HOUSE RESEARCH ORGANIZATION
Texas House of Representatives

focus REPORT

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Constitutional Amendment on November 2014 Ballot

In the November 4, 2014, general election, Texas voters will be asked to approve or reject an amendment to the Texas Constitution to dedicate certain funds to transportation. The proposed amendment would direct the comptroller to allocate to the State Highway Fund one-half of the amount of general revenue derived from oil and gas production taxes that currently is transferred to the rainy day fund. Revenue transferred in this way could be used only for constructing, maintaining, and acquiring rights of way for public roadways other than toll roads.

The 83rd Legislature proposed the measure, which will appear on the ballot as Proposition 1, by adopting SJR 1 by Nichols during its Third Called Session last summer. If approved by voters, the amendment would take effect when the official vote canvass confirms statewide majority approval. The governor must canvass statewide election results 15 to 30 days after the election.

The Legislature proposes constitutional amendments in joint resolutions that may originate in either the House or the Senate. To be presented to voters, a joint resolution must be adopted by at least a two-thirds vote of the membership of each house (Tex. Const., Art. 17, sec. 1). The joint resolution also specifies the ballot wording of the proposition and the election date. For more information about the process and requirements involved in amending the Texas Constitution, see HRO Focus Report Number 83-5, *Constitutional Amendments Proposed for November 2013 Ballot*, August 7, 2013.

Background

Rainy day fund. Art. 3, sec. 49-g of the Texas Constitution establishes the Economic Stabilization Fund, which was ratified by voters in 1988. Also known as the rainy day fund, it annually receives general revenue equivalent to 75 percent of any oil or natural gas production tax revenue that exceeds the amount collected in fiscal 1987. In addition, the comptroller must transfer to the rainy day fund one-half of any unencumbered balance remaining in the general revenue fund at the end of a fiscal biennium.

Fund 6. The State Highway Fund (Fund 6) is the state's primary highway funding mechanism, collecting the vast majority of highway-related revenue from federal reimbursements, state motor fuels taxes, motor vehicle registrations, and various fees. The Legislature may appropriate funds from Fund 6 for various highway-related purposes in accord with limits established in statute and the Texas Constitution.

Digest of Proposition 1

Proposition 1 would direct the comptroller to allocate to Fund 6 one-half of the general revenue derived from oil and gas production taxes that currently is transferred to the rainy day fund. The Legislature would, by statute, create a procedure whereby the amount allocated to the rainy day fund could be greater than one half. Revenue transferred to Fund 6 under Proposition 1 could be used only for constructing, maintaining, and acquiring rights of way for public roadways other than toll roads.

Proposition 1 would take effect immediately upon receiving the necessary approval from voters and would apply to transfers the comptroller made after September 1, 2014.

The ballot proposal reads: "The constitutional amendment providing for the use and dedication of certain money transferred to the state highway fund to assist in the completion of transportation construction, maintenance, and rehabilitation projects, not to include toll roads."

Supporters say

Proposition 1, in combination with its enabling legislation, HB 1 by Pickett, would take a key step toward securing critical funding for transportation projects in Texas. While far from a cure-all, the proposed resolution would present a viable means to secure a portion of the funding Texas needs to maintain roadway congestion at current levels, given population and economic growth.

Proposition 1 would generate an estimated $1.4 billion for public highways in fiscal 2015, decreasing to $1.2 billion in the following years. This steady revenue stream would send a message to citizens, crediting bureaus, and businesses that Texas is serious about financing critical transportation infrastructure.

Dedicated funding stream for public roads. Proposition 1 would dedicate an additional, much-needed funding stream to constructing and maintaining public, non-tolled roads. If approved, the amendment would represent a departure from relying on debt and toll roads as primary mechanisms for funding highways. The amendment would make use of expected increases in oil and gas production tax remissions to increase funding for highways and retain a solid reserve.

Texas since 2001 has relied on enhanced authority to issue bonds, borrowing from public and private interests, and concessions payments from private comprehensive development agreements to build and maintain toll roads. These approaches, while an important part of the highway funding mix, will not by themselves meet the growing demands the state is placing on transportation infrastructure. As of fiscal 2013, the Texas Department of Transportation's (TxDOT's) main bond programs — State Highway Fund bonds, Texas Mobility Fund bonds, and general obligation highway bonds — are effectively exhausted.

The ongoing crisis in highway funding in Texas has been delayed several years — first by federal American Revitalization Act funds, and second by a $5 billion general obligation bond appropriation made in fiscal 2009 and 2011. These infusions may have helped put off the transportation funding crisis a few years, but one-time measures are no remedy for terminal ills.

One-time infusions do little to instill confidence that the Legislature is willing and able to make tough policy decisions necessary to provide infrastructure for vibrant business activity, national and international trade, and a superior quality of life. Proposition 1 would enable voters to show they are serious about increasing funding for critical infrastructure.

Sufficient balance. While Proposition 1 would authorize a dedicated funding stream for transportation projects, it also would allow the Legislature to take necessary means to ensure a minimum balance in the rainy day fund was available to respond to natural disasters and fiscal emergencies. HB 1, the amendment's enabling legislation, calls for the appointment of a

committee of legislators to determine a sufficient balance for the rainy day fund under which no general revenue would be transferred to Fund 6.

The sufficient balance provision authorized by Proposition 1 would achieve a compromise between an automatic Fund 6 transfer irrespective of the status of the rainy day fund and a constitutionally established floor under which no transfer would be made. Without a floor of any kind, a combination of unforeseen events could leave the Legislature with insufficient funds to finance emergency spending needs. A constitutionally designated floor, on the other hand, might not provide the Legislature sufficient flexibility to meet varying needs each session.

Proposition 1, in combination with HB 1, would provide an assurance that a sufficient balance remained in the rainy day fund, while granting each Legislature license to address the needs of the time. In addition, HB 1, which would enable the Legislature to adjust a sufficient balance determination within the first 60 days of a regular session, would ensure proper legislative oversight in determining what the state should maintain as a reserve fund.

A surge in oil and gas exploration and production has led to a near-record number of drilling rigs operating in Texas, and revenue from the associated oil and gas severance tax has resulted in the highest rainy day fund balance in history. Following voter approval of Proposition 1, according to the comptroller, the first transfer out of the rainy day fund of $1.4 billion in 2015 would leave a balance in the fund of about $8.1 billion, considerably greater than the $6 billion balance that is generally perceived to be sufficient.

While industry experts do not expect this boom to subside any time soon, the sufficient balance provision would protect the rainy day fund in the event that severance tax collections began to decline. In addition, as one of the few agencies that has flexibility in how it awards contracts, TxDOT is well positioned to react to any dip in collections.

Credit rating. Contrary to claims otherwise, dedicating a revenue stream for key transportation infrastructure would help the state retain its strong credit rating. Instead of insisting on a particular number or percentage in reserve, credit rating bureaus look for a balance between maintaining a healthy amount in reserve for unexpected events and using reserve funds for critical needs such as infrastructure and water. Proposition 1 would strike this balance by appropriating funds for transportation only when there was a legislatively determined substantial balance in reserve for emergencies.

Opponents say

Proposition 1 would not provide a solution to the state's serious, ongoing highway funding shortage and would not adequately safeguard emergency reserves in the rainy day fund.

No additional revenue. Because the proposed amendment would not authorize the collection of any additional revenue, in effect it would take money out of one fiscal pocket and move it to another. Proposition 1 would reduce the amount of general revenue flowing into the rainy day fund by dedicating it to transportation. While this might not cause problems in times of plenty, it could create a dilemma during a lean period. In the event of an emergency that demanded state spending during a fiscal crisis, a depleted rainy day fund might be the only source of revenue available to lawmakers who traditionally have been reluctant to drain the account below a certain amount, generally perceived to be about $6 billion in 2013.

Sufficient balance. Proposition 1 would provide no guarantee of a minimum balance in the rainy day fund before authorizing a transfer of funds to Fund 6. The amendment relegates this authority to each legislature, which is inevitably subject to the whims and political vagaries of any given legislative session. The rainy day fund transfer is designated in the Constitution in part to provide a well protected reserve and to ensure continuity and stability. A constitutionally protected reserve is important for the state's ability to weather economic calamities and for its credit rating.

Failing to provide a constitutionally designated floor under which no transfer to Fund 6 would be made — such as has been considered and approved in previous versions of this legislation — would open the door to decisions that could leave future legislatures with shortfalls in revenue and a shallow reserve pool from which to draw.

Dedicated funding stream for public roads. The proposed amendment would dedicate funds to transportation that otherwise could be available to support other priorities. The state has pressing needs in many areas, including public education, and dedicating funds as prescribed by Proposition 1 would elevate needs in transportation above all others.

Dedicating these funds to transportation would reduce the likelihood that the state would reach the rainy day fund cap — 10 percent of the total amount deposited into general revenue during the preceding biennium — above which revenue otherwise is made available for general purpose spending.

Credit rating. A large balance in the rainy day fund has been a great asset to the state, helping it retain a strong credit rating through the recession. Any measure that reduced the state's savings account could directly or indirectly harm its credit rating down the road by leaving less revenue in reserve for emergencies. Credit rating agencies do indeed look at the percentage of general funds that states keep in reserve for emergency spending. Allowing this reserve to fall below a well established threshold could jeopardize the state's rating, which would significantly increase the cost of borrowing and have other negative repercussions.

Insufficient remedy. Proposition 1 could create the impression among the general public that this measure would be a remedy for the state's transportation funding woes. In truth, even with approval of Proposition 1, the state still faces a $4 billion gap in transportation funding.

Other opponents say

Establishing a legislatively determined sufficient balance would mean that transportation planners could not count on receiving additional funds more than a year or two into the future because the receipt of those funds would depend on unpredictable factors, such as legislative appropriations for emergencies. As currently drafted, Proposition 1 would create a dedicated but not a reliable source of funding for transportation.

Notes

Provisions in the enabling legislation, HB 1 by Pickett, governing sufficient balance and allocation of revenue would take effect following voter approval of Proposition 1. The Comptroller's Certified Revenue Estimate estimates that the proposed amendment would dedicate about $1.4 billion for Fund 6 in fiscal 2015.

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