

HOUSE RESEARCH ORGANIZATION

focus report

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CONSTITUTIONAL

Amendments Proposed

for November 2011 Ballot

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Amending the Constitution

Texas voters have approved 467 amendments to the state Constitution since its adoption in 1876, according to the Legislative Reference Library. Ten more proposed amendments will be submitted for voter approval at the general election on Tuesday, November 8, 2011.

Joint resolutions

The Texas Legislature proposes constitutional amendments in joint resolutions that originate in either the House of Representatives or the Senate. For example, Proposition 1 on the November 8, 2011, ballot was proposed by Senate Joint Resolution (SJR) 14, introduced by Sen. Leticia Van de Putte and sponsored in the House by Rep. Charles “Doc” Anderson. Art. 17, sec. 1 of the Constitution requires that a joint resolution be adopted by at least a two-thirds vote of the membership of each house of the Legislature (100 votes in the House, 21 votes in the Senate) to be presented to voters. The governor cannot veto a joint resolution.

Amendments may be proposed in either regular or special sessions. A joint resolution includes the text of the proposed constitutional amendment and specifies an election date. The secretary of state conducts a random drawing to assign each proposition a ballot number if more than one proposition is being considered.

If voters reject an amendment proposal, the Legislature may resubmit it. For example, the voters rejected a proposition authorizing \$300 million in general obligation bonds for college student loans at an August 10, 1991, election, then approved an identical proposition at the November 5, 1991, election after the Legislature readopted the proposal and resubmitted it in essentially the same form.

Ballot wording

The ballot wording of a proposition is specified in the joint resolution adopted by the Legislature, which has broad discretion concerning the wording. In rejecting challenges to the ballot language for proposed amendments, the courts generally have ruled that

ballot language is sufficient if it describes the proposed amendment with such definiteness and certainty that voters will not be misled. The courts have assumed that voters become familiar with the proposed amendments before reaching the polls and that they do not decide how to vote solely on the basis of the ballot language.

Election date

The Legislature may call an election for voter consideration of proposed constitutional amendments on any date, as long as election authorities have enough time to provide notice to the voters and print the ballots. In recent years, including 2011, most proposals have been submitted at the November general election held in odd-numbered years.

Publication

Texas Constitution, Art. 17, sec. 1 requires that a brief explanatory statement of the nature of each proposed amendment, along with the ballot wording for each, be published twice in each newspaper in the state that prints official notices. The first notice must be published 50 to 60 days before the election. The second notice must be published on the same day of the following week. Also, the secretary of state must send a complete copy of each amendment to each county clerk, who must post it in the courthouse at least 30 days before the election.

The secretary of state prepares the explanatory statement, which must be approved by the attorney general, and arranges for the required newspaper publication. The estimated total cost of publication twice in newspapers across the state is \$105,495, according to the Legislative Budget Board.

Enabling legislation

Some constitutional amendments are self-enacting and require no additional legislation to implement their provisions. Other amendments grant discretionary authority to the Legislature to enact legislation in a

particular area or within certain guidelines. These amendments require “enabling” legislation to fill in the details of how the amendment would operate. The Legislature often adopts enabling legislation in advance, making the effective date of the legislation contingent on voter approval of a particular amendment. If voters reject the amendment, the legislation dependent on the constitutional change does not take effect.

Effective date

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

P

revious Election Results

Analyses of the 11 proposals on the November 3, 2009, ballot appear in House Research Organization Focus Report No. 81-8, *Constitutional Amendments Proposed for November 2009 Ballot*, August 20, 2009.

Proposition 1: *Authorizing local financing to buy buffer areas near military installations*

FOR	580,030	55.2%
AGAINST	470,746	44.8%

Proposition 2: *Requiring appraisal of residence homesteads based on homestead value*

FOR	722,427	68.2%
AGAINST	336,559	31.8%

Proposition 3: *Allowing state enforcement of uniform property appraisal standards*

FOR	691,294	65.5%
AGAINST	363,703	34.5%

Proposition 4: *Establishing the National Research University Fund*

FOR	593,773	56.7%
AGAINST	453,319	43.3%

Proposition 5: *Allowing consolidated boards of equalization for appraisal districts*

FOR	631,365	61.8%
AGAINST	390,080	38.2%

Proposition 6: *Renewing Veterans' Land Board bond authority for land and mortgage loans*

FOR	672,285	65.7%
AGAINST	351,036	34.3%

Proposition 7: *Allowing members of the Texas State Guard to hold civil office*

FOR	764,994	73.1%
AGAINST	281,855	26.9%

Proposition 8: *Authorizing the state to contribute resources to veterans' hospitals*

FOR	789,703	74.8%
AGAINST	265,627	25.2%

Proposition 9: *Establishing a right to use and access public beaches*

FOR	805,362	76.9%
AGAINST	241,522	23.1%

Proposition 10: *Allowing board members of emergency services districts to serve four years*

FOR	759,059	73.1%
AGAINST	279,566	26.9%

Proposition 11: *Restricting use of eminent domain to taking property for public purposes*

FOR	848,651	81.0%
AGAINST	198,822	19.0%

Source: Secretary of State's Office

Allowing surviving spouse of disabled veteran to receive homestead tax exemption

1

Proposition

SJR 14 Van de Putte (C. Anderson)

Background

Texas Constitution, Art. 8, sec. 1(b) requires that all real and tangible personal property be taxed in proportion to its value unless exempted as authorized by the Constitution. Art. 8, sec. 1-b(i), added in 2007, authorizes the Legislature to exempt from property taxes all or part of the value of the residence homestead of a veteran certified as having a service-related disability of 100 percent or as totally disabled. Tax Code, sec. 11.131 fully exempts the value of the residence homesteads of 100 percent or totally disabled veterans from property taxes.

Veterans are considered 100 percent disabled based on the extent of their physical disability. Total disability is based on employment capability. A veteran may qualify for the tax exemption under either disability category, as defined by the federal Veterans Administration.

Digest

Proposition 1 would authorize the Legislature to allow the surviving spouse of a 100 percent or totally disabled veteran to receive a property tax exemption for a residence homestead if the disabled veteran qualified for the exemption when the veteran died. The exemption would be the same portion of the market value of the same property to which the disabled veteran's exemption applied. A homestead would qualify if:

- the property was the residence homestead of the surviving spouse when the disabled veteran died;
- the property remained the residence homestead of the surviving spouse; and
- the surviving spouse had not remarried since the disabled veteran died.

Proposition 1 also would authorize the Legislature to allow the exemption to follow the surviving spouse to a new homestead if the surviving spouse had not remarried after the death of the disabled veteran. The

exemption would be limited to the dollar amount of the exemption for the previous qualifying homestead as of the last year in which the surviving spouse had received the exemption.

The change would apply starting with the tax year beginning January 1, 2012, and would apply only to tax years after that date.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a 100 percent or totally disabled veteran."

Supporters say

While current law provides a full exemption from property taxes on the residential homesteads of 100 percent or totally disabled veterans, the exemption unfortunately does not transfer to a surviving spouse upon the veteran's death. The personal loss sustained by the surviving spouse is compounded by the need to pay an unexpected property tax bill. Proposition 1 would solve this problem by allowing the exemption to continue for the surviving spouse.

There is precedent for such a measure because Texas already grants certain surviving spouses the right to inherit other property tax breaks. For instance, the school tax freeze awarded to the owner of a residential homestead at age 65 is transferable to a surviving spouse as long as the spouse is at least 55 years old at the time of the transfer. Proposition 1 and its enabling legislation would be a sensible extension of this policy.

Proposition 1 also would help contain the cost of the continued exemption by allowing it to follow the surviving spouse into a new homestead property but not to increase. If the surviving spouse moved to a more valuable property, the spouse could exempt only the value of the original homestead. If the surviving spouse moved to a less valuable property, then the more

valuable original homestead would be returned to the property tax rolls, and the exemption would follow the surviving spouse to the less valuable homestead.

As disabled veterans face their final years, their greatest concerns are about the fate of their families. Proposition 1 would provide them with some peace of mind. We owe this to the service men and women who have sacrificed so much for our country. A spouse who had remarried would not qualify for the exemption or for the transfer of the exemption amount to a new homestead, so the tax break would be limited.

Opponents say

By extending the time that certain properties remained exempt from property taxes, Proposition 1 would decrease property tax revenue to local governments, which means other taxpayers could have to make up the revenue loss. The state should not grant tax exemptions when schools, health care, and other essential services are critically underfunded. A valuable homestead property could remain off the tax rolls for many years if the surviving spouse lived much longer than the disabled veteran.

Other opponents say

The homestead tax exemption for the surviving spouse of a 100 percent or totally disabled veteran should end if the spouse remarried. Under Proposition 1 and its enabling legislation, once the surviving spouse qualified for the full homestead tax exemption or the transfer of the exemption amount to a new homestead, the exemption would continue regardless of whether the spouse subsequently remarried. The remarriage prohibition would apply only at the point the surviving spouse initially qualified for the tax break.

Notes

The enabling legislation, SB 516 by Patrick, will take effect January 1, 2012, if the voters approve Proposition 1. The provisions of SB 516 are identical to those in Proposition 1.

Renewing authority for Texas Water Development Board bonds

2
Proposition

SJR 4 by Hinojosa (Ritter)

Background

Texas Constitution, Art. 3, sec. 49 generally prohibits state borrowing, with certain exceptions. Sec. 49-c gives the Texas Water Development Board (TWDB) constitutional bonding authority to provide financial assistance to political subdivisions for the conservation and development of the state's water resources. Texas voters have amended this provision numerous times to authorize the TWDB to issue general obligation bonds, backed by the state's full faith and credit, to finance water supply, water quality, and flood control projects, most recently in 2001.

The TWDB, under the constitutional authority of the Texas Water Development Fund II, authorized by Art. 3, sec. 49-d-8, provides financial assistance for water and wastewater projects throughout the state by issuing general obligation water development bonds and using the proceeds to finance loans to political subdivisions. The Development Fund also provides state matching funds for federal grants for the TWDB's clean water and drinking water state revolving funds.

The TWDB issues both self-supporting and non self-supporting bonds under its constitutional authority. Non self-supporting bonds require appropriation of general revenue for a portion of the debt service and are included in the calculation of the state's constitutional debt limit under Art. 3, sec. 49-j. Self-supporting bonds do not require any appropriation from the Legislature and are not included in the calculation of the constitutional debt limit. Typically, the TWDB issues self-supporting bonds, with the principal and interest payments by the political subdivisions covering the debt service.

Since 1957, voters have approved, in increments, a total of \$4.3 billion in general obligation bonds to provide financial assistance for water and wastewater projects throughout the state. Most recently, voters in 2001 authorized the TWDB to issue up to \$2 billion in additional general obligation bonds.

Digest

Proposition 2 would amend the Texas Constitution by adding Art. 3, sec. 49-d-11 to allow the Texas Water Development Board (TWDB) to issue, in addition to the bonds authorized by other provisions of the Texas Constitution, general obligation bonds for one or more accounts of the Texas Water Development Fund II (DFund II). The aggregate principal amount of the bonds that were outstanding at any time could not exceed \$6 billion.

The limitation in Art. 3, sec. 49-d-8 that the TWDB not issue bonds exceeding the aggregate principal amount of previously authorized bonds would not apply to bonds authorized by this amendment. Limitations on the percentage of state participation in any single project would not apply to a project funded with the proceeds of bonds issued under this amendment.

The ballot proposal reads: "The constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board in an amount not to exceed \$6 billion at any time outstanding."

Supporters say

Due to demand for the financing programs of the Texas Water Development Board (TWDB), its current constitutional bond authority will be insufficient to sustain its responsibilities through the next two-year state budget period. Without additional authority to issue state-backed bonds, the TWDB will be unable to provide the financing needed to meet the state's water and wastewater needs. The state also may be unable to provide required funding matches, which could mean losing federal grant funds for the state's drinking water and clean water programs.

Proposition 2 would authorize the TWDB to issue additional general obligation bonds as long as the total amount did not exceed \$6 billion at any time. Bonds

previously authorized by the voters and already issued and retired could be reissued. Authorizing the reissuance of previously authorized bonds through such an ongoing, “evergreen” process would simplify the bond authorization process by avoiding repeated and costly constitutional amendment elections and would allow the TWDB to fulfill its mission uninterrupted.

Renewing previously authorized bond authority also would provide a reliable source of financing for critical water supply and water quality needs. Critical water shortages will increase over the next 50 years, and a long-term reliable funding source for financing water and wastewater projects is needed. Proposition 2 would grant the TWDB a net increase of \$4.9 billion in bonding authority under the proposed \$6 billion aggregate cap since about \$1.1 billion in bonds currently is outstanding.

In 2009, Texas voters overwhelmingly approved a similar evergreen provision for state bonds issued by the Veterans’ Land Board to finance the program that provides low-interest loans for land and home mortgages for veterans. This session, the Legislature also adopted and submitted for voter approval Proposition 3 (SJR 50 by West), which would adopt a similar evergreen provision for student loan bonds. Like those bonds, TWDB financial assistance bonds are self-supporting. They require no draw on general revenue but use the state’s superior credit rating to finance water and wastewater projects for public entities — including cities, districts, and nonprofit water supply corporations — at a lower interest rate than the entities could receive with other financing.

In its recent review of the TWDB, the Sunset Advisory Commission recommended that it be authorized to issue additional general obligation bonds for one or more accounts of the Development Fund II up to \$6 billion, observing that “without [the TWDB’s] cost-effective programs, some entities will not be able to finance vital water and wastewater projects.”

Proposition 2 would ensure that TWDB could administer its assistance programs, provide cost-effective financing for the state’s water plan, and continue to help with local and regional efforts to address the state’s water and wastewater needs. The Bond Review Board would continue to review any proposed bond debt issuance under this constitutional authority.

The water development bond authority provided by this amendment would not allow total outstanding debt to exceed \$6 billion at any time. Unless the Legislature otherwise directed, the debt would be supported by the principal and interest received through loan payments by entities receiving TWDB loan financing. It would not require any appropriation of general revenue. The Constitution makes it clear that the Legislature exercises “full power” to direct the TWDB’s use of its bond authority under DFund II. The TWDB would remain accountable to legislators elected by the voters.

Opponents say

Proposition 2, in effect, would authorize state debt in perpetuity by reauthorizing the issuance of bonds originally authorized as long as 45 years ago and since paid off and retired. State bonds are long-term debt and generally are not issued and ultimately retired until decades after their original authorization by the voters. The Legislature and voters should retain their oversight authority to approve the issuance of new state bonds periodically in order to determine the need for this level of state borrowing.

Although Proposition 2 would not allow the total amount of outstanding bonds issued under the authority provided by the amendment to exceed the \$6 billion cap, it would, in effect, allow the TWDB cumulatively to issue more than \$6 billion in new state-backed bonds. Once bonds were issued and ultimately retired, the TWDB could issue new bonds, so the cumulative amount of bonds issued under this “evergreen” authority could far exceed the \$6 billion cap in the long run. This could amount to a considerable expansion of state debt over time without voter approval.

Renewing state bond authority to finance low-interest student loans

SJR 50 by West (Branch)

3

Proposition

Background

Texas Constitution, Art. 3, secs. 50b-4, 50b-5, and 50b-6 authorize the Hinson-Hazlewood College Student Loan Program (HH loan program) for loans to Texas students who attend public or private higher education institutions in Texas. The Texas Higher Education Coordinating Board administers the HH loan program, which uses state general obligation bonds to finance low-interest loans to students with insufficient resources to finance a college education. The loans make up the difference between the cost of attending and the amount a student is able to obtain from other sources, such as grants or federal loans. The lower interest rate on repayment of bonds backed by the full faith and credit of the state of Texas permits the student loans financed by the bonds to be made at a lower interest rate, reducing costs to the student.

Art. 3, sec. 49 of the Texas Constitution prohibits state debt unless it specifically is authorized by the Constitution. State borrowing through the issuance of state-backed general obligation bonds generally must be authorized by constitutional amendment. Texas voters have authorized a cumulative total of \$1.86 billion in general obligation bonds for the student loan program over the years. Amounts include \$85 million in 1965; \$200 million in 1969; \$75 million in 1989; \$300 million in 1991; \$300 million in 1995; and \$400 million in 1999. Most recently, in 2007, voters authorized an additional \$500 million. According to the coordinating board, about \$275.5 million of unissued bond authorization remains. It is projected that the remaining authority will be exhausted by 2013.

Current law prohibits the coordinating board from issuing more than \$125 million in bonds per year. The bonds are subject to review and approval of the Bond Review Board and the Office of the Attorney General.

Texas Constitution, Art. 3, sec. 49-j limits the amount of state debt that may be issued that is payable from state general revenue. The limitation does not apply to bonds that, although backed by the full faith and credit of the state, are reasonably expected to be

paid from other revenue sources and do not draw on general revenue funds. Bonds issued for the HH student loan program are self-supporting. The bond debt is repaid by student loan repayments, and surpluses are used to make future loans, so these bonds are not subject to the state debt limit.

Digest

Proposition 3 would amend Texas Constitution, Art. 3, sec. 50 to authorize the Texas Higher Education Coordinating Board or its successors to issue and sell general obligation bonds for the purpose of financing educational loans to college students in the manner provided by law. The principal amount of outstanding bonds issued could not exceed the aggregate principal amount of state general obligation bonds previously authorized for that purpose by any other provision or former provision of the Constitution.

The ballot proposal reads: “The constitutional amendment providing for the issuance of general obligation bonds of the State of Texas to finance educational loans to students.”

Supporters say

Proposition 3 would allow the continuation of the highly successful Hinson-Hazlewood student loan program. Every four to six years, the coordinating board must seek a constitutional amendment to authorize more bonding capacity to meet ongoing demand for low-interest student loans. Since 1965, Texas voters have authorized seven constitutional amendments totaling \$1.86 billion to provide funds for the HH loan program.

Proposition 3 would amend the Constitution to authorize the coordinating board to issue additional general obligation bonds as long as the aggregate amount did not exceed the total amount previously authorized by the voters. Such ongoing bond authority – known as “evergreen” authority – would simplify the bond authorization process by avoiding repeated and costly constitutional amendment elections and allow the

coordinating board to fulfill its constitutional mission uninterrupted.

In 2009, the 81st Legislature proposed a similar evergreen provision for state bonds issued by the Veteran's Land Board to finance the state program that provides low-interest loans for land and home mortgages for veterans, and Texas voters overwhelmingly approved that provision. This session, the Legislature also adopted and submitted for voter approval Proposition 2 (SJR 4 by Hinojosa), which would adopt a similar evergreen provision for water development bonds.

The HH student loan program has a proven record of success and is self-supporting, depending not on tax dollars, but on money from student loan repayments to pay the interest and principal on the bonds. Over the life of the program, the coordinating board has issued \$1.4 billion in general obligation bonds to finance the program.

The coordinating board has conservatively managed the program for more than 45 years and never relied on state general revenue to pay the costs of issuing, servicing, or repaying the bonds issued. These bonds do not count against the state bond debt limit because they are self-supporting. If a severe economic crisis caused the rate of default on the student loans to increase significantly, the Legislature could limit or suspend issuance of additional bonds until conditions improved.

The coordinating board offers one of the most competitive student loan interest rates in the country. The fixed rate charged by the coordinating board for its College Access Loans (CAL), one of the loans making up the HH loan program, will be 5.25 percent starting in the fall of 2011. Student demand for low-interest loans with low fixed rates has increased as the recession has reduced access to other financial aid programs.

With state appropriations for student financial aid reduced for fiscal 2012-13, Texas students will need more sources of money for college. Increasing low-cost options for students would support the state's goals for closing the gaps in higher education by improving student access and opportunity for success. Increasing

the coordinating board's ability to assume a greater share of the alternative student loan market would ensure more competitive rates for students.

Opponents say

Now is not the time to increase state borrowing by authorizing additional bonds. Even though the HH student loan program is self-supporting, this amendment would add to overall state debt because the bonds are considered an obligation of the state, which ultimately is responsible for repaying money borrowed through issuance of state bonds. If the economy faltered or did not improve and there was a high rate of default on the loans, the cost to the state could be considerable. The state should limit the use of its credit to finance these low-interest loans.

Proposition 3, in effect, would authorize state debt in perpetuity by reauthorizing the issuance of bonds originally authorized as long as 45 years ago and since paid off and retired. State bonds are long-term debt and generally not issued and ultimately retired until decades after their original authorization by the voters. The Legislature and voters should retain their oversight authority to approve the issuance of new state bonds periodically in order to determine the need for this level of state borrowing. Texas voters in 1991 rejected authorization for new student-loan bonds and should retain that authority.

Notes

SB 1799 by West, the enabling legislation enacted by the 82nd Legislature during its 2011 regular session and signed by the governor, would authorize the Texas Higher Education Coordinating Board to issue up to \$350 million in general obligation bonds in each fiscal year to finance the Hinson-Hazlewood student loan program. The principal amount of outstanding bonds issued under the bill could not exceed the amount authorized by Art. 3, sec. 50b-7, which would be added to the Constitution by Proposition 3. The bill would take effect only if the voters approve Proposition 3.

Allowing counties to participate in certain tax financing zones

4

Proposition

HJR 63 by Pickett (Wentworth)

Background

Texas Constitution, Art. 8, sec. 1-g(b) allows the Legislature to authorize an incorporated city or town to issue bonds or notes to finance development of an unproductive, underdeveloped, or blighted area and to pledge increases in property tax revenue in the area to repay the bonds.

Digest

Proposition 4 would amend Texas Constitution, Art. 8, sec. 1-g(b) to add counties to the political entities authorized to pledge increased property tax revenue to repay bonds issued to redevelop property in an unproductive, underdeveloped, or blighted area, which could include an area within a county.

The ballot proposal reads: “The constitutional amendment authorizing the legislature to permit a county to issue bonds or notes to finance the development or redevelopment of an unproductive, underdeveloped, or blighted area and to pledge for repayment of the bonds or notes increases in ad valorem taxes imposed by the county on property in the area. The amendment does not provide authority for increasing ad valorem tax rates.”

Supporters say

Proposition 4 is necessary because counties are excluded from the constitutional provision enabling cities and towns to issue bonds to finance redevelopment of unproductive, underdeveloped, or blighted areas and to use the incrementally higher property tax revenue resulting from the redevelopment to repay the bonds. The attorney general has noted that the omission of counties from the constitutional authorization makes such initiatives by counties and in areas outside of cities and towns subject to potential constitutional challenge.

Proposition 4 would resolve the constitutional issue highlighted by HB 563 by Pickett, a bill enacted by the 82nd Legislature during its 2011 regular session

that takes effect September 1, 2011. HB 563 enhances local governments’ ability to designate transportation reinvestment zones, an important tool to expand and improve transportation options. To circumvent the constitutional issue, HB 563 allows counties to capture revenue from increased property values associated with a transportation project by abating taxes within a zone and creating a corresponding road district to capture future additional revenue equal to the abated county tax. This is an indirect and complicated solution to a problem that could be solved more simply by amending the relevant constitutional provision to include counties.

Allowing a county to designate a reinvestment zone for transportation projects would enhance tools for local governments to reduce congestion, including road, rail, mass transit, and pedestrian and bicycle mobility projects, in both cities and unincorporated areas of counties. Enabling counties to fully use all resources available is necessary to confront the great transportation challenges facing the state.

Expanding the use of reinvestment zones statewide to include unincorporated areas would allow local governments to maximize available resources without a tax rate increase. As affirmed explicitly by the ballot language, Proposition 4 would not authorize a tax rate increase directly or indirectly. Although property values in a redevelopment zone may increase as a result of economic development stemming from projects financed by tax increment bonds, no property would be taxed at a higher rate due to its inclusion in a reinvestment zone.

Opponents say

Increasing opportunities for counties to participate in transportation and other reinvestment zones would expand the troubling practice of using property taxes to fund transportation and other redevelopment projects. This is a questionable use of property taxes, which are problematic and antiquated in themselves, and could create an incentive to increase property appraisals in reinvestment zones. Also, dedicating incremental increases in property tax revenue to redevelopment projects would divert funds from other local needs.



Allowing interlocal contracts by cities and counties without tax and sinking fund

SJR 26 by West (Turner)

Background

Under Texas Constitution, Art. 11, secs. 5 and 7, cities and counties may not create debt unless a tax is levied that is sufficient to pay the interest on the debt and the debt is paired with a sinking fund of at least 2 percent of the principal. A sinking fund is an amount set aside to cover future installment payments on a debt obligation.

Digest

Proposition 5 would amend Texas Constitution, Art. 11, secs. 5 and 7 to allow the Legislature to authorize cities and counties to enter into interlocal contracts with other cities or counties without meeting the tax assessment and sinking fund requirements.

The ballot proposal reads: “The constitutional amendment authorizing the legislature to allow cities or counties to enter into interlocal contracts with other cities or counties without the imposition of a tax or the provision of a sinking fund.”

Supporters say

Texas Constitution, Art. 11, secs. 5 and 7 have been interpreted in a manner that impedes the ability of cities and counties to jointly administer programs or provide services. Currently, a contract between local governments that is longer than one year is considered to constitute a debt, requiring the imposition of a tax and the creation of a sinking fund. This interpretation has limited the ability of local governments to contract with each other for long-term projects, such as building infrastructure.

Proposition 5, in conjunction with its enabling legislation, SB 760 by West, would clarify that cities and counties may enter into contracts with each other for longer than one year without that contract automatically constituting a debt. This would give local governments the flexibility to consolidate more projects and services,

reduce duplication of efforts, and save costs to taxpayers stemming from unnecessary annual contract renewals.

Opponents say

No apparent opposition.

Notes

SB 760 by West, the enabling legislation for Proposition 5, enacted by the 82nd Legislature during the 2011 regular session, would amend Government Code, sec. 791.011 to allow an interlocal contract to have a specified term of years instead of having to be renewed annually. The bill will take effect if voters approve Proposition 5.

Distribution from Permanent School Fund to Available School Fund

HJR 109 by Orr (Ogden)



Background

Established under Texas Constitution, Art. 7, sec. 5, the Permanent School Fund (PSF) is an endowment trust that holds investment returns from the corpus of the fund and the proceeds from state land and mineral rights dedicated to the support of public schools.

The 15-member elected State Board of Education (SBOE) manages the investment of the PSF. If the fund's investment performance permits, the SBOE makes distributions from the PSF to the Available School Fund (ASF), which provides state assistance to school districts. The ASF pays for instructional materials and classroom technology and provides funding to school districts on a per-student basis. To preserve the principal of the PSF, Art. 7, sec. 5 caps at no more than 6 percent the percentage of PSF investment returns that may be distributed annually to the ASF and also prohibits any distribution in years when the PSF value falls below a certain level.

State land managed, sold, or acquired by the School Land Board (SLB) is excluded from the calculation of the market value of PSF investment returns for determining the percentage distributed annually to the ASF for spending on public education. The SLB designates how much money received from any land, mineral, or royalty interest, real estate investment, or other interest is to be deposited into the PSF. Mineral estate deposits in the real estate special fund account are used for investments to benefit the PSF.

The Natural Resources Code authorizes the School Land Board to distribute school land investment funds directly to the ASF for spending by the public schools, but the attorney general has concluded that this code provision (sec. 51.413) likely is unconstitutional. In the attorney general's opinion, the law is inconsistent with constitutional provisions requiring land sale proceeds to be invested or used to acquire other land for the PSF (Atty. Gen. Opinion, GA-0617; April 9, 2008).

Digest

Proposition 6 would amend Art. 7, sec. 5(a) of the Texas Constitution to include discretionary real estate investments and cash in the state treasury derived from Permanent School Fund (PSF) property in determining the PSF's market value used to calculate the annual distribution from the PSF to the Available School Fund (ASF). The change would apply only to a distribution from the PSF to the ASF made on or after September 1, 2011.

Proposition 6 also would authorize the General Land Office or an entity other than the SBOE responsible for managing PSF land or other properties (such as the School Land Board), in its sole discretion, to distribute to the ASF up to \$300 million each year in revenue derived that year from PSF land or properties.

Proposition 6 would amend various sections of the Texas Constitution to replace "perpetual public school fund," "public free school fund," and "free public school fund" with "permanent school fund."

The ballot proposal reads: "The constitutional amendment clarifying references to the permanent school fund, allowing the General Land Office to distribute revenue from permanent school fund land or other properties to the available school fund to provide additional funding for public education, and providing for an increase in the market value of the permanent school fund for the purpose of allowing increased distributions from the available school fund."

Supporters say

At a time when additional state funding for the schools is badly needed, Proposition 6 would allow a larger share of the Permanent School Fund endowment to be distributed to the public schools through the Available School Fund in a prudent manner that would not harm the corpus of the PSF. It would allow PSF

investment assets to be consolidated to reflect accurately the PSF's full balance by adding certain assets managed by the School Land Board to the total asset base used to calculate the annual distribution from the PSF to the ASF. It also would grant explicit authority to the School Land Board to distribute directly to the ASF proceeds from state land for spending on public education.

According to the Legislative Budget Board, the approximate value of the real assets and cash derived from PSF property that would be added to the calculation of the PSF's market value for determining the amount that could be distributed annually to the ASF for spending on the public schools would be \$2.2 billion. At the 4.2 percent distribution rate adopted by the SBOE for the upcoming two-year state budget period, this would mean an extra \$75.4 million could be distributed to the public schools through the ASF in both fiscal 2012 and fiscal 2013.

Proposition 6 also is needed because an attorney general's opinion concluded that current law allowing the School Land Board to send revenue from school land or properties directly to the ASF likely is unconstitutional. The SLB needs this authority to ensure that public schools may benefit directly from the investment returns from state land and property realized by the board. By amending the Constitution, Proposition 6 would remove any question about the SLB's authority to make a direct transfer to the ASF, at the discretion of the SLB and subject to a cap of \$300 million per year. This could provide millions of dollars in badly needed revenue for public schools while still preserving the corpus of the PSF.

Even though the corpuses of the real estate special fund account and the PSF have grown, the SLB has transferred less money to the PSF in recent years than it did 10 years ago. Arguments that the SLB's authority to retain a portion of the returns ensures the fund's future performance fail to appreciate the detriment that hoarding money means for public schools when the need for additional funding is so pressing.

Proposition 6 also would promote transparency by drawing a traceable path between the net revenue earned from public school land and its distribution to the ASF to benefit the public schools. There is no reason PSF funds derived from state land must first go through the SBOE for investment and possible future distribution

to the ASF. Despite claims that the School Land Board uses a specific methodology to determine its payout of state school land proceeds to the PSF, the land board has used its discretion to transfer larger amounts to the PSF in the past.

Replacing "perpetual public school fund" and "public free school fund" with "permanent school fund" would not be a substantive change. These terms are used interchangeably throughout the Texas Constitution — in practice, there is not a perpetual public school fund or a public free or free public school fund. The attorney general's opinion concluded that all of these funds refer to the PSF. Conforming all references to the "permanent school fund" simply would provide uniformity and prevent confusion.

Opponents say

By changing how the total assets of the Permanent School Fund (PSF) are calculated for purposes of distributing a portion of the fund to the Available School fund (ASF), Proposition 6 would offer a short-term solution to the budget crisis, but would harm public schools and their endowment in the long run. Adding discretionary real estate investments and cash returns derived from PSF land to the basis used by the SBOE to calculate the proportion of the PSF endowment to be distributed to the public schools annually through the ASF would diminish the corpus of the PSF that could be invested for future returns. This change would allow a short-term gain, but ultimately mean a long-term loss for the schools.

Authorizing the School Land Board (SLB) to distribute to the ASF up to \$300 million each year in revenue derived from PSF land is neither necessary nor appropriate. The SLB already acts in the best interest of the fund by fulfilling its duty to manage PSF land and mineral rights. Funds generated by SLB investments are used for their intended purpose of providing an endowment for public education. Authorizing the SLB to transfer proceeds from PSF land and property directly to the ASF is unnecessary because the SLB already may transfer funds to the PSF, allowing the SBOE to ensure that the invested proceeds benefit the public schools through the annual distributions to the ASF. Alternatively, the SLB may invest the net revenue, which ultimately benefits public schools by increasing

the total returns available for transfer to the PSF. It is unwise to spend funds directly that would otherwise be better invested to generate future income.

Claims that the SLB has stored money in the corpus of the PSF that should be used to benefit public schools are unfounded. The corpus of the fund has grown due to increased royalties earned from oil and gas on PSF lands. The royalties are PSF mineral rights and, as such, are dedicated constitutionally to the corpus of the PSF. The SLB has not stored money, but has adopted the same disbursement mechanism used by the SBOE.

The SLB should not be subject to a maximum transfer amount to the ASF set by the Legislature. A predetermined maximum would pressure the board to divert funds from the PSF to the ASF, regardless of its fiduciary duty to protect the corpus of the PSF. The SLB's highest priority should be its fiduciary role and determining the distribution of available funds based solely on market and investment returns.

Notes

The School Land Board supervises the management, leasing, and sale of public school lands. The board includes the elected commissioner of the General Land Office and two citizen members, one of whom is appointed by the governor and the other by the attorney general. Citizen members serve two-year terms and may be reappointed, while the commissioner serves for the duration of his or her elected term.

The Available School Fund consists not only of annual distributions from the Permanent School Fund, but also one-fourth of motor fuels tax revenue and one-fourth of occupations tax revenue.

Authorizing El Paso County districts to issue bonds for parks and recreational facilities

SJR 28 by Rodriguez (Marquez)

Background

Art. 16, sec. 59 of the Texas Constitution governs conservation and development of natural resources and parks and recreational facilities, including conservation and reclamation districts. Sec. 59(a) states that conservation and development of Texas' natural resources are public rights and duties, and the Legislature must pass laws appropriate for this purpose. Sec. 59(b) allows the creation of conservation and reclamation districts to protect and allocate these resources. These districts are government entities that may issue bonds and levy taxes.

Sec. 59(c-1) allows the Legislature to authorize conservation and reclamation districts to use taxes to develop and finance certain parks and recreational facilities that were not so authorized before September 13, 2003. The Legislature may authorize certain districts to issue bonds and levy property taxes to pay for the bonds to develop and maintain parks and recreational facilities, if approved by the district's voters. The bonds are liens on the properties assessed for the payment of the bonds. The Legislature also may authorize the districts to levy taxes to pay interest and create sinking funds for the bonds. Conservation and reclamation districts in Bastrop, Bexar, Brazoria, Fort Bend, Galveston, Harris, Montgomery, Travis, Williamson, and Waller counties are among those specified in the constitutional provision. The Legislature cannot authorize a district to issue bonds or provide for indebtedness against a district unless the district voters first approve it.

Digest

Proposition 7 would add El Paso County to the list of counties specified in Art. 16, sec. 59(c-1) of the Texas Constitution, allowing the Legislature to authorize a conservation and reclamation district in the county to issue bonds and levy taxes in order to develop and finance certain parks and recreational facilities.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to permit conservation and reclamation districts in El Paso County to issue bonds supported by ad valorem taxes to fund the development and maintenance of parks and recreational facilities."

Supporters say

Proposition 7 would help El Paso County address its booming population growth. The relocation of the U.S. 1st Armored Division from Germany to Fort Bliss and continuing migration into Texas' major cities have contributed to this growth. The El Paso region needs the coordinated and planned infrastructure development that a parks district could supply.

Proposition 7 would allow El Paso voters to decide whether to create a parks district. The creation of a parks district would let local taxpayers access and enjoy all recreational assets in the county by combining them under one system. Parks are critical to a community's success. They attract and retain human capital and spur regional investment. Combining the region's park facilities would facilitate economies of scale, allowing the district to offer higher-quality services than the separate political jurisdictions could offer independently. A world-class parks system is needed to make El Paso a world-class city.

Proposition 7 would neither create a parks district nor grant it taxing authority. It simply would add El Paso County to the list of counties for which the Legislature could allow local voters to approve a proposal to create a parks district. Currently, 10 other counties may be granted this authority. Approval of this constitutional authorization would be only one step, albeit a very important one, in the process of creating a parks district in El Paso County. The parks district eventually could be authorized to levy taxes, but several other steps would be required before that could occur. It is important that local voters decide how they will be impacted, and this proposition would provide the mechanism for that to occur.

Both city and county representatives are supportive of this initiative, which could improve the quality of life for the area's residents. Proposition 7 is supported by the El Paso County Commissioners Court, as reflected by the court's vote to recommend a constitutional amendment to enable the creation of a regional parks district. The city of El Paso also supports the creation of the district, as reported by the city's Blue Ribbon Committee established to recommend options for creating a regional park authority or district.

Opponents say

Proposition 7 would create the opportunity for another authority to tax the residents of El Paso County during stressful economic times. If the proposition were approved, the district eventually could impose taxes on local citizens. El Paso County does not have a wealthy tax base. The focus of government leaders should be on sustaining the local economy, not seeking opportunities to create debt through bonds or increase revenue through taxes. Although improving the area's quality of life is important, Proposition 7 is neither helpful nor needed right now.

Proposition 7 does not reflect an overwhelming consensus of opinion among El Paso area leaders. The county and city leadership should have been provided with specific information concerning the exact financing, leadership, functions, and authority of the proposed parks district. The proposition has been characterized as a way for the people of El Paso County to begin a conversation regarding whether a parks district would benefit the area and its citizens. However, very little research has occurred to determine the actual economic effects of a vote approving a parks district. Discussion should precede action, not the other way around.

Appraising open-space land for water stewardship

SJR 16 by Estes (Ritter)

Background

Texas Constitution, Art. 8, sec. 1(b) requires that all real and tangible personal property be taxed in proportion to its value unless exempted as authorized by the Constitution. Art. 8, sec. 1-d-1 requires the Legislature to provide for taxation of open-space land devoted to farm, ranch, or wildlife management based on its productive capacity and allows the Legislature to provide for taxation of open-space land devoted to timber production based on its productive capacity.

Digest

Proposition 8 would amend the Texas Constitution, Art. 8, sec. 1-d-1 to require the Legislature to provide for taxation of open-space land devoted to water stewardship purposes based on its productive capacity.

The constitutional amendment would take effect January 1, 2012.

The ballot proposal reads: “The constitutional amendment providing for the appraisal for ad valorem tax purposes of open-space land devoted to water-stewardship purposes on the basis of its productive capacity.”

Supporters say

Proposition 8 would create an incentive for landowners to partner with the state to protect water quality and increase conservation efforts by adding water stewardship to the land uses for which land could be appraised based on its productive capacity to qualify for certain tax benefits. More than 90 percent of Texas water flows through or under land owned by private individuals, and Proposition 8 would encourage those landowners to be good stewards of the water.

One of the suggested water management strategies of the State Water Plan is voluntary land stewardship. This includes controlling nuisance vegetation and

erosion and conserving wetlands to improve the health of the state’s watersheds. The plan also warns that Texas will soon face water shortages, requiring active conservation. Proposition 8 would help Texas achieve important conservation goals and help ensure a safe and adequate water supply.

While Proposition 8 could lead to some overlap between the land valuations for water stewardship and for wildlife management, mainly for erosion control and habitat stewardship, the effects would be positive. Practices that qualified under both valuations could benefit both wildlife and water, expanding options for landowners to protect valuable resources.

Proposition 8 would not provide a new tax exemption or lower valuation, but simply would allow landowners who already qualified for open-space valuation some flexibility to use their land in another way. Under the enabling legislation, for land to qualify for water stewardship use, the land would have to be appraised as qualified open-space or timber land when the water stewardship use began.

Opponents say

Proposition 8 is unnecessary because it would duplicate existing options under wildlife management valuation, mainly erosion control and habitat stewardship.

In addition, farmers and ranchers who qualify for an agricultural valuation already are practicing water conservation to keep their stocks and crops productive. A separate water stewardship designation is not needed when landowners already practice water conservation. Landowners in Texas also already enjoy several tax breaks, so expanding an existing exemption to include water stewardship would be excessive and unnecessary.

Notes

SB 449 by Watson, the enabling legislation for Proposition 8 enacted by the 82nd Legislature during

the 2011 regular session and signed by the governor, would require the Parks and Wildlife Department, with the assistance of the comptroller, to develop standards for determining whether land qualified for appraisal based on water stewardship. On request of the Parks and Wildlife Department or the comptroller, the Texas AgriLife Extension Service would assist in developing the standards. The legislation would define “water stewardship” as actively using land that at the time the water stewardship began was appraised as qualified open-space land or as qualified timber land and was being used in at least three of nine specified ways to promote and sustain water quality and conservation. SB 449 will take effect January 1, 2012, if Proposition 8 is approved by the voters.

Allowing pardon by the governor after successful deferred adjudication

SJR 9 by West (Thompson)

Background

Texas Constitution, Art. 4, sec. 11(b) and Code of Criminal Procedure, art. 48.01 authorize the governor to grant reprieves, commutations of punishments, and pardons after a criminal conviction. The governor may exercise this authority in all criminal cases except treason and impeachment, but only if the Board of Pardons and Paroles recommends it.

Under Code of Criminal Procedure, art. 42.12, sec. 5, a judge may, after receiving a plea of guilty or no contest, defer further proceedings without entering an adjudication of guilt and place the defendant on community supervision (probation). If the defendant successfully completes the community supervision, the judge must dismiss the charges and discharge the defendant. This process is known as deferred adjudication and is unavailable for certain intoxication offenses, certain repeat drug offenses occurring in drug free zones, certain sex offenses, and murder, under certain conditions.

Digest

Proposition 9 would expand the governor's authority to grant pardons, reprieves, and commutations, upon recommendation of the Board of Pardons and Paroles, to cases when a person had successfully completed a term of deferred adjudication.

The ballot proposal reads: "The constitutional amendment authorizing the governor to grant a pardon to a person who successfully completes a term of deferred adjudication community supervision."

Supporters say

Proposition 9 would correct an inequity in Texas law by making people who successfully completed a term of deferred adjudication eligible for a pardon. The governor currently may grant pardons to people

who have been convicted but not to those who have completed deferred adjudication because these cases carry no conviction. Although there is no record of a conviction in these cases, there is a record of an arrest and of the deferred adjudication, a form of probation. Having any type of criminal record – even a deferred adjudication with no final conviction – can present barriers in finding employment and housing and in gaining admission to schools.

Proposition 9 would provide a possible avenue of relief for people who successfully completed a sentence of deferred adjudication. Under the proposed amendment, they could apply for a pardon, and if it were granted, they could seek to have their records expunged. Proposition 9 would be a common-sense application of the governor's pardon power and result in a more consistent policy on the use of pardons. Those who actually are convicted of an offense can apply for a pardon. This option also should be available to those receiving deferred adjudication, who often are first-time, nonviolent offenders deserving of a pardon.

This change would not result in an automatic pardon or the automatic expunction of anyone's record. Those receiving pardons under the authority in Proposition 9 would have to follow the standard vetting procedure to ensure a pardon was deserved. They would have to apply to the Board of Pardons and Paroles, which would consider the case and have to recommend the pardon to the governor. The governor still would have full discretion in whether to grant a pardon. However, once a pardon was awarded, a person could meet the requirements for expunction and have his or her criminal history removed from the public domain. To help ensure that adequate information was available before a pardon recommendation, the enabling legislation for Proposition 9 would require those applying to the Board of Pardons and Paroles wait at least 10 years after completing deferred adjudication before applying.

Current law does not preserve all criminal records indefinitely, but makes reasoned, limited exceptions to public access to these records. Allowing a pardon in

successful cases of deferred adjudication and expunction of a criminal record when justified and merited should be another such exception.

Opponents say

The state should be cautious about any policy that could result in new restrictions on public access to criminal history record information. Once a pardon had been granted under the authority in Proposition 9, a person could meet the requirements for expunction, leading to restrictions on access to currently available records. The criminal record of someone who has completed deferred adjudication states that the person completed the term and that the charges were dismissed, and this should remain public information. Employers, schools, and the public should be able to draw their own conclusions about such records.

SJR 9 is unnecessary. Pardons are designed for those who have been convicted of crimes. In cases of deferred adjudication, there is no conviction, so pardons should not be needed.

Notes

The enabling legislation for Proposition 9, SB 144 by West, would authorize the Board of Pardons and Paroles to recommend pardons for people who received deferred adjudication followed by a discharge and dismissal and who, after waiting at least 10 years from the discharge and dismissal, submitted a written request for a pardon recommendation. SB 144 will take effect January 1, 2012, if Proposition 9 is approved by the voters.

Lengthening period before county officials must resign to run for other office

SJR 37 by Van de Putte (V. Taylor)

Background

Resign-to-run. Under Texas Constitution, Art. 16, sec. 65, when certain elected officials file or announce their candidacy for another office in any general, special, or primary election and their unexpired term of office exceeds one year, it constitutes an automatic resignation from the office held.

This provision, known as the “resign-to-run” provision, applies to district clerks, county clerks, county judges, county court-at-law judges, county criminal court judges, county probate judges, county domestic relations court judges, county treasurers, county surveyors, county commissioners, justices of the peace, sheriffs, tax assessors and collectors, district attorneys, criminal district attorneys, county attorneys, public weighers, and constables.

New filing deadline. Members of the uniformed services and U.S. citizens who live abroad are eligible to register and vote absentee in federal elections under the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA). In 2009, Congress overhauled UOCAVA by enacting the Military and Overseas Voter Empowerment (MOVE) Act, which requires that all states send absentee ballots to uniformed and overseas citizens at least 45 days before an election. This change addressed concerns that military and overseas voters did not have sufficient time to vote and thus were effectively disenfranchised.

SB 100 by Van de Putte, enacted by the 82nd Legislature during its 2011 regular session and signed by the governor, implements the federal MOVE Act by amending the state’s primary election calendar to accommodate the new deadlines for sending ballots to military and overseas voters. The new law moved the filing deadline for an application for a place on the general primary election ballot from January 2 in a primary election year to the second Monday in December of the odd-numbered year before the primary. This year, the candidate filing period for the 2012 election will begin on November 12, 2011, and the filing deadline will be December 12. SB 100 also moved the

runoff primary election date from the second Tuesday in April after the general primary election to the fourth Tuesday in May.

Digest

Proposition 10 would amend Texas Constitution, Art. 16, sec. 65 to extend from one year to one year and 30 days the length of the unexpired term of office that would require automatic resignation by an officeholder who filed or announced candidacy for another office.

The ballot proposal reads: “The constitutional amendment to change the length of the unexpired term that causes the automatic resignation of certain elected county or district officeholders if they become candidates for another office.”

Supporters say

Proposition 10 would change the length of the unexpired term that causes the automatic resignation of certain county and district officeholders. It is needed to address the new filing deadline imposed by SB 100, which the Legislature enacted to implement the federal MOVE Act requiring a longer period before an election for overseas military to cast absentee ballots. The constitutional change would allow officeholders with less than one year and 30 days left in their unexpired terms to avoid automatically resigning their office by becoming a candidate for another public office.

Without approval of Proposition 10, certain county and district officeholders wishing to seek another office will have to forfeit their current posts when they announce their candidacies because they must file for a place on the ballot with more than 12 months left in their current posts under the new filing deadline. Under prior law, the filing deadline was January 2, while the terms for county and district offices end on December 31. This gave these officials a small window of opportunity to file for another office rather than seek reelection and still keep their positions for the remainder of their terms. Moving the filing deadline to the second Monday in

December means that these officials have no option but to resign their position if they file for another office.

Officeholders with less than one year and 30 days left in their unexpired terms should be able to keep their current jobs. Most elected officials are not independently wealthy and rely on their jobs to support themselves and their families. Many would find it difficult to vacate their jobs an entire year early in order to seek another office. This would deprive officeholders of completing their terms and would create unnecessary vacancies, requiring the appointment of temporary officials to complete the terms.

Changing the filing deadline through enactment of SB 100 was necessary for Texas to comply with the federal MOVE Act, which Congress enacted to ensure that military and overseas voters had sufficient time to cast their ballots. Most states have approved or are in the process of approving legislation to comply with the MOVE Act. Ultimately, Texas lawmakers decided that moving the filing deadline was the least disruptive option for voters and the most cost-effective option for the state to comply with the MOVE Act and leave current election dates in place. Alternatives to changing the filing deadline, such as moving the primary election date, would have shifted other election dates and created conflicts with local elections.

The resign-to-run provision was added to the Texas Constitution in 1958 after the terms for certain officials were extended from two to four years. The provision still serves the state's interests by barring those officials from running for another office in the middle of their terms and ensuring that they do not neglect their duties for too long a period because of aspirations for another office.

Opponents say

The resign-to-run provision should be repealed, not merely revised to reconcile it with the new earlier candidate filing deadline. A local official should not be penalized for announcing candidacy for another public office merely because his or her unexpired term exceeds one year. Repealing the provision would treat county and district officials the same as other public officials, who are not required to resign in order to run for another office.

The change in the resign-to-run provision would facilitate the change in the candidate filing period, which now will begin on November 12, 2011, almost a full year in advance of the November 6, 2012, election. This will mean an election season that is far too long.

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John H. Reagan Building
Room 420
P.O. Box 2910
Austin, Texas 78768-2910

(512) 463-0752

www.hro.house.state.tx.us

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