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In the 2007 Regular Session, the 80th Texas Legislature passed 17 joint resolutions proposing amendments to the state constitution. One of these proposed amendments was offered for approval on the May 12, 2007, election ballot. The 16 remaining proposed amendments will be offered for approval on the November 6, 2007, election ballot.

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

Since its adoption in 1876 and through September 2007, the state's constitution has been amended 440 times. The 17 proposed amendments approved by the 80th Legislature as of September 2007 bring the total number of amendments passed by the legislature to 634. The following table lists the years in which constitutional amendments have been proposed by the Texas Legislature, the number of amendments proposed, and the number adopted.

The remaining section of this publication contains, for each proposed amendment that will appear on the November 6, 2007, ballot, the ballot language, an analysis, and the text of the joint resolutions proposing the amendment. The analysis includes background information and a summary of comments made about each proposed constitutional amendment by supporters and by opponents.

year proposed	number proposed	number adopted	year proposed	number proposed	number adopted
1879	1	1	1949	10	2
1881	2	0	1951	7	3
1883	5**	5	1953	11	11
1887	6	0	1955	9	9
1889	2	2	1957	12	10
1891	5	5	1959	4	4
1893	2	2	1961	14	10
1895	2	1	1963	7	4
1897	5	1	1965	27	20
1899	1	0	1967	20	13
1901	1	1	1969	16	9
1903	3	3	1971	18	12
1905	3	2	1973	9	6
1907	9	1	1975	12	3
1909	4	4	1977	15	11
1911	5	4	1978	1	1
1913	7*	0	1979	12	9
1915	7	0	1981	10	8
1917	3	3	1982	3	3
1919	13	3	1983	19	16
1921	5**	1	1985	17**	17
1923	2***	1	1986	1	1
1925	4	4	1987	28**	20
1927	8**	4	1989	21**	19
1929	7**	5	1990	1	1
1931	9	9	1991	15	12
1933	12	4	1993	19**	14
1935	13	10	1995	14	11
1937	7	6	1997	15	13
1939	4	3	1999	17	13
1941	5	1	2001	20—	20
1943	3**	3	2003	22**	22
1945	8	7	2005	9	7
1947	9	9	2007	17*****	1

- * Seven joint resolutions proposing amendments were approved by the legislature, but only six proposals were submitted on the ballot. The unsubmitted proposal included two amendments.
- ** Total reflects two amendments that were included in one joint resolution.
- *** Two joint resolutions were approved by the legislature, but only one proposal was actually submitted on the ballot.
- **** One of the amendments appeared on the May 12, 2007, ballot. The remaining 16 amendments will appear on the November 6, 2007, ballot.
- ✍ Total reflects eight amendments that were included in one joint resolution and would have provided for an entire new Texas Constitution.
- Nineteen of the amendments approved by the 77th Legislature during the 2001 Regular Session appeared on the November 6, 2001, ballot. The remaining amendment appeared on the November 5, 2002, ballot.

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The constitutional amendment providing for the continuation of the constitutional appropriation for facilities and other capital items at Angelo State University on a change in the governance of the university.

Section 17(a), Article VII, Texas Constitution, establishes the higher education fund to provide funding for facilities and other capital items at certain institutions of higher education listed in Section 17(b), Article VII, Texas Constitution. Angelo State University is listed in Section 17(b) as one of several component institutions of the Texas State University System, as the university was formerly under the governance of that system. However, in 2007, the 80th Legislature transferred the governance, management, control, and property of Angelo State University to the Texas Tech University System. In connection with that transfer, the proposed amendment would amend Section 17(b) by listing Angelo State University with the other component institutions of the Texas Tech University System. The proposed amendment will not affect the completion of the transfer of Angelo State University to the Texas Tech University System in any way. Furthermore, the proposed amendment appears to have no effect on Angelo State University's eligibility to continue to receive funds from the higher education fund, but rather revises Section 17(b) to clarify that the university will continue to receive such funds regardless of the transfer of the university to the Texas Tech University System.

Section 17, Article VII, Texas Constitution, establishes the higher education fund and makes annual appropriations to certain institutions of higher education. Funds are appropriated under Section 17 to eligible institutions for purposes of funding facilities and other capital items at the institutions. Section 17 and the higher education fund were established in 1984 to provide a source of capital funds for those state universities

and health institutions that are not eligible for funding from the earnings of the permanent university fund (PUF). Formerly, these non-PUF institutions received capital funds from a state ad valorem tax, which was abolished by the voters in 1982. Section 17(b), Article VII, Texas Constitution, specifies the institutions that are eligible to receive funds from the higher education fund and lists those institutions in a manner that groups each eligible institution according to the university system with which the institution may be affiliated. Section 17(b) currently groups Angelo State University with the eligible institutions of the Texas State University System. However, in 2007, the 80th Legislature enacted House Bill No. 3564, which transferred the governance, management, control, and property of Angelo State University from the Texas State University System to the Texas Tech University System. To recognize this transfer of Angelo State University, House Joint Resolution No. 103 proposes a constitutional amendment to amend Section 17(b) by listing Angelo State University with the other eligible institutions of the Texas Tech University System.

As a result, the constitution as amended would accurately reflect that Angelo State University is no longer affiliated with the Texas State University System and would remove any potential ambiguity regarding whether the university remains eligible to receive funding under Section 17, Article VII, Texas Constitution, after the transfer of the university.

Comments made about the amendment during the legislative process have been reviewed. The following paragraphs are based on those comments and generally summarize the main arguments supporting or opposing the amendment.

The proposed amendment is needed to clarify and ensure that, as the governance of Angelo State University is transferred from one university system to another, previously allocated constitutional appropriations to the university will follow the transfer and remain available to Angelo State University and that future allocations of constitutional funding for the university will continue without interruption.

The proposed amendment will correctly reflect the alignment of Angelo State University as a component of the Texas Tech University System rather than the Texas State University System and avoid any confusion that may have resulted from the current listing of the university as a component of its former system.

During the Regular Session of the 80th Legislature in 2007, arguments were presented opposing the transfer of Angelo State University from the Texas State University System to the Texas Tech University System as proposed by House Bill No. 3564, which passed and took effect September 1, 2007. However, those arguments were directed at the appropriateness of the transfer of the university itself, and no comments were made specifically opposing the clarification of Section 17, Article VII, Texas Constitution, made by the proposed constitutional amendment in the event the transfer took place.

HOUSE JOINT RESOLUTION

proposing a constitutional amendment providing for the continuation of the constitutional appropriation for facilities and other capital items at Angelo State University on a change in the governance of the university.

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

SECTION 1. Section 17(b), Article VII, Texas Constitution, is amended to read as follows:

(b) The funds appropriated under Subsection (a) of this section shall be for the use of the following eligible agencies and institutions of higher education (even though their names may be changed):

(1) East Texas State University including East Texas State University at Texarkana;

(2) Lamar University including Lamar University at Orange and Lamar University at Port Arthur;

(3) Midwestern State University;

(4) University of North Texas;

(5) The University of Texas Pan American including The University of Texas at Brownsville;

(6) Stephen F. Austin State University;

(7) Texas College of Osteopathic Medicine;

(8) Texas State University System Administration and the following component institutions:

(9) [~~Angelo State University~~;

~~(10)~~] Sam Houston State University;

(10) [~~(11)~~] Southwest Texas State University;

(11) [~~(12)~~] Sul Ross State University including Uvalde Study Center;

(12) [~~(13)~~] Texas Southern University;

- (13) ~~[(14)]~~ Texas Tech University;
- (14) ~~[(15)]~~ Texas Tech University Health Sciences Center;
- (15) Angelo State University;
- (16) Texas Woman's University;
- (17) University of Houston System Administration and the following component institutions:
 - (18) University of Houston;
 - (19) University of Houston Victoria;
 - (20) University of Houston Clear Lake;
 - (21) University of Houston Downtown;
 - (22) Texas A&M University Corpus Christi;
 - (23) Texas A&M International University;
 - (24) Texas A&M University Kingsville;
 - (25) West Texas A&M University; and
 - (26) Texas State Technical College System and its campuses, but not its extension centers or programs.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2007. The ballot shall be printed to permit voting for or against the proposition:
✱ The constitutional amendment providing for the continuation of the constitutional appropriation for facilities and other capital items at Angelo State University on a change in the governance of the university.

House Author: Drew Darby
Senate Sponsor: Robert Duncan

The constitutional amendment providing for the issuance of \$500 million in general obligation bonds to finance educational loans to students and authorizing bond enhancement agreements with respect to general obligation bonds issued for that purpose.

The proposed amendment adds Section 50b-6 to Article III of the Texas Constitution, which permits the legislature to authorize the Texas Higher Education Coordinating Board to issue general obligation bonds of the State of Texas in an amount not to exceed \$500 million. The proceeds of the bonds must be used to provide educational loans to students.

The proposed amendment also adds Section 50b-6A to Article III of the Texas Constitution, which permits the legislature to authorize the coordinating board to enter into bond enhancement agreements with appropriate entities with respect to the bonds to be authorized under Section 50b-6 as well as other general obligation bonds issued under current or former provisions of Article III to finance educational loans to students.

In 1965, voters adopted Section 50b, Article III, Texas Constitution, which authorized the coordinating board of the Texas College and University System (the former name of the Texas Higher Education Coordinating Board) to issue up to \$85 million in general obligation bonds to fund student loans. Proceeds from the sale of the bonds were to be deposited in the Texas Opportunity Plan Fund and used to make loans to Texas students attending public or private institutions of higher education in the state under the Hinson-Hazelwood College Student Loan Program, which was created by the legislature at that time to administer the student loans.

Since the initiation of the student loan program in 1965, voters have approved seven additional constitutional amendments authorizing the issuance of general obligation bonds to finance educational loans to students: (1) \$200 million in 1969 (former Section 50b-1, Article III, Texas Constitution); (2) \$75 million in 1989 (former Section 50b-2, Article III); (3) \$300 million in 1991 (former Section 50b-3, Article III); (4) \$300 million in 1995 (Section 50b-4, Article III); and (5) \$400 million in 1999 (Section 50b-5, Article III).

The student loan program is designed to be self-supporting. Repayments of student loans under the program are applied toward retirement of the bonds. The coordinating board estimates that program revenues, including loan repayments and investment earnings, will be sufficient to pay debt service on all bonds issued for purposes of the program and to cover the costs of operating the program. Historically, the student loan program has never required financial support from the state's general revenue fund. If, however, program revenues were unexpectedly insufficient, the state's general revenue would be obligated to meet the bonds' financial obligations to the extent of the program's revenue deficiency.

The proposed amendment would allow the legislature to authorize the coordinating board to enter into bond enhancement agreements in connection with student loan bonds and permit those agreements to be financed from the same revenues as those used to pay the principal and interest on the bonds. Bond enhancement agreements are financial devices designed to be used in conjunction with the issuance of bonds to enhance the creditworthiness, liquidity, or marketability of those bonds, such as bond insurance, a letter of credit, a standby purchase agreement, or another arrangement to reduce risks to bondholders. Effective bond enhancement agreements can have a positive effect on bond ratings and lessen the costs of issuing and servicing the bonds. Similar authority has been granted to other state agencies that issue bonds.

Senate Bill No. 1640 was enacted by the 80th Legislature, Regular Session, 2007, to take effect only if the voters approve the proposed constitutional amendment. Senate Bill No. 1640 requires the Texas Higher Education Coordinating Board to administer the student loan program

authorized by Chapter 52, Education Code, pursuant to proposed Section 50b-6 and other current and former provisions of Article III of the Texas Constitution authorizing the issuance of bonds to finance educational loans to students. However, Senate Bill No. 1640 does not authorize the board to enter into bond enhancement agreements described by the proposed constitutional amendment. Under existing Section 52.82(d), Education Code, which is not amended by the bill, not more than \$125 million in bonds may be issued under the program in a single state fiscal year.

Comments made about the amendment during the legislative process have been reviewed. The following paragraphs are based on those comments, as well as comments made in recent years regarding similar proposed amendments to authorize general obligation bonds to fund student loans, and generally summarize the main arguments supporting or opposing the amendment.

The bonds to be authorized by the proposed amendment are essential to meet the growing demand for student loans for students attending colleges and universities, especially as tuition and fees continue to rise rapidly. The availability of student loans is critical to ensure that Texans can obtain the education they need to be productive contributors to the state's workforce. Without the proceeds from the proposed bonds, the Texas Higher Education Coordinating Board will not be able to provide loans to all eligible applicants in the near future.

The Hinson-Hazelwood College Student Loan Program operated under Chapter 52, Education Code, is a successful, self-sufficient program, depending not on state tax dollars but on money from student loan repayments, federal interest subsidies, and other sources. While general obligation bonds issued under the student loan program, such as those bonds to be authorized by the proposed amendment, do represent debt incurred by the state, the funds borrowed by the state through the sale of those bonds are repaid not by state taxpayers generally, but by former students in the form of loan repayment. Using general obligation bonds

to generate student loan funds allows the state to obtain those funds at the lowest cost by leveraging the state's credit without actually drawing on state funds.

Bond enhancement agreements will provide the Texas Higher Education Coordinating Board with additional tools to leverage its bonds to maximize the student loan money received from the sale of those bonds. Other state agencies that issue bonds, such as the Veterans' Land Board and Texas Water Development Board, have successfully used bond enhancement agreements.

The state should be wary of adding to its debt by issuing \$500 million in additional general obligation bonds for the student loan program, the largest authorization for the program thus far. While the loan program has not required general revenue in the past, unexpected circumstances, such as a sudden increase in student loan default rates, could require the taxpayers to foot part of the bill to repay the bonds.

The student loan program funded by the general obligation bonds competes with loan programs already offered by private lenders. Higher education loans will be available through the private lending market regardless of whether the state operates a separate program to offer such loans.



SENATE JOINT RESOLUTION

proposing a constitutional amendment providing for the issuance of general obligation bonds to finance educational loans to students and for authority to enter into bond enhancement agreements with respect to general obligation bonds issued for that purpose.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Sections 50b-6 and 50b-6A to read as follows:

Sec. 50b-6. (a) The legislature by general law may authorize the Texas Higher Education Coordinating Board or its successor or successors to issue and sell general obligation bonds of the State of Texas in an amount not to exceed \$500 million in order to finance educational loans to students in the manner provided by law. The bonds are in addition to bonds issued under Sections 50b-4 and 50b-5 of this article and under any other provision or former provision of this constitution authorizing similar bonds.

(b) The bonds shall be executed in the form, on the terms, and in the denominations, bear interest, and be issued in installments as prescribed by the Texas Higher Education Coordinating Board or its successor or successors.

(c) The maximum net effective interest rate to be borne by bonds issued under this section may not exceed the maximum rate provided by law.

(d) The legislature may provide for the investment of bond proceeds and may establish and provide for the investment of an interest and sinking fund to pay the bonds. Income from the investment shall be used for the purposes prescribed by the legislature.

(e) Notwithstanding any other provision of this article, there is appropriated out of the first money coming into the treasury in each fiscal year, not otherwise appropriated by this constitution, the amount sufficient to pay the principal of and interest on any bonds issued under this section, under Sections 50b-4 and 50b-5 of this article, and under any other

provision or former provision of this article authorizing similar bonds that mature or become due during the fiscal year, less any amount remaining in an interest and sinking fund established under this section, Section 50b-4 or 50b-5 of this article, or any other provision or former provision of this article authorizing similar bonds at the end of the preceding fiscal year that is pledged to the payment of the bonds or interest.

(f) Bonds issued under this section, after approval by the attorney general, registration by the comptroller of public accounts, and delivery to the purchasers, are incontestable.

Sec. 50b-6A. The legislature by general law may provide for the Texas Higher Education Coordinating Board or its successor or successors to enter into bond enhancement agreements with appropriate entities with respect to any bonds issued under Section 50b-4, 50b-5, or 50b-6 of this article or under any other provision or former provision of this article authorizing similar bonds. Payments due from the coordinating board under a bond enhancement agreement with respect to the principal of or interest on the bonds shall be treated for purposes of this constitution as payments of the principal of and interest on the bonds, and money appropriated for the purpose of paying the principal of and interest on the bonds as they mature or become due may be used to make payments under bond enhancement agreements authorized by this section with respect to the bonds.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on the earlier of the first date on which another election on a constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, is held or November 6, 2007. The ballot shall be printed to permit voting for or against the proposition: The constitutional amendment providing for the issuance of \$500 million in general obligation bonds to finance educational loans to students and authorizing bond enhancement agreements with respect to general obligation bonds issued for that purpose.

Senate Author: Tommy Williams et al.
House Sponsor: Warren Chisum et al.

The constitutional amendment authorizing the legislature to provide that the maximum appraised value of a residence homestead for ad valorem taxation is limited to the lesser of the most recent market value of the residence homestead as determined by the appraisal entity or 110 percent, or a greater percentage, of the appraised value of the residence homestead for the preceding tax year.

Currently, Subsection (i) of Section 1, Article VIII, Texas Constitution, authorizes the legislature to limit the maximum average annual percentage increase in the appraised value of a residence homestead for ad valorem tax purposes to 10 percent, or a greater percentage, for each year since the most recent tax appraisal of the homestead. The constitutional amendment proposed by House Joint Resolution No. 40 amends Subsection (i) to authorize the legislature to limit the maximum appraised value of a residence homestead for ad valorem tax purposes to the lesser of the most recent market value of the homestead as determined by the appraisal entity or 110 percent, or a greater percentage, of the appraised value of the homestead for the preceding tax year.

Subsection (a) of Section 1, Article VIII, Texas Constitution, requires that all taxation be equal and uniform. Subsection (b) of that section requires that all real property and tangible personal property in this state be taxed in proportion to its current market value.

Subsection (i) of Section 1, Article VIII, Texas Constitution, adopted in 1997, authorizes an exception for residence homesteads from the general requirement that property be taxed in proportion to its current market value. Under that provision, the legislature is authorized to limit the maximum average annual percentage increase in the appraised value of a residence homestead for ad valorem tax purposes to 10 percent, or a

greater percentage, for each year since the most recent tax appraisal of the homestead. The 1997 legislature enacted the limitation on increases in the appraised value of residence homesteads authorized by Subsection (i) by adding Section 23.23 to the Tax Code. Section 23.23, which took effect in 1998, provides that the appraised value of a residence homestead for a tax year may not exceed the lesser of (1) the current market value of the homestead or (2) the appraised value of the homestead for the last year in which the homestead was appraised, plus an additional 10 percent of that appraised value for each year since the homestead was last appraised, plus the market value of all new improvements made to the homestead since the last appraisal.

Although Subsection (i) of Section 1, Article VIII, Texas Constitution, and Section 23.23, Tax Code, are not construed in the same manner by all appraisal districts, in general those provisions are understood to permit an increase in the appraised value of a residence homestead only in a year in which the homestead is reappraised by the appraisal district for tax purposes. If the residence homestead is reappraised, the appraised value may be increased by an amount not to exceed 10 percent of the appraised value of the homestead for the last year in which it was appraised times the number of years since it was last appraised. Because under Section 25.18, Tax Code, an appraisal district is permitted to appraise property as infrequently as once every three years, the appraised value of a homestead could increase as much as 30 percent in the year in which it is reappraised as compared to its appraised value in the preceding year.

Under the amendment proposed by House Joint Resolution No. 40, the legislature is authorized to limit the maximum appraised value of a residence homestead for ad valorem tax purposes in a tax year to the lesser of the most recent market value of the residence homestead as determined by the appraisal entity or 110 percent, or a greater percentage, of the appraised value of the residence homestead for the preceding tax year. House Bill No. 438, Acts of the 80th Legislature, Regular Session, 2007, which takes effect January 1, 2008, is the enabling legislation for House Joint Resolution No. 40. The bill amends Section 23.23, Tax Code, to provide that notwithstanding the requirements of Section 25.18 of that code and regardless of whether the appraisal office has reappraised the

residence homestead and determined the market value of the homestead for the current tax year, an appraisal of value may increase the appraised value of a homestead for a tax year to an amount not to exceed the lesser of (1) the market value of the homestead for the most recent tax year that the market value was determined by the appraisal of value or (2) the appraised value of the homestead for the preceding tax year, plus 10 percent of that appraised value, plus the market value of all new improvements made to the homestead since the preceding year.

The amendments to Subsection (i) of Section 1, Article VIII, Texas Constitution, and Section 23.23, Tax Code, made by House Joint Resolution No. 40 and House Bill No. 438, respectively, do not limit the appraised value of a residence homestead in an appraisal district that appraises property annually to an amount that would be different from the amount that would be calculated under current law. In such an appraisal district, under both current law and the proposed amendments, the appraised value of a residence homestead could increase by up to 10 percent per year.

However, the proposed amendments do alter the limitation on the appraised value of a residence homestead in an appraisal district that appraises the homestead only every two or three years as permitted by Section 25.18, Tax Code. Under current law as it is generally construed, the appraised value of a residence homestead could increase only in a year in which the homestead was reappraised, but the increase from the appraised value for the preceding year could be as much as 30 percent of the preceding year's appraised value (10 percent of the appraised value for the last year in which the homestead was appraised times the number of years since the homestead was last appraised, which could be up to three years). Under the proposed amendments, the appraised value of a residence homestead could be increased by the appraisal district regardless of whether the homestead was reappraised for ad valorem tax purposes in the current tax year, but the increase from the appraised value for the preceding year could not exceed 10 percent of the preceding year's appraised value.

Comments made about the amendment during the legislative process have been reviewed. The following paragraphs are based on those comments and generally summarize the main arguments supporting or opposing the amendment.

When the legislature proposed the limitation on increases in appraised value of residence homesteads in 1997 and the voters approved it, the legislature and the voters understood the limitation to prohibit the appraised value of a homestead from being increased by more than 10 percent from year to year. The intent was to provide a circuit breaker that would protect homeowners from the hardship of having their ad valorem taxes increased substantially from one year to the next as a result of appraisal increases. Instead, the limitation has been construed by many appraisal districts that do not appraise property annually to authorize increases of up to 30 percent in the year in which a residence homestead is reappraised for tax purposes. The proposed amendment conforms the language of the Texas Constitution to the legislature's intent when it enacted the original appraisal limitation and the voters' understanding of the limitation when they approved it.

The proposed amendment makes the ad valorem tax system fairer. Under current law, residence homesteads of similar value in different appraisal districts may have different appraised values depending on the frequency with which the appraisal districts appraise property and the year in which the homesteads were last appraised. Under the current appraisal limitation as it is generally construed, increases in the value of residence homesteads are taken into account only when the homesteads are reappraised. While many appraisal districts appraise property annually, some districts appraise property only every two or three years. If property values are changing, differences in appraised values of residence homesteads of similar value may arise between appraisal districts that appraise property annually and those that do not. Furthermore, in an appraisal district that appraises property only every two or three years, in any given year residence homesteads of similar value may have

widely different appraised values because they were last appraised in different years. Because the proposed amendment authorizes changes in the appraised value of a residence homestead regardless of whether the homestead is reappraised in the current year, similar homesteads will be more likely to be appraised at the same value regardless of the frequency with which the appraisal district appraises property or the years in which the homesteads were last appraised, resulting in a more equitable sharing of the tax burden.

The effect of the proposed amendment on the ad valorem tax revenue of local governments is minimal. The proposed amendment affects the appraised value of residence homesteads only in appraisal districts that do not appraise property annually. The proposed amendment would not affect the appraised value of residence homesteads in most populous counties because the appraisal districts for those counties generally appraise property annually. Furthermore, even in appraisal districts that do not appraise property annually, the effect would be minimal because even though appraisal increases might initially lag increases in market values over the short term if market values are rising rapidly, over the long term appraised values would likely catch up with market values because the proposed amendment permits appraisal increases of up to 10 percent annually.

~~kk - a~~ ~~kk - a~~ ~~kk - a~~ The proposed amendment is unnecessary because appraisal districts in most counties that are experiencing rapid increases in property values already appraise property annually, and the proposed amendment has no effect on appraisal increases in those appraisal districts. While the amendment is intended to protect homeowners from increases in property values from one year to the next of 20 or 30 percent as allowed under current law in appraisal districts that appraise property only every two or three years, in reality those increases are uncommon because property values tend to increase more slowly in those appraisal districts.

To the extent that the proposed amendment reduces the ad valorem tax burden of the owner of a residence homestead the value of which

is rising rapidly and that is located in an appraisal district that does not appraise property annually, the amendment has the effect of shifting the tax burden to other taxpayers, including owners of commercial property and of homesteads the values of which are rising less rapidly.



HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to provide that the maximum appraised value of a residence homestead for ad valorem taxation is limited to the lesser of the most recent market value of the residence homestead as determined by the appraisal entity or 110 percent, or a greater percentage, of the appraised value of the residence homestead for the preceding tax year.

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

SECTION 1. Section 1(i), Article VIII, Texas Constitution, is amended to read as follows:

(i) Notwithstanding Subsections (a) and (b) of this section, the Legislature by general law may limit the maximum ~~[average annual percentage increase in the]~~ appraised value of a residence homestead ~~[homesteads]~~ for ad valorem tax purposes in a tax year to the lesser of the most recent market value of the residence homestead as determined by the appraisal entity or 110 [10] percent, or a greater percentage, of the appraised value of the residence homestead for the preceding tax [each] year [since the most recent tax appraisal]. A limitation on appraised values ~~[appraisal increases]~~ authorized by this subsection:

(1) takes effect as to a residence homestead on the later of the effective date of the law imposing the limitation or January 1 of the tax year following the first tax year the owner qualifies the property for an exemption under Section 1-b of this article; and

(2) expires on January 1 of the first tax year that neither the owner of the property when the limitation took effect nor the owner's spouse or surviving spouse qualifies for an exemption under Section 1-b of this article.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2007. The ballot shall be printed to permit voting for or against the proposition:

✱ The constitutional amendment authorizing the legislature to provide that the maximum appraised value of a residence homestead for ad valorem taxation is limited to the lesser of the most recent market value of the residence homestead as determined by the appraisal entity or 110 percent, or a greater percentage, of the appraised value of the residence homestead for the preceding tax year.

House Author: Scott Hochberg et al.
Senate Sponsor: Glenn Hegar

The constitutional amendment authorizing the issuance of up to \$1 billion in bonds payable from the general revenues of the state for maintenance, improvement, repair, and construction projects and for the purchase of needed equipment.

The constitutional amendment proposed by Senate Joint Resolution No. 65 adds to Article III of the Texas Constitution a new Section 50-g allowing the legislature to authorize by law the issuance of up to \$1 billion in general obligation bonds of the state to pay costs of maintenance, improvement, repair, or construction projects authorized by the legislature and to purchase needed equipment.

The proposed Section 50-g(a) authorizes the legislature to authorize the Texas Public Finance Authority to provide for, issue, and sell up to \$1 billion in general obligation bonds of the state and to enter into related credit agreements. The Texas Public Finance Authority would prescribe the form, terms, denominations, and interest rates of the bonds.

The proposed Section 50-g(b) provides that the proceeds of the bonds shall be deposited in a separate fund or account in the state treasury and that money in that separate fund or account may be used only for:

(1) maintenance, improvement, repair, or construction projects that the legislature authorizes by general law or the General Appropriations Act; or

(2) purchasing needed equipment, as authorized by law or the General Appropriations Act.

The proposed Section 50-g(b) also provides that the projects or purchases must be administered by or on the behalf of one or more of the following state agencies: the Texas Building and Procurement Commission; the Parks and Wildlife Department; the adjutant general's department; the Department of State Health Services; the Department of

Aging and Disability Services; the Texas School for the Blind and Visually Impaired; the Texas Youth Commission; the Texas Historical Commission; the Texas Department of Criminal Justice; the Texas School for the Deaf; or the Department of Public Safety of the State of Texas.

The proposed Section 50-g(c) provides that the maximum interest rate of the authorized bonds may be set by general law.

The proposed Section 50-g(d) provides that the first money coming into the state treasury that is not otherwise appropriated by the Texas Constitution is dedicated to pay the principal of and interest on bonds authorized by Section 50-g that mature or become due during that fiscal year and to make payments under related credit agreements.

The proposed Section 50-g provides that bonds issued under Section 50-g are incontestable and are general obligations of the state after the attorney general approves the bonds and the bonds are registered with the comptroller of public accounts.

If the proposed amendment is approved by the voters, Senate Bill No. 2033 will take effect. Senate Bill No. 2033 authorizes issuance of the bonds. Also, if the proposed amendment is approved by the voters, Section 19.71 of the General Appropriations Act for the 2008-2009 state fiscal biennium provides for the appropriation of \$717,303,391 from the bond proceeds for projects of state agencies identified in Section 50-g(b), Article III, Texas Constitution, as added by the amendment, including \$273.4 million to the Texas Department of Criminal Justice for prison construction, repair, and rehabilitation and \$200 million to the Department of Public Safety for various purposes. Also contingent on approval of the proposed amendment by the voters, the General Appropriations Act appropriates \$56,742,868 out of general revenue for debt service payments for the bonds.



The proposed Section 50-g, Article III, Texas Constitution, is similar to Section 50-f of that article. Section 50-f, approved in 2001, authorized up to \$850 million in general obligation bonds for construction and repair projects and for the purchase of equipment by certain specified state

agencies. Like Section 50-f, the proposed Section 50-g provides for the Texas Public Finance Authority to issue general obligation bonds of the state to provide money to pay for projects of certain state agencies for maintenance, improvement, repair, and construction projects and for the purchase of needed equipment and provides that money coming into the state treasury during a fiscal year is set aside as needed to ensure that principal and interest on the bonds are paid as the bonds mature or become due during the fiscal year.

Comments made about the amendment during the legislative process have been reviewed. The following paragraphs are based on those comments and generally summarize the main arguments supporting or opposing the amendment.

Supporters described the proposed amendment as providing for necessary projects for state infrastructure and homeland security. Projects included in the General Appropriations Act for the current state fiscal biennium, contingent on the approval of Senate Joint Resolution No. 65, include money for deferred maintenance and asbestos abatement generally, for courthouse renovations and historic sites, for state mental health hospitals, for mental health state schools, for maintenance at readiness centers for emergency response, for repairs and maintenance at the Texas National Guard's Camp Mabry, for new state prison facilities and repair and rehabilitation of existing facilities, for a new regional office and crime lab in Lubbock for the Department of Public Safety, for Department of Public Safety crime lab expansions, for Department of Public Safety offices in McAllen and Rio Grande City, for construction of a new facility and at existing facilities of the Texas Youth Commission, and for the Parks and Wildlife Department for the Battleship *Texas* and for statewide park repairs.

Some observers have noted that the chosen uses of the proposed bond proceeds have not been publicly reviewed and evaluated adequately to ensure that the uses fulfill valid needs of the

state. In regard to prison spending, it has been claimed that additional prison facilities are not necessary and that the state currently has difficulty maintaining adequate staff for prisons already constructed.



SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing the issuance of general obligation bonds for maintenance, improvement, repair, and construction projects and for the purchase of needed equipment.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Section 50-g to read as follows:

Sec. 50-g. (a) The legislature by general law may authorize the Texas Public Finance Authority to provide for, issue, and sell general obligation bonds of the State of Texas in an amount not to exceed \$1 billion and to enter into related credit agreements. The bonds shall be executed in the form, on the terms, and in the denominations, bear interest, and be issued in installments as prescribed by the Texas Public Finance Authority.

(b) Proceeds from the sale of the bonds shall be deposited in a separate fund or account within the state treasury created by the comptroller of public accounts for this purpose. Money in the separate fund or account may be used only to pay for:

(1) maintenance, improvement, repair, or construction projects authorized by the legislature by general law or the General Appropriations Act and administered by or on behalf of the Texas Building and Procurement Commission, the Parks and Wildlife Department, the adjutant general's department, the Department of State Health Services, the Department of Aging and Disability Services, the Texas School for the Blind and Visually Impaired, the Texas Youth Commission, the Texas Historical Commission, the Texas Department of Criminal Justice, the Texas School for the Deaf, or the Department of Public Safety of the State of Texas; or

(2) the purchase, as authorized by the legislature by general law or the General Appropriations Act, of needed equipment by or on behalf of a state agency listed in Subdivision (1) of this subsection.

(c) The maximum net effective interest rate to be borne by bonds issued under this section may be set by general law.

(d) While any of the bonds or interest on the bonds authorized by this section is outstanding and unpaid, from the first money coming into the state treasury in each fiscal year not otherwise appropriated by this constitution, an amount sufficient to pay the principal and interest on bonds that mature or become due during the fiscal year and to make payments that become due under a related credit agreement during the fiscal year is appropriated, less the amount in the sinking fund at the close of the previous fiscal year.

(e) Bonds issued under this section, after approval by the attorney general, registration by the comptroller of public accounts, and delivery to the purchasers, are incontestable and are general obligations of the State of Texas under this constitution.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2007. The ballot shall be printed to permit voting for or against the proposition: The constitutional amendment authorizing the issuance of up to \$1 billion in bonds payable from the general revenues of the state for maintenance, improvement, repair, and construction projects and for the purchase of needed equipment.

Senate Author: Tommy Williams et al.
House Sponsor: Warren Chisum

The constitutional amendment authorizing the legislature to permit the voters of a municipality having a population of less than 10,000 to authorize the governing body of the municipality to enter into an agreement with an owner of real property in or adjacent to an area in the municipality that has been approved for funding under certain programs administered by the Texas Department of Agriculture under which the parties agree that all ad valorem taxes imposed on the owner's property may not be increased for the first five tax years after the tax year in which the agreement is entered into.

The constitutional amendment proposed by Senate Joint Resolution No. 44 adds Section 1-o to Article VIII of the Texas Constitution to authorize the legislature to permit the voters of a city having a population of less than 10,000 to authorize the governing body of the city to enter into an agreement with an owner of real property in or adjacent to an area in the city that has been approved for funding under the Downtown Revitalization Program or the Main Street Improvements Program administered by the Texas Department of Agriculture under which the parties agree that the taxes imposed by any political subdivision on the owner's property may not be increased for the first five tax years after the tax year in which the agreement is entered into.

Often there are buildings located in the downtown area of small cities that are not maintained or renovated by their owners, or vacant land in such a downtown area remains unimproved, because the property owner cannot afford to keep up, renovate, or improve the property or may be reluctant to do so because that action would increase the appraised value of the property, resulting in substantially higher property taxes.

Section 1, Article VIII, Texas Constitution, requires that taxation be equal and uniform and that all real property and tangible personal property in this state be taxed in proportion to its current market value. Under these provisions, neither the legislature nor a political subdivision that imposes ad valorem taxes on property may limit the amount of a property owner's taxes without constitutional authority.

Section 1-o, Article VIII, Texas Constitution, as proposed by Senate Joint Resolution No. 44, states that its purposes are to:

- (1) aid in the elimination of slum and blighted conditions in less populated communities in this state;
- (2) promote rural economic development in this state; and
- (3) improve the economy of this state.

The Texas Department of Agriculture currently administers two grant programs under which cities may apply for and receive funds for the purposes of improving infrastructure and revitalizing their downtown areas, the Downtown Revitalization Program and the Main Street Improvements Program. Added Section 1-o authorizes the legislature to enact a general law that would apply in connection with a city with a population of less than 10,000 that has applied for and been approved for funding under the Downtown Revitalization Program or the Main Street Improvements Program, or a successor program administered by the department.

The amendment authorizes the enactment of a general law under which the governing body of the city would be able to hold an election by which the voters of the city could decide whether to authorize a limitation on tax increases on real property that is in or adjacent to the area designated for funding under one of those programs. If the election results favor the proposition, the governing body could enter into an agreement with each owner of real property in or adjacent to the designated area under which the taxes imposed on that property by the city or any other political subdivision would not be increased for the next five years, subject to certain terms and conditions.

The 80th Legislature, Regular Session, 2007, did not enact enabling legislation in anticipation of the proposed amendment. Senate Bill No. 1336, which was intended to implement the proposed constitutional

amendment, was introduced and did pass the Texas Senate but was not approved by the Texas House of Representatives. Accordingly, even if the proposed constitutional amendment is approved by the voters, until the legislature enacts enabling legislation at a future legislative session, even if a city has been approved for funding under the Downtown Revitalization Program or the Main Street Improvements Program, the tax limitation envisioned by Senate Joint Resolution No. 44 may not be used by any city.

Comments made about the amendment during the legislative process have been reviewed. The following paragraphs are based on those comments and generally summarize the main arguments supporting or opposing the amendment.

Senate Joint Resolution No. 44 would provide eligible small cities a tool to create incentives for private property owners to renovate downtown buildings and improve downtown properties in conjunction with other downtown revitalization efforts undertaken by those cities. The temporary limitation on tax increases would allow those smaller cities for which currently available economic development options such as tax increment financing or tax abatements may not be feasible to achieve the same effect. Senate Joint Resolution No. 44 would authorize the legislature to provide for a temporary limitation on tax increases on downtown buildings and other properties, which would not negatively affect the city's or other local governments' property tax revenue stream and would provide property owners with an incentive to invest realized tax savings into revitalization efforts.

Senate Joint Resolution No. 44 would provide the means for small cities to offer a financial incentive for property owners to renovate buildings and improve properties in their downtown areas by limiting the owners' tax burden for a five-year period. If the voters of a city approve implementation of the limitation, the city and downtown property owners could enter into contracts to establish the limitation in exchange for the renovation of their buildings or the improvement of their properties. With

only a small number of properties eligible for the limitation on property tax increases, the local impact is expected to be neutral during the five-year period. After the expiration of that limitation period, the political subdivisions that tax those buildings or properties are expected to see a positive local impact because of taxes imposed on the increased value of those buildings and property.

In many small cities, the buildings in the downtown areas are of historical value. If the buildings are allowed to deteriorate or are demolished, they are lost forever. Senate Joint Resolution No. 44 would allow the legislature to give small cities a local option tax relief tool that can be used to preserve and protect the historical buildings in their downtown areas through the cooperative efforts of the city and its downtown property owners.

Property owners who receive the benefit of infrastructure improvements funded through the Texas Department of Agriculture grant programs should be required to pay taxes imposed on any resulting increase in the value of their property. Furthermore, to the extent the amendment permits the legislature to reduce the tax burden of those property owners, the amendment may result in a shift of that tax burden to other property owners. In a smaller city, that effect would be more pronounced because the shifted tax burden would be borne by a smaller number of taxpaying property owners.



SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to permit the voters of a municipality with a population of less than 10,000 to authorize the governing body of the municipality to enter into an agreement with an owner of real property in or adjacent to an area in the municipality that has been approved for funding under certain revitalization or redevelopment programs to prohibit ad valorem tax increases on the owner's property for a limited period.

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

SECTION 1. Article VIII, Texas Constitution, is amended by adding Section 1-o to read as follows:

Sec. 1-o. To aid in the elimination of slum and blighted conditions in less populated communities in this state, to promote rural economic development in this state, and to improve the economy of this state, the legislature by general law may authorize the governing body of a municipality having a population of less than 10,000, in the manner required by law, to call an election to permit the voters to determine by majority vote whether to authorize the governing body of the municipality to enter into an agreement with an owner of real property that is located in or adjacent to a designated area of the municipality that has been approved for funding under the Downtown Revitalization Program or the Main Street Improvements Program administered by the Department of Agriculture, or a successor program administered by that agency, under which the parties agree that the ad valorem taxes imposed by any political subdivision on the owner's real property may not be increased for the first five tax years after the tax year in which the agreement is entered into, subject to the terms and conditions provided by the agreement. A general law enacted under this section must provide that, if authorized by the voters, an agreement to limit ad valorem tax increases authorized by this section:

(1) must be entered into by the governing body of the municipality and a property owner before December 31 of the tax year in which the election was held;

(2) takes effect as to a parcel of real property on January 1 of the tax year following the tax year in which the governing body and the property owner enter into the agreement;

(3) applies to ad valorem taxes imposed by any political subdivision on the real property covered by the agreement; and

(4) expires on the earlier of:

(A) January 1 of the sixth tax year following the tax year in which the governing body and the property owner enter into the agreement; or

(B) January 1 of the first tax year in which the owner of the property when the agreement was entered into ceases to own the property.

SECTION 2. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, authorizing the legislature to permit the voters of a municipality having a population of less than 10,000 to authorize the governing body of the municipality to enter into an agreement with an owner of real property in or adjacent to an area in the municipality that has been approved for funding under certain revitalization or redevelopment programs to prohibit ad valorem tax increases on the owner's property for a limited period and expires January 1, 2009.

(b) Section 1-o, Article VIII, of this constitution takes effect January 1, 2008, and applies only to a tax year that begins on or after that date.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2007. The ballot shall be printed to permit voting for or against the proposition: The constitutional amendment authorizing the legislature to permit the voters of a municipality having a population of less than 10,000 to authorize the

governing body of the municipality to enter into an agreement with an owner of real property in or adjacent to an area in the municipality that has been approved for funding under certain programs administered by the Texas Department of Agriculture under which the parties agree that all ad valorem taxes imposed on the owner's property may not be increased for the first five tax years after the tax year in which the agreement is entered into.

Senate Author: Craig Estes
House Sponsor: Rick Hardcastle

The constitutional amendment authorizing the legislature to exempt from ad valorem taxation one motor vehicle owned by an individual and used in the course of the owner's occupation or profession and also for personal activities of the owner.

The proposed amendment amends Section 1(d), Article VIII, Texas Constitution, by adding Subdivision (4), authorizing the legislature to exempt from ad valorem taxation one motor vehicle owned by an individual used in the course of the owner's occupation or profession and also used for personal activities of the owner. The proposed amendment applies beginning with the tax year that begins on January 1, 2007, and authorizes the legislature to enact a law that applies the exemption to that entire tax year. House Bill No. 1022, also enacted during the most recent legislative session, takes effect contingent on the approval of the constitutional amendment and will implement the exemption authorized by House Joint Resolution No. 54 beginning with 2007 taxes.

Under the Tax Code, owners of tangible personal property used for business purposes are generally required to report, or render, the estimated value of that property to the appropriate appraisal district. In 2005, the 79th Legislature, Regular Session, enacted House Bill No. 809, adding Subsection (k) to Section 22.01, Tax Code, which specifies that a person is not required to render for tax appraisal a personal motor vehicle that is also used for the production of income by its owner. However, many political subdivisions continued to tax those motor vehicles even though the vehicles were not required to be rendered for taxation. In November 2006, Attorney General Greg Abbott in Op. Tex. Att'y Gen. No. GA-0484 upheld the practice of those political subdivisions, stating that although House Bill No. 809 exempted those vehicles from the rendition

requirement, the legislature could not exempt them from ad valorem taxation without constitutional authorization because Section 1, Article VIII, Texas Constitution, requires all tangible personal property to be taxed at its market value unless an exemption is specifically authorized by the constitution. If approved, the proposed constitutional amendment and its enabling legislation, House Bill No. 1022, would largely accomplish what the legislature had intended to do by enacting House Bill No. 809 in 2005, which was to exempt from ad valorem taxation motor vehicles owned by individuals for personal use but also used partly for the production of income by their owners. The proposed amendment and enabling legislation would, however, limit the exemption to a single vehicle for each individual.

Comments made about the amendment during the legislative process have been reviewed. The following paragraphs are based on those comments and generally summarize the main arguments supporting or opposing the amendment.

The proposed amendment would remedy inconsistency in the taxation of personal motor vehicles also used for the production of income. The proposed amendment and House Bill No. 1022 would allow the will of the legislature in enacting House Bill No. 809 in 2005 to have its desired effect.

Because the motor vehicles affected by the proposed amendment are already exempt from rendition for taxation, most of those vehicles go untaxed. Current law allows an appraiser to harass a property owner by taxing motor vehicles that are exempt from rendition. It is clear that the legislature exempted these vehicles from rendition with the intent to exempt them from taxation. Personal property that is exempt from rendition should be exempt from taxation as well. Moreover, it is difficult to identify and tax personal property, and exempting motor vehicles is consistent with Texas law exempting other items of personal property such as stocks, bonds, and bank accounts.

By limiting this exemption to one motor vehicle per individual owner the proposed amendment would allay concerns that a fleet of motor vehicles could be exempted from taxation by a person who uses each vehicle for personal use for a short time each year.

The proposed amendment would provide tax relief to overburdened real estate agents, accountants, lawyers, doctors, and other small business owners and contractors who use their personal vehicles for merely incidental commercial purposes. It is unfair to tax a vehicle that is predominantly for personal use.

~~kk - g~~ ~~kk - g~~ The proposed constitutional amendment would exempt from taxation many motor vehicles used in the production of income by their owners. Exempting such commercial property from taxation runs counter to the long-standing public policy in Texas that all personal property used for the production of income, including motor vehicles, be taxed. A vehicle used predominantly for business should not be exempt merely because it is used for occasional personal purposes.



HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to exempt from ad valorem taxation one motor vehicle owned by an individual and used in the course of the owner's occupation or profession and also for personal activities of the owner.

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

SECTION 1. Section 1(d), Article VIII, Texas Constitution, is amended to read as follows:

(d) The Legislature by general law shall exempt from ad valorem taxation household goods not held or used for the production of income and personal effects not held or used for the production of income. The Legislature by general law may exempt from ad valorem taxation:

(1) all or part of the personal property homestead of a family or single adult, ~~personal property homestead~~ meaning that personal property exempt by law from forced sale for debt;

(2) subject to Subsections (e) and (g) of this section, all other tangible personal property, except structures which are substantially affixed to real estate and are used or occupied as residential dwellings and except property held or used for the production of income; ~~and~~

(3) subject to Subsection (e) of this section, a leased motor vehicle that is not held primarily for the production of income by the lessee and that otherwise qualifies under general law for exemption; ~~and~~

(4) one motor vehicle, as defined by general law, owned by an individual that is used in the course of the individual's occupation or profession and is also used for personal activities of the owner that do not involve the production of income.

SECTION 2. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, authorizing the legislature to exempt from ad valorem taxation one motor vehicle owned by an individual and used in the course of the owner's occupation or profession and also for personal activities of the owner and expires January 1, 2009.

(b) The amendment to Section 1(d), Article VIII, of this constitution takes effect on the date of the official canvass of returns showing adoption of the amendment and applies beginning with the tax year that begins January 1, 2007. The legislature may enact a general law authorized by the constitutional amendment that applies to the entire 2007 tax year, notwithstanding that the constitutional amendment was adopted after the beginning of that tax year, and a general law applicable to the entire 2007 tax year is not considered to be a retroactive law.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2007. The ballot shall be printed to permit voting for or against the proposition: The constitutional amendment authorizing the legislature to exempt from ad valorem taxation one motor vehicle owned by an individual and used in the course of the owner's occupation or profession and also for personal activities of the owner.

House Author: Harvey Hilderbran et al.
Senate Sponsor: Tommy Williams et al.

The constitutional amendment to allow governmental entities to sell property acquired through eminent domain back to the previous owners at the price the entities paid to acquire the property.

Section 52(a), Article III, Texas Constitution, prohibits the legislature from authorizing a county, city, or other political subdivision of the state from lending its credit or granting public money or anything of value to or in aid of an individual, association, or corporation. The constitutional amendment proposed by House Joint Resolution No. 30 amends Article III by adding a new Section 52j that authorizes a governmental entity to sell real property acquired through eminent domain to the person from whom the governmental entity acquired the property, or to that person's heirs, successors, or assigns, at the price the governmental entity paid for the property at the time the property was acquired if: (1) the public use for which the property was acquired is canceled; (2) no actual progress is made toward the public use during a prescribed period of time; or (3) the property is unnecessary for the public use for which the property was acquired.

If a governmental entity uses its eminent domain authority to take private real property, the governmental entity is required to give the property owner just and adequate compensation under the Fifth Amendment to the United States Constitution and Section 17, Article I, Texas Constitution.

Under Chapter 21, Property Code, if the public use for which the real property was acquired is canceled before the 10th anniversary of the date on which the property was acquired, the governmental entity is required to offer to sell the property back to the person from whom the property interest was acquired, or to that person's heirs, successors, or assigns, for

the fair market value of the property at the time the public use is canceled. Two bills proposed during the 80th Legislative Session, House Bill No. 217 and House Bill No. 2006, would have amended Chapter 21, Property Code, to require a governmental entity to offer to sell back property acquired through eminent domain for the price the entity paid to acquire the property under certain circumstances, including the cancellation of the public use during a specified period, the lack of actual progress toward that public use during a specified period, or a determination that the property is not necessary to accomplish that public use. It was expected that, under those two bills, the property would have increased in value during the time it was owned by the governmental entity and that, therefore, the price at which the property would be sold back to the previous owner would be less than market value.

Because a sale of public property at less than its market value is considered a grant of public money to the purchaser in violation of Section 52(a), Article III, Texas Constitution, the changes in law proposed by House Bill No. 217 and House Bill No. 2006 would be unconstitutional unless the Texas Constitution were amended to create an exception to Section 52(a) that would authorize the sales contemplated by those bills. The constitutional amendment proposed by House Joint Resolution No. 30, if passed by the voters, would create such an exception by authorizing a governmental entity to sell property acquired through eminent domain back to the owner from whom it was acquired, or to that owner's heirs, successors, or assigns, for the price the governmental entity paid to acquire the property, regardless of whether that price is lower than the market value of the property when it is sold back, if: (1) the public use for which the property was acquired by the entity is canceled; (2) no actual progress is made toward the public use during a prescribed period of time; or (3) the property is unnecessary for the public use for which it was acquired.

Exceptions to the general rule of Section 52(a), Article III, have been adopted for other situations. Examples include an exception for certain economic development programs, for payment of medical expenses for certain law enforcement officials injured in the course of their official duties, and for the donation of surplus firefighting equipment to underdeveloped countries and rural areas.

Both House Bill No. 217 and House Bill No. 2006 failed to become law. House Bill No. 217 was not enacted by the legislature, while House Bill No. 2006 was enacted by the legislature but was vetoed by Governor Rick Perry on June 15, 2007. House Joint Resolution No. 30 was adopted by the legislature, and the constitutional amendment proposed by the joint resolution will be on the November 6 ballot.

House Joint Resolution No. 30 was considered by the legislature in conjunction with proposed statutory changes to require governmental entities to offer the property for sale at the acquisition price under circumstances described by the proposed constitutional amendment. In the absence of those statutory changes, it is not clear what effect House Joint Resolution No. 30, if adopted by the voters, would have on current law. See the Summary of Comments Made About the Proposed Amendment below for various views about the effect of the adoption of House Joint Resolution No. 30.

Comments made about the proposed amendment during the legislative process have been reviewed. The following paragraphs are based on those comments and generally summarize the main arguments supporting or opposing the amendment.

House Joint Resolution No. 30 allows property to be sold back to property owners whose property was acquired through eminent domain under certain conditions at the price the condemning entity paid for the property. Although selling property acquired through eminent domain to the previous property owner at the price the governmental entity paid, which may not be equivalent to the current market value of the property, might be construed as giving a public benefit to a private individual, it is just a matter of fairness. If the amendment results in giving certain property owners a windfall from any increase in the value of the property, the amendment is still fair because it would be a disincentive to governmental entities taking property they may not need and may indirectly reduce instances in which property is taken through eminent domain.

Private property rights are some of the most fundamental rights we have as individuals in this country. Thus, if there is going to be an imbalance related to the acquisition of private property for public use, the balance should be in favor of the private property owner, not the state. There is something fundamentally wrong with forcing a private property owner to pay more for the owner's former property than the government paid for it when the government acquired it, even though the value of the property may have increased. Furthermore, just compensation should allow the previous owner of property acquired through eminent domain to be compensated for not being able to market the property during the time the condemning entity owned the property. House Joint Resolution No. 30 will give a governmental entity an incentive to be more specific as to the purpose for which the entity is acquiring private property and prevent the entity from benefiting from the acquisition after it has failed to use the property for the purpose for which the property was acquired.

Proponents of House Joint Resolution No. 30 assume that the proposed amendment is self-executing, which means that the amendment would take effect without enabling legislation and that the governor's veto of House Bill No. 2006 would not prevent the amendment from beginning to operate. Under the proponents' assumption, the existing provisions of Chapter 21, Property Code, would likely continue to require a governmental entity to offer to sell back property acquired through eminent domain at the property's fair market value if the public use for which the property was acquired by the entity is canceled before the 10th anniversary of the acquisition. Reading the new constitutional provision and the preexisting statutes together under the proponents' assumption, a governmental entity would continue to be required to offer to sell the property back to the previous owner, or the owner's heirs, successors, or assigns, for fair market value under the circumstances described by the statute, but the entity would also have the authority to offer the property to those persons for the price the entity paid to acquire it. Also, because the constitutional provision does not refer to a time period with respect to cancellation of the public use, the entity might be considered to have the authority to offer the property back to those persons for the entity's acquisition price if the public use is canceled after the 10th anniversary of acquisition.

Furthermore, in the absence of a prescribed statutory time period during which actual progress toward the public use for which the property was acquired through eminent domain must be made, the constitutional amendment might be read to allow a governmental entity to establish under the rulemaking authority of the entity a time period after which, if no actual progress is made toward the public purpose for which the entity acquired the property through eminent domain, the entity would or could offer the property at the price the entity paid to acquire it. Proponents also assume that if a governmental entity determines property it acquired through eminent domain is unnecessary for the public use for which the property was acquired, the constitutional amendment would authorize, but not require, the entity to offer to sell the property back at the price the entity paid to acquire it.

House Joint Resolution No. 30 gives property owners a financial windfall because selling property to previous property owners at the price the governmental entity paid for that property does not account for: (1) any increased value in the property; (2) property taxes and other maintenance costs for the property that have accrued between the time the property was acquired and the time a condition was met for repurchase; and (3) the cost, including the cost for bonds and enhancing the property, paid by the governmental entity for the property.

The proposed amendment would have significant unintended consequences and could tie the hands of municipalities. Furthermore, there is not a great need for the amendment because the price at which property can be repurchased is not a significant problem because cancellation, which occurs when the public use for which property acquired through eminent domain is canceled by the 10th anniversary of the date of acquisition, rarely occurs.

The proposed amendment also creates a disincentive for a property owner to negotiate a deal with a governmental entity because the option of repurchase is only available to a property owner whose property was condemned by eminent domain, not to an owner who negotiated a deal with the governmental entity in a voluntary transaction.

Opponents of House Joint Resolution No. 30 assume that the proposed amendment would have no effect because of the veto of House Bill No. 2006, which the opponents consider to be the enabling statute for the amendment. Under the opponents' assumption, House Joint Resolution No. 30 is not self-executing, which means that the amendment requires enabling legislation to take effect. Opponents argue that if the amendment passes in November 2007, it would have no effect because there is no general law to implement the authorization. Thus, passage of the amendment would only authorize the legislature to adopt a general law in the future to allow a governmental entity to offer to sell real property acquired through eminent domain to the previous owner, or to the owner's heirs, successors, or assigns, for the price the governmental entity paid for the property at the time the property was acquired. Therefore, opponents assume that the governmental entity can only continue to offer to sell property back to owners under existing law, which requires the entity to offer to sell the property back to owners at the fair market value of the property if the public use for which the property was acquired is canceled before the 10th anniversary of the acquisition, regardless of the circumstances and price provided by the amendment.

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to allow the repurchase of real property acquired by a governmental entity through eminent domain.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Section 52j to read as follows:

Sec. 52j. A governmental entity may sell real property acquired through eminent domain to the person who owned the real property interest immediately before the governmental entity acquired the property interest, or to the person's heirs, successors, or assigns, at the price the entity paid at the time of acquisition if:

(1) the public use for which the property was acquired through eminent domain is canceled;

(2) no actual progress is made toward the public use during a prescribed period of time; or

(3) the property is unnecessary for the public use.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2007. The ballot shall be printed to provide for voting for or against the proposition:

✱ The constitutional amendment to allow governmental entities to sell property acquired through eminent domain back to the previous owners at the price the entities paid to acquire the property.

House Author: Jim Jackson et al.
Senate Sponsor: Kyle Janek

• Clarification of Certain Provisions

The constitutional amendment to clarify certain provisions relating to the making of a home equity loan and use of home equity loan proceeds.

• Procedural Requirements

The proposed amendment amends Section 50, Article XVI, Texas Constitution, by making various changes relating to the eligibility for a home equity loan and the procedural requirements related to obtaining a home equity loan. Specifically, the proposed amendment provides that:

- whether property is designated for agricultural use, which would make the property ineligible to secure a home equity loan, is determined as of the date of the loan closing;

- the application that begins the 12-day waiting period before the loan may close must be the loan application;

- the borrower must receive a copy of the loan application at least one business day before the loan may close;

- the one-year waiting period between home equity loans may be waived at the borrower's request in the case of a declared emergency applicable to the area where the property securing the loans is located;

- a borrower may sign a loan document that has blanks left to be filled in if the blanks do not relate to substantive terms of the loan agreement;

- at the time the loan is made the borrower must receive a copy of the original loan application and all executed documents the owner signs at closing and those documents may be provided by a person other than the lender; and

- a borrower may not use an unsolicited preprinted check to obtain an advance on a home equity line of credit.



Before 1998, an owner of a homestead could use the homestead as collateral for a loan only for the limited purposes of buying or improving the homestead or paying taxes on the homestead. The voters approved a constitutional amendment effective January 1, 1998, allowing a homestead to be used as collateral for a loan for any purpose, subject to numerous constraints on how the loan could be made, repaid, and collected. Because these constraints were included in the constitution rather than in an enabling statute, all adjustments and revisions to the constraints had to be made by additional constitutional amendments. In 2003, the voters provided certain authority to interpret the home equity loan constitutional provision to the Credit Union Commission, as to credit unions, and to the Finance Commission of Texas, as to all other home equity lenders. The scope of this authority and the validity of certain specific interpretations are, at the time this analysis is being prepared, being considered by the courts in the case of *Association of Community Organizations for Reform Now (ACORN) et al. v. Finance Commission of Texas et al.* This proposed constitutional amendment includes a variety of adjustments and revisions to the constraints in the home equity loan constitutional provision, including some under consideration in the *ACORN* case.

The constitution prohibits the use of homestead property that is designated for agricultural use under state ad valorem tax law, other than property used for production of milk, from securing a home equity loan. The question has arisen as to whether designation of property for agricultural use at a date after the home equity loan is closed prevents foreclosure of the loan. The proposed amendment makes it clear that the prohibition on use of agricultural land to secure a home equity loan applies only if the property is designated for agriculture use as of the date the loan is closed.

The constitution also provides that a home equity loan may not close before the 12th day after the borrower submits an application to the lender. The proposed amendment clarifies that the application must be a loan application, rather than an application for some other service provided by the lender, such as a preliminary determination of the amount of credit for which a borrower is eligible.

Current law provides that a borrower must receive, at least one business day before the date a home equity loan is closed, an itemized disclosure of the amounts that will be charged at closing. The proposed amendment adds a requirement that the borrower also receive at that time a copy of the borrower's loan application if a copy was not provided earlier.

Home equity loans serve as a source of funds for many homestead owners needing to repair homestead property after a natural disaster such as a flood or hurricane. The constitution, however, prohibits homestead owners from obtaining a home equity loan if the owner has used the homestead to secure another home equity loan closed within the preceding year. The purpose of the one-year waiting period is to prevent a practice used by some unscrupulous lenders known as *flippping*, the repeated refinancing of a loan over short periods of time to allow the lenders to collect fees related to each instance of refinancing. The proposed amendment would create an exception to this one-year waiting period between home equity loans secured by the same property only on the homestead owner's request in the case of a state of emergency that is declared by the president of the United States or the governor and that applies to the area where the homestead is located.

Current law provides that a home equity loan borrower may not sign any instrument in which blanks are left to be filled in. The loan closing process, however, often requires that many complicated and detailed forms be completed, many of which are required by federal law for all home loans and include blanks unrelated to the specific borrower or loan involved. To avoid invalidating a loan transaction for failure of the parties to fill in one of these inconsequential blanks, the proposed amendment limits the requirement only to blanks relating to substantive terms of the agreement at hand.

The constitution requires that when a home equity loan is made the borrower must receive a copy of all documents the borrower signed related to the loan. The finance commission has adopted a rule stating that this applies only to documents signed at closing, and not all the documents signed in connection with the application process. This rule is one of the issues in dispute in the *ACORN* case. The proposed

amendment incorporates the rule into the constitution with the exception that the borrower must also receive a copy of the original loan application. The amendment also removes a requirement that the documents must be provided specifically by the lender, allowing the borrower to receive the documents from another person.

Finally, the proposed amendment addresses another issue disputed in the *ACORN* case relating to the manner in which a person may obtain advances on a home equity line of credit. A home equity line of credit is a type of home equity loan in which the borrower receives the money loaned not as a lump sum or in predetermined amounts, but in advances made from time to time at the borrower's request. Currently the constitution prohibits a borrower from using a preprinted solicitation check to obtain an advance. A finance commission rule limits the definition of a preprinted solicitation check to a check that is provided to the borrower without being requested by the borrower and that contains at least one preprinted key payment item, such as the amount or payee. The rule permits the use of all non-prohibited forms of requesting advances, including convenience checks. The rule did not, however, define convenience check or any other type of non-prohibited device. The amendment substitutes the phrase preprinted check unsolicited by the buyer for preprinted solicitation check to clarify that all types of preprinted checks are permissible if specifically requested by the borrower.

Comments made about the amendment during the legislative process have been reviewed. The following paragraphs are based on those comments and generally summarize the main arguments supporting or opposing the amendment.

Recent interpretations of home equity lending law by the Finance Commission of Texas and court cases, especially the *ACORN* case, have created a lot of uncertainty in that area of law that the proposed amendment is intended to address. Additional clarity is especially important because mistakes in following the legal technicalities of the law can result in invalidating a loan. The proposed amendment more

closely reflects the actual business practices of lenders while protecting borrowers from unscrupulous practices.

Hurricanes Rita and Katrina have shown that flexibility is needed in the one-year waiting period between home equity loans, so that borrowers can access the equity in their homes to finance repair of damages caused during a declared state of emergency.

Although the *ACORN* case involves the issue of what charges are considered fees for the purpose of the constitution's three percent cap on fees that may be charged in connection with a home equity loan and what charges are considered interest not subject to the cap, the law on this issue is clear and the proposed amendment is correct in not addressing this issue.

Opponents agree that a constitutional amendment is necessary to address uncertainties in the law but disagree as to what uncertainties should be addressed and how the law should be changed. The amendment fails to address crucial issues, such as what charges are subject to the constitutional fee cap and whether an application for a home equity loan may be taken orally. Because the courts tend to favor lenders on these issues, failure of the amendment to address the issues is the same as settling the issues in the lenders' favor to the detriment of borrowers.

Moreover, the amendment does not provide enough protection to home equity line of credit borrowers, who are enticed into taking advances on the loan by the use of preprinted checks. A preprinted check should be valid as a means to secure an advance only if it is signed by all owners, as is required of the original application.

The amendment also does not require the lender to provide to the borrower copies of all the documents in the lender's files related to the loan. Borrowers need this information to be sure that at closing of the loan they are receiving everything to which they are entitled under the agreement.

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to clarify certain provisions relating to the making of a home equity loan and use of home equity loan proceeds.

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

SECTION 1. Sections 50(a), (g), and (t), Article XVI, Texas Constitution, are amended to read as follows:

(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money thereof, or a part of such purchase money;

(2) the taxes due thereon;

(3) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(4) the release of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(5) work and material used in constructing new improvements thereon, if contracted for in writing, or work and material used to repair or renovate existing improvements thereon if:

(A) the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead;

(B) the contract for the work and material is not executed by the owner or the owner's spouse before the 4th day after the owner makes written application for any extension of credit for the work and material, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

(C) the contract for the work and material expressly provides that the owner may rescind the contract without penalty or charge within three days after the execution of the contract by all parties, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing; and

(D) the contract for the work and material is executed by the owner and the owner's spouse only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company;

(6) an extension of credit that:

(A) is secured by a voluntary lien on the homestead created under a written agreement with the consent of each owner and each owner's spouse;

(B) is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made;

(C) is without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud;

(D) is secured by a lien that may be foreclosed upon only by a court order;

(E) does not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit;

(F) is not a form of open-end account that may be debited from time to time or under which credit may be extended from time to time unless the open-end account is a home equity line of credit;

(G) is payable in advance without penalty or other charge;

(H) is not secured by any additional real or personal property other than the homestead;

(I) is not secured by homestead property that on the date of closing is designated for agricultural use as provided by statutes governing property tax, unless such homestead property is used primarily for the production of milk;

(J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead;

(K) is the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsections (a)(1)-(a)(5) or Subsection (a)(8) of this section;

(L) is scheduled to be repaid:

(i) in substantially equal successive periodic installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment; or

(ii) if the extension of credit is a home equity line of credit, in periodic payments described under Subsection (t)(8) of this section;

(M) is closed not before:

(i) the 12th day after the later of the date that the owner of the homestead submits a loan [an] application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by Subsection (g) of this section;

(ii) one business day after the date that the owner of the homestead receives a copy of the loan application if not previously provided and a verbal itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing; and

(iii) the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property, except a reference described by Paragraph (Q)(x)(f) of this subdivision, unless the owner on oath requests an earlier closing due to a state of emergency that:

(a) has been declared by the president of the United States or the governor as provided by law; and

(b) applies to the area where the homestead is located;

(N) is closed only at the office of the lender, an attorney at law, or a title company;

(O) permits a lender to contract for and receive any fixed or variable rate of interest authorized under statute;

(P) is made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area:

(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States;

(ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans;

(iii) a person licensed to make regulated loans, as provided by statute of this state;

(iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase;

(v) a person who is related to the homestead property owner within the second degree of affinity or consanguinity; or

(vi) a person regulated by this state as a mortgage broker; and

(Q) is made on the condition that:

(i) the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender;

(ii) the owner of the homestead not assign wages as security for the extension of credit;

(iii) the owner of the homestead not sign any instrument in which blanks relating to substantive terms of agreement are left to be filled in;

(iv) the owner of the homestead not sign a confession of judgment or power of attorney to the lender or to a third person to confess judgment or to appear for the owner in a judicial proceeding;

(v) ~~[the lender,]~~ at the time the extension of credit is made, ~~[provide]~~ the owner of the homestead shall receive a copy of the personal loan application and all executed documents signed by the owner at closing related to the extension of credit;

(vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

(vii) within a reasonable time after termination and full payment of the extension of credit, the lender cancel and return the promissory note to the owner of the homestead and give the owner, in recordable form, a release of the lien securing the extension of credit or a copy of an endorsement and assignment of the lien to a lender that is rescinding the extension of credit;

(viii) the owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge;

(ix) the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made;

(x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date the lender or holder is notified by the borrower of the lender's failure to comply by:

(a) paying to the owner an amount equal to any overcharge paid by the owner under or related to the extension of credit if the owner has paid an amount that exceeds an amount stated in the applicable Paragraph (E), (G), or (O) of this subdivision;

(b) sending the owner a written acknowledgement that the lien is valid only in the amount that the extension of credit does not exceed the percentage described by Paragraph (B) of this subdivision, if applicable, or is not secured by property described under Paragraph (H) or (I) of this subdivision, if applicable;

(c) sending the owner a written notice modifying any other amount, percentage, term, or other provision prohibited by this section to a permitted amount, percentage, term, or other provision and adjusting the account of the borrower to ensure that the borrower is not

required to pay more than an amount permitted by this section and is not subject to any other term or provision prohibited by this section;

(d) delivering the required documents to the borrower if the lender fails to comply with Subparagraph (v) of this paragraph or obtaining the appropriate signatures if the lender fails to comply with Subparagraph (ix) of this paragraph;

(e) sending the owner a written acknowledgement, if the failure to comply is prohibited by Paragraph (K) of this subdivision, that the accrual of interest and all of the owner's obligations under the extension of credit are abated while any prior lien prohibited under Paragraph (K) remains secured by the homestead; or

(f) if the failure to comply cannot be cured under Subparagraphs (x)(a)-(e) of this paragraph, curing the failure to comply by a refund or credit to the owner of \$1,000 and offering the owner the right to re-nance the extension of credit with the lender or holder for the remaining term of the loan at no cost to the owner on the same terms, including interest, as the original extension of credit with any modifications necessary to comply with this section or on terms on which the owner and the lender or holder otherwise agree that comply with this section; and

(xi) the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the extension of credit is made by a person other than a person described under Paragraph (P) of this subdivision or if the lien was not created under a written agreement with the consent of each owner and each owner's spouse, unless each owner and each owner's spouse who did not initially consent subsequently consents;

(7) a reverse mortgage; or

(8) the conversion and re-nance of a personal property lien secured by a manufactured home to a lien on real property, including the re-nance of the purchase price of the manufactured home, the cost of installing the manufactured home on the real property, and the re-nance of the purchase price of the real property.

(g) An extension of credit described by Subsection (a)(6) of this section may be secured by a valid lien against homestead property if the extension of credit is not closed before the 12th day after the lender provides the owner with the following written notice on a separate instrument:

★ NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

★ SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

★ (A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

★ (B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME;

★ (C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

★ (D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;

★ (E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3 PERCENT OF THE LOAN AMOUNT;

★ (F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

• (G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

• (H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

• (I) THE LOAN MAY NOT BE SECURED BY [AGRICULTURAL] HOMESTEAD PROPERTY THAT IS DESIGNATED FOR AGRICULTURAL USE AS OF THE DATE OF CLOSING, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PRIMARILY FOR THE PRODUCTION OF MILK;

• (J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME;

• (K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

• (L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD;

• (M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A LOAN [~~WRITTEN~~] APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND MAY NOT WITHOUT YOUR CONSENT CLOSE BEFORE ONE BUSINESS DAY AFTER THE DATE ON WHICH YOU RECEIVE A COPY OF YOUR LOAN APPLICATION IF NOT PREVIOUSLY PROVIDED AND A FINAL ITEMIZED DISCLOSURE OF THE ACTUAL FEES, POINTS, INTEREST, COSTS, AND CHARGES THAT WILL BE CHARGED AT CLOSING; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN, UNLESS ON OATH YOU REQUEST AN EARLIER CLOSING DUE TO A DECLARED STATE OF EMERGENCY;

✱ (N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

✱ (O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF INTEREST AUTHORIZED BY STATUTE;

✱ (P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

✱ (Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:

✱ (1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT EXCEPT A DEBT THAT IS SECURED BY YOUR HOME OR OWED TO ANOTHER LENDER;

✱ (2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

✱ (3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS FOR SUBSTANTIVE TERMS OF AGREEMENT LEFT TO BE FILLED IN;

✱ (4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

✱ (5) PROVIDE THAT YOU RECEIVE A COPY OF YOUR FINAL LOAN APPLICATION AND ALL EXECUTED DOCUMENTS YOU SIGN AT CLOSING;

✱ (6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

✱ (7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;

✱ (8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

✱ (9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

✱ (10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

✱ (R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

✱ (1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND REBORROW MONEY UNDER THE LINE OF CREDIT;

✱ (2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN AN AMOUNT OF AT LEAST \$4,000;

✱ (3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD, ~~[SOLICITATION CHECK,]~~ OR SIMILAR DEVICE, OR PREPRINTED CHECK THAT YOU DID NOT SOLICIT, TO OBTAIN ADVANCES UNDER THE LINE OF CREDIT;

✱ (4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

✱ (5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LINE OF CREDIT IS ESTABLISHED;

✱ (6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT AT ANY TIME EXCEEDS 50 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED, YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT UNTIL THE BALANCE IS LESS THAN 50 PERCENT OF THE FAIR MARKET VALUE; AND

(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS OF THE LINE OF CREDIT.

THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI, OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE.

If the discussions with the borrower are conducted primarily in a language other than English, the lender shall, before closing, provide an additional copy of the notice translated into the written language in which the discussions were conducted.

(t) A home equity line of credit is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which:

(1) the owner requests advances, repays money, and reborrows money;

(2) any single debit or advance is not less than \$4,000;

(3) the owner does not use a credit card, debit card, [~~preprinted solicitation check,~~] or similar device, or preprinted check unsolicited by the borrower, to obtain an advance;

(4) any fees described by Subsection (a)(6)(E) of this section are charged and collected only at the time the extension of credit is established and no fee is charged or collected in connection with any debit or advance;

(5) the maximum principal amount that may be extended under the account, when added to the aggregate total of the outstanding principal balances of all indebtedness secured by the homestead on the date the extension of credit is established, does not exceed an amount described under Subsection (a)(6)(B) of this section;

(6) no additional debits or advances are made if the total principal amount outstanding exceeds an amount equal to 50 percent of the fair market value of the homestead as determined on the date the account is established;

(7) the lender or holder may not unilaterally amend the extension of credit; and

(8) repayment is to be made in regular periodic installments, not more often than every 14 days and not less often than monthly, beginning not later than two months from the date the extension of credit is established, and:

(A) during the period during which the owner may request advances, each installment equals or exceeds the amount of accrued interest; and

(B) after the period during which the owner may request advances, installments are substantially equal.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2007. The ballot shall be printed to permit voting for or against the proposition:

■ The constitutional amendment to clarify certain provisions relating to the making of a home equity loan and use of home equity loan proceeds.

House Author: Burt Solomons
Senate Sponsor: John Carona

The constitutional amendment authorizing the legislature to exempt all or part of the residence homesteads of certain totally disabled veterans from ad valorem taxation and authorizing a change in the manner of determining the amount of the existing exemption from ad valorem taxation to which a disabled veteran is entitled.

The constitutional amendment proposed by Senate Joint Resolution No. 29 amends Section 1-b, Article VIII, Texas Constitution, by adding Subsection (i) authorizing the legislature by general law to exempt from ad valorem taxation all or part of the market value of the residence homesteads of certain disabled veterans. The proposed constitutional amendment also amends Subsection (b), Section 2, Article VIII, Texas Constitution, which currently authorizes the legislature to exempt a portion of the value of any property owned by a disabled veteran from ad valorem taxation. That subsection classifies disabled veterans into categories corresponding to ranges of disability ratings and specifies the amount of the ad valorem tax exemption to which veterans assigned to each category are entitled, with veterans assigned to categories with higher disability ratings receiving exemptions in greater amounts. The proposed amendment alters the ranges of disability ratings to which the categories correspond so that disabled veterans with certain disability ratings are shifted to the next higher category of disability and are therefore entitled to receive an exemption in the greater amount to which the disabled veterans assigned to that category are entitled.

Section 1, Article VIII, Texas Constitution, provides that taxation shall be equal and uniform and that all real property and tangible personal property, unless exempt as required or permitted by the constitution, shall be taxed in proportion to its value. Accordingly, unless required

or authorized by the constitution, the legislature may not exempt real or tangible personal property from ad valorem taxation.

Section 1-b, Article VIII, Texas Constitution, provides various partial exemptions from ad valorem taxation for residence homesteads and limitations on certain ad valorem taxes imposed on those homesteads. The most generous exemptions and limitations currently authorized by Section 1-b are available to elderly and disabled persons, but a homeowner eligible for such an exemption or limitation is still subject to taxation on the portion of the homestead that is not exempt. Senate Joint Resolution No. 29 amends Section 1-b by adding Subsection (i), which authorizes the legislature by general law to exempt from ad valorem taxation all or part of the residence homestead of a disabled veteran who is certified as having a service-connected disability with a disability rating of 100 percent or totally disabled. In addition, that subsection authorizes the legislature to provide additional eligibility requirements for the exemption.

Senate Joint Resolution No. 29 also amends Subsection (b), Section 2, Article VIII, Texas Constitution, which allows the legislature by general law to exempt from ad valorem taxation a portion of the value of any property owned by a disabled veteran. Under current law, disabled veterans are assigned to categories corresponding to a range of disability ratings for purposes of determining the amount of the ad valorem tax exemption to which they are entitled. A veteran who is certified as having a disability rating of not less than 10 percent, nor more than 30 percent may be granted an exemption from ad valorem taxation of up to \$5,000 of the value of the person's property, a veteran having a disability rating of more than 30 percent but, not more than 50 percent may be granted an exemption of up to \$7,500, a veteran having a disability rating of more than 50 percent but, not more than 70 percent may be granted an exemption of up to \$10,000, and a veteran having a disability rating of more than 70 percent may be granted an exemption of up to \$12,000. Section 11.22, Tax Code, is the enabling legislation for the exemption currently authorized by the constitution.

In certifying a veteran's percentage of disability, the United States Department of Veterans Affairs calculates a percentage of disability using formulas that take into account each veteran's specific injuries and

symptoms, and then rounds off the calculated percentage to the nearest 10 percent. The effect of the department's rounding is that certain disabled veterans are authorized to receive a lesser exemption than would be the case if the department did not round off the percentage disability. For example, a veteran with a calculated disability of 34 percent is certified by the department as having a 30 percent disability rating. If the department did not round the veteran's disability rating to the nearest 10 percent, the veteran could receive an exemption of \$7,500 under current Texas law. However, because the veteran's calculated disability percentage rating is rounded down to 30 percent in that case, the veteran may receive an exemption of only \$5,000.

Senate Joint Resolution No. 29 amends Subsection (b), Section 2, Article VIII, Texas Constitution, by changing the range of disability ratings encompassed by each disability rating category to take into account the department's rounding. Under the proposed ranges, a veteran having a certified disability rating of not less than 10 percent, but less than 30 percent may be granted an exemption from ad valorem taxation of up to \$5,000, a veteran having a disability rating of, not less than 30 percent but, less than 50 percent may be granted an exemption of up to \$7,500, a veteran having a disability rating of, not less than 50 percent but, less than 70 percent may be granted an exemption of up to \$10,000, and a veteran having a disability rating of 70 percent, or more, may be granted an exemption of up to \$12,000. The effect of the amendment is that veterans with certified disability ratings of 30, 50, or 70 percent are shifted to the next higher category of range of disability ratings and are therefore entitled to ad valorem tax exemptions in the higher amounts corresponding to those categories. Accordingly, the rounding down of a disability rating to the nearest 10 percent will not reduce the amount of the exemption to which a disabled veteran would otherwise have been entitled. For example, in the hypothetical scenario described above in which the department rounded a veteran's disability rating from 34 percent to 30 percent, the veteran would become entitled to an ad valorem tax exemption of up to \$7,500 if the proposed amendment is approved, which would have been the case under current law if the department had not rounded the disability rating down.

The 80th Legislature, Regular Session, 2007, did not enact enabling legislation in anticipation of the proposed amendment. Senate Bill No. 666, which provided that a veteran who is classified as having a service-connected disability with a disability rating of 100 percent or totally disabled is entitled to an exemption from taxation of the total appraised value of the veteran's residence homestead, was considered by the legislature but was not enacted. Accordingly, even if the amendment is approved by the voters, the residence homesteads of those veterans will continue to be taxed as provided by current law until a future legislature provides otherwise. Similarly, House Bill No. 358, which proposed amending Section 11.22, Tax Code, to reflect the changes made to the disability rating categories in Subsection (b), Section 2, Article VIII, Texas Constitution, was considered by the legislature but was not enacted. As a result, if the amendment is approved by the voters, the categories of disability ratings under Subsection (b), Section 2, Article VIII, Texas Constitution, will conflict with the categories under current Section 11.22, Tax Code, which do not reflect the rounding off of disability ratings. Although the effect of the amendment to the constitution in the absence of a conforming amendment to Section 11.22, Tax Code, is not clear, it seems likely that the changes made by the amendment to the disability rating categories set out in the constitution would be construed to apply to Section 11.22, Tax Code, even without a conforming amendment to that section.

Comments made about the amendment during the legislative process have been reviewed. The following paragraphs are based on those comments and generally summarize the main arguments supporting or opposing the amendment.

A veteran with a disability rating of 100 percent or totally disabled is unemployable and has limited means of earning an income. Under current law, such a veteran qualifies for an exemption from ad valorem taxation of only up to \$12,000 of the value of the person's property, which the person may apply to the person's

residence homestead or another property. The current exemption no longer provides significant relief from ever-increasing ad valorem taxes. A full exemption from ad valorem taxes on the residence homesteads of such veterans would be a gesture of gratitude on the part of the state and would ensure that those who have sacrificed so much for their country are not forced to sell their homes because they cannot afford to pay the taxes on them. The exemption would not have a significant effect on the revenue available to local governments because only a very few veterans will be eligible for the exemption.

Increasing the amount of the exemption for which veterans whose disability ratings have been rounded down by the United States Department of Veterans Affairs to 30, 50, or 70 percent ensures that those veterans receive the exemptions that the legislature and the voters intended when the current constitution and the Tax Code provisions were originally adopted to provide for ad valorem tax exemptions for the property of disabled veterans. As in the case with regard to the residence homestead exemption for totally disabled veterans authorized by the amendment, the amendment of the ranges of disability ratings so that certain disabled veterans would qualify for a slightly greater ad valorem tax exemption on their property than is allowed under current law would not have a substantial fiscal effect on the state or local governments.

kk - q. M - q. A total exemption from ad valorem taxation of the residence homesteads of veterans with a disability rating of 100 percent or totally disabled would significantly reduce the revenue available to local governments and would require the state to provide additional state funds to school districts to the extent that the exemption reduces the amount of ad valorem tax revenue collected by school districts. Allowing certain disabled veterans to qualify for the ad valorem tax exemptions to which disabled veterans in higher disability rating categories are entitled would likewise cost the state and local governments. In addition, even if ad valorem taxes continue to increase, the school district taxes imposed on the residence homesteads of totally disabled veterans are already subject to the tax freeze available under current law to other disabled homeowners and the elderly. In addition, a totally disabled veteran is eligible for the

limitations on tax increases that have been adopted by many other local governments to benefit disabled homeowners. The local impact of the proposed changes will be more significant due to the number of disabled veterans returning from action in Afghanistan and Iraq.

SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to exempt all or part of the residence homesteads of certain totally disabled veterans from ad valorem taxation and authorizing a change in the manner of determining the amount of the existing exemption from ad valorem taxation to which a disabled veteran is entitled.

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

SECTION 1. Section 1-b, Article VIII, Texas Constitution, is amended by adding Subsection (i) to read as follows:

(i) The legislature by general law may exempt from ad valorem taxation all or part of the market value of the residence homestead of a disabled veteran who is certified as having a service-connected disability with a disability rating of 100 percent or totally disabled and may provide additional eligibility requirements for the exemption. For purposes of this subsection, disabled veteran means a disabled veteran as described by Section 2(b) of this article.

SECTION 2. Subsection (b), Section 2, Article VIII, Texas Constitution, is amended to read as follows:

(b) The Legislature may, by general law, exempt property owned by a disabled veteran or by the surviving spouse and surviving minor children of a disabled veteran. A disabled veteran is a veteran of the armed services of the United States who is classified as disabled by the Veterans' Administration or by a successor to that agency[;] or by the military service in which the veteran ~~he~~ served. A veteran who is certified as having a disability of less than 10 percent is not entitled to an exemption. A veteran having a disability rating of not less than 10 percent but less ~~[not more]~~ than 30 percent may be granted an exemption from taxation for property valued at up to \$5,000. A veteran having a disability rating of not less ~~[more]~~ than 30 percent but less ~~[not more]~~ than 50 percent may be granted an exemption from taxation for property valued at up to \$7,500. A veteran having a disability rating of not less ~~[more]~~ than 50 percent but less ~~[not more]~~ than 70 percent may be granted an exemption

from taxation for property valued at up to \$10,000. A veteran who has a disability rating of ~~[more than]~~ 70 percent or more, or a veteran who has a disability rating of not less than 10 percent and has attained the age of 65, or a disabled veteran whose disability consists of the loss or loss of use of one or more limbs, total blindness in one or both eyes, or paraplegia, may be granted an exemption from taxation for property valued at up to \$12,000. The spouse and children of any member of the United States Armed Forces who dies while on active duty may be granted an exemption from taxation for property valued at up to \$5,000. A deceased disabled veteran's surviving spouse and children may be granted an exemption which in the aggregate is equal to the exemption to which the veteran was entitled when the veteran died.

SECTION 3. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, authorizing the legislature to exempt all or part of the residence homesteads of certain totally disabled veterans from ad valorem taxation and authorizing a change in the manner of determining the amount of the existing exemption from ad valorem taxation to which a disabled veteran is entitled and expires January 1, 2009.

(b) The amendments to Sections 1-b and 2(b), Article VIII, of this constitution take effect January 1, 2008, and apply only to a tax year beginning on or after that date.

SECTION 4. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2007. The ballot shall be printed to permit voting for or against the proposition: The constitutional amendment authorizing the legislature to exempt all or part of the residence homesteads of certain totally disabled veterans from ad valorem taxation and authorizing a change in the manner of determining the amount of the existing exemption from ad valorem taxation to which a disabled veteran is entitled.

Senate Author: John Carona et al.
House Sponsor: Ismael, Kino. Flores

The constitutional amendment to abolish the constitutional authority for the office of inspector of hides and animals.

The proposed amendment removes obsolete references to the now defunct office of inspector of hides and animals in Sections 64 and 65(a), Article XVI, Texas Constitution.

The inspector of hides and animals was a county officer charged with inspecting certain hides and animals in connection with their sale or slaughter. The office was originally created by statute enacted in 1871, and the statute eventually was codified in sections of Chapter 146, Agriculture Code.

Section 64, Article XVI, Texas Constitution, provides for four-year terms of office for certain county officers. Section 65, Article XVI, Texas Constitution, provides that, in certain circumstances, certain public officers automatically resign their offices when they become candidates for other offices. While both sections of the constitution mention the office of inspector of hides and animals, the Texas attorney general ruled in 1977 in Attorney General Opinion H-995 that these sections of the constitution do not require a county to have an inspector of hides and animals but only provide the term of office for the inspector in a county that does have an inspector.

The requirement to elect an inspector of hides and animals was mandated by statute only for certain counties, with other counties able to create the office through a local option election. According to the *Handbook of Texas Online*, about one-third of counties had the office in 1945, and few, if any, had the office in the 1990s.

In 2003, the Texas Legislature repealed the law that gave powers and duties to the inspector of hides and animals. In 2006, the Texas secretary of state ruled in Election Advisory No. 2006-14 that the legislature had abolished the office by repealing the law prescribing the powers and duties of the office and that no candidates for the office would appear on the general election ballot. As a result, it is clear that the office of inspector of hides and animals has been abolished by the legislature and no person may be elected to the office.

House Joint Resolution No. 69, if adopted, will remove out-of-date references to the office of inspector of hides and animals from Sections 64 and 65, Article XVI, Texas Constitution.

Comments made about the amendment during the legislative process have been reviewed. The following paragraphs are based on those comments and generally summarize the main arguments supporting or opposing the amendment.

No one currently holds the office of inspector of hides and animals in any Texas county. The amendment will clean up the Texas Constitution by removing archaic references to the office.

All functions formerly performed by the inspector of hides and animals are currently being performed by other entities. Animal health inspectors inspect hides and animals to control animal diseases. Inspectors from the Texas and Southwestern Cattle Raisers Association inspect cattle to prevent theft.

No comments opposing the amendment were made during the house and senate committee hearings or during discussion of the amendment in the house and senate chambers. A review of other sources also revealed no apparent opposition to the amendment.



HOUSE JOINT RESOLUTION

proposing a constitutional amendment to abolish the constitutional authority for the office of inspector of hides and animals.

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

SECTION 1. Section 64, Article XVI, Texas Constitution, is amended to read as follows:

Sec. 64. The [~~office of Inspector of Hides and Animals, the~~] elective district, county, and precinct offices which have heretofore had terms of two years, shall hereafter have terms of four years; and the holders of such offices shall serve until their successors are qualified.

SECTION 2. Section 65(a), Article XVI, Texas Constitution, is amended to read as follows:

(a) This section applies to the following offices: District Clerks; County Clerks; County Judges; Judges of the County Courts at Law, County Criminal Courts, County Probate Courts and County Domestic Relations Courts; County Treasurers; Criminal District Attorneys; County Surveyors; [~~Inspectors of Hides and Animals;~~] County Commissioners; Justices of the Peace; Sheriffs; Assessors and Collectors of Taxes; District Attorneys; County Attorneys; Public Weighers; and Constables.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2007. The ballot shall be printed to permit voting for or against the proposition. The constitutional amendment to abolish the constitutional authority for the office of inspector of hides and animals.

House Author: Joe Heflin
Senate Sponsor: Kel Seliger

The constitutional amendment to require that a record vote be taken by a house of the legislature on final passage of any bill, other than certain local bills, of a resolution proposing or ratifying a constitutional amendment, or of any other nonceremonial resolution, and to provide for public access on the Internet to those record votes.

The constitutional amendment proposed by House Joint Resolution No. 19 amends Section 12, Article III, by adding a new Subsection (b) to require that a vote taken on final passage of a bill, a resolution proposing or ratifying a constitutional amendment, or any other resolution other than a ceremonial or honorary resolution must be a record vote with the vote of each member recorded in the journal of the applicable house. The proposed amendment allows either house to create exceptions for bills that apply only to one district or political subdivision.

The proposed amendment states that a vote on final passage of a bill or resolution includes a vote on third reading, a vote on second reading if the third reading requirement is suspended, a vote to concur in the amendments of the other house, or a vote to adopt a conference committee report. (The Texas Constitution requires a bill to be read three times in each house before it may become law. On first reading the bill is referred to committee. On second reading the house or senate considers the bill after it has been reported from committee. On third reading the house or senate considers the bill after it has been passed on second reading.)

The proposed amendment also adds Subsection (d) to Section 12 of Article III to require that each house of the legislature make all record votes on final passage of a bill or resolution required by added Subsection (b) and as recorded in the journal of the particular house available to the public for at least two years on the Internet or a successor electronic communications system. For bills and for resolutions proposing or

ratifying constitutional amendments, the record vote must be accessible both by the number assigned to the bill or resolution and according to the subject of the bill or constitutional amendment.

A legislative body such as the Texas Senate or the Texas House of Representatives may decide any question by taking and recording each individual member's vote (a record vote). However, in the absence of a legal requirement that a record vote be taken, a legislative body also may decide any question by a voice vote, a show of hands, or some other method that allows the presiding officer to determine whether a majority of the members supports the motion on which the vote is being held without recording how each individual member of the body voted. Under traditional parliamentary practice there is no inherent requirement that the individual votes cast be recorded.

However, a number of provisions of the Texas Constitution require that a record vote be taken by the legislature in certain specified situations, such as when a supermajority vote is required for some purpose. For example, Section 32, Article III, requires a record vote of four-fifths of the members of a house of the legislature in order to suspend the requirement that a particular bill must be read on three separate days. Section 1, Article IX, requires a two-thirds record vote of each house for the legislature to create a new county within one or more existing counties or to reduce the territory of certain counties. Section 1(a), Article XVII, requires a record vote of two-thirds of the members of each house in order to propose an amendment to the Texas Constitution.

In addition to such specific record vote provisions, Section 12, Article III, which the proposed amendment would amend, currently requires that a record vote be taken by either house on any question at the request of any three members of that house who are present when the vote is taken.

In recent years, open government activists and members of the media have called for recording how members voted on all votes taken by the legislature on all questions and measures, other than purely ceremonial measures. In response, each house amended its rules substantially at the

beginning of the 79th Legislature in 2005 to expand the circumstances in which votes are taken as record votes. In particular, the senate amended its rules to record as a record vote every nonprocedural motion that is approved without objection or by unanimous consent, identifying each senator present as voting in favor of the motion unless the senator registers as voting no or as present not voting. The practical effect of this provision was to make most votes in the senate record votes. The house of representatives amended its rules to require a record vote on any matter at the request of any one house member present, and added a provision stating that approval of a motion by the house, without objection, is the functional equivalent of a record vote. In addition, in 2007, the house of representatives amended its rules to require a record vote on final passage of every bill and every resolution proposing or ratifying a constitutional amendment, and to require that each record vote taken by the house be posted on the Internet within one hour of the declaration of the outcome of the vote.

Comments made about the amendment during the legislative process have been reviewed. The following paragraphs are based on those comments and generally summarize the main arguments supporting or opposing the amendment. While there was little or no direct opposition to the proposed amendment, comments made during the legislative process indicated opposition to specific provisions of the proposed amendment.

The passage of important or even routine legislation by voice vote or other non-record vote deprives the public of the right to know how its elected representatives stand on that legislation. Voting on legislation is the most important official action a legislator takes. Legislators cannot be held fully accountable by the voters of their districts if their votes on legislation are not fully recorded and made readily available for public scrutiny. Even when record votes are taken, finding those votes in the house and senate journals requires tedious research that is difficult even for an expert. The proposed amendment would ensure that every legislator's complete voting record on bills and

proposed constitutional amendments is a matter of public record and is readily available on the Internet to all interested persons.

While both houses have significantly strengthened their rules in recent sessions to provide for more record votes, those rules could be weakened by future legislatures. In addition, while bills to require record votes by statute have been considered by the legislature in recent sessions, under the Texas Constitution either house of the legislature could undermine the effectiveness of such a statute by providing for exceptions under the rules of that house. Only a constitutional amendment can assure that the proposed record vote requirements will remain in effect permanently.

Similarly, while the house and senate journals and the other information currently maintained on the Internet by the legislature for every bill and resolution show the votes cast by each legislator on every record vote, the proposed amendment will ensure that each record vote on a bill or substantive resolution will be made accessible to the public and maintained on the Internet for at least two years, so that the voters may easily access that information, particularly during the next election cycle. In addition, requiring that record votes be made available according to the subject of each bill or resolution will allow a member of the public to look up a legislator's voting record on a topic of particular interest to that person without having to first do the tedious research necessary to identify those particular bills and resolutions by their assigned numbers.

Many of the most important legislative actions on a bill or resolution take place before the final vote on the measure occurs, as the scope and details of the measure are being debated and developed. The proposed amendment is insufficient because it fails to require the recording of all votes on preliminary approval, or second reading, of a bill or resolution, which is arguably the most critical phase in the passage of legislation, as well as votes on amendments, substitutes, and critical procedural decisions such as a motion to table or postpone a bill or to take a bill up out of its regular order. Failure to require record votes on amendments and other motions other than final passage deprives the voters of critical information when a record vote is not specifically requested on the motion. Adoption of the proposed amendment, which

is limited to record votes on general passage of a bill or resolution, may make it difficult to generate future interest in a more complete record vote requirement.

The proposed amendment would allow each house to grant an exception to the record vote requirement on general passage of local bills. However, local bills, such as those creating or affecting special districts, are extremely important to the affected locale. There is no compelling reason to allow either house to pass local bills without recording each member's vote.

The proposed amendment is largely unnecessary because most votes taken on general passage are record votes already, and under current rules a single house member or three senators can require a record vote on any matter. In addition, holding a record vote on an uncontroversial bill can unnecessarily delay the proceedings of a house. Including record votes on uncontroversial bills in the journals or on the Internet does not provide any meaningful information to the public.



HOUSE JOINT RESOLUTION

proposing a constitutional amendment to require each house of the legislature to take a record vote on final passage of a bill other than certain local bills, of a resolution proposing or ratifying a constitutional amendment, or of any other nonceremonial resolution, and to publish the record vote on the Internet.

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

SECTION 1. Section 12, Article III, Texas Constitution, is amended to read as follows:

Sec. 12. (a) Each house of the legislature [~~House~~] shall keep a journal of its proceedings, and publish the same.

(b) A vote taken by either house must be by record vote with the vote of each member entered in the journal of that house if the vote is on final passage of a bill, a resolution proposing or ratifying a constitutional amendment, or another resolution other than a resolution of a purely ceremonial or honorary nature. Either house by rule may provide for exceptions to this requirement for a bill that applies only to one district or political subdivision of this state. For purposes of this subsection, a vote on final passage includes a vote on third reading in a house, or on second reading if the house suspends the requirement for three readings, on whether to concur in the other house's amendments, and on whether to adopt a conference committee report.

(c) The [~~;~~~~and the~~] yeas and nays of the members of either house [~~House~~] on any other question shall, at the desire of any three members present, be entered on the journals.

(d) Each house shall make each record vote required under Subsection (b) of this section, including the vote of each individual member as recorded in the journal of that house, available to the public for a reasonable period of not less than two years through the Internet or a successor electronic communications system accessible by the public.

For a record vote on a bill or on a resolution proposing or ratifying a constitutional amendment, the record vote must be accessible to the public by reference to the designated number of the bill or resolution and by reference to its subject.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2007. The ballot shall be printed to permit voting for or against the proposition: The constitutional amendment to require that a record vote be taken by a house of the legislature on the final passage of any bill, other than certain local bills, of a resolution proposing or ratifying a constitutional amendment, or of any other nonceremonial resolution, and to provide for public access on the Internet to those record votes.

House Author: Dan Branch et al.
Senate Sponsor: John Carona

The constitutional amendment providing for the issuance of general obligation bonds by the Texas Transportation Commission in an amount not to exceed \$5 billion to provide funding for highway improvement projects.

The proposed amendment adds Section 49-p, Article III, Texas Constitution, to allow the legislature to authorize the Texas Transportation Commission to issue general obligation bonds of the State of Texas in an amount not to exceed \$5 billion and enter into related credit agreements. The Texas Transportation Commission would prescribe the form, terms, denominations, interest rates, and installments for the execution of the bonds. A portion of the proceeds from the sale of the bonds and a portion of the interest earned on the bonds may be used to pay the cost of administering highway improvement projects, the cost of issuing the bonds, and all or part of a payment owed under a credit agreement.

Bonds that would be authorized by this amendment would be general obligations of the state and the state would be required to appropriate an amount sufficient to pay the principal of and interest on the bonds that mature or become due during the fiscal year, including an amount sufficient to make payments under a related credit agreement. Once approved by the attorney general, registered by the comptroller, and delivered to the purchasers, the bonds would become incontestable and general obligations of the state under the Texas Constitution.

Section 49, Article III, Texas Constitution, prohibits state debt; however, voters have amended Article III numerous times to allow state debt in the form of general obligation bonds. The state guarantees repayment of debt from these bonds with payments made from the first money coming into the treasury each year.

Comments made about the amendment during the legislative process have been reviewed. The following paragraphs are based on those comments and generally summarize the main arguments supporting or opposing the amendment.

The proposed amendment would help the state finance transportation projects. There is not enough money to cover existing and future transportation needs with available funding.

An expanding population has created the need to spend more on transportation projects and maintenance to correct existing and avoid future problems relating to traffic congestion, including congestion at border crossings, deficient roads, and unsafe bridges. This demand has exceeded capacity and the state has not kept up with spending. The state will not meet this demand unless it uses bonding authority to increase its ability to fund projects. Borrowing against future revenue would enable the state to begin and complete transportation projects at a faster pace, which would ease traffic congestion, improve safety, and aid economic development.

In 2001, the voters approved Proposition 15, modifying the state's pay-as-you-go policy for transportation funding to allow transportation officials to borrow money to construct new roads instead of waiting until money to build was appropriated. The Texas Department of Transportation has since moved in the direction of borrowing money to finance transportation projects. In 2003, the voters approved Proposition 14, allowing the department to issue bonds backed by the state highway fund. The proposed amendment would provide a new source of revenue that the state could use to secure bonds for transportation projects.

The bonds authorized by the proposed amendment would not have a significant effect on the state's fiscal standing because Texas has a comparatively low rate of state debt. The Texas Constitution provides that state-supported debt may not exceed five percent of uncommitted general revenue, and the state is well below this limit. Bonds backed by general revenue would likely have a lower interest rate than those backed by the state highway fund because the bonds are backed by the full faith and credit of the state, not just the money in the state highway fund.

Other states and local governments use general funds to secure bonds for transportation projects. Texas has traditionally used general obligation bonds to fund various types of infrastructure in this state and should use them for funding transportation infrastructure as well.

The proposed amendment would help fill the void left by a reduction in available options for funding highway projects. For the construction of toll roads, the state has been relying on two types of contracts: those that allow private entities to build the roads and those that allow state or local tolling authorities to build them. Contracts with state or local tolling authorities allow bonding backed by expected toll revenue. Businesses that enter into an agreement with the state make up-front payments in exchange for expected toll revenue. With the two-year moratorium on certain privately funded toll roads passed during the 80th legislative session, this private option is restricted for the next two years.

Borrowing increases the state's costs from interest lost on cash balances and interest charges for new borrowing and transfers those costs to future taxpayers and legislatures. The state cannot afford to pay the interest on the bonds authorized by the proposed amendment, even with low rates. The policy of the state has traditionally been to fund transportation projects through dedicated funds and minimize burdens on general revenue for debt service; therefore, the state should continue to pay for the highway construction it can afford rather than encumber scant resources and drive up the cost of already expensive projects.

Some opponents question trusting the Texas Department of Transportation because they believe the agency has not been straightforward regarding its expenditures and it would be irresponsible to provide the agency with even more money not subject to the legislature's appropriations process.

Transportation projects should be funded through the state highway fund and not general revenue. It is not in the state's best interest to obligate money to debt service for bonds to build highways when that money may be needed for other state needs or budget certification.

The state should not use already limited resources to incur additional debt but should use other approaches to put more money into the state highway fund such as raising gas tax rates or vehicle registration fees or dedicating other revenue streams to the state highway fund, including motor-vehicle sales taxes or vehicle inspection fees.



SENATE JOINT RESOLUTION

proposing a constitutional amendment providing for the issuance of general obligation bonds by the Texas Transportation Commission to provide funding for highway improvement projects.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Section 49-p to read as follows:

Sec. 49-p. (a) To provide funding for highway improvement projects, the legislature by general law may authorize the Texas Transportation Commission or its successor to issue general obligation bonds of the State of Texas in an aggregate amount not to exceed \$5 billion and enter into related credit agreements. The bonds shall be executed in the form, on the terms, and in the denominations, bear interest, and be issued in installments as prescribed by the Texas Transportation Commission or its successor.

(b) A portion of the proceeds from the sale of the bonds and a portion of the interest earned on the bonds may be used to pay:

(1) the costs of administering projects authorized under this section;

(2) the cost or expense of the issuance of the bonds; and

(3) all or part of a payment owed or to be owed under a credit agreement.

(c) The bonds authorized under this section constitute a general obligation of the state. While any of the bonds or interest on the bonds is outstanding and unpaid, there is appropriated out of the first money coming into the treasury each fiscal year, not otherwise appropriated by this constitution, an amount sufficient to pay the principal of and interest on the bonds that mature or become due during the fiscal year, including an amount sufficient to make payments under a related credit agreement.

(d) Bonds issued under this section, after approval by the attorney general, registration by the comptroller of public accounts, and delivery to the purchasers, are incontestable and are general obligations of the State of Texas under this constitution.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2007. The ballot shall be printed to permit voting for or against the proposition: The constitutional amendment providing for the issuance of general obligation bonds by the Texas Transportation Commission in an amount not to exceed \$5 billion to provide funding for highway improvement projects.

Senate Author: John Carona
House Sponsor: Mike Krusee

The constitutional amendment authorizing the denial of bail to a person who violates certain court orders or conditions of release in a felony or family violence case.

The proposed amendment authorizes the denial of bail at a subsequent hearing in certain misdemeanor cases involving family violence if the defendant is initially released on bail and after that release violates a condition of the release related to the safety of a victim or the community. The proposed amendment also allows the legislature to provide by general law for the denial of bail to a defendant who is determined to have violated certain court orders rendered in a family violence case or to have committed an offense involving a violation of one of those orders.

Section 11, Article I, Texas Constitution, provides for the right of any defendant charged with an offense, other than a capital offense where the proof is evident, to be released on bail. Consequently, a defendant charged with a noncapital offense may not be denied release on bail unless another provision of the constitution specifically authorizes that denial.

Section 11a, Article I, Texas Constitution, authorizes a district judge to deny release on bail pending trial to certain defendants who have been indicted for or convicted of a prior felony or who have been placed under the supervision of a criminal justice agency for a prior felony. Section 11b, Article I, Texas Constitution, further authorizes a district judge to deny release on bail pending trial to a defendant charged with a felony offense who is released on bail and whose bail is subsequently revoked or forfeited for a violation of a condition of release related to the safety of a victim of the offense or the safety of the community.

The proposed amendment amends Section 11b, Article I, Texas Constitution, to authorize a district judge or magistrate to deny release on bail pending trial to a defendant charged with an offense involving family violence, regardless of whether the offense is a felony or misdemeanor, if the defendant is released on bail and the bail is subsequently revoked or forfeited for a violation of a condition of release related to the safety of a victim of the offense or the safety of the community. The proposed amendment also adds a new Section 11c, Article I, Texas Constitution, to allow the legislature to provide by general law for the denial of bail to a defendant who violates an order for emergency protection or a protective order rendered in a family violence case or who commits an offense involving a violation of one of those orders if, following a hearing, a judge or magistrate determines by a preponderance of the evidence that the defendant violated the order or committed the offense.

The 80th Legislature also passed House Bill 3692, contingent on voter approval of the proposed amendment, which includes statutory provisions authorizing the denial of bail in circumstances consistent with those described by the proposed amendment.

Comments made about the amendment during the legislative process have been reviewed. The following paragraphs are based on those comments and generally summarize the main arguments supporting or opposing the amendment.

The proposed amendment would allow a judge to determine whether a defendant poses an unacceptable threat to a victim of domestic violence or to the community and, if so, to deny the defendant bail, which would protect the victim and the community in a way that a bail bond, community monitoring, or electronic monitoring could not.

Domestic situations are often inherently volatile and subject to rapid escalation of violence. For that reason, a victim of domestic violence may be in need of extra protection. In providing for the denial of bail in

misdemeanor cases in which the defendant violates a condition of release or in cases in which the defendant violates a court order designed to protect the victim or community, the proposal provides necessary protection to victims of domestic violence and to the community.

The denial of bail may be the only means to ensure victim or community safety in cases in which the defendant is willing to violate conditions of release or court orders. The proposed amendment and the legislation that it authorizes are necessary to keep dangerous defendants off the streets and away from their victims.

The right to bail is an important constitutional right that should not be taken away lightly, particularly in the absence of an act of violence or a threat. Amending the constitution to authorize a denial of bail establishes a means to punish defendants through confinement before they are found guilty by a jury. Furthermore, this state should not curtail the right to bail because it is an invaluable tool in preventing jail overcrowding.

The proposal is specific to family violence. While abhorrent, family violence is a subcategory of violence against a person, which is dealt with adequately in other sections of the Penal Code. Punishing an offense based on the victim's status represents a retreat from the reforms made to the Penal Code in the mid-1990s, which emphasized the seriousness of the criminal act rather than the status of the victim.



HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing the denial of bail to a person who violates certain court orders or conditions of release in a felony or family violence case.

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

SECTION 1. Article I, Texas Constitution, is amended by amending Section 11b and adding Section 11c to read as follows:

Sec. 11b. Any person who is accused in this state of a felony or an offense involving family violence, ~~[in this state]~~ who is released on bail pending trial, and whose bail is subsequently revoked or forfeited for a violation of a condition of release may be denied bail pending trial if [on a determination by] a [district] judge or magistrate in this state determines by a preponderance of the evidence[;] at a subsequent hearing ~~[to set or reinstate bail,]~~ that the person violated a condition of release related to the safety of a victim of the alleged offense or to the safety of the community.

Sec. 11c. The legislature by general law may provide that any person who violates an order for emergency protection issued by a judge or magistrate after an arrest for an offense involving family violence or who violates an active protective order rendered by a court in a family violence case, including a temporary ex parte order that has been served on the person, or who engages in conduct that constitutes an offense involving the violation of an order described by this section may be taken into custody and, pending trial or other court proceedings, denied release on bail if following a hearing a judge or magistrate in this state determines by a preponderance of the evidence that the person violated the order or engaged in the conduct constituting the offense.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2007. The ballot shall be printed to provide for voting for or against the proposition:

✱ The constitutional amendment authorizing the denial of bail to a person who violates certain court orders or conditions of release in a felony or family violence case.

House Author: Joe Straus et al.
Senate Sponsor: Jeff Wentworth

The constitutional amendment permitting a justice or judge who reaches the mandatory retirement age while in office to serve the remainder of the justice's or judge's current term.

The proposed amendment amends Section 1-a, Article V, Texas Constitution, by allowing a justice or judge who has reached the mandatory retirement age, 75 years or an earlier age prescribed by the legislature that is not less than 70 years of age, during the justice's or judge's term of office to continue serving until the expiration of the term of office to which the justice or judge was elected. The amendment provides a limited exception if the justice or judge is elected to serve or fill the remainder of a six-year term of office and the justice or judge reaches age 75 during the first four years of the term. This exception provides that the justice or judge may serve only until December 31 of the fourth year of the term to which the justice or judge was elected. This provision ensures that a justice or judge will not serve more than four years beyond age 75.

The state constitution was amended in 1965 to require the mandatory retirement of a justice or judge on the date the justice or judge reaches the age of 75 years, or an earlier age prescribed by the legislature that is not earlier than the age of 70. The 1965 amendment also created the State Judicial Qualifications Commission (now called the State Commission on Judicial Conduct) and established procedures for removal of a justice or judge for incompetence or misconduct. Before this amendment, the state did not have a practical way to remove a justice or judge from office for incompetency or misconduct. These provisions were adopted in an attempt to provide a practical method of removing a justice or judge and ensuring the competency of the judiciary.

House Joint Resolution No. 36, if adopted, will amend Section 1-a(1), Article V, Texas Constitution, to allow a justice or judge who reaches the age of mandatory retirement during the term of office to which the justice or judge was elected to complete the term of office. The amendment includes a limited exception providing that a justice or judge who is serving a six-year term of office and who reaches age 75 during the first four years of the term of office must vacate the office on December 31 of the fourth year of the term to which the justice or judge was elected. This provision was added to the proposed amendment to ensure that a justice or judge elected to a six-year term of office is treated in the same manner as a justice or judge elected to a four-year term of office.

Comments made about the amendment during the legislative process have been reviewed. The following paragraphs are based on those comments and generally summarize the main argument supporting or opposing the amendment.

Supporting the Amendment. Allowing a justice or judge to complete the term of office to which the individual was elected fulfills the intent of the electorate. A justice or judge is elected to serve a specific term of office, and in electing the justice or judge the voters have expressed a desire for the justice or judge to serve the entire term of office. The voters have expressed confidence in the qualifications and abilities of the justice or judge and have determined that the justice or judge should be elected to office regardless of the age of the justice or judge.

Requiring a justice or judge to retire mid-term disrupts the efficient and orderly administration of justice. Immediate retirement requires cases being handled by the justice or judge to be delayed while a temporary justice or judge is selected. A case may also be delayed if a new justice or judge is elected and takes over a case from the temporary judge. Allowing a justice or judge to continue to serve for the duration of the term of office ensures that the succession process will be efficient and predictable. The amendment will provide for the election of a successor justice or

judge at the end of the term of office and will avoid the appointment of an inexperienced, temporary successor serving until the next election cycle.

Judicial retirement pay is based on the length of service and pay rate of the justice or judge. Allowing a justice or judge to complete the term of office to which the justice or judge was elected promotes long-term judicial service because retirement benefits continue to increase as long as the justice or judge continues to serve. Experience is crucial to providing a competent judiciary.

Methods other than mandatory retirement are available to protect the courts from incompetent justices and judges. The State Commission on Judicial Conduct investigates reports of alleged impropriety and incompetence and has authority to remove justices and judges who are determined to be unfit to serve. Mandatory retirement is not needed to protect the integrity of the judiciary.

The amendment will remove the issue of the age of a justice or judge from the political arena and remove mandatory retirement from politics.

The amendment includes a limited exception that creates continuity between a justice or judge elected to a four-year term of office and a justice or judge elected to a six-year term of office. The exception provides that a justice or judge serving a six-year term of office will vacate the office on December 31 of the fourth year of the term. This requirement guarantees that a justice or judge will not serve longer than four years after the justice or judge reaches the mandatory retirement age. The amendment treats a justice or judge elected to a six-year term of office in the same manner as a justice or judge elected to a four-year term of office.

The proposed constitutional amendment is a compromise between arguments supporting mandatory retirement and arguments opposing mandatory retirement. The amendment does not eliminate mandatory retirement but rather extends the service of a justice or judge who has reached mandatory retirement age until the end of the elected term of office or until December 31 of the fourth year.

Mandatory retirement is a way to remove an aging justice or judge who is continuing to serve despite ineffectiveness. The protections of incumbency often make it difficult to remove an aging justice or judge. Timely retirement on reaching the mandatory age ensures a capable and alert judiciary for the state. This extension allows justices and judges to serve past their 75th birthday and delays the election or appointment of new justices and judges who may be better versed in current developments in the law.

Mandatory retirement for justices and judges should be eliminated and this amendment does not accomplish this goal. Sufficient protections are in place to ensure the professional quality of justices and judges and mandatory retirement is not needed. Voters should be allowed to elect the justice or judge who is best qualified to serve, and that justice or judge should be allowed to serve without regard to age. The federal government and many states have abolished mandatory retirement and Texas should as well.

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to permit a state justice or judge who reaches the mandatory age of retirement while in office to complete the justice's or judge's current term.

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

SECTION 1. Section 1-a(1), Article V, Texas Constitution, is amended to read as follows:

(1) Subject to the further provisions of this Section, the Legislature shall provide for the retirement and compensation of Justices and Judges of the Appellate Courts and District and Criminal District Courts on account of length of service, age and disability, and for their reassignment to active duty where and when needed. The office of every such Justice and Judge shall become vacant on the expiration of the term during which ~~[when]~~ the incumbent reaches the age of seventy-five (75) years or such earlier age, not less than seventy (70) years, as the Legislature may prescribe, except that if a Justice or Judge elected to serve or fill the remainder of a six-year term reaches the age of seventy-five (75) years during the last four years of the term, the office of that Justice or Judge shall become vacant on December 31 of the fourth year of the term to which the Justice or Judge was elected.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2007. The ballot shall be printed to permit voting for or against the proposition. The constitutional amendment permitting a justice or judge who reaches the mandatory retirement age while in office to serve the remainder of the justice's or judge's current term.

House Author: Jim McReynolds et al.
Senate Sponsor: Kirk Watson et al.

The constitutional amendment requiring the creation of the Cancer Prevention and Research Institute of Texas and authorizing the issuance of up to \$3 billion in bonds payable from the general revenues of the state for research in Texas to find the causes of and cures for cancer.

The proposed amendment adds Section 67 to Article III of the Texas Constitution requiring the legislature to create the Cancer Prevention and Research Institute of Texas to:

(1) make grants to public or private persons to implement the Texas Cancer Plan;

(2) make grants to institutions of learning and advanced medical research facilities to:

research the causes of and cures for cancer;

provide facilities for use in research into the causes of and cures for cancer;

research therapies, protocols, medical pharmaceuticals, or procedures for the cure or substantial mitigation of cancer; and

develop cancer prevention and control programs;

(3) support institutions of learning and advanced medical research facilities in researching the causes of and cures for cancer; and

(4) establish standards and oversight bodies to ensure the proper use of funds.

The focus of the proposed amendment is on institutions, facilities, research, and programs in Texas.

Under the proposed amendment, the legislature may authorize the Texas Public Finance Authority to issue general obligation bonds in an amount not to exceed \$3 billion to be used by the Cancer Prevention and

Research Institute of Texas to carry out its purposes. The amount of bonds authorized to be issued in any year is limited to \$300 million, and a grant of bond proceeds may be provided only to a recipient that has funds equal to one-half of the amount of the grant dedicated to the research that is the subject of the requested grant.

The proposed amendment also authorizes the institute to use federal or private grants and gifts to fulfill its purposes.

House Bill No. 14, enacted by the 80th Legislature, Regular Session, 2007, and signed into law by the governor provides for the creation of the institute and permits the issuance of the bonds if the constitutional amendment is approved by the voters.

Section 49, Article III, Texas Constitution, prohibits generally the creation of state debt. The issuance of general obligation bonds by the state, in any amount, creates state debt, so it is necessary to seek voter approval to issue the bonds, either by submitting an amendment to the Texas Constitution that authorizes the bonds or by following a procedure prescribed by Section 49, Article III, Texas Constitution. The voters have previously approved constitutional amendments authorizing the issuance of general obligation bonds for purposes such as purchasing land for resale to veterans, making home mortgage loans to veterans, establishing various water development projects, building correctional facilities, and issuing student loans.

If the voters approve the constitutional amendment proposed by House Joint Resolution No. 90, the \$3 billion in general obligation bonds will not automatically be issued. Under House Joint Resolution No. 90 and its related enabling legislation, House Bill No. 14, the bonds will only be issued on request of the Cancer Prevention and Research Institute of Texas. The bonds would be issued by the Texas Public Finance Authority, which is an existing state agency governed by a board appointed by the governor with the advice and consent of the senate.

Comments made about the amendment during the legislative process have been reviewed. The following paragraphs are based on those comments and generally summarize the main arguments supporting or opposing the amendment.

The state has a significant interest in finding a cure for cancer. Cancer is the number two killer of Texans, killing more than 35,000 Texans each year. Each year more than 77,000 Texans develop cancer. Cancer has a substantial economic impact on the state, costing Texans more than \$4 billion each year. Grants made by the Cancer Prevention and Research Institute would provide the cancer research and treatment community with up to \$300 million each year for 10 years. At a time when cancer research funding is being cut on the federal level, research institutions are in need of other sources of funding to continue the effort to fight and potentially cure cancer.

The amendment only authorizes the issuance of \$3 billion in general obligation bonds. The state is not required to ever actually issue the bonds. The state may still finance the cancer research program in other ways, including by making biennial appropriations for the program in the general appropriations bill. The amendment gives the state another option and more flexibility in financing the cancer research program. By authorizing the issuance of \$3 billion in general obligation bonds for cancer research, the state is telling the world that Texas is making a 10-year commitment to cancer research and that long-term commitment is necessary to attract the top researchers to the state and make the state a world leader in cancer research.

Although the state would have to pay approximately \$1.6 billion in interest to issue the \$3 billion in general obligation bonds for the Cancer Prevention and Research Institute, that extra cost to the program would be offset by royalties, income, and other intellectual property benefits realized by the state as a result of projects developed with grants of the bond proceeds and by the economic impact resulting from new jobs created in the state and the decreased direct and indirect costs of cancer that would

result from any cures, treatments, or other medical advances developed with grants of the bond proceeds.

The state should not borrow money to finance a cancer research program while the state has a fiscal surplus and could pay for the program out of general revenue. The interest on \$3 billion in general obligation bonds is approximately \$1.6 billion. By borrowing \$3 billion to pay for the cancer research program, the state would end up paying \$4.6 billion for the cancer research program. The extra \$1.6 billion would be used to pay the interest on the general obligation bonds instead of being used for cancer research. The extra \$1.6 billion could be better spent by providing other benefits to the residents of the state, such as expanding the CHIP program, paying for schools, or building roads.

Finding a cure for cancer is an international issue. Coordinated national and international efforts are needed, and Texas should not provide a disproportionate share of the research funds needed for finding a cure for cancer that will benefit all mankind. Furthermore, the state should not put a higher priority on cancer research over other state issues including public education, higher education, and other health and human service issues.

The state should not limit funding to cancer research when there are many other diseases that affect Texans, including heart disease, obesity, and diabetes.



HOUSE JOINT RESOLUTION

proposing a constitutional amendment providing for the establishment of the Cancer Prevention and Research Institute of Texas and authorizing the issuance of general obligation bonds for the purpose of scientific research of all forms of human cancer.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Section 67 to read as follows:

Sec. 67. (a) The legislature shall establish the Cancer Prevention and Research Institute of Texas to:

(1) make grants to provide funds to public or private persons to implement the Texas Cancer Plan, and to institutions of learning and to advanced medical research facilities and collaborations in this state for:

(A) research into the causes of and cures for all forms of cancer in humans;

(B) facilities for use in research into the causes of and cures for cancer; and

(C) research, including translational research, to develop therapies, protocols, medical pharmaceuticals, or procedures for the cure or substantial mitigation of all types of cancer in humans;

(2) support institutions of learning and advanced medical research facilities and collaborations in this state in all stages in the process of finding the causes of all types of cancer in humans and developing cures, from laboratory research to clinical trials and including programs to address the problem of access to advanced cancer treatment; and

(3) establish the appropriate standards and oversight bodies to ensure the proper use of funds authorized under this provision for cancer research and facilities development.

(b) The members of the governing body and any other decision-making

body of the Cancer Prevention and Research Institute of Texas may serve four-year terms.

(c) The legislature by general law may authorize the Texas Public Finance Authority to provide for, issue, and sell general obligation bonds of the State of Texas on behalf of the Cancer Prevention and Research Institute of Texas in an amount not to exceed \$3 billion and to enter into related credit agreements. The Texas Public Finance Authority may not issue more than \$300 million in bonds authorized by this subsection in a year. The bonds shall be executed in the form, on the terms, and in the denominations, bear interest, and be issued in installments as prescribed by the Texas Public Finance Authority.

(d) Proceeds from the sale of the bonds shall be deposited in separate funds or accounts, as provided by general law, within the state treasury to be used by the Cancer Prevention and Research Institute of Texas for the purposes of this section.

(e) Notwithstanding any other provision of this constitution, the Cancer Prevention and Research Institute of Texas, which is established in state government, may use the proceeds from bonds issued under Subsection (c) of this section and federal or private grants and gifts to pay for:

(1) grants for cancer research, for research facilities, and for research opportunities in this state to develop therapies, protocols, medical pharmaceuticals, or procedures for the cure or substantial mitigation of all types of cancer in humans;

(2) grants for cancer prevention and control programs in this state to mitigate the incidence of all types of cancer in humans;

(3) the purchase, subject to approval by the Cancer Prevention and Research Institute, of laboratory facilities by or on behalf of a state agency or grant recipient; and

(4) the operation of the Cancer Prevention and Research Institute of Texas.

(f) The bond proceeds may be used to pay the costs of issuing the bonds and any administrative expense related to the bonds.

(g) While any of the bonds or interest on the bonds authorized by

this section is outstanding and unpaid, from the first money coming into the state treasury in each fiscal year not otherwise appropriated by this constitution, an amount sufficient to pay the principal of and interest on bonds that mature or become due during the fiscal year and to make payments that become due under a related credit agreement during the fiscal year is appropriated, less the amount in the sinking fund at the close of the previous fiscal year.

(h) Bonds issued under this section, after approval by the attorney general, registration by the comptroller of public accounts, and delivery to the purchasers, are incontestable and are general obligations of the State of Texas under this constitution.

(i) Before the Cancer Prevention and Research Institute of Texas may make a grant of any proceeds of the bonds issued under this section, the recipient of the grant must have an amount of funds equal to one-half the amount of the grant dedicated to the research that is the subject of the grant request.

(j) The Texas Public Finance Authority shall consider using a business whose principal place of business is located in the state to issue the bonds authorized by this section and shall include using a historically underutilized business as defined by general law.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2007. The ballot shall be printed to permit voting for or against the proposition: The constitutional amendment requiring the creation of the Cancer Prevention and Research Institute of Texas and authorizing the issuance of up to \$3 billion in bonds payable from the general revenues of the state for research in Texas to fund the causes of and cures for cancer.

House Author: Jim Keffer et al.
Senate Sponsor: Jane Nelson et al.

The constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board in an amount not to exceed \$250 million to provide assistance to economically distressed areas.

The proposed amendment adds Section 49-d-10 to Article III of the Texas Constitution to allow the Texas Water Development Board to issue additional general obligation bonds for the economically distressed areas program account of the Texas Water Development Fund II in an amount not to exceed \$250 million. Section 49-d-8(e), Article III, Texas Constitution, which pertains to the payment of bonds issued for an account of the Texas Water Development Fund II and the use of money in the account, would apply to the bonds authorized by Section 49-d-10.

The Texas Water Development Board operates the economically distressed areas program. The program provides financial assistance in the form of grants and loans to political subdivisions to bring water and wastewater services to economically distressed areas. Economically distressed areas are located throughout the state, but those areas are primarily found in rural communities and in communities along the Texas-Mexico border. The program finances the construction of, acquisition of, and improvements to water supply, wastewater collection, and wastewater treatment facilities. The political subdivision that requests the financial assistance must pay for the maintenance and operation of each project.

The Texas Water Development Board uses funds for the economically distressed areas program from the economically distressed areas program account, which is a part of the Texas Water Development Fund II. The board, however, has exercised most of its bonding authority under current

law. This constitutional amendment would authorize the board to issue additional general obligation bonds in an amount not to exceed \$250 million for the account.

Comments made about the amendment during the legislative process have been reviewed. The following paragraphs are based on those comments and generally summarize the main arguments supporting or opposing the amendment.

The authorization of additional funding will help the state meet the water and wastewater infrastructure needs of Texas' residents. Despite the success of the economically distressed areas program, many Texas residents continue to lack water and wastewater infrastructure. Unless additional funding is provided, many residents of unincorporated and economically distressed areas will be forced to continue to live in communities lacking basic infrastructure. Providing residents access to clean water and adequate sanitation is necessary to promote public health.

The economically distressed areas program has administered more than \$500 million in state and federal funds to provide assistance to economically distressed communities located primarily along the Texas-Mexico border. The Texas Water Development Board estimates that economically distressed areas program communities require an additional \$5.4 billion to meet those communities' water and wastewater infrastructure needs. The board, however, has only \$12 million in bond authority remaining, and the federal government has reduced the appropriations to the Border Environment Infrastructure Fund, which also provides funding for the construction of water and wastewater projects along the border. The state should provide additional money for the economically distressed areas program so as to ensure that the board has the resources necessary to meet the state's water and wastewater infrastructure needs.

Extending water service to unincorporated and economically distressed areas would benefit the economy in those areas. Many of the communities

SENATE JOINT RESOLUTION

proposing a constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board to provide assistance to economically distressed areas.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Section 49-d-10 to read as follows:

Sec. 49-d-10. (a) The Texas Water Development Board may issue additional general obligation bonds, at its determination, for the economically distressed areas program account of the Texas Water Development Fund II, in an amount not to exceed \$250 million. The bonds shall be used to provide financial assistance to economically distressed areas of the state as defined by law.

(b) Section 49-d-8(e) of this article applies to the bonds authorized by this section.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 2007. The ballot shall be printed to provide for voting for or against the proposition:

✱ The constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board in an amount not to exceed \$250 million to provide assistance to economically distressed areas.

Senate Author: Eddie Lucio, Jr., et al.
House Sponsor: Norma Chavez et al.