CONDENSED ANALYSES OF PROPOSED CONSTITUTIONAL AMENDMENTS

September 13, 2003, Election

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of the
Texas Legislative Council
Austin, Texas

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July 2003

AMENDMENT NO. 1

The constitutional amendment authorizing the Veterans' Land Board to use assets in certain veterans' land and veterans' housing assistance funds to provide veterans homes for the aged or infirm and to make principal, interest, and bond enhancement payments on revenue bonds.

SUMMARY: The proposed amendment would allow the Veterans' Land Board to use excess receipts in the veterans' land fund, the veterans' housing assistance fund, and the veterans' housing assistance fund II to pay the debt service on any revenue bonds issued by the board. Specifically, the board could use those receipts to pay principal and interest and make bond enhancement payments with respect to revenue bonds issued under a veterans homes program or other veterans programs administered by the board, and not solely in connection with its land and housing assistance programs for veterans.

The amendment would also allow the Veterans' Land Board to use excess assets in the three funds to plan and design, operate, maintain, enlarge, or improve veterans homes. This new language would supplement the effect of an earlier constitutional amendment that granted the board similar authority with respect to veterans cemeteries.

ARGUMENTS FOR: Security for revenue bonds issued by the Veterans' Land Board would increase because the debt service on those bonds could be paid with money produced from multiple board programs. Less overall risk associated with the revenue bonds means that the board could obtain a more favorable credit rating and pay interest at a lower rate on the bonds, saving money for the state. The use of excess assets from certain Veterans' Land Board funds would preclude the necessity of issuing more revenue bonds for veterans homes, thus saving money for the state by reducing transaction costs associated with funding the construction of veterans homes. The excess money in the veterans' land and housing assistance programs was primarily paid for by veterans and should be available to assist all veterans programs administered by the Veterans' Land Board.

ARGUMENTS AGAINST: At least some of the money that was formerly earmarked for veterans' land and housing assistance programs may go to entirely different programs administered by the Veterans' Land Board; the board has complete discretion to determine how much money to retain within the land and housing assistance programs. Adoption of the amendment would lead to dilution of money currently reserved for two veterans programs, the land and housing assistance programs, so that it would be spread out over twice as many programs.

AMENDMENT NO. 2

The constitutional amendment to establish a two-year period for the redemption of a mineral interest sold for unpaid ad valorem taxes at a tax sale.

SUMMARY: The proposed amendment to Section 13(c), Article VIII, of the Texas Constitution increases the period in which the former owner of a mineral interest that is sold at a tax sale for unpaid ad valorem taxes may redeem the property from the person who purchased it. The redemption period is increased from six months after the date the purchaser's deed is filed for record to two years after that date. To redeem the property, the former owner must pay to the person who purchased the property the amount the purchaser at the tax sale paid for the property, including the tax deed recording fee and all taxes, penalties, interest, and costs paid, plus an amount not exceeding 25 percent of the aggregate total in the first year of the redemption period or 50 percent of the aggregate total in the second year. The proposed amendment to Section 13(d), Article VIII, of the Texas Constitution makes a conforming change.

The amendment takes effect January 1, 2004, and applies only to the redemption of a mineral interest sold at a tax sale for which the purchaser's deed is filed for record on or after January 1, 2004.

ARGUMENTS FOR: Since 1876, the Texas Constitution provided for a two-year redemption period for property sold at a tax sale. Only recently was the constitution amended to limit the redemption period for most property, including a mineral interest, to six months. Unlike information for other real property, the information used to identify and list mineral interests on the tax rolls is often derived from private industry, so it may be outdated or inaccurate. In addition, due to the usual business practices associated with developing a mineral interest, there are frequently numerous fractional owners who depend on the owner of the working interest to pay the taxes on the property. For these reasons, the owner of a mineral interest may not receive timely notice that taxes on the property are delinquent or that the property has been ordered to be sold. Increasing the redemption period from six months to two years, as it was previously, would reduce the chance that the redemption period would expire before the owner of a mineral interest learned that the property had been sold. Current law unfairly distinguishes between residence homesteads and agricultural land on one hand and mineral interests on the other hand for purposes of the right of redemption. There is no principled basis for such a distinction.

ARGUMENTS AGAINST: The amendment would discourage investors from purchasing mineral interests at tax sales and make it more difficult for taxing units to dispose of property at a tax sale. Under current law, a purchaser of a mineral interest at a tax sale is required to wait only six months before obtaining clear title. If the purchaser incurs expenses in developing the minerals and the former owner exercises the right of redemption, the former owner may profit unfairly from the expenses incurred by the purchaser. A prospective purchaser may be reluctant to purchase a mineral interest and wait two years before developing the property, and taxing units would experience costly delays in getting mineral interests back onto their tax rolls. The amendment would not resolve the inequity in current law of having different redemption periods apply to different types of real property. Commercial property would continue to be subject to a shorter redemption period than

residence homesteads, agricultural land, and mineral interests.

AMENDMENT NO. 3

The constitutional amendment to authorize the legislature to exempt from ad valorem taxation property owned by a religious organization that is leased for use as a school or that is owned with the intent of expanding or constructing a religious facility.

SUMMARY: The proposed amendment amends Section 2(a), Article VIII, Texas Constitution, to authorize the legislature by general law to exempt from ad valorem taxation the property owned by a religious organization that also owns a place of religious worship, such as a church or temple, if the property is owned for the purpose of expanding the place of religious worship or constructing a new place of religious worship and if the property does not produce any revenue for the religious organization. The amendment also authorizes the legislature by general law to provide eligibility limitations for the exemption and to impose sanctions related to the exemption. In addition, the amendment authorizes the legislature by general law to exempt from ad valorem taxation any property owned by a religious organization that is leased to a person for use as a school that meets the statutory definition for a school that is exempt from taxation.

ARGUMENTS FOR: The proposed amendment permits a religious organization to plan for the growth of its congregation by acquiring property for expansion without incurring ad valorem taxes on the property pending the beginning of construction. The legislature has the authority to impose eligibility limitations for the exemption, including a time limit, and to require the payment of back taxes if the property is not ultimately used for a place of worship. The amendment would allow a religious organization that leases its property for use as a nonprofit school to enjoy the same exemption from taxation as a person who owns property that the person uses as a school. The amendment eliminates an unjustified distinction between property owners who operate schools on their property and property owners who lease their property to others to operate schools and encourages religious organizations to use their property for educational purposes.

ARGUMENTS AGAINST: The Texas Constitution and the Tax Code already allow a religious organization to receive an ad valorem tax exemption for the organization's place of worship, including an exemption for not more than three years while the place is under construction. The amendment's broadening of the exemption to include future expansion or construction of a new place of worship will take property off the tax rolls even though it may not actually be used for religious purposes for years. The Texas Constitution and the Tax Code already provide for an exemption from ad valorem taxation for property a person owns and uses as a school. Allowing a religious organization to receive a tax exemption for property that is leased to another person to be used as a school will encourage religious organizations to use property for nonreligious purposes and discriminate between religious organizations and other property owners who lease property for that purpose. The exemption would also deprive school districts and other local governments of tax revenue and put an unfair burden on other property owners who may be required to pay higher taxes to offset the lost tax revenue.

AMENDMENT NO. 4

The constitutional amendment relating to the provision of parks and recreational facilities by certain conservation and reclamation districts.

SUMMARY: The proposed amendment amends Section 59, Article XVI, Texas Constitution, to provide that conservation and reclamation districts have the specific right and duty to develop parks and recreational facilities. The amendment requires the legislature to pass laws concerning the development of parks and recreational facilities by districts. The amendment, without limiting the power to finance parks and recreational facilities that currently exists, provides for the issuance of bonds financed by taxes in districts located completely or partially in a limited number of areas.

ARGUMENTS FOR: The proposed amendment clarifies an area of the law that has been at issue by stating clearly that conservation and reclamation districts may create parks and recreational facilities. The amendment would empower the voters in certain areas to choose to finance area parks and recreational facilities with tax dollars if they feel the need exists. It is proper to place this decision with the affected voters, and restricting this power to certain areas limits it to localities where the greatest need exists. The amendment would allow conservation and reclamation districts to meet the recreational needs of communities whose needs are not being met by the city, town, or county in which they are located. Many citizens live in unincorporated areas not adequately serviced, and authorizing conservation and reclamation districts to improve the civic spaces of a community will improve the quality of life for area residents.

ARGUMENTS AGAINST: There is no reason to allow only districts in the listed areas to use tax dollars to finance parks and recreational facilities while districts elsewhere may not use tax dollars for that purpose. Conservation and reclamation districts should focus on water and conservation issues. Other political subdivisions, such as municipalities and counties, currently have the ability to address parks and recreational needs and are more appropriate entities to satisfy those needs. The creation of some conservation and reclamation districts is initiated by and significantly benefits private developers. Allowing districts to provide parks and recreational facilities and to finance them with tax money creates too much of a risk that the facilities would be provided at public expense to create an amenity that a private developer can use to promote a land development.

AMENDMENT NO. 5

The constitutional amendment to authorize the legislature to exempt from ad valorem taxation travel trailers not held or used for the production of income.

SUMMARY: Section 1(d), Article VIII, Texas Constitution, currently authorizes the legislature to exempt from ad valorem taxes certain tangible personal property but excludes the legislature from exempting tangible personal property structures used or occupied as residential dwellings. The proposed amendment amends Subsection (d) to exclude from being exempt only those structures used or occupied as residential dwellings that are substantially affixed to real estate. The amendment repeals Section 1(j), Article VIII, Texas Constitution, which authorizes the legislature to allow a taxing unit, other than a school district, to exempt travel trailers from ad valorem taxes.

ARGUMENTS FOR: Approval of the proposed amendment will eliminate the mandatory school taxes on travel trailers and provide travel trailers with the same tax treatment as other noncommercial personal property, such as motor vehicles. The exemption will eliminate the current disincentive for consumers in Texas to purchase travel trailers that will not be attached to real property and will also promote tourism and economic development. Imposition of the ad valorem tax on travel trailers by those school districts and other taxing units that elect to tax travel trailers amounts to "double taxation" because the purchaser of a travel trailer is also required to pay sales and use taxes and annual vehicle registration fees on the trailer. In 2001, the legislature and the voters intended to authorize the elimination of ad valorem taxes on travel trailers. Approval of the amendment will authorize the legislature to rectify the unintended effect of the 2001 amendment and end the double tax on travel trailers. Ad valorem taxation of travel trailers is very inefficient, due to the costs of identifying and appraising them and of billing for and collecting the relatively small amount of taxes imposed on each of them. Approval of the amendment will require a school district or other taxing unit that elects to tax travel trailers to bear the full costs of taxation, which are currently borne in large part by the appraisal district.

ARGUMENTS AGAINST: If the proposed amendment is adopted, those school districts and other taxing units that do tax travel trailers will lose the property tax revenue they currently receive from the taxation of travel trailers unless their governing bodies act affirmatively to impose an ad valorem tax on those trailers. To make up any shortfall, those school districts and taxing units may have to impose higher property taxes on other property owners, including persons who own and reside in manufactured homes and other types of homes. A person who resides in a travel trailer, regardless of whether it is affixed to real property, should be required to pay property taxes on the trailer, just like other home owners, including those who reside in manufactured homes. The proposed exemption of travel trailers creates a property tax break for a small group of persons who will no longer pay their fair share of taxes. By requiring a school district or other taxing unit to take affirmative action to tax travel trailers, and imposing all the costs of appraising those travel trailers on a school district or other taxing unit choosing to tax them, the legislature is unfairly discouraging those school districts and other taxing units that have previously taxed travel trailers from continuing to tax them in order to maintain their current tax base.

AMENDMENT NO. 6

The constitutional amendment permitting refinancing of a home equity loan with a reverse mortgage.

SUMMARY: The proposed amendment amends Section 50(f), Article XVI, Texas Constitution, by providing that a home equity loan may be refinanced in a manner that converts the loan into a reverse mortgage.

The same change proposed by this amendment is also being proposed, among other constitutional changes, by Proposition 16, which is being submitted to the voters at this election.

ARGUMENT FOR: Reverse mortgages are a popular means for seniors to supplement their income by tapping the equity in their homes. Beginning in 1998, there were several years when home equity loans were available but reverse mortgages were not offered. During this period many persons who would have preferred reverse mortgages obtained home equity loans instead. The proposed amendment would allow those borrowers to convert their existing home equity loans into reverse mortgages.

ARGUMENT AGAINST: Reverse mortgages are not subject to all the extensive safeguards that apply to home equity loans. Elderly persons, who may be more susceptible to unscrupulous or uncaring lending practices, may be victimized by lenders who would convince elderly borrowers under home equity loans to convert those loans to reverse mortgages under terms unfairly favorable to the lender.

AMENDMENT NO. 7

The constitutional amendment to permit a six-person jury in a district court misdemeanor trial.

SUMMARY: The proposed amendment specifies that a district court petit jury hearing a criminal misdemeanor case must consist of six persons. In a conforming change, the amendment also strikes a provision allowing nine members of a district court 12-member jury to render a verdict in a criminal misdemeanor case.

ARGUMENTS FOR: Six-member county court juries are authorized by Article 33.01, Code of Criminal Procedure, to hear criminal misdemeanor cases, and a majority of misdemeanor cases are tried before those six-member juries. However, in some small or rural counties, 12-member district court juries hear criminal misdemeanor cases. Allowing six-member juries in district court criminal misdemeanor trials would bring uniformity to the law. Reducing the number of jurors in criminal misdemeanor cases would save counties time and money without sacrificing the merits of a jury trial.

ARGUMENT AGAINST: Allowing six-member district court jury trials in criminal misdemeanor cases would reduce the procedural protection of a 12-member jury in misdemeanor official misconduct cases. The legislature intended a 12-member jury trial in those cases involving a public official accused of a crime that might lead to the official's removal from office.

AMENDMENT NO. 8

The constitutional amendment authorizing the legislature to permit a person to take office without an election if the person is the only candidate to qualify in an election for that office.

SUMMARY: The proposed amendment adds Section 13, Article XVI, Texas Constitution, to authorize the legislature to provide by general law that a person may take office without an election if that person is the only candidate to qualify in an election to be held for that office.

ARGUMENTS FOR: By authorizing the legislature to allow an authority holding an election to avoid the expense of time and money to count votes for unopposed candidates, the proposed amendment promotes efficiency in election administration and would help reduce the cost of elections without interfering with anyone's right to vote. If a candidate is unopposed, and no other candidate, including a write-in candidate, is eligible for election to that office, the race is decided before the election occurs. The amendment would permit the legislature to give election officials greater flexibility in ballot preparation, and shorter, simpler ballots will allow the voter to focus on contested races, without having to sort through the unopposed candidates. Shorter ballots will also reduce voter confusion, especially during the implementation of new electronic voting systems.

ARGUMENTS AGAINST: Omitting a candidate from the ballot deprives voters of their right to vote for the candidate of their choice. Those who take the time to vote are exercising their right to endorse the candidates they wish to represent them and validate the candidates' election to public office. The right to vote for a candidate should exist whether or not there is a choice in candidates. The amendment would authorize the legislature to deprive candidates of the opportunity to gain visibility by campaigning and make it more difficult for the voters to know who their elected leaders are or what offices are being filled. The formality of an election is an important part of the democratic process that should not be rendered into a mere technicality.

AMENDMENT NO. 9

The constitutional amendment relating to the use of income and appreciation of the permanent school fund.

SUMMARY: The proposed amendment amends Section 5, Article VII, Texas Constitution, to allow the State Board of Education or the legislature to determine the amount distributed from the permanent school fund (PSF) to the available school fund (ASF) from a portion of the "total return," including capital gains, on all investment assets of the PSF. The amendment places limits on the portion of total return that may be transferred to the ASF and provides for payment from the PSF of the expenses of managing permanent school fund assets.

ARGUMENTS FOR: Texas voters in 1999 approved a total return policy for the permanent university fund, which supports various institutions in the University of Texas and the Texas A&M systems. Because much of the increase in value of a portfolio such as that held by the PSF comes as capital gains, the corpus of the PSF can be protected even if a portion of those gains is distributed to the ASF. Changing to a total return policy for the PSF is expected to yield significant additional net revenue for the benefit of public schools. The Legislative Budget Board estimates the change would produce additional net revenue of over $230 million in fiscal year 2004, $247 million in fiscal year 2005, and somewhat less in fiscal year 2006 and beyond.

ARGUMENTS AGAINST: Because the PSF is a permanent endowment, a conservative investment strategy would retain all capital gains as part of the PSF. The state should avoid any danger that the corpus of the PSF, on an inflation-adjusted, per-student basis, will decline. It is possible that a continued drop in stock prices would lead to lower distributions from the PSF to the ASF, not higher. Even if PSF distributions to the ASF increase, that does not mean most public schools will receive more money. In districts that receive state aid under the Foundation School Program, the increase in ASF payments is matched by a decrease in foundation school fund payments. As ASF payments to wealthy school districts increase, so does the gap between the revenue available to school districts that rely on state aid and the revenue available to the wealthiest districts. This could potentially disturb the equity of the school finance system.

AMENDMENT NO. 10

The constitutional amendment authorizing municipalities to donate surplus fire-fighting equipment or supplies for the benefit of rural volunteer fire departments.

SUMMARY: The proposed amendment adds Section 52i, Article III, Texas Constitution, to create an additional exception to the general constitutional prohibition against a county, city, town, or other political subdivision of the state granting a thing of value to any individual, association, or corporation.

ARGUMENTS FOR: Rural areas often do not have the financial resources to purchase necessary fire-fighting equipment or supplies. The proposed amendment creates a method by which municipal areas may "recycle" unused equipment or supplies for the benefit of rural communities in need. Surplus fire-fighting equipment or supplies normally will have little, if any, value, and the cost incurred in selling the property may exceed the revenue generated by the sale. A cost-effective way to dispose of the property is to donate it to rural volunteer fire departments that have a recognizable need.

ARGUMENTS AGAINST: The amendment allows for the donated equipment or supplies to be distributed to rural volunteer fire departments "based on need." However, the amendment does not provide any criteria under which a finding of need can be made. The donating municipality may incur some costs in making the donation, and the amendment should have contained provisions to require the donating municipality to recover those costs.

AMENDMENT NO. 11

A constitutional amendment to allow the legislature to enact laws authorizing and governing the operation of wineries in this state.

SUMMARY: The proposed amendment would amend Section 20, Article XVI, Texas Constitution, to permit the legislature to authorize wineries to manufacture, sell, and dispense wine in any area of the state, even if the sale of wine in the area has not been authorized by a local option election.

ARGUMENTS FOR: The proposed amendment would permit potentially large growth in the state's agricultural base in a new area that could replace past agricultural practices that are no longer viable by expanding the areas in which wineries may operate to include dry areas. The legislation ensures that state agriculture would benefit from the sale of wine in dry areas by requiring that wine sold or dispensed by wineries in those areas be made primarily from fruit grown in this state. The amendment provides a very narrow exemption to the requirement that alcoholic beverage sales be authorized by a local option election, allowing dry areas to maintain local control of most alcoholic beverage sales and eliminating the need for the expense of holding an election to permit the sale of alcohol by a narrow class of permit holders. The amendment would bring greater uniformity to laws governing the operation of wineries in this state.

ARGUMENTS AGAINST: The amendment would override the preference of many local communities to prohibit the sale of alcoholic beverages within their boundaries. A community that wants to authorize only the sale of wine by a winery may already do so. Current law does not prohibit the expansion of the wine industry in areas in which the manufacture and sale of wine is already legal.

AMENDMENT NO. 12

The constitutional amendment concerning civil lawsuits against doctors and health care providers, and other actions, authorizing the legislature to determine limitations on non-economic damages.

SUMMARY: The proposed amendment would add a new Section 66 to Article III, Texas Constitution, that authorizes the legislature by statute to determine the limit of liability for all damages and losses, however characterized, other than economic damages, in health care liability claims and other claims.

The first part of new Section 66 to Article III, Texas Constitution, authorizes the legislature by statute to determine liability limits for a provider of medical or health care with respect to treatment, lack of treatment, or other claimed departure from an accepted standard of medical or health care or safety, however characterized, that is or is claimed to be a cause of, or that contributes or is claimed to contribute to, disease, injury, or death of a person. "Economic damages" are defined to mean compensatory damages for any pecuniary loss or damage. "Economic damages" do not include any loss or damage, however characterized, for past, present, and future physical pain and suffering, mental anguish and suffering, loss of consortium, loss of companionship and society, disfigurement, or physical impairment. The authority of the legislature by statute to determine liability limits applies without regard to whether the claim or cause of action arises under or is derived from common law, a statute, or other law, including any claim or cause of action based or sounding in tort, contract, or any other theory or any combination of theories of liability. The claim or cause of action includes a medical or health care liability claim as defined by the legislature. This first part authorizes the legislature to determine liability limits by a law enacted by the 78th Legislature, Regular Session, 2003, and by all subsequent regular or special sessions of the legislature.

The second part of new Section 66 to Article III, Texas Constitution, authorizes the legislature by statute to determine the limit of liability for all damages and losses, however characterized, other than economic damages, for claims or causes of action other than medical or health care liability claims. This authorization applies without regard to whether the claim or cause of action arises under or is derived from common law, a statute, or other law, including any claim or cause of action based or sounding in tort, contract, or any other theory or any combination of theories of liability. This second part authorizes the legislature by statute to determine liability limits for claims and causes of action that are not medical or health care liability claims only after January 1, 2005, and only by at least a three-fifths vote of all the members elected to each house. The statute adopted by the legislature must include language that cites new Section 66 as its authority.

Finally, H.J.R. No. 3 provides that if the voters reject the proposed amendment, a court could not consider any aspect of the vote for any purpose, in any manner, or to any extent.

ARGUMENTS FOR: In 2003, the legislature found a serious public problem in the availability and affordability of adequate medical professional liability insurance that created a medical malpractice

insurance crisis in Texas. It found that this crisis has had a material adverse effect on the delivery of medical and health care in Texas, including significant reductions of availability of medical and health care services to the people of Texas and a likelihood of further reductions. The proposed amendment is both balanced and limited in its manner of addressing the identified crisis. It does not authorize the legislature to limit the direct economic costs that may arise from a claim against a health care provider, nor does it authorize the legislature to limit in any way more indirect economic costs, such as lost wages. The amendment only authorizes the legislature to limit noneconomic damages, such as pain and suffering, which is the element of a lawsuit that is the least predictable and the most subjective. Under the 2003 legislation, a claimant in a health care liability claim could recover as much as $750,000 for noneconomic damages, and the right of a person to obtain full redress for negligence that injures him or her is not unduly affected by allowing the legislature to impose such a limit.

In 1977, the legislature enacted the initial liability limits on the recovery of noneconomic damages in health care liability claims, and it was not until 1988--eleven years later--that the Texas Supreme Court found those limits unconstitutional for common law causes of action. The long lag between enactment by the legislature of a limit on noneconomic damages and a definitive determination of constitutionality by the Texas Supreme Court is inherent in the judicial system and severely reduces both the effectiveness and predictability of any future liability limits enacted by the legislature. To promote predictability and stability in the civil justice system for doctors, health care providers, hospitals, and other health care institutions, it is necessary to give the legislature clear constitutional authority to enact limits on noneconomic damages.

To effectively respond to future crises, the amendment authorizes the legislature to adopt, beginning January 1, 2005, limits on noneconomic damages for lawsuits other than health care liability claims. This authority will also allow the legislature to adopt liability limits that may avoid crises in those areas altogether. As a recognition of the seriousness of limits on noneconomic damages in lawsuits and as a further check and balance to legislative power, the amendment would provide that in suits other than health care liability claims, the legislature may only limit noneconomic damages by at least a three-fifths vote of all the members elected to each house, instead of a simple majority.

ARGUMENTS AGAINST: Section 13, Article I, Texas Constitution, known as the "open courts provision" provides that "[a]ll courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." This is a fundamental right, contained in the Bill of Rights in the Texas Constitution, and is properly protected by the courts. Even in the midst of a medical malpractice insurance crisis in Texas, it is the judiciary that is the proper forum to determine the extent to which a fundamental right may be reasonably restricted. The test established by the Texas Supreme Court in 1983 is reasonable, appropriate, and fully adequate: whether any limit on noneconomic damages adopted by the legislature is "unreasonable or arbitrary when balanced against the purpose and basis of the statute." Under the 2003 legislation, a claimant in a health care liability claim could recover as much as $750,000 for noneconomic damages. That amount may be adequate and just for many cases, but it will not be adequate and just for all.

Although a lengthy lag between enactment by the legislature of a limit on noneconomic damages and a definitive determination of constitutionality by the Texas Supreme Court may be, to a certain extent, inherent in the judicial system, it need not take nearly as long as it has in the past. The Texas Constitution authorizes the legislature to provide for a direct appeal to the supreme court of the finding by a trial court that a statute is unconstitutional, and legislation enacted by the 78th Legislature provides for just such an accelerated appeal.

Even if the medical malpractice insurance crisis in Texas justifies the legislature to enact limits on noneconomic damages in health care liability claims, no similar crisis has been identified by the legislature to justify it to enact limits on noneconomic damages for areas other than health care. Absent an identifiable and critical need, the courts are the appropriate guardian of the fundamental right that they be open to the people to fully redress wrongs. The requirement that, in suits other than health care liability claims, the legislature may only limit noneconomic damages by at least a three-fifths vote of all the members elected to each house, instead of a simple majority, is not a sufficient replacement for the traditional protection of this fundamental right by the judiciary.

AMENDMENT NO. 13

The constitutional amendment to permit counties, cities and towns, and junior college districts to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses.

SUMMARY: The proposed amendment amends Section 1-b, Article VIII, Texas Constitution, by adding Subsection (h) to authorize the governing body of a county, a municipality, or a junior college district to prohibit increases in the amount of county, municipal, or junior college district ad valorem taxes that may be imposed on the residence homestead of a person who is disabled or who is 65 years of age or older. The proposed amendment would provide a means by which disabled and elderly persons can be provided the same beneficial tax treatment in connection with their county, municipal, or junior college district property taxes that elderly persons currently enjoy in connection with their public school district property taxes.

ARGUMENTS FOR: Due to inflation, rising property values, or increases in tax rates, taxes imposed by counties, municipalities, and junior college districts have consistently increased over time. Tax increases are particularly hard on persons on fixed incomes, such as many elderly or disabled persons. The proposed amendment would allow local officials or voters to protect homeowners who are disabled or 65 years of age or older from increases in county, municipal, or junior college district property taxes, allowing those persons to remain in their homes. The amendment provides a local option method by which a county, a municipality, or a junior college district may limit tax increases on the residence homesteads of the disabled or elderly. The amendment does not require a county, municipality, or junior college district to establish a property tax freeze, nor does the amendment relieve disabled and elderly homeowners from all of the taxes they must pay to their county, municipality, or junior college district. The amount of tax revenue that will be lost in future years will be minimal and can be made up from other sources of revenue without significantly increasing the tax burdens of other taxpayers.

ARGUMENTS AGAINST: Limiting the amount of county, municipal, or junior college district taxes on the residence homesteads of the disabled or the elderly does not affect the total tax burden of the county, municipality, or junior college district but will only shift the tax burden among taxpayers. By limiting increases in the taxes owed by a disabled or elderly person on the person's home, the amendment unfairly shifts a portion of the tax burden to other homeowners and to owners of other types of property, primarily business property, who are not entitled to any limitation on such taxes. Regardless of the amount of tax revenue that will be lost if the amendment is adopted, the county, municipality, or junior college district will be forced to consider imposing higher taxes on other property owners to maintain the same level of services it currently provides. Because the amendment provides that a limitation on taxes that is adopted may not be rescinded or repealed, a county, municipality, or junior college district will be prevented from ever again asking its disabled or elderly residents to pay their fair share of the costs incurred in providing those services.

AMENDMENT NO. 14

The constitutional amendment providing for authorization of the issuing of notes or the borrowing of money on a short-term basis by a state transportation agency for transportation-related projects, and the issuance of bonds and other public securities secured by the state highway fund.

SUMMARY: The proposed amendment would provide for the Texas Department of Transportation to issue notes or obtain loans with terms of two years or less to carry out any of the department's functions. The amendment would also provide for the Texas Transportation Commission to issue longer term bonds or other public securities to fund highway improvement projects. The bonds or other public securities would be payable from the money in the state highway fund.

ARGUMENTS FOR: The state's population and the amount of traffic on state roads have grown enormously, and new roads are needed. Allowing the state to borrow money for those purposes, rather than waiting for the money to accumulate, will allow those problems to be addressed earlier. The state already borrows money for many purposes, and the building of roads using short-term borrowing is an important tool to allow the state to more efficiently administer its function of providing for transportation.

ARGUMENTS AGAINST: Borrowing does not create new money for road construction, it only delays the time when payment is due. The state could actually increase the amount of road construction accomplished by finding additional sources of revenue for this purpose, such as increased vehicle registration fees or motor fuel taxes. By borrowing money the state will incur extra expenses, such as interest and the expenses related to issuing bonds or notes. These expenses may be paid from money in the state highway fund, resulting in less money actually available to spend directly on transportation projects.

AMENDMENT NO. 15

The constitutional amendment providing that certain benefits under certain local public retirement systems may not be reduced or impaired.

SUMMARY: The proposed amendment amends Article XVI, Texas Constitution, by adding Section 66 to provide that any change made to certain benefits provided by certain retirement systems cannot reduce benefits that a person was entitled to receive before the date of the change. The amendment places the responsibility for ensuring that those benefits are not reduced on both the retirement system and the governmental entities that finance the system.

The amendment applies to public retirement systems of political subdivisions, such as cities and counties, that provide benefits for their employees. Under the amendment, any reduction in the retirement or death benefits that the retirement systems provide cannot be applied retroactively to benefits that a person has accrued or is entitled to receive before the date the reduction takes effect.

The application of the amendment is limited in several ways. It specifically exempts the retirement system that provides benefits for San Antonio firefighters and police officers, and it does not apply to any statewide retirement system. An opt-out provision is also included under which voters may choose to exempt a political subdivision from the application of the amendment at local elections to be held next year.

The amendment applies only to service or disability retirement benefits and death benefits. Health and life insurance benefits are not within the scope of the amendment. Further, it does not apply to disability benefits that a person has previously received, but may no longer receive because the person no longer qualifies as disabled under the terms of the retirement system.

ARGUMENTS FOR: In exchange for their years of work in public service, often at a lower salary than their counterparts in the private sector, local government employees should receive retirement benefits that are protected. This protection will enable these employees to better plan for retirement, knowing that the benefits they have earned are guaranteed. The proposed amendment would permit local public retirement systems to make changes in the provision of certain benefits as long as the changes apply prospectively. The amendment would also give those retirement systems the flexibility the systems need to adjust retirement benefits if necessary to respond to changing economic times, while still protecting the benefits that local government employees have earned. The amendment would give voters the flexibility to exempt a political subdivision from the application of the amendment at local elections to be held next year.

ARGUMENTS AGAINST: Providing a constitutional guarantee of certain benefit levels and placing the burden of that guarantee on both local public retirement systems and local government employers could force local governments to raise taxes, cut necessary services, or both, to maintain benefit levels. Although the amendment would protect the retirement benefits earned by employees of local governments, the amendment does not extend that protection to other public employees such as teachers and state employees. It is unfair to provide a constitutional protection of retirement benefits for some public employees but not for others. Although the amendment would give voters

the option of exempting a political subdivision from the application of the amendment, this opt-out provision is available to voters on only one date: a local election to be held in May 2004. In subsequent years, if a retirement system and a local government become unable to sustain retirement benefits at protected levels, voters would no longer be able to exempt their city or county from the amendment's application.

AMENDMENT NO. 16

The constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.

SUMMARY: The proposed amendment amends Section 50, Article XVI, Texas Constitution, by providing that a home equity loan may be in the form of a line of credit, allowing a lender of a home equity loan who fails to comply with the lender's obligations under the loan to cure the failure and avoid forfeiting the principal of and interest on the loan, providing for interpretation by a state agency of the constitutional provisions relating to loans secured by a homestead, adding mortgage brokers to the list of persons eligible to make home equity loans, allowing payments on a home equity loan to be more often than monthly, requiring lenders to provide to a borrower before closing of a home equity loan an itemized estimate of amounts that the borrower will be required to pay at the closing, and allowing a home equity loan to be refinanced by a reverse mortgage.

This same change is also being proposed by Proposition 6, which is being submitted to the voters at this election.

ARGUMENTS FOR: Home equity loans in the form of a line of credit are popular in other states, and borrowers in Texas also would like to have this flexible option. Allowing borrowers to access their homestead equity periodically in the amount needed rather than in a lump sum will save the borrowers the money that would otherwise be paid as interest on money borrowed before it is needed or on higher interest rate loans not secured by the homestead. Several years have passed since home equity loans were authorized in Texas, yet many lenders are still reluctant to offer the loans. This is because of the steep penalty for making an error in the loan process--loss of the entire principal of and interest on the loan--and because of the uncertainty of interpretation of some of the existing constitutional provisions. The proposed amendment would ease those fears by allowing the lenders to correct errors to bring the loans into compliance with the law, and by providing for administrative interpretations to give the meaning of the law more certainty. Reverse mortgages are a popular means for seniors to supplement their income by tapping the equity in their homes. Beginning in 1998, there were several years when home equity loans were available but reverse mortgages were not being offered. During this period many persons who would have preferred reverse mortgages obtained home equity loans instead. The amendment would allow these borrowers to convert their existing home equity loans into reverse mortgages.

ARGUMENTS AGAINST: Any loan secured by a person's home has the risk that the person will lose the home if unable to make the payments. Lines of credit make it easier to borrow money through loans secured by homes and consequently will cause more persons to lose their homes. The steep penalties for lenders who err exist because of the steep penalty for borrowers who err--loss of the borrower's home. The safeguards provided by the law are important to protect borrowers, and lenders should not be allowed to take them lightly, knowing that they can simply cure any problems if they are caught. Similarly, the constitutional provisions governing homestead mortgage lending have been submitted to and approved by the voters. An administrative agency should not be given the potential opportunity to void or alter what the voters have approved. Elderly persons, who may

be more susceptible to unscrupulous or uncaring lending practices, may be victimized by lenders who would convince elderly borrowers under home equity loans to convert those loans to reverse mortgages under terms unfairly favorable to the lender.

AMENDMENT NO. 17

The constitutional amendment to prohibit an increase in the total amount of school district ad valorem taxes that may be imposed on the residence homestead of a disabled person.

SUMMARY: The proposed amendment amends Subsection (d), Section 1-b, Article VIII, Texas Constitution, which prohibits increases in the amount of school district ad valorem taxes that may be imposed on the residence homestead of a person who is 65 years of age or older. The proposed amendment would grant disabled persons much the same beneficial tax treatment that elderly persons are currently granted.

ARGUMENTS FOR: Due to inflation, rising property values, or increases in tax rates, school district taxes have consistently increased over time. Tax increases are particularly hard on persons on fixed incomes, such as many elderly or disabled persons. Elderly persons are already protected from school tax increases on their homes. The proposed amendment would similarly protect homeowners who are disabled for social security purposes from increases in school district property taxes, allowing them to remain in their homes. The amendment prevents only increases in the amount of school district taxes on the residence homesteads of the disabled and does not relieve disabled homeowners from all of the taxes they must pay to their school district. The amount of tax revenue that will be lost to any particular school district in future years will be minimal and can be made up from other sources of revenue without significantly increasing the tax burdens of other taxpayers.

ARGUMENTS AGAINST: Limiting the amount of school district taxes on the residence homesteads of the disabled does not affect the total tax burden of the school district but will only shift the tax burden among taxpayers. By limiting increases in the taxes owed by a disabled person, the amendment unfairly shifts a portion of the tax burden to other homeowners and to owners of other types of property, primarily business property, who are not entitled to any limitation on their school district taxes. Regardless of the amount of tax revenue that will be lost by one school district if the amendment is adopted, the total amount lost by all school districts will be significant. In addition, not every school district will be able to increase its tax collections to make up for the lost property tax revenue in future years and will likely look to the state government to make up for their lost property tax revenue at a time when the economy is weak and state funds that are available for education need to be conserved.

AMENDMENT NO. 18

The constitutional amendment authorizing the legislature to permit a person to assume an office of a political subdivision without an election if the person is the only candidate to qualify in an election for that office.

SUMMARY: The proposed amendment adds Section 13A, Article XVI, Texas Constitution, to authorize the legislature to provide by general law that a person may assume an office of a political subdivision without an election if that person is the only candidate to qualify in an election for that office.

ARGUMENTS FOR: By authorizing the legislature to allow political subdivisions to avoid the expense of time and money to list unopposed candidates on the ballot and count votes for unopposed candidates, the proposed amendment promotes efficiency in election administration and would help reduce the cost of elections. The amendment would permit the legislature to give election officials greater flexibility in ballot preparation. Simpler, shorter ballots will allow the voter to focus on contested races, without having to sort through the unopposed candidates and will generally reduce voter confusion. The amendment would not interfere with anyone's right to vote. If a candidate is unopposed, and no other candidate, including a write-in candidate, is eligible for election to that office, the race is decided.

ARGUMENTS AGAINST: Omitting a candidate from the ballot deprives voters of their right to vote for the candidate of their choice. Those who take the time to vote are exercising their right to endorse the candidate they wish to represent them and validate the candidate's election to public office. The right to vote for a candidate should exist regardless of the number of candidates. The amendment would authorize the legislature to deprive candidates of the opportunity to gain visibility by campaigning and make it more difficult for the voters to know who their elected leaders are or what offices are being filled. The amendment is unnecessary because Amendment No. 8, to be submitted to the voters at the same time as this amendment, would more broadly authorize the legislature to provide by general law that a person may assume any office, including an office of a political subdivision, without an election if that person is the only candidate to qualify in an election for that office. If Amendment No. 8 is approved by the voters, this amendment is unnecessary and duplicative, and will add confusion to the Texas Constitution.

AMENDMENT NO. 19

The constitutional amendment to repeal the authority of the legislature to provide for the creation of rural fire prevention districts.

SUMMARY: The proposed amendment would repeal Section 48-d, Article III, Texas Constitution. That section authorizes the legislature to create rural fire prevention districts supported by a tax on property located in the district.

ARGUMENTS FOR: Rural fire prevention districts have been struggling to provide services under the decades-old three-cent cap on property taxes imposed under the state constitution. In contrast, the constitutional cap on property tax rates in emergency services districts is 10 cents. An emergency services district also has statutory authority to impose a limited sales and use tax and may use its tax revenue not only for fire prevention services in rural areas, but also for related emergency services. Thus, emergency services districts have greater financial flexibility to meet the changing needs of rural communities for fire prevention and other emergency services. Since all rural fire prevention districts are converted to emergency services districts on September 1, 2003, and the statute providing for rural fire prevention districts is repealed at that time, the amendment would clean up the state constitution by removing a provision that the legislature has determined is no longer useful.

ARGUMENTS AGAINST: There is no compelling reason to amend the state constitution to repeal the legislature's authority to create rural fire prevention districts. The legislation that converts existing rural fire prevention districts into emergency services districts is not contingent on passage of the amendment. The state constitution explicitly provides two options for fire prevention services in rural areas: rural fire prevention districts supported by a property tax at a rate of not more than three cents for each $100 of valuation, and emergency services districts supported by a property tax at a rate of not more than 10 cents for each $100 of valuation. The constitution should maintain the flexibility it currently offers to rural communities to provide fire prevention services under the lower rate cap.

AMENDMENT NO. 20

The constitutional amendment authorizing the issuance of general obligation bonds or notes not to exceed $250 million payable from the general revenues of the state to provide loans to defense-related communities, that will be repaid by the defense-related community, for economic development projects, including projects that enhance the military value of military installations.

SUMMARY: The proposed amendment would add Section 49-n to Article III of the Texas Constitution and permit the legislature to authorize one or more state agencies to issue general obligation bonds or notes in an aggregate amount not to exceed $250 million to provide loans to defense-related communities for economic development projects that benefit the defense-related community, including projects that enhance the military value of military installations located in the state. The amendment would authorize the bond proceeds to be deposited in the Texas military value revolving loan account in the state treasury.

ARGUMENTS FOR: The Texas military value revolving loan account would assist local communities in financing projects that would enhance the military value of nearby military installations. Enhancing this value is important because the United States Department of Defense will undergo another round of base realignment and closure in 2005. The military installations located in this state and defense-related businesses are vital to the economy, and improving the military value of Texas military installations will increase the likelihood that such installations will not be closed during the base realignment and closure process. Local communities could borrow money from the Texas military value revolving loan account at a lower rate than the community could borrow money from other sources and, without the resulting cost savings, might not be able to afford to complete projects necessary to enhance the value of nearby military installations.

ARGUMENTS AGAINST: The Department of Defense desires to close expensive, unnecessary defense bases, and it does not make sense to spend state money to keep bases that are not needed. Furthermore, the expenditures will not guarantee that the federal government will decide to keep the bases open. At a time when the state is facing increasing needs for services in all areas and state revenues are being strained to meet those needs, the approval of an additional amount of bonds for financing projects that increase the military value of federal military installations does not appear to be practical or necessary.

AMENDMENT NO. 21

The constitutional amendment to permit a current or retired faculty member of a public college or university to receive compensation for service on the governing body of a water district.

SUMMARY: The proposed amendment amends Section 40(b), Article XVI, Texas Constitution, to permit a faculty member or retired faculty member of a public institution of higher education who also serves as a member of the governing body of a water district created under Section 59, Article XVI, or Section 52, Article III, Texas Constitution, to receive a salary for that service.

ARGUMENTS FOR: The proposed amendment would eliminate an antiquated and unnecessary restriction on additional public service by public college and university faculty members. The law currently does not prohibit that service, but discourages it by prohibiting a salary for it, and there is no such salary prohibition applicable to other persons holding full-time jobs, such as federal or private-sector employees. Approval of the amendment would encourage valuable public service by faculty members and greatly increase the pool of qualified persons able to serve on the governing bodies of the state's hundreds of water districts. The proposed amendment is properly limited to very narrow circumstances. Public college and university faculty members, unlike most other state employees, have more flexible hours and can more easily schedule outside duties in conjunction with their primary jobs. In addition, the exception applies only to water districts, which have limited functions.

ARGUMENTS AGAINST: The existing constitutional prohibition against a state employee receiving a salary for serving on the governing body of a political subdivision is intended to ensure that the state employee is committed first and foremost to his or her public employment. If service on the governing body of a water district is a salaried position, the duties of that position are probably substantial enough to potentially interfere with the duties of the faculty member and could potentially reduce the member's commitment to faculty responsibilities. While faculty members of public colleges and universities are able to provide valuable service to local governments because of their valuable skills, knowledge, and experience, other state employees are also well qualified to provide such service and frequently do so without additional compensation. There is no reason to single out faculty members for the special treatment that would become available under the proposed amendment. The inclusion of retired faculty members in the proposed amendment implies that other retired state employees are <u>not</u> entitled to receive a salary for serving on a local governing body. If that interpretation is adopted by the courts, the proposed amendment will actually discourage public service on local governing bodies by thousands of well-qualified state retirees.

AMENDMENT NO. 22

The constitutional amendment authorizing the appointment of a temporary replacement officer to fill a vacancy created when a public officer enters active duty in the United States armed forces.

SUMMARY: The proposed amendment would add Section 72 to Article XVI of the Texas Constitution to: (1) allow an elected or appointed officer of the state or of any political subdivision who enters active duty in the armed forces of the United States as a result of being called to duty, drafted, or activated, to retain the person's office while serving in the military; and (2) allow a temporary acting officer to be appointed to perform all the duties of the office.

Under the amendment, for an officer other than a member of the legislature, the authority who has the power to appoint a person to fill a vacancy in the office would appoint the temporary acting officer. If a vacancy in the office would normally be filled by a special election, the governor would appoint the temporary acting officer for a state or district office and the governing body of a political subdivision such as a city or county would appoint the temporary acting officer for an office of that political subdivision.

For an officer who is a member of the legislature, the amendment authorizes the member of the legislature to appoint a temporary acting representative or senator, subject to approval of the selection by a majority vote of the appropriate house of the legislature.

ARGUMENTS FOR: The proposed amendment is necessary to clarify that an elected or appointed officer of the state or a political subdivision does not vacate the person's office when the officer is called to active military duty. Authorizing the appointment of a temporary acting officer would allow for the needs of constituents to continue being served during the officer's temporary leave of absence. State law provides that an employee of the state or of a local governmental entity who leaves employment to enter active military service is entitled to reemployment after the employee completes active military service. Officers of the state or a political subdivision should receive the same benefit after taking a temporary leave of absence to defend the state or nation as a member of the military, and allowing an officer to return to office after completing active military service will encourage public officers to maintain their involvement in the national guard or reserves.

ARGUMENTS AGAINST: Authorizing the governor or the governing body of a political subdivision to appoint a temporary replacement for an elected officer deprives the citizens of this state of the right to select the individuals who will represent them. Allowing an officer of the state or of a political subdivision to return to office after the individual completes temporary active duty in the military creates inefficiency in the operation of the office because there is no definite length of time the officer may be away on active duty. Without having a definite term of office, fewer qualified individuals will agree to serve as a temporary replacement officer.

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