

Analyses of Proposed Constitutional Amendments

November 8, 2011, Election



Texas Legislative Council

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of the
Texas Legislative Council

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Introduction

General Information

In the 2011 Regular Session, the 82nd Texas Legislature passed 10 joint resolutions proposing amendments to the state constitution, and these proposed amendments will be offered for approval by the voters of Texas on the November 8, 2011, 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.

From the adoption of the current Texas Constitution in 1876 through November 2009, the legislature has proposed 646 amendments to the constitution, of which 643 have gone before Texas voters. Of the amendments on the ballot, 467 have been approved by the electorate and 176 have been defeated. The other three amendments were never placed on the ballot, for reasons that are historically obscure. See the online publication *Amendments to the Texas Constitution Since 1876* for more information.

The *Analyses of Proposed Constitutional Amendments* contains, for each proposed amendment that will appear on the November 8, 2011, ballot, the ballot language, an analysis, and the text of the joint resolution proposing the amendment. The analysis includes background information and a summary of comments made during the legislative process about the proposed constitutional amendment by supporters and by opponents.

Proposed Amendments

Amendment No. 1 (S.J.R. 14)

Wording of Ballot Proposition

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.

Analysis of Proposed Amendment

Section 1-b(i), Article VIII, Texas Constitution, authorizes the legislature by general law to exempt from property (or "ad valorem") taxation all or part of the market value of the residence homestead of a disabled veteran who is certified as having a disability rating of 100 percent or totally disabled. The proposed amendment would add Subsections (j) and (k) to Section 1-b. Proposed Subsection (j) would authorize the legislature by general law to provide that the surviving spouse of a 100 percent or totally disabled veteran who qualified for an exemption in accordance with Subsection (i) from property taxation of all or part of the market value of the disabled veteran's residence homestead when the disabled veteran died is entitled to an exemption from property taxation of the same portion of the market value of the same property to which the disabled veteran's exemption applied if the surviving spouse has not remarried since the death of the disabled veteran and the property was the residence homestead of the surviving spouse when the disabled veteran died and remains the surviving spouse's residence homestead.

Proposed Subsection (k) would authorize the legislature by general law to provide that if a surviving spouse who qualifies for an exemption in accordance with Subsection (j) subsequently qualifies a different property as the surviving spouse's residence homestead, the surviving spouse is entitled to an exemption from property taxation of the subsequently qualified homestead in an amount equal to the dollar amount of the exemption of the former homestead in accordance with Subsection (j) in the last year in which the surviving spouse received an exemption in

accordance with that subsection for the former homestead if the surviving spouse has not remarried since the death of the disabled veteran.

The proposed amendment would apply only to a tax year beginning on or after January 1, 2012.

Background

In 2007, Section 1-b, Article VIII, Texas Constitution, which governs residence homestead exemptions from property taxation, was amended by adding Subsection (i). That subsection authorizes the legislature to provide for an exemption from property taxation of all or part of the value of the residence homestead of a 100 percent or totally disabled veteran. Although certain exemptions from and other limitations on property taxes applicable to residence homesteads continue on behalf of a surviving spouse after the death of the other spouse, the exemption for disabled veterans authorized by Subsection (i) does not.

The proposed amendment authorizes the legislature to provide that the surviving spouse of a 100 percent or totally disabled veteran is entitled to an exemption from property taxation of all or part of the value of the same property to which the disabled veteran's exemption applied if the surviving spouse has not remarried and the property was, when the disabled veteran died, and remains the surviving spouse's residence homestead. In addition, the amendment authorizes the legislature to provide that the surviving spouse is entitled to an exemption from property taxation of a subsequently qualified residence homestead in an amount equal to the dollar amount of the exemption from taxation of the former homestead in the last year in which the surviving spouse received an exemption for that homestead if the surviving spouse has not remarried.

Senate Bill 516, Acts of the 82nd Legislature, Regular Session, 2011, is the enabling legislation for the proposed amendment. The bill amends Section 11.131, Tax Code, to entitle the surviving spouse of a 100 percent or totally disabled veteran who qualified for a homestead exemption under that section to an exemption from property taxation of the total appraised value of the same property to which the disabled veteran's exemption applied if the surviving spouse has not remarried and the property was, when the disabled veteran died, and remains the surviving

spouse's residence homestead. The bill also entitles a surviving spouse who subsequently qualifies a different property as the surviving spouse's residence homestead to an exemption from property taxation of the subsequently qualified homestead in an amount equal to the dollar amount of the exemption from taxation of the former homestead in the last year in which the surviving spouse received an exemption for that homestead if the surviving spouse has not remarried. The surviving spouse is entitled to receive from the chief appraiser of the appraisal district in which the former residence homestead was located a certificate providing the information necessary to determine the amount of the exemption to which the surviving spouse is entitled on the subsequently qualified homestead. The bill applies only to a tax year beginning on or after January 1, 2012, and takes effect only if the proposed amendment is approved by the voters.

Summary of Comments

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

Comments by Supporters. The proposed amendment would recognize the sacrifices made by disabled veterans and their surviving spouses. The surviving spouses often forgo career opportunities and reduce their work hours, affecting their income and retirement benefits and thereby their ability to pay property taxes. The proposed amendment would provide disabled veterans the peace of mind of knowing that their surviving spouses will not be taxed out of their homes.

By allowing a surviving spouse to transfer the surviving spouse's exemption to a subsequent homestead, the proposed amendment would permit the surviving spouse to move to a different home, including a home closer to family, without losing the exemption. At the same time, the amendment would limit the cost to local governments of the exemption by limiting the amount of the exemption on the subsequent homestead to the value of the exemption on the former homestead.

Finally, the proposed amendment would be a sensible extension of existing state policy, as Texas already entitles certain surviving spouses to retain property tax relief previously granted to a deceased spouse, such as the freeze on school district property taxes granted to an owner of a residence homestead at age 65, which is transferred to a surviving spouse who is at least 55 years of age when the homeowner dies.

Comments by Opponents. By allowing the surviving spouse of a disabled veteran to receive an exemption from property taxation of the surviving spouse's residence homestead, the proposed amendment would lengthen the period that the homestead is exempt from taxation, thereby decreasing property tax revenue to local governments. The state should not provide for new property tax exemptions at a time when essential services such as public education and health care are underfunded.

Text of S.J.R. 14

SENATE JOINT RESOLUTION

proposing a 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.

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

SECTION 1. Section 1-b, Article VIII, Texas Constitution, is amended by adding Subsections (j) and (k) to read as follows:

(j) The legislature by general law may provide that the surviving spouse of a 100 percent or totally disabled veteran who qualified for an exemption in accordance with Subsection (i) of this section from ad valorem taxation of all or part of the market value of the disabled veteran's residence homestead when the disabled veteran died is entitled to an exemption from ad valorem taxation of the same portion of the market value of the same property to which the disabled veteran's exemption applied if:

(1) the surviving spouse has not remarried since the death of the disabled veteran; and

(2) the property:

(A) was the residence homestead of the surviving spouse when the disabled veteran died; and

(B) remains the residence homestead of the surviving spouse.

(k) The legislature by general law may provide that if a surviving spouse who qualifies for an exemption in accordance with Subsection (j) of this section subsequently qualifies a different property as the surviving spouse's residence homestead, the surviving spouse is entitled to an exemption from ad valorem taxation of the subsequently qualified homestead in an amount equal to the dollar amount of the exemption from ad valorem taxation of the former homestead in accordance with

Subsection (j) of this section in the last year in which the surviving spouse received an exemption in accordance with that subsection for that homestead if the surviving spouse has not remarried since the death of the disabled veteran.

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 82nd Legislature, Regular Session, 2011, 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.

(b) Sections 1-b(j) and (k), Article VIII, of this constitution take effect January 1, 2012, and apply only to a tax year beginning on or after that date.

(c) This temporary provision expires January 1, 2013.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2011. The ballot shall be printed to permit voting for or against the proposition: "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."

Senate Author: Leticia Van de Putte et al.

House Sponsor: Charles "Doc" Anderson et al.

Amendment No. 2 (S.J.R. 4)

Wording of Ballot 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 \$6 billion at any time outstanding.

Analysis of Proposed Amendment

The proposed amendment would add Section 49-d-11, Article III, Texas Constitution, authorizing the Texas Water Development Board to issue general obligation bonds on a continuing basis for Texas Water Development Fund II accounts in amounts such that the aggregate principal amount of the outstanding bonds issued by the board under that section that are outstanding at any time does not exceed \$6 billion. The \$6 billion bonding authority would be in addition to the board's current bonding authority. The proposed amendment would make the proposed bonding authority subject to the general framework governing the Texas Water Development Fund II found in Section 49-d-8, Article III, Texas Constitution, except for the limitation in that section that the board may not issue bonds in excess of the aggregate principal amount of previously authorized bonds. In addition, the proposed amendment would exempt a project funded with the proceeds of bonds issued under Section 49-d-8 or 49-d-11 of Article III of the Texas Constitution from a limitation on the percentage of state participation in any single project imposed by that article.

Background

Recognizing the need to assist political subdivisions in Texas with water development programs, Texas voters approved a constitutional amendment in 1957 authorizing general obligation bonds for water resource conservation and development undertaken by political subdivisions. Bonding authority and programs to assist those entities with water development projects across Texas have been expanded since that date and currently are administered by the Texas Water Development Board. The

board's bonding authority is used for various programs, including loans to local governments for water supply, water quality, flood control, and agricultural water conservation projects and groundwater conservation district creation expenses; grants and loans for the water and wastewater needs of the state's economically distressed areas; agricultural water conservation funding; and water-related research and planning grants.

The board, through its bonding authority, functions chiefly as a financing entity, offering more favorable financing options for water development projects than would be available if financing were undertaken by a local entity, and serves as the lender of last resort for certain disadvantaged entities. Additionally, the board's bonding authority is used to finance projects that are included in the state water plan and serves as a source of state matching funds for capitalization grants through the federal Clean Water and Drinking Water State Revolving Fund programs.

Each of the previous voter-approved bonding authority amounts was approved for one-time use, meaning once the specified amount of bonds was issued the authority was exhausted. The proposed amendment would authorize an additional \$6 billion in bonds as general obligation bonds on a continuous or revolving basis, rather than on a one-time basis. The proposed amendment allows the issuance of self-supporting and non-self-supporting debt, and any non-self-supporting debt that receives a general revenue appropriation for debt service would impact the state's constitutional debt limit. However, the board can issue non-self-supporting debt only with legislative authorization. For the purposes of calculating the constitutional debt limit, this \$6 billion bond authorization would be considered self-supporting and would not have an impact on the constitutional debt limit until the legislature authorizes the issuance of non-self-supporting general obligation water bonds.

To date, voters have approved approximately \$4.26 billion in bonding authority for water development projects, and in 2010, the board estimated that by August 31, 2011, all except approximately \$266 million would have been used.

Summary of Comments

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

Comments by Supporters. The increase in Texas' population and the persistent threat of severe drought highlight the need to update infrastructure to meet current water needs and to anticipate and plan for future water needs. The proposed amendment is a result of the Texas Water Development Board's 2010 review by the Sunset Advisory Commission, which made the following findings:

- Demand for the board's financial assistance has increased as a result of new funding mechanisms and declining market conditions.
- The board's current bonding authority is insufficient to meet the increased demand for financial assistance and will have been virtually exhausted as early as the end of August 2011.
- Without the additional bonding authority, the board will not meet the state's water and wastewater financing needs.
- The board has a history of responsibly managing its loan portfolio. The board has had no defaults in the history of its water and wastewater loan programs or its state revolving fund programs, has generated \$143.1 million in savings since 1998 by reissuing bonds at lower interest rates based on its ability to get a AAA bond rating, maintains low bond issuance costs, and has reclassified almost \$140 million of state participation program debt from non-self-supporting to self-supporting debt, meaning the debt no longer requires repayment from the state general revenue fund and does not count toward the state's constitutional debt limit.

The additional bonding authority is needed to meet the demand for water project financing. Without the additional authority, critical water planning and infrastructure upgrades will be greatly impeded or halted altogether, which will negatively impact local water development and conservation programs in many communities across Texas. Although this

bonding authorization may finance only a small portion of state water plan implementation projects to meet the long-term water needs of Texas, the total estimated cost of which is \$30 billion, it will be used in support of implementation. The additional bonding authority also is needed to meet federal matching requirements to draw down capitalization grants through the federal Clean Water and Drinking Water State Revolving Fund programs.

The provision in the proposed amendment making the bonding authority continuous (also known as the evergreen provision) would give the board, which has been a good steward of the bonding authority granted to date, flexibility over a longer term in the board's financing options. However, even with the evergreen provision, the legislature would retain its ability to provide oversight through its statutory and constitutional authority to determine how the board administers its programs. These bonds, if approved, would be self-supporting and not a detriment to the state budget, would not cost the state any money from the general revenue fund, and would not count toward the state's constitutional debt limit.

Comments by Opponents. No comments opposing the proposed 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 did not reveal any apparent opposition to the amendment.

However, a witness at a committee hearing, while noting that the additional bonding authority is critical and the board has demonstrated the ability to effectively administer the additional bonding authority, recommended removing the evergreen provision, arguing that periodic review by the legislature and the voters increases the board's accountability for the administration of the funds. The witness also noted general concern that funding for implementation of the state water plan is inadequate and should be considered where possible.

Text of S.J.R. 4

SENATE JOINT RESOLUTION

proposing a constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Section 49-d-11 to read as follows:

Sec. 49-d-11. (a) In addition to the bonds authorized by the other provisions of this article, the Texas Water Development Board may issue general obligation bonds, at its determination and on a continuing basis, for one or more accounts of the Texas Water Development Fund II in amounts such that the aggregate principal amount of the bonds issued by the board under this section that are outstanding at any time does not exceed \$6 billion.

(b) Section 49-d-8 of this article applies to the bonds authorized by this section. The limitation in Section 49-d-8 of this article that the Texas Water Development Board may not issue bonds in excess of the aggregate principal amount of previously authorized bonds does not apply to the bonds authorized by and issued under this section.

(c) A limitation on the percentage of state participation in any single project imposed by this article does not apply to a project funded with the proceeds of bonds issued under the authority of this section or Section 49-d-8 of this article.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2011. The ballot shall be printed to permit 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 \$6 billion at any time outstanding."

Senate Author: Juan "Chuy" Hinojosa et al.
House Sponsor: Allan Ritter

Amendment No. 3 (S.J.R. 50)

Wording of Ballot Proposition

The constitutional amendment providing for the issuance of general obligation bonds of the State of Texas to finance educational loans to students.

Analysis of Proposed Amendment

The proposed amendment would add Section 50b-7, Article III, Texas Constitution, which would empower the legislature by general law to authorize the Texas Higher Education Coordinating Board or its successor to issue and sell state general obligation bonds for the purpose of financing student loans in the manner provided by law as long as the principal amount of outstanding bonds issued is at all times equal to or less than the aggregate principal amount of state general obligation bonds previously authorized for that purpose by any other constitutional provision or former constitutional provision. The proposed amendment would require the bonds to be executed in the form, on the terms, and in the denominations, bear interest, and be issued in installments as prescribed by the coordinating board and would prohibit the maximum net effective interest rate to be borne by bonds so issued from exceeding the maximum rate provided by law. The proposed amendment also would authorize the legislature to provide for the investment of bond proceeds and to establish and provide for the investment of an interest and sinking fund to pay the bonds. Investment income would be required to be used for legislatively prescribed purposes. The proposed amendment would have the effect of continuing the existing Hinson-Hazelwood Student Loan Program, for which similar bonds have previously been authorized. Unlike the previous bond authorizations, the proposed amendment would not limit the total amount of bonds issued.

Background

Section 52.01, Education Code, requires the Texas Higher Education Coordinating Board to administer the Hinson-Hazelwood Student Loan Program authorized by Chapter 52 pursuant to Sections 50b-4, 50b-5, and 50b-6, Article III, Texas Constitution, and any former constitutional provision authorizing bonds to finance educational loans to students. The program offers eligible Texas students low-interest, fixed-rate loans, financed by the issuance of state general obligation bonds, to make up the difference between the cost of attendance at certain institutions of higher education and other sources of financial aid available to such students. Voters have approved constitutional amendments increasing the bonding authority of the coordinating board several times since the program's inception in 1965; most recently, in 2007, Senate Joint Resolution 57 added Section 50b-6 to Article III, which increased the board's bonding authority by \$500 million, bringing the aggregate principal amount of all previous authorizations to \$1.86 billion. As of May 2011, the coordinating board had \$400.4 million of bonding authority remaining but expected to exhaust that remainder by 2013. The proposed amendment would permit the legislature to increase the coordinating board's bonding authority by statute, without the need to return to the voters repeatedly for that authority.

The 82nd Legislature, Regular Session, 2011, enacted Senate Bill 1799 to take effect only if the voters approve the constitutional amendment proposed by Senate Joint Resolution 50. Senate Bill 1799 increases the cap on the total amount of bonds issued by the coordinating board under the Hinson-Hazelwood program in a state fiscal year from \$125 million to \$350 million and makes additional changes related to implementation of the proposed amendment.

Summary of Comments

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

Comments by Supporters. Recent cuts in federal financial aid and the elimination of certain federal financial aid programs, together with expected reductions in available state grant programs, likely will increase the demand for student loans. Low-interest, fixed-rate loans, such as those offered under the Hinson-Hazelwood program, are the best alternative loans a student can get when federally subsidized or federally insured loans are insufficient or are not available. The program boasts relatively low default rates, interest rates competitive on a national level, and a long-standing record of success. Students issued loans under the program tend both to graduate and to repay money owed. In addition, existing law requires that the program be self-sustaining; regardless of the default rate, the program is obligated to pay back its debt service payments, which it does through student loan repayments funneled into a statutorily required interest and sinking fund. The state has never had to contribute any general revenue for bonds issued under the program, and even though the program is backed by the state's general obligation rating, it does not affect the constitutional debt limit because of its self-supporting nature.

Comments by Opponents. No comments opposing the proposed amendment were made during the house and senate committee hearings or during debate on the amendment in the house and senate chambers.

However, during the house committee hearing, certain members observed that while the benefits of the Hinson-Hazelwood program generally are unquestioned, national student loan debt presently exceeds national credit card debt, and also that certain media sources have identified student loans as a potential catalyst for a widespread financial predicament similar to that relating to subprime mortgage loans. Ideally, one member suggested, state support of students pursuing higher education would be in the form of grant aid, not loans.

Text of S.J.R. 50

SENATE JOINT RESOLUTION

proposing a constitutional amendment providing for the issuance of general obligation bonds of the state to finance educational loans to students.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Section 50b-7 to read as follows:

Sec. 50b-7. (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 for the purpose of financing educational loans to students in the manner provided by law. The principal amount of outstanding bonds issued under this section must at all times be equal to or less than the aggregate principal amount of state general obligation bonds previously authorized for that purpose by any other provision or former provision of this constitution.

(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) While any of the bonds issued under this section or interest on the bonds is outstanding and unpaid, 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 the bonds that mature or become due during the fiscal year, less any amount in an interest and sinking fund established under this section 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.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2011. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment providing for the issuance of general obligation bonds of the State of Texas to finance educational loans to students."

Senate Author: Royce West
House Sponsor: Dan Branch et al.

Amendment No. 4 (H.J.R. 63)

Wording of Ballot Proposition

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.

Analysis of Proposed Amendment

Section 1-g(b), Article VIII, Texas Constitution, currently allows the legislature by general law to authorize an incorporated city or town to issue bonds or notes to finance the development or redevelopment of an unproductive, underdeveloped, or blighted area within the city or town and to pledge for repayment of those bonds or notes increases in property taxes imposed on property in the area by the city or town and other political subdivisions, a mechanism referred to as tax increment financing. The proposed amendment would expand the authorization to include counties, allowing the legislature by general law to authorize a county to issue bonds or notes to finance the development or redevelopment of an unproductive, underdeveloped, or blighted area within the county and to pledge for repayment of those bonds or notes increases in property taxes imposed on property in the area by the county.

Background

Section 1-g(b), Article VIII, Texas Constitution, which was added to the constitution in 1981, allows the legislature by general law to authorize an incorporated city or town to finance development or redevelopment in a designated reinvestment zone through a process known as tax increment financing. The principal general law governing tax increment financing was codified in 1987 as Chapter 311, Tax Code. In 2005, the legislature

amended Chapter 311 to authorize a county to implement tax increment financing, but Section 1-g(b) was not amended to allow the legislature to extend to counties the authorization previously given to cities to implement that financing method. The proposed amendment would provide a constitutional basis for counties to implement tax increment financing. The proposed amendment would not provide a basis for increasing property tax rates.

Summary of Comments

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

Comments by Supporters. Counties should have the same ability as cities and towns to finance needed public improvements in areas that are deteriorating or unproductive and designated as reinvestment zones. Without the proposed amendment, county implementation of tax increment financing could be subject to a constitutional challenge. House Bill 563, Acts of the 82nd Legislature, Regular Session, 2011, which enhances the ability of local governments to designate and use transportation reinvestment zones for the purpose of tax increment financing, highlights the importance of adding counties to the constitutional provision that enables cities and towns to implement tax increment financing. Property in a tax increment financing reinvestment zone would not be taxed at a higher rate because of its inclusion in a zone because the proposed amendment would not provide a basis for increasing tax rates. Instead, the proposed amendment would provide a mechanism for financing structural improvements in a defined area without a tax rate increase.

Comments by Opponents. Authorizing counties to implement tax increment financing to fund transportation or other projects in a reinvestment zone could create an incentive to appraise property in the zone at a higher value. Even if the tax rate were to remain the same, a higher appraised value would result in a greater tax burden on owners of property in the area. Furthermore, dedicating tax revenue generated in a reinvestment zone to pay the costs of transportation or other projects in the zone could have a negative effect on other pressing local needs.

Text of H.J.R. 63

HOUSE JOINT RESOLUTION

proposing a 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.

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

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

(b) The legislature by general law may authorize an incorporated city or town or a county to issue bonds or notes to finance the development or redevelopment of an unproductive, underdeveloped, or blighted area within the city, [or] town, or county and to pledge for repayment of those bonds or notes increases in ad valorem tax revenues imposed on property in the area by the city, [or] town, or county and other political subdivisions.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2011. The ballot shall be printed to permit voting for or against the proposition: "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."

House Author: Joe C. Pickett
Senate Sponsor: Jeff Wentworth

Amendment No. 5 (S.J.R. 26)

Wording of Ballot Proposition

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.

Analysis of Proposed Amendment

The proposed amendment would authorize the legislature, by general law and for the purpose of increasing efficiency and effectiveness to the greatest extent possible, to authorize a city or county to enter into interlocal contracts with other cities or counties without meeting the requirement that, before incurring any debt, the city or county provide for the assessment and collection of a sufficient tax to pay the interest on the debt and that it create a sinking fund of at least two percent.

Background

To maximize efficiency and increase cost savings, local governments can enter into contracts with one another to consolidate certain government programs, services, and projects. In 2010, as part of the lieutenant governor's interim charges to the Senate Committee on Intergovernmental Relations, the committee was asked to review the types of support state government can provide to assist local government consolidations with county governments, evaluate budget implications for city and county government consolidations, and research the appropriateness and cost savings of eliminating duplication of services among city and county governments in different regions in the state. After hearing testimony on existing impediments to consolidation efforts and recent consolidation efforts by several local governments, the committee created a work group to identify impediments to local government consolidation efforts and to make recommendations for ways in which the state can support those efforts.

In its December 2010 report, the committee identified certain provisions of the Texas Constitution that limit the ability of local governments to

enter into contracts for consolidation purposes and recommended that clarifying changes be made to the constitutional provisions that prohibit a city or county from incurring debt unless the city or county provides for the levying and collection of a sufficient tax to pay the interest on the debt and the establishment of a sinking fund for repayment of the debt. The proposed amendment would give the legislature the authority to authorize cities and counties to enter into interlocal contracts without imposing such a tax or creating such a sinking fund.

Summary of Comments

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

Comments by Supporters. Current constitutional provisions requiring local governments to impose a tax and create a sinking fund when incurring any debt have been interpreted in a way that limits the ability of a city or county to enter into an interlocal contract with a term of more than one year by treating a longer-term contract as a debt under certain circumstances, which would require a debt service tax and sinking fund. This limitation has impeded the ability of cities and counties to enter into contracts to consolidate long-term programs, services, and projects, including the construction of infrastructure. By allowing a local government to enter into a contract with a term of more than one year without having to impose a tax or create a sinking fund, the proposed amendment would increase government efficiency by allowing for the consolidation of more programs, services, and projects.

Comments by Opponents. No comments opposing the proposed amendment were made during the house and senate committee hearings on the amendment or during discussion of the amendment in the house and senate chambers. A review of other sources also did not reveal any apparent opposition to the amendment.

Text of S.J.R. 26

SENATE JOINT RESOLUTION

proposing a 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.

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

SECTION 1. Section 5, Article XI, Texas Constitution, is amended to read as follows:

Sec. 5. (a) Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters. If the number of inhabitants of cities that have adopted or amended their charters under this section is reduced to five thousand (5000) or fewer, the cities still may amend their charters by a majority vote of the qualified voters of said city at an election held for that purpose. The adoption or amendment of charters is subject to such limitations as may be prescribed by the Legislature, and no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State. Said cities may levy, assess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year, which shall exceed two and one-half per cent. of the taxable property of such city, and no debt shall ever be created by any city, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent. thereon, except as provided by Subsection (b). Furthermore, no city charter shall be altered, amended or repealed oftener than every two years.

(b) To increase efficiency and effectiveness to the greatest extent possible, the legislature may by general law authorize cities to enter into interlocal contracts with other cities or counties without meeting the assessment and sinking fund requirements under Subsection (a).

SECTION 2. Section 7, Article XI, Texas Constitution, is amended to read as follows:

Sec. 7. (a) All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized upon a vote of the majority of the qualified voters voting thereon at an election called for such purpose to levy and collect such tax for construction of sea walls, breakwaters, or sanitary purposes, as may now or may hereafter be authorized by law, and may create a debt for such works and issue bonds in evidence thereof. But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund, except as provided by Subsection (b); and the condemnation of the right of way for the erection of such works shall be fully provided for.

(b) To increase efficiency and effectiveness to the greatest extent possible, the legislature may by general law authorize cities or counties to enter into interlocal contracts with other cities or counties without meeting the tax and sinking fund requirements under Subsection (a).

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2011. The ballot shall be printed to permit voting for or against the proposition: "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."

Senate Author: Royce West
House Sponsor: Sylvester Turner

Amendment No. 6 (H.J.R. 109)

Wording of Ballot Proposition

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.

Analysis of Proposed Amendment

Section 5(a), Article VII, Texas Constitution, limits the amount that may be distributed from the permanent school fund to the available school fund in each year of a state fiscal biennium to an amount not greater than six percent of the average of the market value of the permanent school fund on the last day of each of the 16 state fiscal quarters preceding the regular session of the legislature that begins before that state fiscal biennium. The proposed amendment to Section 5(a) would change the manner of calculating the market value of the permanent school fund for purposes of the limitation on distributions, with the result of raising the market value and allowing increased distributions. Specifically, the proposed amendment would provide for including in the calculation of market value discretionary real assets investments and cash in the state treasury derived from permanent school fund property. The proposed amendment includes a temporary provision addressing implementation of the change to the determination of market value.

The proposed amendment also would add Subsection (g) to Section 5, Article VII, Texas Constitution, authorizing the General Land Office or an entity other than the State Board of Education that has responsibility for the management of permanent school fund land or other properties, in its sole discretion, to distribute to the available school fund each year revenue derived during that year from the land or properties, not to exceed \$300 million each year.

The proposed amendment also would amend various provisions of the Texas Constitution to make consistent the terminology used in referring to the permanent school fund. The Texas Constitution variously refers to a permanent free public school fund, a perpetual public school fund, a public free school fund, and a permanent school fund, all of which, according to the attorney general, constitute a single fund now commonly referred to as the permanent school fund. See Op. Tex. Att'y Gen. No. GA-0617 (2008).

Background

The permanent school fund is a perpetual endowment established under Section 2, Article VII, Texas Constitution, for the support of public schools in this state. The fund consists of all land appropriated for the public schools by the Texas Constitution and laws of this state, other properties belonging to the fund, and all revenue derived from the land or other property of the fund. Management of the fund is divided between the State Board of Education, which manages the fund's financial investment portfolio as authorized by law, and the General Land Office, which, through the School Land Board, manages the fund's real estate portfolio and is responsible for the sale, trade, lease, and improvement of that real estate and for the administration of associated contracts, mineral royalty rates, and other transactions.

If the permanent school fund's investment performance allows, distributions are made periodically from the permanent school fund to the available school fund, within certain constitutional limits. Amounts in the available school fund are apportioned annually to each county according to student population and also are used to fund instructional materials in classrooms. Under Section 5(a), Article VII, Texas Constitution, the amount that may be distributed from the permanent school fund to the available school fund depends on the market value of the permanent school fund. Under the current constitutional language addressing market value, the value of real property belonging to the permanent school fund and managed by the General Land Office is explicitly excluded from the determination. The proposed amendment would add additional explicit

language stating that the value of discretionary real assets investments and cash in the state treasury derived from property belonging to the permanent school fund is included in determining market value.

Another issue regarding the permanent school fund and the available school fund concerns the authority of the General Land Office to distribute certain revenues to the available school fund. Historically, revenue derived from permanent school fund lands or other fund properties managed by the General Land Office, such as proceeds from the sales of land, lease payments, and royalty income from oil, gas, and mineral leases, has not been available for direct distribution by the General Land Office to the available school fund because the revenue was considered under law to be reserved as part of the corpus of the permanent school fund.

House Bill 3699, Acts of the 80th Legislature, Regular Session, 2007, attempted through enactment of Section 51.413, Natural Resources Code, to authorize the General Land Office to either distribute the revenue to the State Board of Education for investment as part of the corpus of the permanent school fund or distribute the revenue directly to the available school fund. However, the attorney general determined in 2008 that the authorization to distribute the revenue directly to the available school fund was likely inconsistent with language in the Texas Constitution. For example, the attorney general noted that the Texas Constitution requires proceeds from the sale of permanent school fund land to be used to acquire other land for the permanent school fund or to be invested as directed by the State Board of Education, and that the constitutional description of the components of the available school fund cannot be read as including proceeds from the sale of permanent school fund land. See Op. Tex. Att'y Gen. No. GA-0617 (2008). The proposed amendment adds Section 5(g), Article VII, Texas Constitution, to explicitly authorize the General Land Office, or another entity with current or future responsibility for managing permanent school fund land, to distribute revenue derived from permanent school fund land directly to the available school fund, not to exceed \$300 million each year.

Summary of Comments

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

Comments by Supporters. The proposed amendment is necessary to clarify the constitutionality of the General Land Office's authority to distribute revenue derived from permanent school fund land and property directly to the available school fund. The proposed amendment would expressly allow the General Land Office to distribute such revenue directly into the available school fund, providing a much-needed infusion of revenue into the available school fund for distribution in the next biennium to the state's public schools and allowing the public schools to benefit directly from the investment returns earned by the General Land Office from its management of permanent school fund lands. Allowing the General Land Office to distribute the funds directly to the available school fund makes sense and would provide transparency with respect to the distributions by the General Land Office. Those revenues can be distinguished from the distributions from the permanent school fund that are attributable to revenue from the State Board of Education's management of investments of other permanent school fund assets.

Supporters also note that the changes made by the proposed amendment to ensure the use of consistent terminology in referring to the permanent school fund do not substantively change the Texas Constitution and are appropriate to provide uniformity and prevent confusion.

Comments by Opponents. The permanent school fund is meant to provide interest revenue from investment of the fund's permanent assets for distribution through the available school fund to the public schools in this state, and it would be unwise to spend funds that otherwise would be invested. Protecting the corpus of the permanent school fund, adding to it whenever possible, and distributing only the total return on all investment assets as specified by Section 5(a), Article VII, Texas Constitution, which includes, among other types of income, investment proceeds such as

interest, capital gains, dividends, and other distributions, ensures not only the fund's continued growth but also a permanent revenue stream that will allow lawmakers to help fund schools and, in turn, keep property taxes down. Diverting the revenue that otherwise would go into the fund and become part of that corpus and making it available for use would be tantamount to liquidating a permanent asset to satisfy a short-term need and would defeat the purpose of the investment fund.

No opposition was expressed to the changes proposed to be made by the amendment to ensure consistency in terminology referring to the permanent school fund.

Text of H.J.R. 109

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to clarify references to the permanent school fund, to allow the General Land Office to distribute revenue derived from permanent school fund land or other properties to the available school fund, and to provide for an increase in the market value of the permanent school fund for the purpose of allowing increased distributions from the available school fund.

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

SECTION 1. Section 49-b(h), Article III, Texas Constitution, is amended to read as follows:

(h) Lands purchased and comprising a part of the Veterans' Land Fund are declared to be held for a governmental purpose, but the individual purchasers of those lands shall be subject to taxation to the same extent and in the same manner as are purchasers of lands dedicated to the Permanent ~~[Free Public]~~ School Fund. The lands shall be sold to veterans in quantities, on terms, at prices, and at fixed, variable, floating, or other rates of interest, determined by the Board and in accordance with rules of the Board. Notwithstanding any provisions of this section to the contrary, lands in the Veterans' Land Fund that are offered for sale to veterans and that are not sold may be sold or resold to the purchasers in quantities, on terms, at prices, and at rates of interest determined by the Board and in accordance with rules of the Board.

SECTION 2. Sections 2 and 4, Article VII, Texas Constitution, are amended to read as follows:

Sec. 2. All funds, lands and other property heretofore set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the State out of grants heretofore made or that may hereafter be made to railroads or other corporations of any nature whatsoever; one half of the public domain of the State; and all sums of money that may come to the State from the sale of any portion of the same, shall constitute a permanent ~~[perpetual public]~~ school fund.

Sec. 4. The lands herein set apart to the Permanent ~~[Public Free]~~ School fund, shall be sold under such regulations, at such times, and on such terms as may be prescribed by law; and the Legislature shall not have power to grant any relief to purchasers thereof. The proceeds of such sales must be used to acquire other land for the Permanent ~~[Public Free]~~ School fund as provided by law or the proceeds shall be invested by the comptroller of public accounts, as may be directed by the Board of Education herein provided for, in the bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the State shall be responsible for all investments.

SECTION 3. Section 5, Article VII, Texas Constitution, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) The permanent school fund consists of all land appropriated for public schools by this constitution or the other laws of this state, other properties belonging to the permanent school fund, and all revenue derived from the land or other properties. The available school fund consists of the distributions made to it from the total return on all investment assets of the permanent school fund, the taxes authorized by this constitution or general law to be part of the available school fund, and appropriations made to the available school fund by the legislature. The total amount distributed from the permanent school fund to the available school fund:

(1) in each year of a state fiscal biennium must be an amount that is not more than six percent of the average of the market value of the permanent school fund, excluding real property belonging to the fund that is managed, sold, or acquired under Section 4 of this article, but including discretionary real assets investments and cash in the state treasury derived from property belonging to the fund, on the last day of each of the 16 state fiscal quarters preceding the regular session of the legislature that begins before that state fiscal biennium, in accordance with the rate adopted by:

(A) a vote of two-thirds of the total membership of the State Board of Education, taken before the regular session of the legislature convenes; or

(B) the legislature by general law or appropriation,

if the State Board of Education does not adopt a rate as provided by Paragraph (A) of this subdivision; and

(2) over the 10-year period consisting of the current state fiscal year and the nine preceding state fiscal years may not exceed the total return on all investment assets of the permanent school fund over the same 10-year period.

(g) Notwithstanding any other provision of this constitution or of a statute, the General Land Office or an entity other than the State Board of Education that has responsibility for the management of permanent school fund land or other properties may in its sole discretion distribute to the available school fund each year revenue derived during that year from the land or properties, not to exceed \$300 million each year.

SECTION 4. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by H.J.R. No. 109, 82nd Legislature, Regular Session, 2011, 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.

(b) The change to Section 5(a), Article VII, of this constitution made by the amendment applies to a distribution from the permanent school fund to the available school fund made on or after September 1, 2011.

(c) This temporary provision expires December 1, 2015.

SECTION 5. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2011. The ballot shall be printed to provide for voting for or against the proposition: "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."

House Author: Rob Orr et al.
Senate Sponsor: Steve Ogden

Amendment No. 7 (S.J.R. 28)

Wording of Ballot Proposition

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.

Analysis of Proposed Amendment

Section 59(c-1), Article XVI, Texas Constitution, authorizes the legislature, for development of certain parks and recreational facilities that were not authorized to be developed and financed with taxes before September 13, 2003, to authorize indebtedness payable from taxes as may be necessary to provide for improvements and maintenance only for a conservation and reclamation district all or part of which is located in any one of certain specified counties or for a certain water district. The proposed amendment would include among the conservation and reclamation districts for which such indebtedness is authorized a conservation and reclamation district all or part of which is located in El Paso County.

Background

In 2003, voters approved a constitutional amendment proposed by Senate Joint Resolution 30, Acts of the 78th Legislature, Regular Session, 2003, that was intended to resolve issues and questions surrounding the development and financing of parks and recreational facilities by conservation and reclamation districts. Before the 2003 amendment, it was unclear whether a conservation and reclamation district could use property (or "ad valorem") taxes and issue bonds supported by property taxes to pay for the development and maintenance of parks and recreational facilities. The 2003 amendment clarifies that conservation and reclamation districts may develop parks and recreational facilities and allows the legislature to authorize conservation and reclamation districts to develop and finance with taxes those types and categories of parks and recreational facilities that were not authorized to be developed and financed with taxes before

the amendment's election date. The 2003 amendment also allows the legislature, for development of such parks and recreational facilities, to authorize indebtedness payable from taxes as may be necessary to provide for improvements and maintenance only for a conservation and reclamation district all or part of which is located in one of several specified counties (Bexar County, Bastrop County, Waller County, Travis County, Williamson County, Harris County, Galveston County, Brazoria County, Fort Bend County, or Montgomery County), or for the Tarrant Regional Water District, a water control and improvement district located in whole or in part in Tarrant County. The 2003 amendment also prohibits the legislature from authorizing the issuance of bonds or providing for indebtedness against a conservation and reclamation district unless a proposition is first submitted to the qualified voters of the district and the proposition is adopted. The enabling legislation, Senate Bill 624, Acts of the 78th Legislature, Regular Session, 2003, was passed covering districts in the specified counties except for districts in Montgomery County. Some districts in Montgomery County were later covered by House Bill 1127, Acts of the 80th Legislature, Regular Session, 2007.

The proposed amendment would include a conservation and reclamation district located wholly or partly in El Paso County as a district for which the legislature may authorize indebtedness payable from taxes to provide for improvements and maintenance for certain parks and recreational facilities, though there was no accompanying enabling legislation during the 82nd Legislature, Regular Session, 2011.

Summary of Comments

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

Comments by Supporters. Currently, the City of El Paso's park system, used by both city and El Paso County residents, is underfunded. The proposed amendment would facilitate the creation and maintenance of a regional parks district in the county through certain bonding and taxing authority currently available in 10 other counties. The proposed amendment would not raise taxes or automatically create a regional parks

district, but rather would provide an opportunity for county voters to decide whether such a district should be created and be allowed to issue bonds payable from property taxes.

Parks play a role in the success of a community, enhancing the quality of life in an area, and the creation of a regional parks district with authority to issue bonds payable from property taxes would allow the city and county to work together to offer higher quality services than either could provide separately.

The recommendation for the proposed amendment originated from constituents, and city and county representatives are supportive of the amendment, which seeks to improve the quality of life of area residents.

There is no enabling legislation accompanying the proposed amendment. The amendment would be the start of the process toward the development in the county of a regional parks district with authority to issue bonds payable from property taxes. If the amendment is approved, city and county officials will start working on enabling legislation for consideration by the 83rd Legislature.

Comments by Opponents. The proposed amendment would provide an opportunity for further taxing authority in El Paso County, a property-poor county. In this current economic climate, government leaders should be focused on sustaining the local economy and generating revenue rather than on creating additional debt. While improving the regional quality of life is laudable, it is irresponsible at this time.

The proposed amendment has been characterized as a way for El Paso County residents to start a conversation regarding the creation of a regional parks district with authority to issue bonds payable from property taxes and the associated benefits, but there has been little study regarding the actual economic impact of such a district. Specific information should have been provided to city and county leaders regarding the financing, leadership, function, and authority of such a district before the amendment was proposed.

Text of S.J.R. 28

SENATE JOINT RESOLUTION

proposing a constitutional amendment relating to the provision of parks and recreational facilities by conservation and reclamation districts in El Paso County.

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

SECTION 1. Subsection (c-1), Section 59, Article XVI, Texas Constitution, is amended to read as follows:

(c-1) In addition and only as provided by this subsection, the Legislature may authorize conservation and reclamation districts to develop and finance with taxes those types and categories of parks and recreational facilities that were not authorized by this section to be developed and financed with taxes before September 13, 2003. For development of such parks and recreational facilities, the Legislature may authorize indebtedness payable from taxes as may be necessary to provide for improvements and maintenance only for a conservation and reclamation district all or part of which is located in Bexar County, Bastrop County, Waller County, Travis County, Williamson County, Harris County, Galveston County, Brazoria County, Fort Bend County, [ø] Montgomery County, or El Paso County, or for the Tarrant Regional Water District, a water control and improvement district located in whole or in part in Tarrant County. All the indebtedness may be evidenced by bonds of the conservation and reclamation district, to be issued under regulations as may be prescribed by law. The Legislature may also authorize the levy and collection within such district of all taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of the bonds and for maintenance of and improvements to such parks and recreational facilities. The indebtedness shall be a lien on the property assessed for the payment of the bonds. The Legislature may not authorize the issuance of bonds or provide for indebtedness under this subsection against a conservation and reclamation district unless a proposition is first submitted to the qualified voters of the district and the proposition is adopted. This subsection expands the authority of the

Legislature with respect to certain conservation and reclamation districts and is not a limitation on the authority of the Legislature with respect to conservation and reclamation districts and parks and recreational facilities pursuant to this section as that authority existed before September 13, 2003.

SECTION 2. The legislature intends by the amendment proposed by Section 1 of this resolution to expand the authority of the legislature with regard to conservation and reclamation districts in El Paso County. The proposed amendment should not be construed as a limitation on the powers of the legislature or of a district with respect to parks and recreational facilities as those powers exist immediately before the amendment takes effect.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2011. The ballot shall be printed to permit voting for or against the proposition: "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."

Senate Author: Jose R. Rodriguez
House Sponsor: Marisa Marquez

Amendment No. 8 (S.J.R. 16)

Wording of Ballot Proposition

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.

Analysis of Proposed Amendment

Section 1(b), Article VIII, of the Texas Constitution generally requires real property to be taxed at its market value. Section 1-d-1, Article VIII, Texas Constitution, requires the legislature, for the purpose of promoting the preservation of open-space land, to provide by general law for taxation of open-space land devoted to farm, ranch, or wildlife management purposes on the basis of its productive capacity, rather than at full market value, and authorizes the legislature to provide, by general law, for taxation on the same basis of open-space land devoted to timber production. The proposed amendment would require the legislature, by general law, to provide for taxation of open-space land devoted to water stewardship on the basis of its productive capacity.

Background

In 1978, Texas voters approved the constitutional amendment proposed by House Joint Resolution 1, Acts of the 65th Legislature, 2nd Called Session, 1978, which added Section 1-d-1, Article VIII, Texas Constitution, requiring the legislature, for the purpose of promoting the preservation of open-space land, to provide by general law for the appraisal for property (or "ad valorem") tax purposes of open-space land devoted to farm or ranch purposes on the basis of its productive capacity. This appraisal method ordinarily provides a lower property valuation than an appraisal based on market value. The 1978 amendment also authorized the appraisal of open-space land devoted to timber production on the basis of its productive capacity. A subsequent amendment to Section 1-d-1, proposed by House Joint Resolution 72, Acts of the 74th Legislature, Regular Session, 1995, and adopted in 1995, required the legislature to extend the applicability of

this appraisal method to open-space land devoted to wildlife management purposes. The statutory authority for Section 1-d-1 is found at Subchapter D, Chapter 23, Tax Code.

The amendment proposed by Senate Joint Resolution 16 would add open-space land devoted to water stewardship to the categories of open-space land subject to taxation on the basis of its productive capacity as provided by the legislature by general law. The enabling law, Senate Bill 449, Acts of the 82nd Legislature, Regular Session, 2011, in part amends Section 23.51, Tax Code, to define "water stewardship"; amends Section 23.52, Tax Code, to provide that the category of land that qualifies for appraisal based on water-stewardship use is the category of the land before the water-stewardship use began; adds Section 23.5215, Tax Code, to set out standards for the qualification of land for appraisal based on water-stewardship use; and amends Section 23.56, Tax Code, to establish conditions under which land is not eligible for appraisal on the basis of use for water stewardship. Senate Bill 449 takes effect only if Texas voters approve the proposed amendment.

Summary of Comments

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

Comments by Supporters. According to the state water plan, active conservation will account for 23 percent of the state's future water supply, and the plan endorses voluntary water stewardship as a water conservation strategy. Promoting water stewardship is sound and sustainable water conservation policy. Voluntary water stewardship is a new tool to advance water conservation in a tough budget cycle and is revenue neutral because eligible landowners already would be receiving the agricultural-use property valuation (sometimes called the agricultural-use exemption). In a state where more than 90 percent of the land is privately owned, a water-stewardship tax incentive would encourage private landowners to

conserve water without more regulation. Farmers and ranchers would have a financial incentive to run fewer cattle on their land, helping to preserve the land's habitat and native plant and animal species.

Comments by Opponents. The proposed amendment and its enabling legislation could provide a way to undermine the agricultural-use property valuation, or have other unintended consequences. There already are several other tax breaks for Texas landowners, and providing for another one is excessive. The separate water-stewardship valuation is superfluous because landowners already practice voluntary water conservation. Furthermore, some options under the water-stewardship appraisal method already are available under the wildlife management appraisal method.

Text of S.J.R. 16

SENATE JOINT RESOLUTION

proposing a 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.

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

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

(a) To promote the preservation of open-space land, the legislature shall provide by general law for taxation of open-space land devoted to farm, ranch, ~~or~~ wildlife management, or water-stewardship purposes on the basis of its productive capacity and may provide by general law for taxation of open-space land devoted to timber production on the basis of its productive capacity. The legislature by general law may provide eligibility limitations under this section and may impose sanctions in furtherance of the taxation policy of this section.

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 82nd Legislature, Regular Session, 2011, 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.

(b) The amendment to Section 1-d-1(a), Article VIII, of this constitution takes effect January 1, 2012.

(c) This temporary provision expires January 1, 2013.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2011. The ballot shall be printed to permit voting for or against the proposition: "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."

Senate Author: Craig Estes et al.
House Sponsor: Allan Ritter

Amendment No. 9 (S.J.R. 9)

Wording of Ballot Proposition

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

Analysis of Proposed Amendment

Section 11(b), Article IV, Texas Constitution, authorizes the governor, in all criminal cases except treason and impeachment, after conviction and on the written signed recommendation and advice of the Board of Pardons and Paroles or of a majority of the board, to grant reprieves and commutations of punishment and pardons. The proposed amendment would authorize the governor, in all criminal cases except treason and impeachment, and on the board's written signed recommendation and advice, to grant a pardon also to a person who is not convicted but who successfully completes a term of deferred adjudication community supervision.

Background

Section 5, Article 42.12, Code of Criminal Procedure, authorizes a judge in whose opinion the best interest of society and the defendant will be served, after receiving a plea of guilty or nolo contendere, hearing evidence, and finding that the evidence substantiates the defendant's guilt, to defer further proceedings in the case without entering an adjudication of guilt and to place the defendant on community supervision. With limited exceptions, the statute requires a judge who has not proceeded to an adjudication of guilt, on expiration of the period of community supervision, to dismiss the proceedings and discharge a defendant who successfully completes the term of deferred adjudication community supervision. The statute also authorizes a judge in whose opinion the best interest of society and the defendant will be served to dismiss the proceedings and discharge a defendant before the expiration of the period of community supervision. The statute generally prohibits such a dismissal and discharge

from being considered a conviction for purposes of disqualifications or disabilities imposed by law on conviction of an offense, although there are exceptions to the general prohibition, including exceptions for certain repeat and habitual felony offenders and for certain state agencies that may, in issuing, renewing, denying, or revoking certain professional licenses or registrations, consider the fact that the defendant previously has been placed on deferred adjudication community supervision. Defendants convicted of certain crimes are not eligible to be placed on deferred adjudication community supervision.

Under Section 11(b), Article IV, Texas Constitution, the governor has the power to grant pardons after criminal convictions, excluding convictions for treason or impeachment, on the recommendation of the Board of Pardons and Paroles. In 2009, the 81st Legislature, Regular Session, passed Senate Bill 223 to allow a person who successfully completes a term of deferred adjudication community supervision to be eligible for a pardon. Whether the bill would take effect was contingent on the adoption of the constitutional amendment proposed by Senate Joint Resolution 11, which would have authorized the governor to grant a pardon to certain persons under specific circumstances. Because Senate Joint Resolution 11 was never adopted by the House of Representatives, the governor vetoed Senate Bill 223.

During the 82nd Legislature, members of the House Committee on Criminal Jurisprudence discussed and heard neutral testimony on Senate Joint Resolution 9. During the hearing, there was discussion that current law authorizes the governor to grant a pardon after a conviction but does not provide the same pardon authority in cases of deferred adjudication because placing the defendant on deferred adjudication community supervision is not a conviction. It was further explained that while deferred adjudication was originally intended as an incentive for certain first-time offenders to abide by the law and thereby avoid having a criminal record for the offense, that concept has been overlooked by many employers, including state agencies, that often consider and treat deferred adjudication as a conviction for employment and licensing purposes. The committee testimony and discussion described how persons who successfully complete a term of deferred adjudication community supervision are

ineligible for expunction of arrest records and files and noted that orders of nondisclosure, the means by which persons who successfully complete a term of deferred adjudication community supervision may petition to prevent the release of criminal history record information, have been ineffective in preventing the release of that information to many entities, including those outside of the criminal justice system.

Senate Joint Resolution 9 proposes to amend Section 11(b), Article IV, Texas Constitution, to authorize the governor to grant a pardon to a person who has successfully completed a term of deferred adjudication community supervision. If the proposed amendment is adopted, Senate Bill 144 also will take effect. The bill amends Article 48.01, Code of Criminal Procedure, to authorize the governor to grant a pardon on successful completion of a term of deferred adjudication community supervision, on the recommendation and advice of the Board of Pardons and Paroles, and authorizes the board to make that recommendation on or after the 10th anniversary of the date on which the proceedings are dismissed and the defendant is discharged.

Summary of Comments

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

Comments by Supporters. The Texas Constitution currently authorizes the governor to pardon a person who has been convicted of a crime but not a person who has successfully completed a term of deferred adjudication community supervision, a procedure by which a person charged with certain crimes can avoid a conviction. This incongruity allows a person who is convicted of a violent crime to receive a pardon while a person who is charged with a nonviolent crime and who is placed on and successfully completes a term of deferred adjudication community supervision is not allowed even to seek a pardon. While certain criminal history record information of a person who is pardoned is eligible for expunction, criminal history record information reflecting the arrest and placement on deferred adjudication community supervision of a person

who successfully completes deferred adjudication is not eligible for expunction because of the absence of a conviction. Although a person who is placed on deferred adjudication community supervision may petition for an order of nondisclosure to prevent the release of criminal history record information to the public, even if the order is granted, that information is still available to many entities, including criminal justice and non-criminal justice entities. The existence of a criminal history record negatively impacts persons applying for employment, housing, and professional licenses. There have been reported incidents involving employers releasing an employee on discovering the employee's criminal history record resulting from an offense that was dismissed by a judge after successful completion of a term of deferred adjudication community supervision.

The proposed amendment would address these issues by providing the means by which a person who successfully completes a term of deferred adjudication community supervision may receive a pardon and an expunction of certain related criminal history record information and would result in a more consistent policy on pardons in Texas.

Comments by Opponents. Providing the means by which a person who successfully completes a term of deferred adjudication community supervision may be pardoned would not efficiently achieve the goal of expunction of criminal history record information because the person still must proceed through the pardon process involving the Board of Pardons and Paroles and the governor, a process that historically has resulted in few pardons. The expunction of criminal history record information for these persons should be achieved through another appropriate legal avenue. Furthermore, it is unclear whether the proposed amendment will be sufficient to allow a person who completes a term of deferred adjudication community supervision and who is pardoned to subsequently obtain an expunction of criminal history record information because statutory law governing expunction does not allow expunction based on a pardon following successful completion of a term of deferred adjudication community supervision.

Text of S.J.R. 9

SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing the governor to grant a pardon to a person who successfully completes a term of deferred adjudication community supervision.

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

SECTION 1. Subsection (b), Section 11, Article IV, Texas Constitution, is amended to read as follows:

(b) In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction or successful completion of a term of deferred adjudication community supervision, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishment and pardons; and under such rules as the Legislature may prescribe, and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures. The Governor shall have the power to grant one reprieve in any capital case for a period not to exceed thirty (30) days; and he shall have power to revoke conditional pardons. With the advice and consent of the Legislature, he may grant reprieves, commutations of punishment and pardons in cases of treason.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2011. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing the governor to grant a pardon to a person who successfully completes a term of deferred adjudication community supervision."

Senate Author: Royce West
House Sponsor: Senfronia Thompson et al.

Amendment No. 10 (S.J.R. 37)

Wording of Ballot Proposition

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.

Analysis of Proposed Amendment

The proposed amendment would amend Section 65(b), Article XVI, Texas Constitution, to specify that an announcement by certain elected county or district officeholders of candidacy for another office, or such candidacy itself, constitutes an automatic resignation of the office then held if the announcement or candidacy occurs at any time when the officeholder's unexpired term exceeds one year and 30 days, rather than one year. Senate Joint Resolution 37 specifies that the proposed amendment shall be submitted to the voters only if the secretary of state certifies that an enactment of the 82nd Legislature, Regular Session, that became law provides for a filing deadline for an application for a place on the general primary ballot that occurs in the calendar year before the year in which the primary election is held. Senate Bill 100, Acts of the 82nd Legislature, Regular Session, 2011, which changes the filing deadline in that manner, was enacted by the legislature and is effective on September 1, 2011.

Background

Section 65(b), Article XVI, Texas Constitution, commonly known as the "resign-to-run" provision, was added to the constitution in 1958 to provide that the announcement by certain county and district officeholders of candidacy for another office, or such candidacy itself, constitutes an automatic resignation of the office then held if the announcement or candidacy occurs more than one year before the officeholder's current term of office expires. The purpose of the 1958 addition was to permit such officeholders to give their undivided attention to the duties of their current office during most of their term, rather than campaigning while in the middle of the term. The provision applies to 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; county commissioners; justices of the peace; sheriffs; tax assessors and collectors; district attorneys; county attorneys; public weighers; and constables.

A second provision, Section 11(a), Article XI, Texas Constitution, provides that municipal officers whose terms exceed two years are also subject to the resign-to-run provision of Section 65(b), Article XVI, Texas Constitution.

The proposed amendment, which extends by 30 days the length of an officeholder's unexpired term that triggers the resign-to-run provision, was introduced to mitigate the effects of Senate Bill 100, which was passed by the 82nd Legislature, Regular Session, 2011, to bring Texas into compliance with the federal Military and Overseas Voter Empowerment Act (or MOVE Act). Among other provisions, the MOVE Act requires state election officials to send ballots to members of the United States military 45 days before a federal election. To provide election officials in Texas with sufficient time to meet the 45-day requirement for the general primary election, Senate Bill 100 changes the deadline for filing an application for a place on the general primary election ballot from January 2 in the primary election year to the second Monday in December of an odd-numbered year, which is the calendar year preceding the year in which the primary election is held. Thus, without a change in the constitution, the statutory change in the filing deadline would cause all officeholders subject to the resign-to-run constitutional provision, including those who are nearing the last year of their term, to automatically resign when filing to run for another office. By extending by 30 days the length of the unexpired term that triggers the automatic resignation, the proposed amendment authorizes an officeholder whose term expires in the primary election year to file an application for a place on the general primary election ballot for another office by the new December deadline without automatically resigning. The contingency provision in Senate Joint Resolution 37—specifying that the proposed amendment shall be presented to voters only if the secretary of state certifies that an enactment of the 82nd Legislature, Regular Session, that became law provides for a filing deadline for an application for a place on the general primary ballot that occurs in the calendar year before the year in which the primary is held—was satisfied by the secretary of state's certification on July 5, 2011,

that Senate Bill 100 provides for such a deadline and became law when the governor signed the bill on June 17, 2011.

Summary of Comments

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

Comments by Supporters. Under the current resign-to-run provision in the Texas Constitution, a covered officeholder nearing the end of a four-year term could file an application for a place on the general primary election ballot for another office as late as January 2 of the primary election year, the current filing deadline, at which time the officeholder would have less than one year remaining in that office and would not be affected by the resign-to-run provision. Because Senate Bill 100 changes that filing deadline from January 2 of the primary election year to the second Monday in December of the preceding year, a conforming change to the constitutional resign-to-run provision is necessary to preserve the original intent of that provision. Without such change, any officeholder subject to the resign-to-run provision who files to run for another office on the general primary election ballot would automatically resign because that officeholder would have at least one year remaining before the officeholder's current term of office would expire. The unintentional effect of the new filing deadline is unfair to municipal, county, and district officeholders, most of whom are financially unable to leave their post to seek another office before their current term expires. The acceleration of the automatic resignation requirement penalizes them for seeking to continue their public service through pursuit of another elected office and discourages them from such pursuit, which would adversely affect the field of candidates for those positions.

By extending by 30 days the length of the unexpired term that triggers automatic resignation, the proposed amendment would retain the provision's intended purpose and would provide for the continued public service of local officials by allowing those officeholders to remain in their current post until their current term expires if they have less than one year and 30 days left in the term and bring their experience in public office to other elected positions.

Comments by Opponents. No comments opposing the proposed 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 did not reveal any apparent opposition to the amendment.

Text of S.J.R. 37

SENATE JOINT RESOLUTION

proposing a 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.

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

SECTION 1. Subsection (b), Section 65, Article XVI, Texas Constitution, is amended to read as follows:

(b) If any of the officers named herein shall announce their candidacy, or shall in fact become a candidate, in any General, Special or Primary Election, for any office of profit or trust under the laws of this State or the United States other than the office then held, at any time when the unexpired term of the office then held shall exceed one [~~(1)~~] year and 30 days, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled.

SECTION 2. (a) This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2011, only if the secretary of state certifies that an enactment of the 82nd Legislature, Regular Session, that became law provides for a filing deadline for an application for a place on the general primary ballot that occurs in the calendar year before the year in which the primary is held. If the secretary of state does not make a certification under this subsection, this resolution has no effect.

(b) If the election on this amendment is held, the ballot shall be printed to permit voting for or against the proposition: "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."

Senate Author: Leticia Van de Putte
House Sponsor: Van Taylor