HOUSE RESEARCH ORGANIZATION

constitutional amendments

Texas House of Representatives

September 25, 1995

Fourteen amendments on November ballot

Texas voters have approved 353 amendments to the state Constitution since its adoption in 1876. Fourteen more amendments will be proposed at the general election on Tuesday, November 7, 1995.

Six of the proposals deal with property tax exemptions for individuals or groups and four with state bond debt. Veterans would benefit from one of the property-tax proposals and one of the debt proposals. Proposition 10 would eliminate the office of state treasurer. Proposition 4 would amend constitutional protections of homesteads from forced sale. Proposition 8 would only affect three small-population counties, eliminating their constable offices, and Proposition 9 deals with investment of state funds in businesses linked to South Africa.

Joint resolutions

The Legislature proposes constitutional amendments in joint resolutions that originate in either the House or the Senate. For example, Proposition 1 on this year's ballot was proposed by House Joint Resolution (HJR) 50, which was introduced Rep. Christine Hernandez and sponsored in Senate by Sen. Gonzalo Barrientos. Constitution Art. 17, sec. 1, requires that a joint resolution be adopted by a two-thirds vote of the membership of each house of the Legislature (100 votes in the House of Representatives; 21 votes in the Senate) in order to be presented to voters. The governor cannot veto a joint resolution. Amendments may be proposed in either regular or special sessions.

A joint resolution includes the text of the proposed constitutional amendment and specifies an election date. While a joint resolution may include more than one proposed amendment, each proposition on the November 1995 ballot was proposed by a separate resolution. The secretary of state conducts a random drawing to assign each proposition a ballot number, if more than one proposition is being considered.

If voters reject an amendment proposal, the Legislature may resubmit it one or more times. For example, a proposition authorizing $300 million in

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general obligation bonds for college student loans was rejected at an August 10, 1991, election, and approved November 5, 1991, after being readopted by the Legislature and resubmitted in essentially the same form.

Ballot wording

The ballot wording of a proposition is specified in the resolution adopted by the Legislature, which has broad discretion concerning the wording. 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 become familiar with the proposed amendments before reaching the polls and that they do not decide how to vote solely on the basis of the ballot language.

Election date

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. Most proposals are submitted at the November general elections held in odd-numbered years. The last amendment election was held on November 2, 1993. Three proposals were presented on May 1, 1993.

Publication

Constitution Art. 17, sec. 1, requires that a brief explanatory statement of the nature of each proposed amendment, along with the ballot wording for each, 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 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, and arranges for the required newspaper publication, often by contracting with the Texas Press Association. The average estimated cost of publication twice in newspapers across the state is $90,000.

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 often sometimes adopts implementing legislation in advance, making the effective date of the legislation contingent on voter approval of a particular amendment. If the amendment is rejected by the voters, the legislation dependent on the constitutional change does not take effect.

Effective date

Constitutional ainendments take effect when the official vote canvass confirms statewide majority approval, unless a later date is specified. Statewide election results are tabulated by the secretary of state and must be canvassed by the governor 15 to 30 .days following the. election.

November 2, 1993, Election Results: Constitutional Amendments

Sixteen proposed constitutional amendments were adopted by the Legislature during the 1993 regular session and' submitted to the voters at the November 2, 1993, election. The voters approved 14. For additional information on the proposed amendments, see House Research Organization Special Legislative Report Number 184, 1993 *Constitutional Amendments: The November* 2 *Election,* August 30, 1993.

The Secretary of State's Office reported the final statewide results of the November 2, 1993, election as follows:

·Proposition 1
$50 million bond sale for historically underutilized businesses

For: 332,248 (30.2 percent)
Against: 767,543 (69.8

Proposition 2
Property-tax exemption for certain pollution control devices

For: 626,586 (56.9
Against: 475,384 (43.1 percent)

Proposition 3
Relinquishing state interest in Fort Bend, Austin county land

For: 711,519 (67.3 percent)
Against: 345,888 (32.7

Proposition 4
Requiring voter approval for personal income tax

For. *n5,822* (69.3 percent)
Against: 343,638 (30.7 percent)

Proposition 5
Qualifications for sheriffs

For: 646,484 (59.0
Against: 449,333 (41.0

Proposition 6
Abolishing Jackson County surveyor office

For. 780,930 (76.2
Against: *243,nO* (23.8

Proposition 7
Repeal of corporate requirements for issuing stocks bonds

For: 558,487 (52.9
Against: 497,299 (47.1 percent)

Proposition 8
Abolishing McLennan County surveyor office

For: 783,693 (76.8
Against: 237,034 (23.2

Proposition 9
Umiting the right to redeem property sold at a tax sale

For. 628,156 (60.1 percent)
Against: 416,450 (39.9

Proposition 10
$750 million bond sale for Veterans' Land Board

For. 579,840 (53.0
Against: 514,561 (47.0

Proposition 11
Duties of trustees of local public pension systems

For. 823,370 (76.4
Against: 254,094 (23.6 percent)

Proposition 12
Denying bail to certain persons on probation or parole

For. 997,890 (89.1 percent)
Against: 122,547 (10.9

Proposition 13
Higher Education Assistance Fund for Texas State Technical College

For: 610,714 (58.2
Against: 438,756 (41.8 percent)

Proposition 14
Authorizing $1 billion in bonds for corrections facilities

For. 684,001 (62.4
Against: 411,694 (37.6

Proposition 15
Local elections to abolish county surveyor offices

For: 925,408 (86.0
Against: 150,081 (14.0 percent)

·Proposition 16
$75 million bond sale for agricultural fund

For. 476,715 (44.5
Against: 594,889 (55.5

• Not adopted

Proposition 1 (HJR 50 by Hernandez/Barrientos)
$300-million bond debt for student loans

Background

Texas Constitution Art. 3, sec. 49, generally prohibits state debt but has been amended numerous times to authorize general obligation bond debt specific purposes. Since 1965 Texas voters have authorized issuance of a total of $660 million in general obligation bonds to finance loans to college and university students. Bonds student loans were authorized by constitutional amendments in 1965, $85 million; in 1969, $200 million; in 1989, $75 million, and 1991, $300 million.

Several loan programs are administered through the Texas Opportunity Plan Fund by the Texas Higher Education Coordinating Board under the umbrella of the Hinson-Hazlewood College Student Loan The Hinson-Hazlewood program offers federally guaranteed student loans backed by the U.S. Department of Education, health education assistance loans (some backed by the U.S. Department of Health and Human Services) and College Access Loans, made primarily to students middle-income families.

Student borrowers must be Texas residents or eligible to pay in-state tuition and must demonstrate financial need. About 20,000 students receive loans each year, and in fiscal 1994 loans totaled about $94 million. The loans are guaranteed by the federal government, the state or a co-signer.

Digest

Proposition 1 would add Art. 3, sec. 50b-4, to the Texas Constitution to authorize the Legislature to allow the Texas Higher Education Coordinating Board to issue up to $300 million in additional general obligation bonds to finance educational loans to college and university students.

The maximum interest rate on the bonds would be set by law. The Legislature could provide for the investment of bond proceeds and the establishment of an interest and sinking fund to pay the principal and interest due on the bonds.

The ballot proposal reads: "The constitutional amendment providing for the issuance of $300 million in general obligation bonds to finance educational loans to students."

Supporters say

Proposition 1 would authorize additional funding needed to meet growing demand for loans to financially needy college and university students. The $300 million in general obligation bond authority proposed by Proposition 1 would allow the Texas Higher Education Coordinating Board to meet student loan demand for the remainder of the decade. Providing an opportunity for Texas students to receive a higher education is one of the primary responsibilities of the state government. Proposition 1 would help continue a -successful program that assists students in financing their education.

Although the bonds authorized by Proposition 1 would be state debt, they would be repaid by the students - not the taxpayers.· Since 1965 the state has made loans to students and used repayment by the students of the principal and interest to retire the bond debt and to make additional student loans. The program operated 1977 to 1988 as a self-supporting fund, making new loans with the loan payments it received. Because the demand for loans has increased and most of the numerous loans made in recent years not yet due, the coordinating board needs new revenue for the program.

The current general obligation bond authority is nearly exhausted. Without new borrowing authority to borrow the state will have to markedly curtail the loan program starting in spring 1996, making loans to only 4,000 to 5,000 students a year, instead of about 20,000 as in past years. The bonds issued under this amendment should provide enough funds to meet loan demand for about four years.

The Hinson-Hazlewood program makes higher education more affordable for students by giving them a reliable source of loans, often at a more favorable

interest rate than could be obtained on loans made through the private sector. Students are assured of quality servicing of their loans and the knowledge the loans will not be not sold to another lender. The program is the only lender in the state making one type of loan generally used by middle income students and is one of only a few lenders making certain health-education loans.

The Hinson-Hazlewood program does not compete significantly with private lenders, as it represented only about 5 percent of the Texas federally guaranteed loan volume in 1994. The increasing cost of higher education, increasing numbers of students and proposed changes in federal student loan programs that could affect the availability of loans will cause demand for Hinson-Hazlewood loans to continue growing.

The state's loan program has a strong record of success. Since 1965 the Hinson-Hazlewood program has provided loans to about 250,000 students who might otherwise have been unable to attend college. In fiscal 1994 about $94.5 million was loaned to about 19,800 students. The default rate on Hinson-Hazlewood loans is low, about 5 percent, compared to a default rate of about 15 percent to 20 percent for other student loan programs.

Proposition 1 would not require use of any taxpayer dollars since the bond debt would be repaid, with interest, by the borrowers. Repayment is guaranteed by the federal government, a co-signer or the loan fund, if a student defaults, although very few do. In the almost 20 years that the program has been making loans, Texas taxpayers have never had to fund any type of bailout.

General obligation bonds provide the most economical way to raise funds for the program. Because they'are guaranteed by the state, the bonds are a secure investment that is attractive to buyers, and the lower interest rate paid by the state on its bond debt in tum allows student borrowers to pay a lower interest rate on their loans. The administrative costs of the program are paid from the loan program, not taxpayer dollars.

Additional bond debt for student loans would not be counted against a cap that state law imposes on bonded indebtedness. Because they would be repaid by revenue from student loan repayments, these bonds are not counted as general state debt against the cap.

Opponents say

The state should not add to its considerable debt by issuing bonds to continue a student loan program that competes with lenders in the private sector. These loans could and should be made through the private lending market. As of May 31, 1995, state bond debt totaled $10.6 billion, of which $5.0 billion was from general obligation bonds. In addition, the state has constitutional authority to issue another $3.4 billion in general obligation bonds that have not yet been issued.

Even though student-loan bonds are supposed to be repaid by students, the state backs the bonds with its credit and takes ultimate responsibility for repayment. Borrowing money by issuing bonds is expensive due to interest costs, and issuing bonds will eventually cost the students or the state almost twice as much as the face amount of the bond issue.

Any new debt-creating measure needs to be examined in view of overall governmental debt in the state. Although Texas has a relatively low burden of state debt per capita, it has a relatively high burden of local debt per capita. Of the 10 largest states, Texas ranks 10th in terms of state debt per capita but first in terms of local debt per capita. The Legislature needs a comprehensive evaluation of the state's debt structure and its future before more new debt is authorized.

Other opponents say

The $300 million in new bond authority that Proposition 1 would grant is excessive. An additional $200 million or less should be more than sufficient to meet loan demand for the next two years. Then the Legislature and the voters can determine if additional bond authority is justified.

Notes

HB 686 by Hernandez, which would take effect upon approval of Proposition 1, would amend the Education Code to authorize the bond sale and use of the proceeds for student loans.

The Legislative Budget Board estimates that debt service on $300 million in general obligation bonds would be approximately $3.62 million in fiscal 1996, increase until 2000, then stabilize at $23.78 million a year for the next 20 years.

Proposition 2 (SJR 36 by Montford/Counts)
Tax exemption for Masonic lodges

Background

Taxation must be equal and uniform and all real and tangible personal property taxed in proportion to its value unless the Constitution requires or permits otherwise, according to Texas Constitution Art. 8, sec. 1.

The Grand Lodge is the basic unit of the Freemasons (Free and Accepted Masons), a fraternal and charitable order whose lineage in the United States dates to the early 1730s. The Grand Lodge of the Republic of Texas was chartered on January 30, 1845, by the Ninth Congress of the Texas Republic. The original charter also applied to subordinate lodges established in the republic. The first Legislature of the State of Texas in 1846 chartered the current Grand Lodge of Texas, which reports having 916 lodges.

Freemasonry may be derived from the medieval guilds of European stonemasons. Lodges first appeared in the United States in Phihidelphia and Boston, and U.S. membership today is reported at about 3.5 million. In addition to subsidiary lodges the Freemasons have appendant organizations, such as the and the Scottish Rite, to provide charitable and social services such as hospitals for crippled and burned children, the Order of the Eastern Star for women and the youth organizations Order of De Molay for boys and Order of Rainbow for girls.

Digest

Proposition 2 would amend Texas Constitution Art. 8, sec. 2, to allow the Legislature to from property taxes any property belonging to an organization in continuous existence since being chartered by the Congress of the Republic of Texas if the property was used primarily for charitable, benevolent or public service activities, as defined by law. The Legislature could place additional qualifications and limitations on the property tax exemption and specify how the exemption should be administered.

The ballot proposal reads: "The constitutional amendment to authorize the legislature to exempt from ad valorem taxation property of an organization chartered by the Congress of the Republic of Texas that is used primarily for the charitable, benevolent, or public service activities of the organization."

Supporters say

The Grand Lodge of Texas has a long, distinguished history in Texas and contributes more than $80 million a year to charity. Additionally, many of the state's Masonic lodges have been designated as historical buildings. Both the Masons' charity work and the fate of their lodge building"s are threatened by rising local property taxes. The statewide tax exemption proposed by this amendment would cost local taxing authorities less than $1 million per year and would help preserve an organization and many structures that form part of Texas history. Many of Texas' founders, including Sam Houston and Mirabeau Lamar, were Freemasons.

The property taxes imposed on lodge real estate are draining resources from charity and service. The tax exemption would allow the lodges to continue to help communities across Texas with charitable aid. Texas membership in the Masonic brotherhood has dropped from a high of 250,000 in 1960 to 150,000, but the cost to maintain charities, especially medical charities, continues to rise. If the lodges close, other charities, or state and local government, would have to fill the gap that would be left.

The Grand Lodge provided the first school system in Texas, and it continues to provide educational programs to combat illiteracy and treat the learning disorder called dyslexia. The more than $80 million a year the lodge contributes to charity supports two homes for the aged, a home and school for orphans, two orthopedic hospitals and a bum hospital. Other charitable programs include providing scholarships, assisting community projects and operating literacy programs and learning centers used by public schools, as voting precincts and for health and safety instruction.

The state exempts many other nonprofit organizations from property taxes, including veterans' organizations, the Texas Federation of Women's Clubs, the Nature Conservancy of Texas, Congress of Parents and Teachers, raisers of buffalo and cattalo, theater schools, community service clubs, medical development centers and scientific research corporations. With the many services they provide for the benefit of the. public, the Masonic lodges should be part of this group.

Opponents say

This amendment proposes a blanket statewide tax exemption and a special subsidy to the Masonic Lodge and its subsidiaries, which have been subject to taxes for more than 150 years. The Masons estimate that the exemption would cost government at least $1 million a year in lost tax revenue, including $508,300 for school districts, $233,100 for cities and $197,400 for counties. The communities that will lose this revenue will not necessarily receive commensurate benefits from lodge charities. Other organizations might even qualify for this exemption under the wording of the proposed amendment, further decreasing local tax revenues. Lodges that have special cultural or historical value may already qualify for tax breaks, which must be justified on an individual basis rather than by a blanket exemption.

The Grand Lodge of Texas' is an exclusive secret fraternal organization. In order to join the lodge, a person must be sponsored by a member. While the organization does not discriminate in providing charitable services, its me'mbership practices should be considered in light of a potential state subsidy and the group possibly subjected to a requirement similar to one made for certain tax-exempt community service clubs: that they be open to membership without regard to race, religion or national origin;

Tax exemptions do not reduce the need for local tax revenue; they just shift the tax burden to other taxpayers. In effect, other taxpayers would be forced to provide an involuntary subsidy to the Masonic Lodge, regardless of whether they agree with the aims of the lodge and its charities.

Other opponents say

If one fraternal and charitable organization gets a property tax exemption, similar benevolent and fraternal organizations should get the same break, regardless of whether they are 150 years old. The Lions, Elks, Rotarians, Optimists and many other similar organizations involved in charitable work deserve a tax break as much as the Masons.

Notes

The law that would implement the exemption, SB 1654 by Montford, would amend the Tax Code to exempt property belonging to an organization in continuous existence since being established under the Republic of Texas from ad valorem taxation if the organization performs primarily charitable, benevolent or public service activities and the property to be exempted was used primarily for charitable, benevolent or public service activities. SB 1654 will take effect January I, 1996, if Proposition 2 is approved.

Proposition 3 (SJR 51 by Montford/Patterson)
Agribusiness use of $200 million in farm bonds

Background

Texas Constitution Art. 3, sec. 49, generally prohibits state debt but has been amended numerous times to authorize general obligation bond debt for specific purposes. In 1985 Texas voters authorized up to $500 million in state general obligation bonds to be outstanding at anyone time to establish a farm and ranch finance program to help farmers and ranchers acquire land. The program is administered by the Texas Agricultural Finance Authority (TAFA), while the fund is administered by the Veterans Land Board. The $500-million bond authorization is found in Texas Constitution Art. 3, sec. 49-f.

TAFA also administers two agribusiness development programs. Art. 3, sec. 49-i, adopted in 1989, authorizes up to $25 million in state general obligation bond debt to be outstanding at any time to finance the Texas agricultural fund and up to $5 million to be outstanding for the rural microenterprise development fund. The agricultural fund may be used only to provide financial assistance to develop, increase, improve or expand the production, processing, marketing or export of crops or products grown or produced primarily in Texas. The rural microenterprise development fund can be used only to foster and stimulate the creation and expansion of small businesses in rural areas. Sec. 49-i states that the funds may offer loan guarantees, insurance, coinsurance, loans .and indirect loans or purchases or acceptances of assignments of loans or other obligations.

TAFA was created by statute in 1987 to financially assist businesses that provide, produce, process, market or export Texas agriculture products. TAFA's programs may include making, insuring or guaranteeing loans to agricultural businesses to buy land, acquire and construct buildings, acquire machinery and equipment, perform research and development and cover other business-related expenses. In addition to the general obligation bond debt, which must be authorized by constitutional amendment, TAFAhas statutory authority to issue up to $500 million in *revenue* bonds, for which the state promises to repay debt from revenues of a particular program, not from its general funds. The interest the state pays on revenue bond borrowing generally exceeds that paid on general obligation debt.

TAFA is nine-member board composed of seven governor-appointed members, the commissioner of agriculture and the director of the Institute for International Agribusiness Studies at Prairie View A&M University.

Digest

Proposition 3 would amend Constitution Art 3, sec. 49-f, to allow $200 million of the $500 million in general obligation bonds authorized for the farm and ranch finance program fund to be deposited in the Texas agricultural fund. The bond proceeds could be used for the purposes specified in sec. 49-i (to provide financial assistance to develop, increase, improve or expand the production, processing, marketing or export of crops or products grown or produced primarily in Texas and to foster and stimulate the creation and expansion of small businesses in rural areas) and for other rural economic development programs.

The proposition also would transfer administration of the farm and ranch finance program fund from the Veteran's Land Board to the Texas Agricultural Finance Authority (TAFA).

The ballot proposal reads: "The constitutional amendment allowing the use of existing bond authority of the farm and ranch finance program to include financial assistance for the expansion, development, and diversification of production, processing, marketing, and export of Texas agricultural products."

Supporters say

Proposition 3 would allow bond proceeds earmarked for the farm and ranch finance program to help farmers and ranchers purchase land, a

program already authorized by voters, to be shifted to another agricultural program that helps rural businesses obtain financing. The businesses could use the financing for the expansion, development and diversification of Texas agricultural products. This would transfer bond authority from a program with a low demand for funds to a successful program that has high demand and promotes expansion of vital sectors of the Texas economy.

The transfer would not increase the state's bonded indebtedness, but would merely deploy previously bonds more appropriately. In the past voters have rejected constitutional amendments that would have added to the state's bonding authority; this proposition would just *shift* some of the bonds already authorized for the farm and ranch program to other agricultural purposes and would not add to the state's potential debt. Bond revenue already authorized by voters would be moved to where it could do the most good. Proposition 3 would allow an injection of capital to help the state preserve and diversify its agricultural economy.

The Texas farm and ranch finance program is charged with providing financing to eligible farmers and ranchers to purchase land for a base of operation. The Constitution allows up to $500 million in general-obligation bonds for the program to be outstanding at one time, but the demand for loans has not approached that amount. The program is only now getting started, and its first loans may be made in late 1995 or early 1996. A Texas A&M University study gauging demand for the program concluded that $263 million in bonds would be adequate for the program, which would operate as a revolving fund with loan repayments used to make or guarantee additional loans. The $300 million that would remain for this program if Proposition 3 is approved should be more than adequate.

On the other hand, demand for the agribusiness financing provided by the Texas agricultural fund is high and exceeds existing general obligation bond authority. The fund provides financing for businesses in Texas to produce, process and market crops and other agricultural products, especially businesses that add value to Texas agricultural products. While the program is allowed to have up to $25 million in outstanding gen,eral obligation bonds, it has received requests for over $260 million in loan guarantees.

Shifting revenue to the Texas agricultural fund would allow this extremely successful program to expand and continue making a positive impact on the Texas economy. The fund had guaranteed 49 private-sector loans worth approximately $37 million as of mid-1995. TAFA estimates that these loans have directly or indirectly created more than 4,700 jobs and have had an $81.9 million impact on Texas income, $21.6 million of that in direct income. The fund has had a $428.2 million impact on the gross state product, according to TAFA.

TAFA loan guarantees encourage financial institutions to make loans to small and innovative agricultural businesses that often could not otherwise find financing. These businesses may utilize innovative technology for which bankers, often unfamiliar with the new techniques, are reluctant to make loans. Some private sector lenders in agricultural areas are too small to make a large loan without a guarantee through the state fund. Enabling these smaller banks to make these loans helps the banks and the surrounding communities.

The most cost-effective way to expand the Texas agricultural fund is to utilize the general-obligation bond borrowing that voters already have authorized. Since the bonds were authorized specifically for the farm and ranch program, voter approval for the transfer is required if they are to be used for other purposes. While the Texas agricultural fund is authorized by statute to issue up to $500 million in *revenue* bonds, it has proved unfeasible to issue these bonds. Unlike general obligation bonds, for which the state guarantees repayment, revenue bonds are backed only by the revenue that may be generated by the program the bonds finance and therefore also carry a higher interest rate. A transfer of general obligation bond authority from the farm and ranch program offers a better way of promoting economic development at a lower cost and without increasing the state's bonded indebtedness.

The agricultural fund uses loan repayments to repay the bond debts and does not use general revenue or any other taxpayer funds. Although theoretically the state, and the taxpayers, are responsible for the general obligation bonds, TAFA has been prudent about making and guaranteeing loans and keeps adequate reserves to cover any shortfall in repayments.

Transferring administration of the farm and ranch finance program fund from the Veterans Land Board to TAFA makes administrative sense., TAFA deals exclusively in agricultural programs and has experience in and guaranteeing loans. In 1993 the Legislature transferred administration of the farm and ranch finance *program* to TAFA but could not transfer administration of the *fund* because the Constitution specifies that the Veteran's Land Board is to administer the fund. Proposition 3 would complete the transfer.

Opponents say

Voters have twice rejected proposals to give the Texas agricultural fund additional bond authority, which should have made their views clear. In 1987 voters rejected a proposal for the state to sell $100 million in bonds to help finance the program. After approving a total of $30 million in authority for the Texas agricultural fund in 1989, voters in 1993 soundly rejected an attempt to add an extra $75 million in bond authority for the fund.

Now a different approach is being tried - a transfer of funds from a completely different program, the farm and ranch finance program, which promotes the purchase of farm and ranch land. The purposes of the two programs are quite different,and diverting funds from a program to preserve family farms. and ranches into one to provide subsidies for private agri-business ventures should be viewed warily. Bond authority approved for the farm and ranch program may be needed in the future and should not be diverted to other purposes.

The state should not expand a program making loans that traditional financial institutions fear to make, nor should it compete with private lenders. If borrowers default on loans, taxpayers could be left holding the bag and have to pay to .retire the debt. Five of the 49 loan guarantees approved by TAFA as of mid-1995 totaling $1.8 'million have defaulted; the state guaranteed $1.6 million of these loans and has recovered only about $400,000 of the principal thus far.

Proposition 3 would allow the $200 million in bond authority transferred from the farm and ranch finance program to the Texas fund to be used not only for the purposes specified in sec. 49-i but also "for other rural economic development programs." This change could greatly expand the use of public debt to subsidize the financing of any private business venture that has a remote to "rural economic development."

Notes

The implementing legislation for Proposition 3, SB 1260 by Montford, would amend law to reflect the transfer of authority over the farm and finance program fund from the Veterans Land Board to TAFA, eliminate detailed restrictions on how the fund may be invested, require that the fund's investment be governed by the TAFA statutes and remove the $25 million statutory limit on TAFA's authority to issue general obligation bonds for the Texas agricultural fund and the $5 million statutory limit on general obligation bonds for the rural microenterprise development fund. SB 1260 would become effective January 1, 1996, if Proposition 3 is approved by the voters.

Proposition 4 (SJR 46 by Harris/Cook)
Homestead loan exceptions

Background

A borrower who fails to make required payments on a secured loan may lose the property pledged as loan security through a court-ordered forced sale or a non-judicial foreclosure procedure. However, the Texas Constitution Art. 16, sec. 50, allows the forced sale of a borrower's *homestead* only for debt incurred for these purposes:

- to purchase the home;
- to finance improvements to the home; and
- for taxes due on the home.

The constitutional homestead protection effectively blocks use of a homestead as security for loans for purposes other than those specified, since lenders do not make loans using security that would be protected from foreclosure.

Ownership in a homestead may be either *divided* or *undivided.* Undivided ownership means the *whole* property belongs to the various owners - as in the case of a married couple's community property or an inheritance that passes to two or more heirs. By comparison, a divided interest gives each owner a specific *portion* of the property. One of the owners of an undivided interest in a property such as a homestead may wish to purchase the share of another owner - after a divorce, for instance. An owelty of partition is the debt owed by one co-tenant to another when property has been partitioned between them by a court or through agreement of the parties to execute a purchase.

The federal government may attach a lien against homestead property for non-payment of delinquent federal taxes. Although a lien for delinquent federal taxes is not among the exceptions to the homestead production because the taxes are not due on the home, such as local property taxes, a federal tax lien on a homestead is allowed because federal law has supremacy over state law, including the homestead protection.

Digest

Proposition 4 would amend Texas Constitution Art. 16, sec. 50, to allow the forced sale of a homestead for two additional purposes: the payment of debts for owelties of partition and payment of debts for the refinancing of a federal tax lien against a homestead.

The amendment also would allow purchasers or lenders who do not have other knowledge about the status of a property to rely on affidavits signed by a seller that designate other property as the seller's homestead and that state that the property being sold or encumbered is not the seller's homestead.

The ballot proposal reads: "The constitutional amendment permitting an encumbrance to be fixed on homestead property for an owelty of partition, including a debt of a spouse resulting from a division or award of a homestead in a divorce proceeding, and for the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of the owner."

Supporters say

Proposition 4 would explicitly allow use of a homestead as security to obtain loans to meet two common needs: to buy an undivided interest in the homestead and to payoff a federal tax lien on the homestead. Court decisions have raised questions about whether homesteads may be to secure these types of loans in Texas, and a constitutional amendment is needed to clarify the situation. By specifically adding the two limited situations as exceptions to the constitutional protection against the forced sale of a homestead, Proposition 4 would make loans for these purposes available by assuring lenders that the homestead property used as collateral for the loans may be foreclosed on in case of default.

Proposition 4 would not open the door to home equity borrowing. Under the amendment the homestead could be used as collateral only for two narrowly specific purposes: to help a homeowner

keep a homestead after a divorce or a death in a family or when a federal tax lien is filed against the homestead. These purposes relate directly to maintaining the homestead, just as the current exceptions for loans to purchase or improve the homestead. Conversely, home equity loans allow . use of the homestead as collateral for loans for purposes *unrelated* to the homestead and involve entirely different issues.

A homestead currently may not be used as security for a loan to a buyer who already owns an undivided interest in the property and merely wishes to buy the other interest in order to keep the homestead. In the case of owelties of partition, a person who owns an undivided interest in a property may find banks reluctant to make a loan to purchase an undivided interest if only part of the ownership interest in the property will be offered as collateral.

For example, a homeowner who wanted to borrow money to purchase the ex-spouse's interest in their home would find the bank unwilling to make the loan if only a partial interest in the property was offered as collateral. The bank would not want to become a co-tenant with the borrower if it had to foreclose. Yet the ability of banks to require that the whole property be offered as collateral in such cases has been called into question by courts ruling that the Texas Constitution prohibits using the entire homestead as collateral when the loan is for only a partial interest in the property.

A similar troublesome situation arises when several heirs, such as siblings, inherit homestead property and one heir wants to buyout the others and keep the home. Banks are reluctant to loan the buyer the money to purchase the undivided interests of the other heirs if only part of the property is used as collateral. Since it is unclear whether the whole property may be pledged as collateral, the heir who wishes to buyout the interest of other owners is prevented from doing so, and the entire homestead may have to be sold to compensate the other owners for their share of the property. Proposition 4 would remedy this situation by allowing lenders to make loans secured by the homestead of persons who because of divorce or an undivided inheritance wish to buyout the interest of others in their own homestead.

Proposition 4 also would allow loans to pay federal tax liens and help *avoid* foreclosures on homesteads. While loans secured by a homestead to pay property taxes on the homestead have not been questioned, courts recently have raised doubts about whether loans secured by the borrower's homestead can be made to pay federal taxes. Proposition 4 would amend the Constitution to make refinancing of a lien against a homestead for payment of federal taxes one of the exceptions to the prohibition against the forced sale of a borrower's homestead, clearing the way to use the homestead as collateral for loans to pay federal taxes.

For example, in *Crowder* v. *Benchmark Bank, 889* S.W.2d 525 (1994), a Dallas Court of Appeals decision pending before the Texas Supreme Court, the court decided that when the owner of a homestead got a bank loan to payoff a federal tax lien on the homestead, the bank could not be placed in the same legal position as the federal government in attaching a valid lien against the homestead. The federal government's lien was valid only because federal law overrides the Texas homestead protection; the bank's lien was still subject to state law and was unenforceable as a debt against the homestead.

Homeowners with unpaid federal tax bills currently face a "Catch-22" in which the federal government files a lien using the delinquent taxpayer's homestead as security for payment of back taxes but the owner of the property cannot do the same. A law designed to protect the homeowner against loss of the homestead should not force the homeowner to lose the house for unpaid taxes. Since the homeowner cannot use the homestead as collateral to obtain a loan to pay the delinquent tax, the only way the federal government can collect is to sell the homestead.

The provisions allowing reliance on affidavits stating that property is not the seller's homestead would make it easier for purchasers to obtain loans to buy property. Lenders would be assured that the property being purchased was not a homestead and therefore was subject to foreclosure if loan payments were not made. This would make it easier for someone who already has a homestead to borrow money to purchase rental property or use non-homestead property as collateral to make other purchases.

Opponents say

Proposition 4 would establish two new ways for banks and other financial institutions to foreclose on a homestead. The constitutional homestead protection was intended to assure debtors and their families of a home and some means of support even in difficult circumstances. Proposition 4 would erode that protection by expanding the possibilities for lenders to take away a person's home if the homeowner on a loan. By undermining the fundamental purpose of the homestead protection, this amendment could help pave the way for further exceptions, including the possibility of home-equity lending.

Other opponents say

This amendment may be worded too narrowly to accomplish its primary purpose. Owelties of partition are most often created when the undivided ownership shares in property held by co-tenants are recalculated, rather than when property interests are divided between joint owners, as in divorce situations. The situations in which owelties of partition are created may be so rare that the amendment would have little actual benefit.

Notes

If Proposition 4 is adopted, Tax Code amendments proposed by SB 1032 by Harris would also take effect. SB 1032 would include owelties of partition under the definition of purchase money in the law that specifies when encumbrances may be placed on a homestead. It would also define taxes on property for purposes of the homestead protection as specifically including the refinancing of property taxes or a federal tax lien.

Proposition 5 (HJR 34 by Willis/Brown)

$500-million bond debt for veterans' housing

Background

The Veterans' Land Board (VLB) was created in 1946 to purchase land for resale at low interest to World War II veterans, using funds raised through the sale of state general obligation bonds. The program was expanded in 1983 to make low-interest housing loans to veterans to purchase homes and in 1986 to include home improvement loans. The programs are open to all veterans.

Voters have authorized sale of $1.5 billion in bonds for the land program and $1.5 billion for the housing program in a series of constitutional amendments adopted since 1946. The Texas Constitution prohibits most forms of state debt, but numerous amendments authorize general obligation bond debt for specific purposes.

General obligation bonds carry a promise that they will be repaid with the first money coming into the state treasury each fiscal year. They generally cost the state less for interest than revenue bonds, which specify repayment with revenue from a specific program and need not be constitutionally authorized. The Bond Review Board classifies the veterans bonds as self-supporting general obligation bonds because the bond debt is repaid with funds from the program they support.

The Veterans' Housing Assistance Program (VHAP) created in 1983 has issued $1.235 billion of its $1.5 billion bond authorization. Mortgage payments by borrowers and a small loan fee are used to pay all the board's bond debt and cover all administrative costs.

VHAP loans are capped at $45,000. Interest rates range from 1 percent to 1.5 percent below market. The VLB made more than $309 million in housing loans to 7,111 veterans in 1994, and in 1993 authorized housing loans totaling $113.2 million.

The constitutionally created VLB consists of the commissioner of the General Land Office, who is elected statewide, and two gubernatorial appointees.

Digest

Proposition 5 would add Art. 3, sec. 49-b-3, to the Texas Constitution authorizing the Veterans' Land Board to issue an additional $500 million in general obligation bonds to finance the Veterans' Housing Assistance Fund II. Guidelines governing previous housing bond sales under Art. 3, sec. 49-b-2, would apply to the new bonds. The bonds would be incontestable after execution by the Veterans' Land Board, approval by the attorney general and delivery to the purchaser. The Veterans' Land Board also could enter into bond enhancement agreements regarding the bonds.

The ballot proposal reads: "The constitutional amendment to increase by $500 million the amount of general obligation bonds that may be issued to augment the veterans' housing assistance fund II."

Supporters say

Demand for veterans' housing loans has increased markedly since 1993, and it appears likely that the Veterans' Land Board will run out of money to lend before the 75th Legislature convenes in 1997. The board needs the authority granted by Proposition 5 to issue an additional $500 million in general obligation bonds in order to continue making low-interest housing loans to veterans for the next few years.

Both 1993 and record years in the demand for housing loans. The current bond authority might have been sufficient if loans to veterans had remained at the 1992 levels. However, the program's low interest rates and 1994 lending rate increases caused by Federal Reserve Board actions combined to cause a 175 percent increase in loans in 1994. The high loan demand has continued and thus far in 1995 the program has lent nearly $144.8 million in 3,386 loans to qualified veterans. The proposed $500 million infusion into the program is expected to meet loan demand for the next four years, if state and local economies hold fairly constant.

The many veterans in Texas receive relatively few state benefits for the sacrifices they have made in serving their country. These housing loans provide some reward at almost no financial risk to the state and reflect a long-time Texas tradition of recognizing its veterans. Principal and interest payments on the loans to veterans are pledged to pay debt service on the bonds. The programs are self-supporting and have never used taxpayer dollars. Proposition 5 was recommended by the Special Committee on Veterans' Affairs, in its November 1994 interim report to the Legislature.

Veterans' loan programs help the whole state by stimulating the economy and strengthening Texas communities. The General Land Office reports that the land board has loaned a total of $2.4 billion since about 1949, $1.7 billion of that amount since 1983. Economists estimate that these loans have generated more than $14 billion in economic activity for Texas not only in the housing industry but also in local sales of goods and services. As the federal government closes military bases with facilities that benefit veterans living nearby and considers cuts in other services, the state should maintain a veterans-assistance program with a record of proven success.

The foreclosure rate on veterans' housing is very low - ·about 1 percent compared to 4 percent in the general market. Foreclosed property is sold, and the proceeds go toward loan repayment.

Demand for general obligation bonds is running fairly high, due to their low interest rates and tax-exempt status. 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. Texas enjoys a favorable bond rating, and Veterans' Land Board bonds sell easily. Texas' financial interests are protected by the oversight activities of the Texas Bond Review Board, which reviews, approves and coordinates all bond issuances.

Opponents say

Proposition 5 would authorize a large increase in state debt and a greater state intrusion into the capital markets. As of May 31, 1995, the state's outstanding bond debt exceeded $10.6 billion, of which about $5 billion was in general obligation bonds. As popular and worthy as the veterans' housing programs may be, Texas. voters should be wary of adding more state debt.

Texas veterans are already eligible for many benefits, inchiding federal Veterans' Administration housing loans, college tuition assistance and hiring preferences for federal and state civil service jobs.

Regardless of need or income or whether they served during wartime, any veteran can obtain a government-subsidized mortgage at interest rates lower than those available to other home buyers. At some point a reasonable limit should be placed on how much debt the state should assume for these programs.

It was only two years ago that voters were asked to authorize another $750 million for veterans programs, of which $500 million was for the housing program. The housing program increased by 175 percent the amount of loans it made from 1993 to 1994. If this tremendous growth rate continues unchecked, by the tum of the century the annual bond issuance could be more than $1 billion. Additional state general obligation bonds on the market will compete with local bond sales to finance public works projects such as water and sewer systems and school facilities.

Proposition 6 (HJR 64 by Hamric/Henderson)

Tax exemption for surviving spouse at age 55

Background

Taxation must be equal and uniform and all real or tangible personal property be taxed in proportion to its value unless the Constitution requires or permits an exemption, according to Texas Constitution Art. 8, sec. 1.

The value of a homestead used as the basis for local property (ad valorem) taxes may be reduced from the full value determined by the local tax appraisal office, under one of several exemptions. Art. 8, sec. I-b(b), allows local taxing units, such as counties, cities and school districts, to exempt $3,000 or more of the market value of the residence homesteads of disabled persons or persons age 65 years or older. Persons age 65 and older may not receive a double exemption if they are also disabled. If the taxing unit does not adopt the exemption, voters may petition for an election to decide whether to grant the exemption.

The exemptions are subtracted from the market value of a homestead before a tax is imposed. For instance, a home appraised at $120,000 with $30,000 in exemptions has a taxable value of $90,000. The local tax rate is applied to each $100 in value. A $90,000 base taxed at a rate of $1.20 would result in a tax of $1,080 (900 X $1.20). Each local taxing unit its own tax rate and any exemptions that are allowed.

Digest

Proposition 6 would entitle a person age 55 or older who is the surviving spouse of a person who received a 65-years-or-older exemption under Art. 8, sec. I-b(b) (allowing taxing units to grant an exemption of $3,000 or more) to receive an equal exemption for the same homestead property.

The exemption extension would apply only if the deceased spouse received the I-b(b) exemption and the surviving spouse was age 55 or older and was using the property as a residence homestead in the year the deceased spouse died. The exemption would apply only as long as the property remained the residence homestead of the surviving spouse. Persons granted an exemption because they are age 65 or older or disabled could not also receive a surviving-spouse exemption.

The ballot proposal reads: "The constitutional amendment exempting from ad valorem taxation the residence homestead of the surviving spouse of an elderly person."

Supporters say

Proposition 6 would extend the tax exemption for persons age 65 and older to their surviving spouse age 55 or older as long as the surviving spouse continued to reside in the same homestead. Surviving spouses often suffer financially as well as emotionally

as a result of losing a mate. A spouse's death may mean a significant loss of household income, and under current law it can also mean a drastic increase in property taxes on the family homestead. A surviving spouse who is 55 or older often lacks the means to keep up with rising tax bills, while single persons in the same age group are more likely to be part of the workforce.

The extension granted by Proposition 6 for surviving spouses would apply only to taxing units that choose to offer a homestead exemption for the elderly or disabled under Art. 8, sec. I-b(b) of the Constitution. It would only extend an existing exemption, not grant a new one.

Local taxing authorities would not lose anticipated revenue because the exemption for the same property would already have been granted to the deceased spouse. The Legislative Budget Board has determined that the adoption of this proposal would not create a significant fiscal implication to the state or units of local government.

The effect of the proposed survivor's exemption on a taxing unit's total revenue would be minimal, as relatively few people would be in the situation it addresses. However, the relief for those affected could be significant. In populous Harris County, for instance, only around 300 surviving spouses age 55 to 65 are projected to benefit from the exemption extension. Since the county grants a $100,000 exemption for persons age 65 and older, after their death their spouses suffer a large jump in county taxes on their homestead.

Fairness dictates that an exemption be extended for a surviving spouse who is age 55 or older after the death of an elderly spouse. This rationale is already being used with regard to the freeze on school taxes on homesteads. As authorized by Art. 8, sec. 1-b(c), the Legislature requires school districts to exempt $10,000 of the value of a homestead claimed by disabled persons or persons age 65 and over, and the school taxes of those eligible for the 65 and older exemption are frozen as of the year that they qualify for the exemption, under sec. I-b(d). The school tax freeze for persons 65 or older continues after their death as long as the property remains the residence homestead of their surviving spouse age 55 or older.

Opponents say

The taxing districts affected by this change would lose revenue that they would otherwise receive when exempted property values returned to the tax rolls after the death of a person age 65 or older. Extending the exemption to a younger spouse could reduce potential tax revenue substantially.

Everyone would like a tax break, but counties, cities and schools need someone to foot the bill for government services. As the Texas population ages and a growing proportion of the state's population are in the 55-and-older group, younger citizens will find themselves bearing an increasing tax burden. People between the ages of 55 and 65 generally are capable of paying taxes and should not be exempted.

Other opponents say

Proposition 6 would give preferential treatment to widows and widowers age 55 to 65 while ignoring people in the same age bracket who are single or are living on small, fixed incomes. A surviving spouse is not necessarily less able to pay taxes than a single person of similar age. If the purpose of the exemption is to assist older individuals with low- or fixed-incomes, the exemption shouid be income-based and apply to all who meet the age requirement, regardless of marital history.

Notes

HB 1127 by Hamric, the implementing legislation, would take effect on January 1, 1996, if Proposition 6 is approved by the voters.

The original version of HJR 64 would have extended the *tax freeze* now required of school districts to include other taxing districts, so that once a person turned 65 taxes would remain fixed as long as that person or a surviving spouse age 55 or older claimed the property as a residence homestead.

Proposition 7 (HJR 73 by *Romol* Moncrief)
Reducing amount of super collider bond authority'

Background

In October 1993 Congress discontinued federal funding for construction of the superconducting super collider (SSC), a proposed multibillion-dollar U.S. Department of Energy (DOE) physics laboratory near Waxahachie on 16,500 acres in Ellis County. About $640 million in federal funds was appropriated to terminate the project.

Texas had competed with other states to be the site of the SSC and had promised DOE that it would borrow up to $1 billion to support the project: up to $500 million in general obligation bonds, debt that the state guarantees it will repay with the first money coming into the treasury each fiscal year, and up to $500 million in revenue bonds, which are not backed by the state's general credit but are linked to revenue from particular state programs. The revenue bonds had been authorized by the Legislature in 1987, and in the same year the $500 million general obligation bond issue had been approved by voters as Art. 3, sec. 49-g. General-obligation bond debt, because it is backed by the state's full general credit, carries a lower interest cost to the state than revenue bond debt, but, unlike revenue bond debt, must be approved by the state's voters in a constitutional amendment.

At the time the SSC project was discontinued Texas had spent approximately $539 million on the project, and DOE had spent approximately $1.5 billion. The National Laboratory Commission (NRLC), the state agency created in 1985 by the Legislature to coordinate state efforts to obtain the super collider project, had sold $250 million in general obligation bonds and $250 million in revenue bonds for SSC support between 1990 and 1993.

The NRLC had acquired more than 16,500 acres of land for the super collider site. A warehouse in Waxahachie had been renovated as a central facility, and a superconducting magnet development/cryogenics complex and linear accelerator facility had been completed, as had 14 miles of a proposed 54-mile underground tunnel for particle acceleration experiments.

In November 1994 DOE agreed to give Texas $210 million to offset the state's investment in the SSC and to convey to the state the title to SSC assets that had cost more than $500 million. The DOE agreed to work with the state to secure additional appropriations to fund a proton cancer therapy facility at the site, but development of that project later faltered.

Most of the $210 million was used to repay the state's bond debt, but $65 million was set aside for the development of the proposed proton cancer therapy and medical radioisotope production complex until that project was cancelled. The commission received title to assets, including all of the land, the superconducting magnet development/cryogenics complex, linear accelerator facilities and associated equipment. The commission also has the option of purchasing many of the SSC's computing systems at one-quarter the original cost.

The NRLC is maintaining the state-owned facilities at the SSC site and planned to begin disposing of assets in September 1995. The federal government is already disposing of its assets at the site.

Digest

Proposition 7 would reduce from $500 million to $250 million the amount of general obligation bonds authorized in Art. 3, sec. 49-g(a), of the Texas Constitution to establish a fund to finance undertakings related to the superconducting super collider research facility.

The ballot proposal reads: "The constitutional amendment reducing the amount of general obligation bonds authorized for undertakings related to the superconducting super collider research facility from $500 million to $250 million."

Supporters say

Proposition 7 would revoke the state's authority to issue $250 million in general obligation bonds for the now defunct SSC project. Half the $500-million general obligation bond debt authorized by voters in 1987 has been incurred, but the other half will never be, since the SSC project is defunct. The authorization should be eliminated from the Constitution. Half the $500-million revenue bond issue authorized by the Legislature in statute is likewise unneeded, but no voter approval is necessary for this authorization to be removed from the books. The law implementing Proposition 7, HB 1320 by Romo, reduces by half the statutory authorization for the revenue bonds and will do the same for the general obligation bonds if Proposition 7 is approved.

The state comptroller has reported that the state has about $7 billion in authorized but unissued bonds and has recommended that certain authorizations, including unused bonds for the SSC project, be revoked in order to lower the state's potential debt. According to the comptroller's 1994 Texas Performance Review report *Gaining Ground,* reducing the amount of debt authorized in the Constitution would send a favorable signal to financial analysts and could eventually lead to an upgrade in the state's bond rating, which would lower future state borrowing costs and save the state millions of dollars. Bond rating agencies periodically reevaluate a state's debt to determine bond ratings, and authorized but unissued debt may be a factor in determining the rating. A better rating could lower debt service payments.

Opponents say

No apparent opposition.

Notes

HB 1320 by Romo, the implementing legislation for Proposition 7, would amend the Government Code to reduce the authorization for sale of bonds for the SSC from $500 million to $250 million in general obligation bonds and from $500 million to $250 million in revenue bonds. The general obligation bond reduction would take effect only if voters approved Proposition 7. Other parts of the bill took effect September 1, 1995.

HB 1320 also repealed VACS art. 601d-2, which had authorized up to $67.5 million in revenue bonds for Capitol renovation project administered by the State Preservation Board. The bonds were never issued.

HB 1320 also requires the Bond Review Board to review authorized but unissued state general obligation and revenue bonds and report to the Legislature by October 31 of each even-numbered year about whether any such bond authorizations should be revoked.

Proposition 8 (HJR 80 by Black/Sims)
Abolishing constable office in three counites

Background

Each Texas county is directed by the state Constitution to elect from one to eight constables. Art. 5, sec. 18, requires counties of 30,000 or more residents to have from four to eight precincts, and to elect a constable and justice of the peace for each, and counties of 18,000 to 29,999 to have two to five justice and constable precincts. Counties of fewer than 18,000 residents, which include over half the 254 Texas counties, have a single constable and JP precinct, but commissioners courts in those counties are allowed to divide such counties into as many as four such precincts if needed. Texas law allows counties to name deputy constables and reserve deputy constables.

County commissioners courts set constable salaries. Texas courts have held that counties are required to pay constables a "reasonable" salary. In 1992 the Texas Supreme Court ruled, in *Ector County v. Stringer*, 843 S.W.2d 477 (Tex. 1992), that a district court may determine whether salaries set by a commissioners court are arbitrary or an abuse of discretion, but may not set the salaries.

The duties of constables listed in the Local Government Code relate primarily to attending justice of the peace courts and serving court papers. Local Government Code Chapter 86 requires the constable of a precinct to attend each justice court held in the precinct and to execute civil and criminal process. The code also authorizes constables to serve court-related papers throughout their home county and in any other location as provided by law.

Government Code sec. 415.053 requires that constables be licensed as peace officers by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) within two years of taking office.

Counties vary widely in how they utilize constables. A recent informal survey by the Justices of the Peace and Constables Association of Texas showed that 25 of Texas' 254 counties did not have a constable. Some urban counties, however, report having numerous constables actively employed in court and law enforcement affairs.

Digest

Proposition 8 would amend Texas Constitution Art. 5, sec. 18, to abolish the office of constable in Mills, Reagan and Roberts counties, effective January 1, 1996. The functions of the constable's office in Reagan and Roberts counties and the powers, duties and records of the constable's office in Mills County would be transferred to the county sheriffs of those counties. The office of constable in Reagan and Roberts County would be abolished only if a majority of the voters in the affected county, as well as voters statewide, approve the amendment. The office of constable in Mills County would be abolished if the amendment is approved by voters statewide, regardless of the outcome in Mills County.

The ballot proposal reads: "The constitutional amendment providing for the abolition of the office of constable in Mills, Reagan and Roberts counties."

Supporters say

Proposition 8 would allow three rural counties with small populations to be spared the trouble and expense of filling and paying for an unnecessary office whose duties can easily be handled by the county sheriff. According to the 1990 census, Roberts County (county seat Miami) in the Panhandle has 1,025 residents, Mills County in Central Texas (Goldthwaite) has 4,531 and Reagan County (Big Lake) in West Texas has 4,514. In times of fiscal austerity these three counties cannot afford to maintain the office of constable to perform duties that the sheriff could do.

The constitutional requirement for election of a constable makes counties vulnerable to candidates who decide to run for the office despite the wish of citizens that the office be left vacant. Unscrupulous candidates may exploit the electoral process just to obtain a salary and benefits or other prerogatives of office. Counties are exposed to various kinds of liability for

the actions of an official they may not even want. Once a constable is in office, the only means of removal are through court action, if the constable fails to perform the required duties properly, or by running someone else for the office, which would not leave it vacant.

Abolition of any county office is an important step that should be justified to and reviewed by the Legislature and state voters on a case-by-case basis. Proposition 8 would affect only three counties where the Legislature has determined that abolition of the constable's office is clearly justified. In the unlikely event that any of the three counties decides later that a constable is needed, the abolition proposal could be reversed by the Legislature and the state's voters. If any county was allowed to abolish an office by local option election, abolition could be used as political retribution against controversial officials.

In all three cases the county should be relieved of the constitutional necessity of electing a constable. The counties and their taxpayers and citizens would be far better off if the sheriff simply assumed the constable's role. In Mills County the" commissioners court has by resolution supported abolition of the constable's office, so the amendment need not be contingent on approval by local voters, although such approval most likely will be granted. In Mills County the constable's office was vacant for many years and the sheriff handled the constable's duties, but a constable won office and sued the county in district court for a higher salary and an office expense budget. The county countersued to remove the constable from office, alleging that he failed to become certified as a peace officer within two years of taking office. Proposition 8 would eliminate such controversies.

In Reagan County the sheriff's office had handled the constable's duties well. County residents would prefer not to spend money on an office they consider nonessential. The same is true in Roberts County, where the commissioner's court alleged that the constable neglected his duties and abandoned his office. The county had to obtain a court judgment determining that the constable had vacated the office. If the office is "not abolished, someone else could file for it and be elected.

Opponents say

State voters are being asked to become involved in completely local disputes at some peril to sound government policy. The framers of the Constitution decreed that each county should have more than one elected law enforcement official - an elected sheriff and one or more elected constables. These officials complement each other's work, provide sensible checks and balances and augment the work of police officers hired to serve cities. Letting voters choose two different law enforcement offices provides a good system of counterbalances and helps assure citizen control. The constable can serve papers on the sheriff should this be necessary.

Elected officials are more responsive to the people and can be held accountable for their actions. The various elected offices required by the Constitution disperse power in order to avoid development of local fiefdoms.

An unfortunate trend has developed toward attempts to amend the Constitution to abolish various county elected offices. In 1993, for instance, voters approved amendments abolishing the office of county surveyor in particular counties and also authorizing counties to abolish the office by local vote. The office of county treasurer has been abolished in some counties. As voters lose the power to choose governmental officers, power is consolidated in the hands of the remaining officials or in the hands of appointed civil servants. While in some states a single commissioner may rule a county, Texans have always preferred a broader-based government structure. The desire to eliminate elected offices often stems not just from misguided attempts at thrift and efficiency, but also from an inability to settle local political disputes arising from personality conflicts and turf battles.

Sparsely populated counties may not feel the need to have a constable but may want one as their population grows. It would be very difficult to recreate the office once it is abolished. Voters in some counties merely leave an office unfilled if they feel no immediate need for the services of that officer. If they find themselves saddled with an incompetent person in an office, removal procedures provided by law can be employed.

The controversies involving the constable position in some cases involve personal and political squabbles that should be settled at the local level without requiring voters statewide to decide whether to abolish the office. If problems with a local constable reach the point that the constable should be removed, the county may seek to have the office vacated, as Roberts County successfully did. Allowing a judge to review independently whether the constable's office should be vacated is a more appropriate response than abolishing the office.

The voters of Mills County should be given the same voice in deciding whether they want to abolish the office of constable as the voters in Reagan and Roberts counties. For Reagan and Roberts counties, the constable office will be abolished only if Proposition 8 is approved both statewide *and* in the respective counties, while in Mills County only voters statewide will decide the issue.

Other opponents say

Voters statewide have no idea about local issues in counties where they do not reside and should not have the final say about the termination of an office in an individual county. The Constitution should be amended to allow all counties the discretion to decide by local option whether or not they need county constables. This local option is already allowed for county surveyors and should be permitted for other local offices that are frequently left vacant.

Local amendments cluttering the statewide ballot create confusion and voter apathy. Proposition 8 will only lead to more requests for special exceptions in other counties.

Notes

As originally introduced HJR 80 concerned only Mills County. The House added Reagan and Roberts counties to the proposal.

Proposition 9 (SJR 7 by Ellis/Giddings)

No screening of *South-Africa linked investments*

Background

The Texas Growth Fund is a stock-oriented state investment fund aimed at assisting firms that promote economic growth in Texas. The trust fund invests funds of the state's Permanent University Fund, Permanent School Fund, Teacher Retirement System, Employee Retirement System and other state pension systems. The fund was created in 1988 in Texas Constitution 16, sec. 70.

The $52-million growth fund is governed by a nine-member board. Trustees are required to use the prudent-person standard of care in selecting investments and to invest at least half the fund in stocks and bonds involving the construction, expansion or modernization of business facilities in Texas. The fund may only invest in businesses that submit an affidavit disclosing their direct financial investment in or with South Africa or Namibia, a requirement imposed by the constitutional provision creating the fund.

The fund is constitutionally prohibited from making new investments after 1998, but the Legislature is authorized to create a new growth fund in 1997, by a two-thirds vote of both houses, for up to 10 years.

Digest

Proposition 9 would amend the Texas Constitution by repealing Art. 16, sec. 70(r), which prohibits the Texas Growth Fund from investing in a business that does not disclose whether it has any direct financial investments in or with South Africa or Namibia.

The ballot proposal reads: "The constitutional amendment allowing investment of money from the Texas growth fund in a business without the business's disclosure of its investments in or with South Africa or Namibia."

Supporters say

The requirement that companies disclose whether they have direct investments in South Africa or Namibia in order to qualify for Texas Growth Fund investments is no longer necessary or useful. South Africa's white minority government has been replaced by the democratically elected government of President Nelson Mandela, and Namibia is an independent nation no longer under South African control. The need to screen businesses for ties to a discriminatory regime has vanished.

Disclosure of ties to South Africa or Namibia was intended to permit the fund board to select among otherwise equal investments to address concerns relating to supporting the apartheid system of racial separation in South Africa. These concerns have become irrelevant with the dismantling of apartheid and majority rule in South Africa and Namibia, and the additional disclosure is now only an unnecessary administrative burden on the companies in which the growth fund invests.

Opponents say

No apparent opposition.

Notes

SB 59 by Ellis, enacted by. the 74th Legislature and effective August 28, 1995, generally repeals restrictions on investing state funds in businesses involved with supporting the South African apartheid regime.

Proposition 10 (SJR 1 by Ellis/Siebert and Stiles)

Abolishing state treasurer office

Background

The state treasurer holds one of seven constitutionally created executive-branch offices. The Texas Constitution, in Art. 4, creates an executive branch of six elected officers (governor, lieutenant governor, land commissioner, treasurer, comptroller and attorney general) and one gubernatorial appointee (secretary of state) with terms set at four years.

The treasurer is charged with receiving, protecting, managing and investing all money deposited in state funds and accounts. The treasurer administers the Treasury Department, which reviews and pays all state warrants, administers the state's unclaimed property laws, manages the securities deposited in trust and purchased for the state's investment funds and invests local government monies in TexPool, a local government investment pooL The treasury administers cigarette and tobacco taxes, but recently transferred auditing and enforcement of those taxes to the state comptroller.

For fiscal 1996 the treasury has the equivalent of 220.5 full-time employees and an operating budget of $10.5 million. In 1994 the treasury earned $346 million in interest for the state on investments.

The treasury has six divisions:

O Cash and Securities Management forecasts statewide expenditures and revenue 'collection for investment purposes and appraises how much cash the state will need and when sale of cash management notes is necessary. The treasury's rapid deposit program works with state agencies to implement cash management programs so money can be moved in and out of depository banks efficiently. TEXNET, a rapid deposit program, is used to reduce the time it takes for large payments to begin earning interest.

O Investments is responsible for interest earnings on state revenue. The division manages two major portfolios: The Treasury portfolio consists of all treasury funds, while TexPool is made up of funds invested on behalf of local political subdivisions such as school districts, counties and cities. The average daily balance of the Treasury Portfolio ranges from

$6 billion to $9 billion. TexPool includes funds of 1,380 local governments; TexPool assets on July 31, 1995, totaled $3.37 billion.

O Texas Treasury Safekeeping Trust Company has a direct account with the Federal Reserve System that can provide almost all the major services of a private financial institution to state agencies authorized to keep money outside the treasury and for local political subdivision investment pools.

O Unclaimed Property administers the program in which unclaimed or abandoned money must be turned over to the treasury after three to five years. Unclaimed property can include dormant bank accounts and safe deposit boxes, uncashed checks, utility deposits and securities and related cash held by private entities. The treasury attempts to locate missing owners, widely advertising the names of the owners of the property in Texas newspapers.

O Tobacco Tax sells cigarette tax stamps required on each package of cigarettes sold in Texas. Permit holders submit cigarette stamp orders, and credit is extended to those who pledge collateral to the treasury or who participate in the cigarette tax recovery trust fund. The fund is used to protect the state if a tobacco vender defaults on a credit extension for cigarette stamps. In 1994 the treasurer and the comptroller by interagency contract agreed that the comptroller would collect tobacco taxes and perform the permitting, auditing and enforcement functions of cigarette and tobacco tax operations.

O Item Processing processes checks and letters of credit and manages payment of state warrants. The division processes all deposits received from and on behalf of state agencies.

Digest

Proposition 10 would amend the Constitution to abolish the office of state treasurer and transfer specific constitutional powers and duties of the office to the state comptroller on September 1, 1996. The statutory powers, duties, property and other obligations of the state treasurer would be transferred to officers and agencies of state government in accordance with general law.

The ballot proposal reads: "The constitutional amendment abolishing the office of state treasurer."

Supporters say

Proposition 10 simply recognizes that the office of the state treasurer has become superfluous and its functions should be merged with the Comptroller's Office as a cost-saving measure. When created in the previous century, the treasury operated as the state's bank, but since many state banking functions are now automated, the agency's reason for being has been greatly diminished. Residual functions of the office could be transferred to the Office of the Comptroller of Public Accounts, which is 10 times the size of the Treasury and well-equipped for additional financial duties. The state would enjoy substantial savings, at no loss of safety or efficiency.

Recent projections by the treasurer and the comptroller estimate that abolishing the Treasurer's Office would save the state $22 million over five years. Treasury functions would be performed by the much larger Comptroller's Office, at reduced cost and increased efficiency. Treasurer Martha Whitehead favors abolishing the office and estimates that abolition could save the state $3 out of every $4 currently spent on treasury operations. Auditors studying ways to streamline state government have twice suggested that the treasury be consolidated into the Comptroller's Office, freeing money for pressing state needs. Consolidation would streamline and downsize state government. State Comptroller John Sharp in 1993 said his agency could perform the functions of the treasury with fewer than 30 employees.

Adequate safeguards for state funds would remain if the Treasurer's Office was abolished. While corporations and banks usually separate the divisions that manage their assets from those who write the checks, they keep both divisions under one roof. As long as all divisions are carefully monitored and audited, a system of checks and balances remains. Oversight of the comptroller is provided by the state auditor, who in turn is accountable to the Legislative Audit Committee. That committee includes the lieutenant governor, the speaker of the House, and the chairs of the Senate Finance and State Affairs committees and the House Appropriations and Ways and Means committees - all elected officials.

The comptroller already employs stringent fiscal controls to ensure strict oversight over the receipt and disbursement of state funds, and none of these depend on the treasury. Investment and cash management

operations could easily function as divisions in another agency without the tax dollars required to fund an entire state agency.

The treasury's cash-flow forecasting division could be absorbed into the comptroller's revenue estimating division. Functions of the treasury's cash management program and the item processing division could all be easily integrated into the comptroller's operation. Personnel requirements would be diminished because supervisory, communications and administrative positions, computer services, internal accounting and payroll functions could all be consolidated. This would also eliminate redundant accounting databases and duplicative administrative and technical functions. Services to taxpayers would be improved since similar functions would be handled by only one agency, and support staff for the treasurer would be eliminated.

Some functions of the treasury might be performed under private contract, after competitive bids, which could save taxpayer dollars, improve service, reduce cost and generate more revenue. The comptroller's 1994 Texas Performance Review report *Gaining Ground* suggested, for example, that the receipt, inventory appraisal, storage and liquidation of items from safe deposit boxes could be done by companies that specialize in identification and recovery of unclaimed property.

Treasurer Martha Whitehead based her 1992 election campaign on a promise to abolish the office of state treasurer. Her election can be seen as a ratification by the voters of Texas of her proposal to abolish the office.

In abolishing the Treasurer's Office the state would merely be following the sensible example set by various counties that have successfully sought approval of constitutional amendments abolishing their elected county treasurer's office. However, Proposition 10 would not affect county treasurers in any way; separate constitutional amendments are still required to abolish any county treasurer's office.

Other states operate efficiently without a separate treasury. Montana has abolished its treasury, and New York, Florida, Alaska and Hawaii do not have a separate treasury agency, but place the treasurer within another department or agency, such as the state comptroller's office. Minnesota and Nevada are considering whether to abolish their treasurer's office. In 1994 Texas moved in this direction through an agreement allowing the comptroller, rather than the treasurer, to collect the taxes levied on cigarettes and other tobacco products.

The issue of a state income tax is in no way linked to whether the state has a treasury department except that by saving the state money abolition would make imposition of an income tax even more unlikely than it already is. Nor is there much merit in the argument that the treasurer's office offers a useful steppingstone to higher political office. If an office is viewed primarily as a bridge to higher office, the people of Texas will not be well served by those elected.

Opponents say

Electing the state treasurer as a separate, independent official provides the system of checks and balances for state finances envisioned by the drafters of the Texas Constitution. The state should have an independent agency to manage and invest state funds. Financial institutions and corporations have long understood that it is important to keep the person who collects and certifies money (the comptroller) separate from the person who manages the investments (the treasurer). Almost all counties in Texas, for example, separate the offices of treasurer and tax assessor-collector. All banks separate those who handle the cash from those who write the checks and keep the books. By keeping a careful, independent eye on state expenditures, the treasurer can help prevent excessive or unconstitutional state spending that, if left unchecked, could eventually lead to imposition of a state income tax.

Combining the functions of the Comptroller's Office and the treasury would concentrate too much power over financial management in one office run by a single official. The large sums invested by the treasury merit separate oversight and a degree of independence from other agencies. No other state except Montana has abolished the office of state treasurer. Texas should be extra vigilant to see that public funds are handled with integrity and propriety. The treasurer and the comptroller complement each other, ensuring that errors and malfeasance are avoided.

None of the major functions of the treasury (cash management, item processing, management of state investments) can be eliminated by a merger, and these services are not currently performed by the comptroller. The primary function of the treasury is very different from that of the comptroller. Being an expert tax collector does not make one an expert portfolio manager or investor.

Although election of an unqualified official may be unlikely, if either the treasurer or comptroller proved incompetent, the other officer could take up the slack. The state auditor would not provide an adequate check on a consolidated comptroller-treasurer agency. The auditor is supposed to determine periodically if daily checks and balances are functioning, not to provide them.

Promises of big savings from abolishing the treasury may prove illusory. Abolition might require additional state spending on the transfer of functions to another office, training new employees and dealing with unforeseen problems of transition. Even if the transfer did save the state a few million dollars a year, the loss of financial safeguards that protect the billions of dollars of state transaction handled by the treasury could prove costly in the long run.

Consolidating agencies into large "super-agencies" often results in bloated bureaucracies that are less responsive to the public and wind up being costly. Consolidation might mean merely that the already giant Comptroller's Office, with 2,765.5 employee positions and a $147.9 million budget in fiscal 1996, would swell further, perhaps losing some responsiveness.

Misguided efforts to "downsize" government have resulted in an unfortunate trend towards abolition of constitutionally created offices. Voters are worse off when they lose power to elect an official who is accountable to them. Abolition of the office of state treasurer could pressure more counties to seek to abolish the elected county treasurer position. Voters should not be denied the opportunity to directly elect the officials who safeguard their funds.

The office of treasurer, formerly held by both U.S. Sen. Kay Bailey Hutchison and former Gov. Ann Richards, has served as a steppingstone to higher political office for women in recent years. The Center for American Women reported recently that the state treasurer position was one of the statewide elected offices most often held by women. Abolishing the office of state treasurer could limit political opportunities for women in Texas.

Other opponents say

A more thorough review of the treasury's statutory and constitutional authority is needed before a transfer of functions is considered. An unbiased review may show that a better solution would be to strengthen the Treasurer's Office as a watchdog over state financial investments and state fiscal conduct, allowing the office to exert more influence on state financial policies. It might make more sense to merge the investment functions of the treasury with the Employees Retirement System or a similar agency with expertise in portfolio management.

Notes

SB 20 by Ellis, the implementing legislation for Proposition 10, would take effect September 1, 1996, if Proposition 10 is approved. The comptroller, with the agreement of the treasurer, could transfer records, employees or property before September 1, 1996, in preparation for the final transfer, if Proposition 10 is approved. Rules, policies, procedures and decisions of the treasurer would continue until superseded by an action of the comptroller. The law would allow the comptroller to contract with a private entity to perform a transferred activity as long as the activity was not solely a sovereign function of the state.

In general, when both the comptroller and the state treasurer are ex officio members of a particular body, or both have powers to make appointments to a body, the transfer would not allow the comptroller to exercise appointment powers for two offices or have more than one vote or position.

Proposition 11 (HJR 72 by Alexander/Montford)
Tax exemption for wildlife-management land

Background

Taxation must be equal and uniform and all real or tangible personal property in the state be taxed in proportion to its value unless the Constitution requires or permits otherwise, according to Texas Constitution Art. 8, sec. 1.

Open-space land used for farming, ranching or timber production is taxed on the basis of its productive capacity, which is often much lower than market value. Texas Constitution Art. 8, sec. I-d-l, added in 1978, requires the Legislature to provide for the productive-value appraisal of open-space land to promote its preservation as open land. Qualifying land must have been used primarily for agricultural or timber production for five of the seven previous years, according to the Tax Code.

Agricultural land is land used for producing crops and livestock, exotic animals used for food, fiber or other commercial products, floriculture, viticulture, horticulture, cover crops and log and post production, land left idle for crop rotation and land used for wildlife management, according to the Tax Code.

In 1991 the Legislature amended the Tax Code to add wildlife-management land to the definition of agricultural use. Wildlife management applies only to land that was appraised as qualified open-space land on January I, 1992, or was eligible for such appraisal at that time. Wildlife-management land includes land used to propagate a sustaining breeding population of indigenous' wild animals to produce a harvestable surplus of those animals for human use, including food, medicine or recreation, in at least two of the following ways: habitat control, erosion control, predator control, providing supplemental supplies of water, providing supplemental supplies of food, providing shelters and making a census count to determine population.

Digest

Proposition 11 would amend Texas Constitution Art. 8, sec. I-d-l, to require the Legislature to allow the taxation of land devoted to wildlife management based on its productive capacity. A temporary provision would retroactively validate the Tax Code provisions granting the open-space agricultural use exemption to wildlife management areas. The temporary provision would expire January 1, 1998, and would not authorize a landowner to claim tax refunds unless a tax payment was properly challenged before the effective of the amendment.

The ballot proposal reads: "The constitutional amendment to allow open-space land use for wildlife management to qualify for tax appraisal in the same manner as open-space agricultural land, subject to eligibility limitations provided by the legislature."

Supporters say

Proposition 11 would provide clear constitutional authority for a state law to promote use of open-space land for wildlife management purposes by taxing the land based on its productive capacity rather than its market value. Allowing a lower tax valuation for land used for wildlife management would provide an economic incentive to encourage landowners to provide a habitat for Texas' indigenous wildlife without reducing local tax revenue. Providers of habitat to preserve the state's 2,500 fish and wildlife species should get the same tax break as owners of agricultural land used for livestock.

Constitutionally authorizing a wildlife management valuation will clear up questions about the constitutionality of the 1991 Tax Code amendment intended to allow wildlife-management land to have an open-space agricultural use valuation (HB 1298 by Berlanga, nnd Legislature). Since any special tax valuation of land must be specifically authorized by the Constitution, some have questioned whether adding wildlife management to the statutory definition of agricultural use was sufficient to allow open-space land used for that purpose to be valued based on its productive capacity. Because of concerns that a

separate, specific constitutional exemption is needed to allow wildlife-management land to be valued differently, most county appraisers have been hesitant to implement the 1991 wildlife-management appraisal provision. Proposition 11 should remove any doubt.

Unlike other states with vasttracts of govemment-owned land, nearly 97 percent of the land in Texas is privately owned. Allowing a lower valuation for open-space land used for wildlife management would give landowners an incentive to maintain their land in a natural state. Without a tax break marginal agricultural producers could be forced to develop land unnecessarily if faced with losing their agricultural-use appraisal and paying a penalty that equals five years of taxes on the difference between the ag-use appraisal and the market valuation.

Local.taxing units would not lose revenue because of the amendment. The wildlife-management tax classification in the law applies only to land that *already* has an open-space valuation and has been eligible for this valuation for five of seven years. The only effect of the amendment would be to authorize a change to a wildlife-management designation for parcels now classified as farming or ranching land, which will cost taxing units nothing.

Legislation that would implement Proposition 11 requires the state comptroller, in conjunction with the Texas Parks and Wildlife Department and the Texas Agricultural Extension Service, to prepare guidelines for appraisers to use to determine the productivity value of wildlife-management land, assuring a sensible, uniform statewide application of the law. These guidelines will allow appraisers to determine if a landowner has been actively managing for wildlife in at least three of seven ways. The guidelines will assure that only those landowners who engage in sanctioned wildlife management practices can legitimately retain their agricultural property tax valuation.

The amendment would help keep wildlife habitat or natural areas intact, which would ultimately provide more nature-oriented and recreational activities and would promote and stimulate the economically vital hunting and fishing industry. The amendment would give rural landowners an incentive to actively manage wildlife and lease their land for hunting or nature tourism. Land used for hunting, bird-watching and other recreational uses should qualify as agricultural land._ Maintaining the lower agricultural-use valuation would encourage private land owners to develop habitats for species of wildlife that are incompatible with livestock, and other native species, such as the white-tailed deer, quail, dove, coyotes and cave spiders.

Proposition 11 has widespread support from environmental, agricultural and property rights groups. Proposition 11 and its implementing legislation would satisfy both those who advocate property owner control of land use and those who advocate policies promoting environmental protection. It would give private landowners who actively manage the land a tax break similar to that given to well-endowed nonprofit land trusts like the Nature Conservancy.

The amendment would help landowners fend off restrictive federal regulations stemming the Endangered Species Act and wetlands provisions. By designating land for wildlife-management use, landowners would have a response to U.S. Fish and Wildlife Service criticism of conversion of wildlife habitat to cropland or grazing.

The implementing legislation would extend the wildlife-management valuation to landowners who manage their land for non-game animals, including endangered species, if the landowners take certain actions such as providing habitat, providing shelters or making census counts of populations. The 1991 legislation did not make land used for non-game animals eligible for the lower appraisal.

Opponents say

Broadening the open-space agricultural use tax break to include land used for wildlife management would result in less tax revenue for many local taxing authorities, including school districts whose revenue is already stretched thin. Other taxpayers should not have to subsidize a few rural landowners when their land is no longer being used for agricultural purposes.

Keeping valuable rural and suburban land at a low tax valuation is unwise. Land that is about to become ineligible for agricultural use valuation could too easily get a wildlife-management valuation, thus denying counties and school districts the five-year tax penalty that accrues when the land starts being appraised on the basis of market value.

Property owners will have an incentive to use the wildlife-management exemption, since it technically requires little more of them than putting out some feed and water for deer. If many agricultural producers take this easy route, farm production may drop. Land taxed on the basis of agricultural productivity would likely generate more local revenue than land taxed on the basis of the productivity of managing wildlife, so local taxing units stand to lose revenue or shift the tax burden to other taxpayers.

Implementation of statewide wildlife-management appraisal guidelines is likely to vary from district to district, and enforcement of requirements on landowners to achieve and maintain the wildlife-management status is not clearly assigned.

Other opponents say

The wildlife management tax break is just an extension of the unfair agricultural-productivity tax break. Rising property values benefit the property owner, urban or rural, when the property is sold. Taxes should rise in tandem with rising property values regardless of how the land is used. The open-space tax exemption is abused by wealthy land owners, corporations, developers and foreign investors, and the wildlife-management exemption would create more opportunities for abuse.

Notes

HB 1358 by Alexander amends Tax Code sec. 23.15, which allows land used for wildlife management also to be appraised as agricultural land. The bill eliminates the requirement that to qualify for the wildlife-management designation the land must be appraised as qualified open-space land, or eligible for such an appraisal, on January 1, 1992. The bill defines wildlife management as *actively* using land that at the time the wildlife-management use began was appraised as qualified open-space land. It eliminates the requirement that a harvestable surplus of indigenous animals be produced and requires that the land be used in at least three (instead of two) of seven specified ways to propagate a sustaining breeding, migrating, or wintering population of indigenous wild animals for human use, including food, medicine or recreation. The seven categories are habitat control, erosion control, predator control, providing supplemental supplies of water, providing supplemental supplies of food, providing shelters and making census' counts to determine population. HB 1358 takes effect January 1, 1996, and is not contingent on approval of Proposition 11.

Proposition 12 (HJR 31 by Hartnett/Brown)
Tax exemption for low-yield property

Background

Taxation must be equal and uniform and all real and tangible personal property in the state must be taxed in proportion to its value unless the Constitution requires or permits an exemption, according to Texas Constitution Art. 8, sec. 1.

Digest

Proposition 12 would amend Texas Constitution Art. 8, sec. 1, to allow the Legislature to exempt from property taxes income-producing personal property and mineral interests with a taxable value that is insufficient to cover the costs of administering the tax on the property or interest.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to exempt from 'ad valorem taxation personal property and mineral interests having a value insufficient to recover the administrative costs of collecting the taxes,"

supporters say

Proposition 12 would eliminate the need for local taxing districts to spend more to collect taxes on low-yield personal property and mineral interests than the property produces in tax revenue, allowing them to avoid a net loss. Taxing units as well as taxpayers would benefit from a change in the law that would exempt such property from taxes. Low-value income-producing personal property may include such items as' inventories, consigned goods at craft antique malls,

goods held at resale shops, business documents stored in mini-warehouses, business furnishings like computers, equipment and furniture and samples held by manufacturers. Low-yield mineral interests may include tiny shares of a royalty interest in a producing gas or oil well.

HB 366 by Hartnett, the law that would implement Proposition 12, would remove income-producing personal property and mineral interests with a total taxable value of less than $500 from the tax appraisal rolls. In each taxing unit the taxable value of all of a taxpayer's income-producing personal property or mineral interests would be totaled to determine if the aggregate value exceeded $500, a reasonable cutoff amount for identifying when tax-administration costs exceed the revenue received. Allowing the Legislature the flexibility to set statutory guidelines for granting the exemption would avoid having to amend the Constitution each time that inflation or changes in tax collecting procedures require an adjustment.

The proposed tax exemption would be convenient for both taxpayers and local taxing authorities and in almost all cases taxing units would have a net gain. The state comptroller says the average property tax rate is around $2.50 per $100 of value. A property valued at $500 would yield $12.50 in taxes at a rate of $2.50 per $100. But in 1994 the average cost to appraise a property was $13.10 - more than the property would yield in taxes - even before counting the cost of postage and personnel to send a notice of valuation, a bill and a receipt.

Taxing entities usually suffer a net loss when they administer taxes on properties valued at less than $500, which represents a small fraction of the total tax values in the state. For example, the Dallas Central Appraisal District carries 4,097 accounts valued at less than $500, which collectively total about $1.2 million. Taxes collected on the accounts total only about $31,000 a year while about $69,500 is spent to appraise the property plus an additional amount for billing and collection. The Tarrant County appraisal district reports a similar problem with taxing low-yield properties.

A few counties with an extraordinarily large number of mineral leases might experience minor revenue losses from the exemption, but far more Texas counties would benefit. Making the exemption automatically effective statewide, as the implementing law would do, would be more administratively convenient and simpler than allowing each county to choose individually whether to adopt the exemption or making taxpayers apply for the exemption.

Opponents say

Proposition 12 is likely to cause a revenue loss for those counties with numerous mineral interest accounts that can be quickly and cheaply appraised. Because the administrative costs of appraising even small mineral interest accounts are relatively small in these counties, they still have a net revenue gain from taxing these accounts that will be lost if Proposition 12 is approved. To make up the lost revenue they may have to either shift part of the tax burden to other taxpayers or cut back spending.

The appraisal district for Upton County, for example, spends only $3.33 to appraise the average parcel, one of the lowest appraisal costs in the state. The county has about 61,700 accounts, mostly mineral interest accounts, 46,000 of which are valued at less than $500. The administrative cost of appraising the small-value mineral interests is not subtracted from revenue because, according to the appraiser, the county must still pay for the appraisal of all mineral holdings to obtain the total amount of value for a specific mineral lease, in order to determine the value of each mineral interest holder. Even when the cost of billing accounts of $500 or less is included, the Upton County appraisal district office believes that the county still makes a net revenue gain on mineral interests with a taxable value of less than $500.

The Upton County appraisal district says the proposed exemption would cost the Rankin Independent School District, with a tax rate of about $1.43 per $100 on $3.2 million in property, up to $46,000 in lost revenue a year. Reduction of school district taxable wealth would also affect state school funding formulas, which are based in part on local tax valuations.

Notes

The implementing legislation, HB 366 by Hartnett, will take effect January I, 1996, if Proposition 12 is approved. Persons with aggregate income-producing personal property or aggregate mineral interests a taxable value of less than $500 in a taxing unit would be exempt from paying taxes on the property.

Proposition 13 (HJR 35 by Uher/Patterson)
Tax exemption for fishing

Background

Texas Constitution Art. 8, sec. 1 requires that all taxation be equal and uniform and that all real and tangible personal property in proportion to its value unless exempted by the Constitution.

Digest

Proposition 13 would authorize the Legislature to allow the governing body of a political subdivision to exempt from property (ad valorem) taxation boats other equipment used in the commercial taking or production of fish, shrimp, shellfish and other marine life.

The ballot language reads: "The constitutional amendment authorizing the governing of a political subdivision to exempt from ad valorem taxation boats and other equipment used primarily in the commercial taking or production of fish, shrimp, shellfish, and other marine life."

Supporters say

Proposition 13 would authorize the Legislature to allow local governments to grant a property tax exemption for the boats and other equipment used by those who harvest or commercially produce aquatic food such as fish, shrimp and shellfish. They deserve the same type of property tax break that the, state allows for certain other income-producing property, such as the equipment and machinery ("implements of husbandry") used for production of farm or ranch' products. But Proposition 13 is narrower in scope and would only permit a tax exemption to be granted on a local option basis, allowing each local taxing unit to decide whether it can afford the tax break.

Proposition 13 tax exemption would affect mostly small family-owned commercial fishing operations. Under the terms of its implementing. legislation, HB 399 by Uher, Proposition 13 would only apply to boats less than 100 feet long and the nets and other equipment used on the boat to take marine for human consumption. This narrowly targeted local exemption option is directed at those who most need a break.

Fishing and shrimping are inconsistent, unpredictable businesses, and the property taxes imposed on boats and related equipment can especially hamper family businesses. It does local economies no good if local property taxes push these productive businesses the edge, resulting in a loss of sales tax and other revenue. Local governments should have the flexibility to decide whether local circumstances justify granting a tax break to help preserve an important local industry. The impact of the exemption on most local taxing units is expected to be relatively small, and school districts and other local governments can judge for themselves whether wish to exclude this property from taxation.

The worth of a boat in any given year for tax valuation purposes may go or down based on whether the vessel has been freshly painted or its equipment has been updated, making owners wary of making improvements. Proposition 13 would allow local governments to give these business owners an incentive to keep their boats in top condition without having to be penalized for increasing the value of their most productive asset.

Shrimpers are now required to have turtle excluding devices (TEDs) on their nets that allow turtles and other marine life to escape. However, TEDs allow as much as a third of the catch to escape, so shrimpers have to work just as hard to earn two-thirds of their previous income. Local taxing units should be allowed to give a tax break to shrimpers losing income in the name of conserving marine life in order to encourage compliance. Proposition 13 is much like Proposition **11,** also on this year's ballot, which would allow a tax break to promote wildlife management on land.

It is only fair to allow shrimp trawlers and other· fishing vessels to be exempt from property taxes, given that pleasure craft are tax exempt. Those who cruise the Gulf in large pleasure yachts pay no property taxes, while hardworking shrimpers are ,hit hard by property tax each year.

Texas law permits vessels and other watercraft used outside Texas to be taxed in proportion to the amount of time spent in Texas waters, but a 1986 court ruling *(Aransas County Appraisal Review Board v. Texas Gulf Shrimp Co.,* 707 S.W.2d 186) denied this tax break to shrimp trawlers. Proposition 13 would allow local governments to make up for this exclusion.

Opponents say

The state's numerous property tax exemptions undermine local government finance and require local taxing authorities to either reduce services or transfer the tax burden to some other group. Every special interest group would like an exemption from taxes for materials used in a trade or business, and each new exception makes it harder to say no the next time.

Shrimp trawlers and fishing boats are "tools of the trade," and are hardly different, from a taxation viewpoint, from the tools used in the practice of medicine or the trades of plumbing or automotive repair. Those who fish or raise fish for a living are no different than many other hard-working individuals who pay taxes on their income-producing property, and their boats and equipment should not be exempt from paying taxes absent some extraordinary justification.

Pleasure craft are personal property and should be exempt from property taxes, while shrimp trawlers and other commercial fishing boats are income producing businesses, which generally are required to pay taxes on their equipment.

Other opponents say

Although the implementing legislation for Proposition 13 applies only to boats less than 100 feet long and related equipment used to catch fish and other marine life for human consumption, the tax exemption that the Legislature could grant under Proposition 13 is much broader, potentially applying to any equipment used in commercial operations to produce fish and other marine life. Exempting small family fishing boats from property taxes might be justifiable, but it is much harder to justify allowing equipment used in lucrative commercial fish farming operations to be exempt. Also, most shrimping trawlers are between 60 and 80 feet long, so an exemption for boats up to 100 feet would give larger operators the same break being promoted as an aid to small businesses.

Notes

The implementing legislation, HB 399 by Uher, authorizes the governing body of a taxing unit to exempt from property taxes boats not exceeding 100 feet in length, and related equipment such as nets, used in the taking of fish, shrimp, shellfish and other marine life for resale as food for human consumption. The bill would take effect January I, 1996, if Proposition 13 is adopted.

Proposition 14 (HJR 68 by Haggerty/Rosson)
Tax exemption for disabled veterans

Background

Taxation must be equal and uniform and all real and tangible personal property in the state must. be taxed in proportion to its value unless the . Constitution requires or permits an exemption, according to Texas Constitution Art. 8, sec. I.

Art. 8, sec.. 2(b), adopted in 1972, authorizes the Legislature to exempt a portion of the appraised value of any property owned by disabled veterans and their surviving spouses and minor children from the property (ad valorem) taxes imposed by local taxing units such as school districts, cities and counties. The exemption is from the property value used for calculating the tax, not from the amount of the tax owed; the actual savings depends on the tax rate set by each local taxing unit.

Disabled veterans are allowed a property tax exemption on the basis of the extent of their service-connected disability. A disability rating of 10 percent to 30 percent qualifies a veteran for an exemption of up to $1,500; 31 percent to 50 percent, up to $2,000; 51 percent to 70 percent, up to $2,500. An exemption of up to $3,000 may be granted to a veteran with a disability rating of more than 70 percent, or one with a disability rating of more than 10 percent who is over 65 years old, or a veteran who is totally blind in one or. both eyes or who has lost the use of one or more limbs.

The spouse and children of a U.S. armed forces member who dies while on active duty are entitled to an exemption of up to $2,500; and a deceased disabled veteran's surviving spouse and children are entitled to an exemption equal to the amount the veteran was entitled to when the veteran died.

The Legislature, in Tax Code sec. 11.22, has granted the maximum exemptions authorized by Art. 8, sec. 2(b). Individuals who qualify for the exemption must designate the property to which the exemption applies; only one property may be used.

Digest

Proposition 14 would raise the property tax exemptions for disabled veterans or their surviving spouses and minor children in Texas Constitution Art. 8; sec. 2(b). A person would automatically qualify for the maximum constitutionally authorized exemption, instead of the lower exemption specified in Tax Code sec. 11.22, unless the Legislature provides otherwise by general law enacted after January 1, 1995.

The proposition would raise the exemption from $1,500 to $5,000 for veterans with disability ratings of 10 percent to 30 percent, from $2,000 to $7,500 for ratings of 31 percent to 50 percent and from $2,500 to $10,000 for ratings between 51 percent and 70 percent. The exemption would be raised from $3,000 to $12,000 for veterans with disability of more than 70 percent or those with disability ratings of at least 10 percent who are also over 65 years old, or veterans who are totally blind in one or both eyes or who have lost the use of one or more limbs.

The exemption for spouses and children of military personnel who die while on active duty would be raised from $2,500 to $5,000. A deceased disabled veteran's surviving spouse and children would still be entitled to an exemption equal to the amount the veteran was entitled to when the veteran died.

The ballot proposal reads: "The constitutional amendment relating to raising the limits of the exemption from ad valorem taxation of property owned by disabled veterans or by the surviving spouses or surviving minor children of disabled veterans."

Supporters say

Proposition 14 would simply increase the property value exemptions allowed disabled veterans and their surviving spouses and children to account for inflation since the provision was originally adopted in 1972. Disabled veterans have paid a high price to defend our country and deserve public benefits to recognize and reward their service. The ad valorem tax exemptions are special rewards for personal sacrifice, limited to veterans with disabilities, and do not apply to veterans generally.

Most disabled veterans live on limited, fixed incomes. A veteran with a 100 percent disability is unemployable and receives only about $1,800 a month from the federal government. A relatively small exemption from their property valuation in calculating ad valorem taxes is the least the state can do to help those who sacrificed so much for their country.

Almost all 50 states grant to disabled veterans and their surviving spouses some form of exemption from ad valorem taxation. The Texas property tax exemption of $1,500 for a disabled veteran may be one of the lowest in the nation. Increasing the amount of tax exemptions was recommended by the Special Committee on Veterans' Affairs, in its interim report published in November 1994.

The tax exemptions have not been increased since they were first approved in 1972, so inflation and increasing property values have eroded their worth. Tax assessors estimate that even if the exemptions were increased 10-fold, they still would not be as valuable to veterans as in 1972. Proposition 14 would increase the exemption amounts only two-to-four-fold, a reasonable amount that would not create an excessive tax-loss burden on local governments.

Increasing the tax exemption amounts would have a relatively minor overall impact on local tax revenue. The *assessed value* of a disabled veteran's property, not the veteran's final tax bill, would be reduced by the exemption amount. Disabled veterans would continue to pay local taxes, but the taxes would be calculated off of a smaller tax base. Also, the actual impact of the exemptions on a particular tax unit's tax revenues would depend on the number of disabled veteran.s in the area, the severity of their disability and the value of their property - in most areas the potential tax loss would be relatively small.

Automatic increases in the exemption amounts to offset rises in the cost of living, as some advocate, would not be prudent because property values are not always directly affected by inflation; many other factors determine whether property values rise or fall. The Legislature and the voters should review and decide whether tax exemptions should be increased rather than increasing them automatically. The exemption increase granted by Proposition 14 would be a reasonable adjustment that local governments could afford.

Opponents say

Proposition 14 would increase the size of disabled-veteran exemption amounts up to four-fold, resulting in a tax revenue loss to public schools and local governments that would have to be transferred to other taxpayers. The state comptroller's property tax division has estimated that local governments, including school districts, already lose approximately $6.7 million because of the exemptions at the current levels. Proposition 14 would cause a substantially greater revenue loss.

Although the loss resulting from the amendment could be relatively small compared to total statewide local tax revenues collected, some local taxing units could be hit harder than others, such as those with a disproportionately high number of military retirees or a low property tax base. Veterans already receive a wide range of benefits from the state and federal governments, and this additional tax loss should not be imposed on local taxing units without their consent.

opponents say

Proposition 14 would not go far enough to help disabled veterans. Veterans groups have recommended a IO-fold increase in the amount of the exemptions to offset inflation over the quarter century since the

exemption was first authorized. The state should raise the exemptions much higher to account for inflation since 1972 and authorize a method of automatic adjustments to offset future inflation and tax-rate increases.

Notes

A bill that would have amended the Tax Code to conform with the amounts proposed by Proposition 14, HB 177 by Willis!Raymond, died on the House Calendar on May 11, 1995, when the time allowed for voting on House bills expired. However, a Senate amendment to Proposition 14 would make the constitutional amendment self-implementing and specify that the amendment would supersede the exemption amounts specified in the Tax Code. The new exemption·amounts would apply starting with the tax beginning on or after Proposition 14 took effect, Le. the 1996 tax year.

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