also increased funding for facilities, increased the basic allotment to school districts, and placed tax rate and revenue limits on the component school districts of CEDs. Using existing constitutional authority to consolidate districts without having an election to authorize the levy of property taxes within the consolidated district, the legislature sought to meet the mandate of Edgewood I while following a specific suggestion by the court in Edgewood II.

In January 1992, a divided Texas Supreme Court again held the legislature's efforts unconstitutional (Edgewood III). This time, the court did not judge the merits of S.B. No. 351 under the efficiency standard from the earlier cases. Rather, the court held that: (1) the CED tax is a state property tax in violation of Article VIII, Section 1-e, of the Texas Constitution; and (2) the authority of a CED to levy a property tax without voter approval violated Article VII, Section 3, of the Texas Constitution, which requires a school district created by a means other than consolidation to obtain voter approval. The CED tax was found to be a state property tax because the legislature mandated the levy of the tax (by requiring a CED to raise a set local share), set the tax rate, and prescribed the distribution of the proceeds. In addition, the court found that while the legislature had the power to create school districts, the creation of county education districts was not consolidation in the sense permitted by the constitution without voter approval of property taxes. The court did not require a refund of the unconstitutional CED taxes, and stayed the effect of its decision until June 1, 1993, to provide the legislature with adequate time to address the issue once again.

Frustrated by this series of court cases, the legislature proposed this constitutional amendment to address the impediments found by the court while accepting the responsibility to comply with the court's equity standard. If adopted, the amendment would:

(1) effectively overrule the Love v. Dallas prohibition on recapture, by expressly allowing limited recapture;

(2) expressly authorize the creation of county education districts that combine the taxable property of existing school districts;

(3) authorize the levy, collection, and distribution of property taxes by a county education district as authorized by general law (which general law may or may not require voter approval of the imposition of the taxes) at a rate not to exceed $1 per $100 valuation of taxable property;

(4) authorize the legislature to set the rate of ad valorem taxes in county education districts or in school districts, effectively overruling the Edgewood III determination that the CED tax was a state property tax and overcoming the implication from Edgewood III that the state could not require a mandatory local share for the foundation school program; and

(5) limit the amount recaptured directly from school districts and effectively recaptured within a county through a CED to 2.75 percent of the sum of state and local revenue for the public schools, not including the amount of state revenue for free textbooks or retirement contributions. (The amount "effectively recaptured" from a school district within a county is the difference between what the school district would generate on its own at the CED tax rate and the revenue the district actually receives from the CED tax. The limit would be approximately $400 million at current funding levels.)

The amendment does not affect the distribution of the available school fund, which under Article VII, Section 5, of the Texas Constitution is distributed to schools on the basis of the number of students.

An injunction of the supreme court that will prohibit distribution of state funds to school districts will go into effect June 1, 1993, if a constitutional school finance system has not been enacted by the legislature by that date. The district court with enforcement responsibility has ordered the appropriate

parties to prepare for enforcement of that injunction. To date, the 73rd Legislature has not enacted the necessary enabling legislation to implement a new system.

ARGUMENTS

FOR:

1. By relying from the beginning on the nebulous standard of "efficiency," the courts have yet to give the legislature meaningful direction as to how to satisfy that standard. After at least three hearings before the supreme court and eight years of litigation, the legislature is little closer to a common understanding of what legislation will satisfy the court's standard. Even after following a specific suggestion of the court in the second Edgewood opinion and creating county education districts as a form of tax base consolidation, the legislation again was held unconstitutional. A constitutional amendment, approved by the voters of the entire state, is the only effective means to ensure those persons elected to make school finance policy—the legislature—have the ability to enact a valid school finance law.

2. Action is necessary to avoid closure of the schools under the court order. Other alternatives are either economically or politically unfeasible. The options are relatively few: full state funding or large increases in state funding would require a new revenue source such as a state income tax or state property tax; consolidation of school districts is locally unpopular and has an undesirable effect on local control of schools; and limiting judicial review of school finance laws upsets the traditional balance of powers within state government. The limited ability to redistribute tax revenue from one district to another and to consolidate tax bases within counties for at least part of the local share of support of the public schools is the only politically and economically feasible method of meeting the court's equity standard—that school districts have substantially equal access to similar revenues per pupil at similar levels of tax effort.

3. In order to achieve the court's equity standard while avoiding large increases in the amount of state funds going to the operation of the public

schools, it is necessary that the legislature be empowered to require districts to raise a certain amount of support for the foundation school program. While taxpayers in property rich areas would be required to share their resources through recapture and county education districts, a required level of local support for all districts is necessary to ensure that all children of the state receive an education of appropriate quality.

AGAINST:

1. By whatever name you call it—"recapture," "redistribution," or "Robin Hood"—the taking of local property tax revenue from one school district and expending that revenue in another school district violates a basic principle of government: that locally imposed property taxes are held in trust for the benefit of the residents of the district imposing the tax. It is that principle that the Texas Supreme Court has consistently refused to overturn in the Edgewood litigation. The legislature should show the political will and courage to pursue an alternative to recapture, which has the aura of soaking the rich districts but in reality raises only a small portion of the funding for public schools.

2. There is no need to empower the legislature to set local tax rates, a power that will enable the legislature to effect large increases in local property taxes. Even if it were necessary for equity purposes to authorize the legislature to require school districts to make a minimum contribution to the funding of the public schools, this amendment is much broader than that. By its express terms, it authorizes the legislature to set the rate of a local property tax, whether levied by a county education district or an independent school district. Nothing in the history of the Edgewood litigation justifies this level of intrusion into local control of schools. This offense to local control is compounded by the ability of the legislature to require those local taxes without any form of voter approval, a right currently protected by the constitution.

3. This constitutional amendment, which is being presented to the voters in the abstract without connection to and the context of enabling legislation to implement it, does not address the core, underlying problem in school finance—court intrusion into legislative and local control of the public schools. The court of appeals in the first Edgewood case was

intellectually honest in its determination that "efficiency" was a political standard suitable only to political definition through the legislative process. This constitutional amendment leaves in place the nebulous notion of efficiency as a standard against which all future school finance legislation will be judged, even if it is adopted. If the negative effects of this amendment were offset by adoption of a provision that addressed this core problem, this amendment still does not fix the problem and therefore does not justify its negative effects.

AMENDMENT NO. 2

Senate Joint Resolution No. 7, Section 2, proposing a constitutional amendment exempting a school district from the obligation to comply with unfunded state educational mandates. (SENATE AUTHOR: Bill Ratliff; HOUSE SPONSOR: Libby Linebarger)

The proposed amendment amends Article VII of the Texas Constitution by adding Section 8a to exempt a school district from complying with an obligation requiring the expenditure of school district funds unless the obligation is: (1) fully funded; (2) imposed in compliance with the Texas Constitution or federal law; or (3) enacted by a vote of at least two-thirds of the members elected to each house of the legislature. The amendment requires the legislature to establish a procedure for determining whether an obligation is fully funded, in the absence of which the comptroller of public accounts makes the determination at the request of a board of trustees of a school district. The provision applies only to mandates enacted after December 31, 1993.

BACKGROUND

States have always mandated functions, standards, tax limits, and other rules for local governments such as school districts. These mandates require the local governments either to take specific actions or not take specific actions. In recent decades, the number and cost of state mandates have grown in most states. The concern over state mandates is increased as a result of the decline in federal aid relative to state and local revenues, the shift of programmatic responsibility from the federal government to state and local governments, questions of accountability, public opposition to rising taxes, the difficulties faced by many local governments in meeting the financial demands of mandates, and the implications of mandates for local self-government.

These issues—common to the relationship of the state to all types of local governments—are compounded in relation to Texas school districts. Over the last decade, an increasingly greater percentage of the cost of

funding public schools has shifted from the state to the local school district as the ability of the state to maintain levels of services has become more difficult because demands have increased as growth in revenues has slowed. At the same time, there has been increased emphasis on performance from the public schools and accountability of the public schools for the quality of education provided Texas students. The result has been increased demand at the state level for policy-making to improve the educational performance of the public schools statewide, a demand at odds with the ability of the state to generate revenue to fund the policies adopted.

The issue of educational mandates is further compounded by the litigation concerning the Texas public school financing system. In a series of decisions known as the Edgewood cases, the Texas Supreme Court has held the school finance system unconstitutional as being "inefficient" in light of the requirement of Article VII, Section 1, of the Texas Constitution that the legislature establish an efficient system of public schools. One of the inefficiencies in the system found by the court is the extent to which Texas relies on local property taxes to fund the system; local property tax reliance creates inefficiencies because of the varying property wealth among Texas' school districts. Districts with high property wealth raise more money with less tax effort than districts with low property wealth; some districts have such a high amount of property wealth that they do not qualify for state funds, leaving their property wealth effectively outside the state finance system. It is the same local property taxes that must increase to meet the demands of state mandates.

Since 1973, when California enacted the first broad restriction on state mandates on local governments, at least 19 states have adopted some form of constitutional or statutory limitation on the ability of the legislature to impose mandates on units of local government. The scope of the various restrictions or reimbursement requirements varies greatly from state to state. In 10 states the constitutional or statutory provision pertains to any local government, taxing authority, or political subdivision. In other states, the provision applies solely to municipalities and counties, and in yet others only to municipalities. The Texas proposal appears to be unique in being limited to school districts and educational mandates.

The key issue in any provision applicable to mandates is one of definition: what constitutes a "mandate"? In its broadest meaning, a mandate is a demand for action by a superior government on a subordinate government imposed by statute, constitution, rule, or court order under pain of a sanction, be it a civil or criminal penalty or a loss of funding. A more limited definition would define mandate in terms of cost, i.e., the difference between what a local government spends on legally mandated activity and what the government would spend in the absence of that mandate. As with the type of approach to mandates, there is no consensus among the states with mandate provisions as to the definition of "mandate."

The proposal in Amendment No. 2 does not expressly define "state educational mandate," but limits its effect to obligations requiring the expenditure of school district funds. Examples generally conceded to fit a common understanding of what constitutes a mandate would include:

(1) the requirement that schools operate for at least 180 days of instruction each year;

(2) the requirement that each school district provide 20 hours of staff development training under guidelines approved by the commissioner of education; and

(3) the requirement that teacher/student ratios not exceed 1:20 or that a school district not enroll more than 22 students in a kindergarten, first, second, or third grade class.

The proposal in Amendment No. 2 also does not define "fully funded" but by its terms does not necessarily require full state funding of the obligations from which school districts may claim an exemption. The legislature is directed to establish procedures for determining which mandates are fully funded. Procedures used in other states involve (1) a legislative or intergovernmental agency being charged with defining, identifying, and cataloging mandates, and (2) evaluating the costs of mandates through a fiscal note that accompanies each piece of proposed legislation. Texas legislative procedure has long included a fiscal note procedure, but the costs of mandates to local governments is often difficult or impossible to estimate.

ARGUMENTS

FOR:

1. Unfunded state educational mandates represent little more than an unwillingness on the part of the legislature to confront voters directly on the true costs of public educational policy. Unfunded state educational mandates give the public the impression that they are getting something for nothing, when in fact the costs are being borne by the local property taxpayer. As the costs of a basic education have been increasingly shifted to the local property tax, it becomes increasingly more important for the school districts to have a mechanism to control state-imposed tax increases.

2. Many state educational mandates are an unwarranted intrusion into the affairs of the local school district, which itself is governed by an elected school board more closely associated with the needs and desires of the public than state legislators. State educational mandates supplant local priorities for the public schools. If state policy considerations are of such importance as to be imposed statewide on every school district, it should be the state government who provides adequate financing for implementation of the policy.

3. As a basic philosophy of government, the governmental unit mandating an expenditure of public funds should be responsible for financing the expenditure. School districts have difficulty meeting the financial demands of state mandates within the fiscal resources available to the district, which must also operate under state-imposed limits on taxing and borrowing authority. Since school districts rely solely on local property taxes as a source of revenue and do not have access to other forms of taxation and fees, state government is better able to equitably raise revenue than the local school district. This is particularly true in the context of the known inequalities of the local property tax system.

AGAINST:

1. In this particular proposal, the definition of "state educational mandate" is unclear. For example, if they were not already law, would basic uniform requirements that school districts admit students of a particular age or maintain workers' compensation coverage for employees be mandates

from which a school district could claim an exemption? Is there any requirement that the state may impose on a school district that does not in some sense obligate the expenditure of funds? The lack of definition is symptomatic of the fact that this particular proposal, adopted by floor amendment in the second house of the legislature, was not debated and developed by committee in either house and has simply not been studied, evaluated, and refined enough to present an appropriate and workable solution to the mandate problem.

2. The legislature and governor, elected to represent all the people of the state, have a broader perspective on policy issues and are less tied to particular parochial interests than a locally elected school board. There is a clear and unequivocal state interest in uniformity of services, yet this constitutional provision would deter effective uniformity in educational policy-making. If local officials object to statewide policy, the appropriate arena for airing the objection is legislative, judicial, and electoral, not a constitutional provision that allows individual districts to exempt themselves from state policy.

3. As with the mandates themselves, this proposal has a hidden cost that is difficult to evaluate—the cost of creating and maintaining the bureaucratic structure to define, identify, and enforce the provision. In other states such as Florida and California that have established limitations on state mandates, this cost of implementation and enforcement has been significant.

AMENDMENT NO. 3

Senate Joint Resolution 4, proposing a constitutional amendment authorizing the issuance of $750 million in state general obligation bonds or revenue bonds to assist school districts in partially financing facilities, authorizing the state to forgive payment of loans made to school districts for partially financing facilities, and repealing the authorization for $750 million in state revenue bonds guaranteed by the permanent school fund. (SENATE AUTHOR: Teel Bivins; HOUSE SPONSORS: David Swinford, Christine Hernandez, Libby Linebarger)

The proposed amendment to Article VII, Section 5(b), of the Texas Constitution authorizes the legislature to provide for the issuance of general obligation bonds or revenue bonds to assist school districts by making loans to them, or purchasing their bonds, so that they may acquire, construct, or improve instructional facilities. The proposed amendment provides that the state may forgive the payment of all or part of the principal and interest on a loan made to a school district to partially finance an instructional facility. No more than $750 million in bonds may be outstanding at any one time. Finally, if a school district is delinquent in repaying a loan made from the bond proceeds, the state must offset that against state aid to which the district is otherwise entitled.

BACKGROUND

While the state has historically shared the cost of operating public schools with local school districts, the cost of building or renovating school facilities has fallen mostly on local districts. State funding formulas do not include funds specifically designated for facilities, although a district is free to use some state funds for any purpose, including facilities.

Because building a new school is expensive, districts typically raise the money by issuing bonds for a term such as 20 years and imposing additional property taxes to repay the bonds. To issue bonds, a district must obtain voter approval; in tough economic times, voters may be reluctant to approve additional taxes.

The reliance on local funds for facilities construction gives school districts with higher property wealth an advantage because a relatively low tax rate will generate much more money for bond repayment than a higher rate would in a district with lower property wealth. This allows a wealthy school district to build a higher-quality school than a poor district, or even to build a school when a poor district cannot build one at all. Rapidly growing districts, primarily in suburbs, must also build more facilities and are forced to raise taxes. Any school district that must spend a large portion of its tax revenue on facilities has less to spend on programs and personnel that more directly benefit students.

In the series of school finance cases known as the Edgewood cases, the Texas Supreme Court has held the Texas public school finance system unconstitutional because it does not meet the state's duty to provide "an efficient system of free public schools." The court has indicated that to meet the constitutional standard of efficiency, a school finance system would have to address facilities.

The Texas Education Agency recently completed a comprehensive audit of school facilities across the state. The agency estimates that at least $1.5 billion is needed immediately for facilities construction and renovation.

In 1989, Texas voters approved a constitutional amendment that would have allowed the state to issue $750 million in revenue bonds to make loans to school districts or to purchase school districts' bonds. General obligation bonds, like those that would be issued if Amendment No. 3 is approved, are backed by the full faith and credit of the state and must be repaid from the first money coming into the state treasury. Revenue bonds, on the other hand, are usually paid from the revenue stream produced by the project for which the bonds were issued (for example, tolls from a toll highway or gate fees from an airport). Because a school building does not generate revenue, to make the revenue bonds attractive to investors, the 1989 constitutional amendment permitted the legislature to use the permanent school fund, with a current market value of $11.3 billion, to guarantee payment of the revenue bonds.

Unfortunately, because of rulings by the Internal Revenue Service, the permanent school fund guarantee is not available to the state, and the $750

million in revenue bonds have never been issued, although there is a possibility the Internal Revenue Service will eventually rule in favor of the state and allow the guaranteed revenue bonds to be issued.

The Texas Senate has passed S.B. No. 131 by Bivins that creates a school facilities equalization program to be funded by the bonds authorized by Amendment No. 3. The program has two components: the basic program, to receive 75 percent of the bond money, would be available primarily to districts that have a low wealth of taxable property per student but would also take into account a district's tax effort; the supplemental program, to receive 25 percent of the bond money, would be available mainly to districts that have high taxes and are rapidly growing. Under the basic program, a school district must contribute at least 20 percent of the cost of a facility.

To help ensure that as many school districts as possible benefit from the program, a district would not be entitled to more than $9 million in assistance in a state fiscal biennium. For each biennium, the legislature would authorize the amount of general obligation bonds to be issued so that all $750 million would not necessarily be issued immediately.

Under either program, the state's share of the cost of a school facility is in the form of a loan to the school district. For the first four years, the state would forgive payments on the loan. At the end of the four years, if the school district's wealth per student has increased, the district must begin repaying the loan. If the district's wealth per student has remained steady or decreased, the payments are again forgiven. A school district would be reevaluated every four years for the life of the loan.

The Texas House of Representatives has referred S.B. No. 131 to the Public Education Committee, which has not yet acted on it. The final version of the bill may differ from that passed by the senate.

ARGUMENTS

FOR:

1. Authorizing the issuance of general obligation bonds to assist school districts in building school facilities will help the state meet its constitutional obligation to provide an "efficient" school finance system. A school finance system that does not address facilities will continue to result in litigation. General obligation bonds will provide a more secure source of revenue for facilities purposes than relying solely on general revenue.

2. Since the state faces serious financial difficulties and taxation problems, using bonds to finance school facilities will reduce the amount of general revenue spending in the current fiscal biennium. A school building is intended to last for many years; it makes sense to spread the cost over its lifetime. Corporations and governments, as well as homeowners, generally use long-term financing for buildings.

3. Satisfying the massive need—over $1.5 billion—for school facilities with local revenue will put an enormous burden on local property taxpayers. Those districts with the greatest need for facilities—property-poor or rapidly growing districts—are likely to be the least able to withstand property tax hikes. These bonds will go a long way toward satisfying the need and for Texas' future are as important or more important than the over $1 billion in bonds authorized for prisons in recent years.

AGAINST:

1. Relying too heavily on bonded indebtedness to solve the state's fiscal responsibilities at the present may lead to financial problems in the future. There are already many bond programs in operation, with total outstanding state debt currently at $8.6 billion; another bond program will strain the state's credit. In addition, interest and principal payments on the general obligation bonds that the state will have to make in future years will increase the financial strains on the state.

2. The constitutional amendment will permit the state to forgive the repayment of loans made to a school district, which is effectively the same as if the state simply granted the money to the district. This means that all

taxpayers in the state will bear the cost of building schools that are not in their communities. School construction should be a responsibility of the local district.

3. The proposed constitutional amendment eliminates the possibility of issuing revenue bonds backed by the permanent school fund if a favorable ruling is obtained from the Internal Revenue Service. Revenue bonds might cost the state less to issue.

APPENDIX

Text of Resolutions Proposing Amendments

AMENDMENT NO. 1

SENATE AUTHOR: Bill Ratliff S.J.R. 7

HOUSE SPONSOR: Libby Linebarger

SENATE JOINT RESOLUTION

proposing constitutional amendments relating to the support and maintenance of public schools.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article VII of the Texas Constitution is amended by adding Section 3-c to read as follows:

Sec. 3-c. (a) The legislature may redistribute among other school districts ad valorem taxes levied and collected by a school district, as determined by general law.

(b) The legislature may create county education districts with the taxable property of existing school districts in one or more counties combined. A county education district may levy, collect, and distribute ad valorem taxes as authorized by general law. The legislature may set the rate of the tax, as determined by general law, to be imposed in a school district or county education district or may authorize the board of trustees of each school district or county education district to set the rate, provided that the rate of county education district ad valorem taxes may not exceed $1.00 per $100 valuation of taxable property, as determined by law, unless a higher rate is approved by the voters of the district.

(c) The amount redistributed among school districts by the legislature under Subsection (a) of this section and effectively redistributed within a county through county education districts under Subsection (b) of this section may not exceed 2.75 percent of the sum of the state revenue appropriated for public schools and the revenue from local ad valorem taxes levied and collected for public schools. For purposes of this section, state revenue does not include revenue from ad valorem taxes, revenue for the provision of free textbooks, or contributions to a retirement system.

(d) This section does not affect the distribution of the available school fund under Article VII, Section 5, of this constitution.

SECTION 2. Article VII of the Texas Constitution is amended by adding Section 8a to read as follows:

Sec. 8a. (a) Except for state educational mandates imposed in compliance with this constitution or federal law, or unless enacted by a vote of at least two-thirds of the members elected to each house, a school district may not be required to comply with an obligation requiring expenditure of school district funds unless the obligation is fully funded.

(b) The legislature shall provide by law a procedure for determining whether an obligation is fully funded for purposes of Subsection (a) of this section. In the absence of such a procedure, at the request of the board of trustees of a school district the comptroller of public accounts shall determine whether or not an obligation is fully funded for purposes of Subsection (a) of this section.

(c) This section applies only to state educational mandates enacted after December 31, 1993.

SECTION 3. The constitutional amendment proposed by Section 1 of this joint resolution shall be submitted to the voters at an election to be held May 1, 1993. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment allowing limited redistribution of ad valorem taxes for schools, authorizing the legislature or local districts to set a minimum tax rate in county education districts, and placing a cap on the ad valorem tax levied by county education districts."

SECTION 4. The constitutional amendment proposed by Section 2 of this joint resolution shall be submitted to the voters at an election to be held May 1, 1993. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment exempting a school district from the obligation to comply with unfunded state educational mandates."

AMENDMENT NO. 2

SENATE AUTHOR: Bill Ratliff S.J.R. 7

HOUSE SPONSOR: Libby Linebarger

SENATE JOINT RESOLUTION

proposing constitutional amendments relating to the support and maintenance of public schools.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article VII of the Texas Constitution is amended by adding Section 3-c to read as follows:

Sec. 3-c. (a) The legislature may redistribute among other school districts ad valorem taxes levied and collected by a school district, as determined by general law.

(b) The legislature may create county education districts with the taxable property of existing school districts in one or more counties combined. A county education district may levy, collect, and distribute ad valorem taxes as authorized by general law. The legislature may set the rate of the tax, as determined by general law, to be imposed in a school district or county education district or may authorize the board of trustees of each school district or county education district to set the rate, provided that the rate of county education district ad valorem taxes may not exceed $1.00 per $100 valuation of taxable property, as determined by law, unless a higher rate is approved by the voters of the district.

(c) The amount redistributed among school districts by the legislature under Subsection (a) of this section and effectively redistributed within a county through county education districts under Subsection (b) of this section may not exceed 2.75 percent of the sum of the state revenue appropriated for public schools and the revenue from local ad valorem taxes levied and collected for public schools. For purposes of this section, state revenue does not include revenue from ad valorem taxes, revenue for the provision of free textbooks, or contributions to a retirement system.

(d) This section does not affect the distribution of the available school fund under Article VII, Section 5, of this constitution.

SECTION 2. Article VII of the Texas Constitution is amended by adding Section 8a to read as follows:

Sec. 8a. (a) Except for state educational mandates imposed in compliance with this constitution or federal law, or unless enacted by a vote of at least two-thirds of the members elected to each house, a school district may not be required to comply with an obligation requiring expenditure of school district funds unless the obligation is fully funded.

(b) The legislature shall provide by law a procedure for determining whether an obligation is fully funded for purposes of Subsection (a) of this section. In the absence of such a procedure, at the request of the board of trustees of a school district the comptroller of public accounts shall determine whether or not an obligation is fully funded for purposes of Subsection (a) of this section.

(c) This section applies only to state educational mandates enacted after December 31, 1993.

SECTION 3. The constitutional amendment proposed by Section 1 of this joint resolution shall be submitted to the voters at an election to be held May 1, 1993. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment allowing limited redistribution of ad valorem taxes for schools, authorizing the legislature or local districts to set a minimum tax rate in county education districts, and placing a cap on the ad valorem tax levied by county education districts."

SECTION 4. The constitutional amendment proposed by Section 2 of this joint resolution shall be submitted to the voters at an election to be held May 1, 1993. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment exempting a school district from the obligation to comply with unfunded state educational mandates."

AMENDMENT NO. 3

SENATE AUTHOR: Teel Bivins S.J.R. 4

HOUSE SPONSOR: David Swinford, et al.

SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing the issuance of $750 million in state general obligation bonds or revenue bonds to assist school districts in partially financing facilities, authorizing the state to forgive payment of loans made to a school district for partially financing facilities, and repealing the authorization for $750 million in state revenue bonds guaranteed by the permanent school fund.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article VII, Section 5, Subsection (b), of the Texas Constitution is amended to read as follows:

(b) The legislature by law may provide for using the permanent school fund and the income from the permanent school fund to guarantee bonds issued by school districts. The legislature by law may provide for the issuance of general obligation bonds or revenue bonds of [~~or by~~] the state for the purpose of making loans to or purchasing the bonds of school districts for the purpose of acquisition, construction, or improvement of instructional facilities including all furnishings thereto. The state, pursuant to general law, may forgive the payment of principal and interest on all or part of a loan made to a school district under this section to partially finance an instructional facility [~~If any payment is required to be made by the permanent school fund as a result of its guarantee of bonds issued by the state, an amount equal to this payment shall be immediately paid by the state from the treasury to the permanent school fund. An amount owed by the state to the permanent school fund under this section shall be a general obligation of the state until paid~~]. The amount of bonds authorized hereunder shall not exceed $750 million. While any of the general obligation bonds issued under this subsection or any of the interest on those bonds is outstanding and unpaid, there is appropriated out of the first money coming into the state treasury in each fiscal year, not otherwise appropriated by this

constitution, the amount sufficient to pay the principal and interest on those bonds that mature or become due during that year [~~or a higher amount authorized by a two-thirds record vote of both houses of the legislature~~]. If the proceeds of bonds issued by the state are used to provide a loan to a school district and the district becomes delinquent on the loan payments, the amount of the delinquent payments shall be offset against state aid to which the district is otherwise entitled.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held May 1, 1993. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment authorizing the issuance of $750 million in state general obligation or revenue bonds to assist school districts in partially financing facilities, authorizing the state to forgive payments of loans made to a school district for partially financing facilities, and repealing the authorization for $750 million in state revenue bonds guaranteed by the permanent school fund."