Analyses of Proposed Constitutional Amendments

85th Regular Session
November 7, 2017, Election

Texas Legislative Council

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Proposed Amendments

General Information

In 2017, the 85th Texas Legislature passed seven 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 7, 2017, 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 the 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 2015, the legislature has proposed 673 amendments to the constitution, of which 670 have gone before Texas voters. Of the amendments on the ballot, 491 have been approved by the electorate and 179 have been defeated. 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.

For each proposed amendment that will appear on the November 7, 2017, ballot, *Analyses of Proposed Constitutional Amendments* contains 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.

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Proposition 1 (H.J.R. 21)

Wording of Ballot Proposition

The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of part of the market value of the residence homestead of a partially disabled veteran or the surviving spouse of a partially disabled veteran if the residence homestead was donated to the disabled veteran by a charitable organization for less than the market value of the residence homestead and harmonizing certain related provisions of the Texas Constitution.

Analysis of Proposed Amendment

Summary Analysis

Section 1-b, Article VIII, Texas Constitution, provides for a number of residence homestead exemptions from property (or "ad valorem") taxation. Subsection (l) of Section 1-b authorizes the legislature to provide for an exemption from property taxation of a percentage of the market value of a partially disabled veteran's residence homestead equal to the percentage of the veteran's disability if the residence homestead was donated at "no cost" to the veteran by a charitable organization. The constitutional amendment proposed by H.J.R. 21 amends Subsection (l) to authorize the legislature to expand the exemption authorized by that subsection to include a residence homestead donated to a disabled veteran by a charitable organization "for less than the market value of the residence homestead, including at no cost" to the veteran, instead of only at "no cost" to the veteran.

Background and Detailed Analysis

Section 1, Article VIII, Texas Constitution, requires that taxation be equal and uniform and that all real and tangible personal property be taxed in proportion to its value unless the property is exempt as required or permitted by the constitution. Accordingly, the legislature may not exempt real or tangible personal property from property taxation unless

the exemption is required or authorized by the constitution. Section 1-b, Article VIII, Texas Constitution, provides for various exemptions from property taxation for residence homesteads and limitations on property taxes imposed on certain homesteads.

Subsection (l) of Section 1-b currently authorizes the legislature to provide for an exemption from property taxation of a percentage of the market value of a partially disabled veteran's residence homestead equal to the percentage of the veteran's disability if the residence homestead was donated at "no cost" to the veteran by a charitable organization. Subsection (l) also authorizes the legislature to provide additional eligibility requirements for the exemption. In addition, Subsection (l) provides that limitations and restrictions on certain other property tax exemptions for disabled veterans do not apply to the exemption authorized by that provision.

Subsection (m) of Section 1-b authorizes the legislature to provide that, if a partially disabled veteran dies after qualifying for the exemption authorized by Subsection (l), the veteran's surviving spouse may receive a property tax exemption for the same portion of the market value of the same property to which the veteran's exemption applied if the surviving spouse has not remarried, the property was the residence homestead of the surviving spouse when the veteran died, and the property remains the residence homestead of the surviving spouse. Section 11.132, Tax Code, establishes the disabled veterans' exemption authorized by Subsection (l) and the exemption for the surviving spouses of those disabled veterans authorized by Subsection (m).

The constitutional amendment proposed by H.J.R. 21 amends Subsection (l) of Section 1-b to authorize the legislature to expand the property tax exemption authorized by that provision to include a residence homestead donated to a disabled veteran by a charitable organization "for less than the market value of the residence homestead, including at no cost" to the veteran, instead of at only "no cost" to the veteran. Those existing provisions of Section 1-b related to the exemption authorized by Subsection (l), including the applicability of the exemption to the surviving spouse of the disabled veteran, would apply to the exemption as proposed

to be expanded by the proposed amendment. The proposed amendment applies only to property taxes imposed for a tax year beginning on or after January 1, 2018.

The constitutional amendment proposed by H.J.R. 21 also reletters two subsections of Section 1-b to eliminate duplicate lettering in the existing provisions of that section. The relettering has no substantive effect.

The legislature in 2017 enacted H.B. 150 as the enabling legislation for the proposed amendment. The bill amends Section 11.132(b), Tax Code, by expanding the existing exemption for a no-cost residence homestead to include a residence homestead donated to a disabled veteran by a charitable organization "at some cost to the disabled veteran in the form of a cash payment, a mortgage, or both in an aggregate amount that is not more than 50 percent of the good faith estimate of the market value of the residence homestead made by the charitable organization as of the date the donation is made." The change in law made by the bill to Section 11.132(b) applies only to a tax year beginning on or after January 1, 2018, and takes effect only if the proposed amendment is approved by the voters. If the bill takes effect, the expanded exemption under Section 11.132(b) would also apply to the disabled veteran's surviving spouse under Section 11.132(c), Tax Code.

Summary of Comments

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

Comments by Supporters

- H.J.R. 21 would provide financial relief to disabled veterans receiving a partially donated home who may not otherwise be able to afford a home because of the tax burden on the home.
- Currently, a partially disabled veteran who pays part of the cost of a donated home receives no property tax exemption on the

home's taxable value, unlike a partially disabled veteran whose home has been donated to the veteran in full. H.J.R. 21 would address this inconsistency in the law and avoid the risk that such a veteran might lose a home designed specifically for the individual's disabilities because of property tax bills that the veteran may not have the income to pay.

- The legislature has long recognized veterans for sacrifices they have made for this state and nation. H.J.R. 21 would continue this practice.

Comments by Opponents

- While no witnesses opposing H.J.R. 21 appeared before the legislature, the HRO analysis reports that opponents say that the legislature should focus its efforts on reducing the property tax burden for everyone rather than granting exemptions for a specific category of people, regardless of how deserving, which results in higher taxes for others.

House and Senate Votes

House Committee on Ways & Means: 10 yeas; 0 nays; 1 absent

House Floor: 143 yeas; 0 nays; 3 present, not voting*

*1 statement of vote: member was away from desk but would have voted yes

Senate Committee on Veteran Affairs & Border Security: 7 yeas; 0 nays

Senate Floor: 31 yeas; 0 nays

Text of H.J.R. 21

A JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of part of the market value of the residence homestead of a partially disabled veteran or the surviving spouse of a partially disabled veteran if the residence homestead was donated to the disabled veteran by a charitable organization for less than the market value of the residence homestead and harmonizing certain related provisions of the Texas Constitution.

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

SECTION 1. Section 1-b(l), Article VIII, Texas Constitution, as proposed by H.J.R. 24, 83rd Legislature, Regular Session, 2013, is amended to read as follows:

(l) The legislature by general law may provide that a partially disabled veteran is entitled to an exemption from ad valorem taxation of a percentage of the market value of the disabled veteran's residence homestead that is equal to the percentage of disability of the disabled veteran if the residence homestead was donated to the disabled veteran by a charitable organization <u>for less than the market value of the residence homestead, including</u> at no cost to the disabled veteran. The legislature by general law may provide additional eligibility requirements for the exemption. For purposes of this subsection, "partially disabled veteran" means a disabled veteran as described by Section 2(b) of this article who is certified as having a disability rating of less than 100 percent. A limitation or restriction on a disabled veteran's entitlement to an exemption under Section 2(b) of this article, or on the amount of an exemption under Section 2(b), does not apply to an exemption under this subsection.

SECTION 2. Section 1-b(l), Article VIII, Texas Constitution, as proposed by H.J.R. 62, 83rd Legislature, Regular Session, 2013, is redesignated as Section 1-b(m), Article VIII, Texas Constitution, to read as follows:

<u>(m)</u> [~~(l)~~] The legislature by general law may provide that the surviving spouse of a member of the armed services of the United States who is

killed in action is entitled to an exemption from ad valorem taxation of all or part of the market value of the surviving spouse's residence homestead if the surviving spouse has not remarried since the death of the member of the armed services.

SECTION 3. Section 1-b(m), Article VIII, Texas Constitution, is redesignated as Section 1-b(n), Article VIII, Texas Constitution, and amended to read as follows:

(n) [~~(m)~~] The legislature by general law may provide that a surviving spouse who qualifies for and receives an exemption in accordance with Subsection (m) [~~(l)~~] of this section and who subsequently qualifies a different property as the surviving spouse's residence homestead 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 first homestead for which the exemption was received in accordance with Subsection (m) [~~(l)~~] of this section in the last year in which the surviving spouse received the exemption in accordance with that subsection for that homestead if the surviving spouse has not remarried since the death of the member of the armed services.

SECTION 4. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 7, 2017. 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 part of the market value of the residence homestead of a partially disabled veteran or the surviving spouse of a partially disabled veteran if the residence homestead was donated to the disabled veteran by a charitable organization for less than the market value of the residence homestead and harmonizing certain related provisions of the Texas Constitution."

House Author: Cecil Bell Jr. et al.
Senate Sponsor: Brandon Creighton et al.

Proposition 2 (S.J.R. 60)

Wording of Ballot Proposition

The constitutional amendment to establish a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads.

Analysis of Proposed Amendment

Summary Analysis

The constitutional amendment proposed by S.J.R. 60 amends certain provisions of Section 50, Article XVI, Texas Constitution, relating to home equity loans and home equity lines of credit. The proposed amendment lowers the cap on fees that a borrower may be charged for a home equity loan but excludes certain fees from the cap. It repeals the prohibition against home equity loans on agricultural homesteads and amends the list of approved home equity loan lenders. In addition, the proposed amendment allows a home equity loan to be refinanced as a non-home equity loan if certain conditions are met. Finally, the proposed amendment repeals the restriction on making debits or advances on a home equity line of credit if the principal amount outstanding exceeds 50 percent of the fair market value of the homestead.

Background and Detailed Analysis

Before 1997, the Texas Constitution only allowed the owner of a homestead to use the homestead to secure a debt for the limited purposes of buying or improving the homestead or paying taxes on the homestead. In that year, the voters approved a constitutional amendment that allowed for two new types of loans to be secured using a homestead as collateral: the home equity loan and the reverse mortgage. Under a home equity

loan, a lender advances a borrower money which may be used for any purpose, and the lender may foreclose on the borrower's homestead if the borrower fails to repay the money. Today, the constitution contains numerous requirements for making and repaying home equity loans. The constitutional amendment proposed by S.J.R. 60 amends some of those requirements.

Since home equity loans were first authorized in 1997, the constitution has capped fees a borrower may be charged to originate, evaluate, maintain, record, insure, and service a home equity loan at three percent of the original principal amount of the loan. The proposed amendment lowers that cap to two percent but excludes fees for the following from the cap: an appraisal performed by a third-party appraiser, a property survey performed by a state registered or licensed surveyor, a premium for a mortgagee's title insurance, and certain title examination reports. The proposed amendment also specifies that, in addition to interest, bona fide discount points used to buy down the interest rate are not subject to the fee cap.

When home equity loans were initially authorized in 1997, the constitution prohibited homestead property designated for agricultural use, other than property used primarily for the production of milk, from being used to secure a home equity loan. In 2007, the voters approved a constitutional amendment that clarified that the prohibition only applies to homestead property designated for agricultural use as of the date the loan is closed. The proposed amendment repeals this prohibition altogether so that an agricultural homestead is treated the same as any other homestead.

Since home equity loans were originally authorized in 1997, the constitution has included a list of the types of financial entities or other persons that may make home equity loans. In 2003, the voters approved a constitutional amendment to add mortgage brokers to the list. The proposed amendment clarifies that subsidiaries of banks, savings and loan associations, savings banks, and credit unions that are already included on the list are also eligible to make home equity loans. The proposed amendment also updates the reference to mortgage brokers by referring to mortgage bankers and mortgage companies.

From 1997 until 2003, the constitution allowed a home equity loan to be refinanced only as a subsequent home equity loan. In 2003, the voters approved two constitutional amendments that allowed a borrower to also refinance a home equity loan as a reverse mortgage. The constitutional amendment proposed by S.J.R. 60 establishes another method for refinancing a home equity loan. The proposed amendment allows a borrower to refinance a home equity loan as a non-home equity loan that is secured by a lien against the homestead, which may have a lower interest rate or lower closing costs but fewer consumer protections, if the following conditions are met: the refinance is closed at least one year after the date the home equity loan was closed; the refinance does not include the advance of any additional funds other than funds advanced to refinance certain debts or the actual costs and reserves required by the lender to refinance the debt; and the refinance is of an amount that, when added to the total outstanding principal balances of other indebtedness secured by encumbrances against the homestead, does not exceed 80 percent of the fair market value of the homestead. In addition, the proposed amendment requires a lender to provide to a person seeking to refinance a home equity loan as a non-home equity loan a written notice that states the person's option to refinance the home equity loan as a home equity loan or a non-home equity loan and that highlights major differences between the two. The amendment provides the specific content of the notice and instructs that it be provided to the borrower not later than the third business day after the date the borrower submits the refinance loan application to the lender and at least 12 days before the date the refinance is closed.

The proposed amendment establishes that a lien against a homestead securing a refinance of a home equity loan as a non-home equity loan described above is a lien excepted from the constitution's general protection of a homestead from forced sale following foreclosure. The amendment also provides that an affidavit executed by a borrower or borrower's spouse acknowledging that the conditions outlined above for refinancing a home equity loan as a non-home equity loan have been met conclusively establishes that the requirements for that type of excepted lien have been met.

From 1997 until 2003, the constitution did not permit a home equity loan to be in the form of a line of credit. Money borrowed had to be delivered to the borrower in a lump sum and repaid in regular monthly payments. In 2003, the voters approved a constitutional amendment that allowed a home equity loan to be in the form of an open-end line of credit account under which a borrower receives money in advances from time to time at the borrower's request. That amendment included multiple requirements for extending a home equity line of credit, including the requirement that no additional debits or advances may be made if the principal amount outstanding exceeds 50 percent of the fair market value of the homestead.

The constitutional amendment proposed by S.J.R. 60 repeals the restriction on making debits or advances on a home equity line of credit if the principal amount outstanding exceeds 50 percent of the fair market value of the homestead. Because home equity lines of credit are subject to the constitutional provision applicable to all home equity loans that the amount borrowed, when added to the total outstanding principal balances of other indebtedness secured by encumbrances against the homestead, may not exceed 80 percent of the fair market value of the homestead, a borrower would now be allowed to request advances under a home equity line of credit until that threshold is reached.

Finally, the constitution includes a written notice that a lender must provide to a borrower before making a home equity loan. The proposed constitutional amendment amends that notice to conform to the preceding proposed changes to home equity lending in Texas.

Summary of Comments

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

Comments by Supporters

- The proposed amendment would modernize existing Texas law regarding home equity loans, which is based on 1997 legislation. This amendment represents the first major revision since 2003.
- S.J.R. 60 aims to improve access to home equity loans and allow home equity loans to be made on smaller-value properties.
- The amendment represents a consensus of the concerns of Realtor and lender associations, which include addressing limited access to home equity loans in rural areas, significantly increased costs at the time of origination, and high population growth from outside Texas that has created increased real estate activity.
- Home equity loans are used for home repairs, medical expenses, college tuition, and expenses for emergencies such as accidents and natural disasters. It is important to keep these loans available because other types of loans do not offer the same benefits and protections to homeowners.
- The amendment would keep the home equity market stable and lending responsible while improving consumers' access to credit.
- Regarding the changes to the fee cap:
    - o S.J.R. 60 would balance consumer protection provided by the fee cap with a reasonable standard for lenders by lowering the ceiling on fees that can be charged and removing certain fees from the calculation of the cap.
    - o Excluding certain third-party charges from the fee cap is to the consumer's advantage because it allows the consumer to shop for competitive options.
- Regarding agricultural homesteads:
    - o S.J.R. 60 would provide increased consumer choice by allowing home equity loans to be made on agricultural homesteads.
    - o Current law prohibits the use of homestead property designated for agriculture, other than dairy farming, to

secure a home equity loan. An owner of such property who obtains this type of loan does so at the cost of losing the property's agricultural designation tax status. The current restrictions impose a hardship because they make transactions too complex and discourage new buyers.

- Regarding the refinancing changes:
    - S.J.R. 60 would provide increased consumer choice by allowing the refinancing of home equity loans into non-home equity loans.
    - Consumer protections for prospective refinance customers have been included in the form of a required statement of comparison between home equity loans and non-home equity loans.
- The proposed amendment would afford consumers greater access to funds for which they have been approved by repealing a restriction on home equity lines of credit that prohibits additional advances on a loan from being made under certain circumstances.
- The limitation of home equity loans to 80 percent of total equity is what saved the Texas market during the last recession. This rule has been retained.

Comments by Opponents

- S.J.R. 60 would erase constitutional protections for homeowners that were very carefully negotiated when home equity loans were first authorized.
- There are no significant issues with obtaining home equity loans in Texas under current law. The amendment would only make costs more onerous to borrowers.
- Regarding the changes to the fee cap:
    - Although this change appears to benefit the consumer, the proposed amendment disguises the potential for lender fee increases. Because the amendment excludes the items that generally represent the highest up-front costs—third-party

appraisals, surveys, title insurance, and title examination reports—from the calculation of the fee cap, lenders would have greater incentive to increase their own origination fees despite the two percent limit.

- Increasing the prospective profits from loan origination fees, regardless of the loan's expected performance, would encourage improvident lending. Lenders could later sell badly performing loans on the secondary market. Such behavior contributed to the 2007-2009 recession.

- Regarding the refinancing changes:
  - When home equity loans were initially authorized in Texas, it was expected that homeowners would be protected from forced sales by the requirement for judicial foreclosure and because these are nonrecourse loans, which means other assets are protected. The amendment would allow conversion of a home equity loan back to a purchase money loan, which lacks these protections.
  - Home equity loan borrowers already have the ability to refinance their loans with a new home equity loan that provides certain protections.

Senate and House Votes

Senate Committee on Business & Commerce: 9 yeas; 0 nays

Senate Floor: 31 yeas; 0 nays

House Committee on Investments & Financial Services: 6 yeas; 0 nays; 1 absent

House Floor: 143 yeas; 0 nays; 2 present, not voting*

*1 statement of vote: member was away from desk but would have voted yes

Text of S.J.R. 60

SENATE JOINT RESOLUTION

proposing a constitutional amendment establishing a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads.

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

SECTION 1. Section 50, Article XVI, Texas Constitution, is amended by amending Subsections (a), (f), (g), and (t) and adding Subsection (f-1) to read as follows:

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

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

(2) the taxes due thereon;

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

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

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

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

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

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

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

(6) an extension of credit that:

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

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

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

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

(E) does not require the owner or the owner's spouse to pay, in addition to any interest or any bona fide discount points used to buy down the interest rate, any fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, two [~~three~~] percent of the original principal amount of the extension of credit, excluding fees for:

(i) an appraisal performed by a third party appraiser;

(ii) a property survey performed by a state registered or licensed surveyor;

(iii) a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law; or

(iv) a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law;

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

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

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

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

(J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under

other indebtedness not secured by a prior valid encumbrance against the homestead;

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

(L) is scheduled to be repaid:

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

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

(M) is closed not before:

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) a person regulated by this state as a mortgage banker or mortgage company [~~broker~~]; and

(Q) is made on the condition that:

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

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

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

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

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

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

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

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

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

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

than the 60th day after the date the lender or holder is notified by the borrower of the lender's failure to comply by:

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

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

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

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

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

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

the owner and the lender or holder otherwise agree that comply with this section; and

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

(7) a reverse mortgage; or

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

(f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless either:

(1) the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of this section; or

(2) all of the following conditions are met:

(A) the refinance is not closed before the first anniversary of the date the extension of credit was closed;

(B) the refinanced extension of credit does not include the advance of any additional funds other than:

(i) funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of this section; or

(ii) actual costs and reserves required by the lender to refinance the debt;

(C) the refinance of the extension of credit is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances

of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made; and

(D) the lender provides the owner the following written notice on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed:

"YOUR EXISTING LOAN THAT YOU DESIRE TO REFINANCE IS A HOME EQUITY LOAN. YOU MAY HAVE THE OPTION TO REFINANCE YOUR HOME EQUITY LOAN AS EITHER A HOME EQUITY LOAN OR AS A NON-HOME EQUITY LOAN, IF OFFERED BY YOUR LENDER.

"HOME EQUITY LOANS HAVE IMPORTANT CONSUMER PROTECTIONS. A LENDER MAY ONLY FORECLOSE A HOME EQUITY LOAN BASED ON A COURT ORDER. A HOME EQUITY LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE.

"IF YOU HAVE APPLIED TO REFINANCE YOUR EXISTING HOME EQUITY LOAN AS A NON-HOME EQUITY LOAN, YOU WILL LOSE CERTAIN CONSUMER PROTECTIONS. A NON-HOME EQUITY REFINANCED LOAN:

"(1) WILL PERMIT THE LENDER TO FORECLOSE WITHOUT A COURT ORDER;

"(2) WILL BE WITH RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE; AND

"(3) MAY ALSO CONTAIN OTHER TERMS OR CONDITIONS THAT MAY NOT BE PERMITTED IN A TRADITIONAL HOME EQUITY LOAN.

"BEFORE YOU REFINANCE YOUR EXISTING HOME EQUITY LOAN TO MAKE IT A NON-HOME EQUITY LOAN, YOU SHOULD MAKE SURE YOU UNDERSTAND THAT YOU ARE WAIVING IMPORTANT PROTECTIONS THAT HOME EQUITY LOANS PROVIDE UNDER THE LAW AND SHOULD CONSIDER CONSULTING WITH AN ATTORNEY OF YOUR CHOOSING REGARDING THESE PROTECTIONS.

"YOU MAY WISH TO ASK YOUR LENDER TO REFINANCE YOUR LOAN AS A HOME EQUITY LOAN. HOWEVER, A HOME EQUITY LOAN MAY HAVE A HIGHER

INTEREST RATE AND CLOSING COSTS THAN A NON-HOME EQUITY LOAN."

(f-1) A lien securing a refinance of debt under Subsection (f)(2) of this section is deemed to be a lien described by Subsection (a)(4) of this section. An affidavit executed by the owner or the owner's spouse acknowledging that the requirements of Subsection (f)(2) of this section have been met conclusively establishes that the requirements of Subsection (a)(4) of this section have been met.

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

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

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

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

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

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

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

"(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 2 [~~3~~] PERCENT OF THE LOAN AMOUNT, EXCEPT FOR A FEE OR CHARGE FOR

AN APPRAISAL PERFORMED BY A THIRD PARTY APPRAISER, A PROPERTY SURVEY PERFORMED BY A STATE REGISTERED OR LICENSED SURVEYOR, A STATE BASE PREMIUM FOR A MORTGAGEE POLICY OF TITLE INSURANCE WITH ENDORSEMENTS, OR A TITLE EXAMINATION REPORT;

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

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

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

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

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

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

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

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

THE CLOSING DATE OF THE OTHER LOAN, UNLESS ON OATH YOU REQUEST AN EARLIER CLOSING DUE TO A DECLARED STATE OF EMERGENCY;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT AT ANY TIME EXCEEDS 80 [~~50~~] PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED, YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT UNTIL THE BALANCE IS LESS THAN 80 [~~50~~] PERCENT OF THE FAIR MARKET VALUE; AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 85th Legislature, Regular Session, 2017, to establish a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads.

(b) The constitutional amendment takes effect January 1, 2018.

(c) The changes in law made by the constitutional amendment apply only to a home equity loan made on or after the effective date of the constitutional amendment and to an existing home equity loan that is refinanced on or after the effective date of the constitutional amendment.

(d) This temporary provision takes effect on the adoption of the constitutional amendment by the voters and expires January 1, 2019.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 7, 2017. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to establish a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads."

Senate Author: Kelly Hancock
House Sponsor: Tan Parker et al.

Proposition 3 (S.J.R. 34)

Wording of Ballot Proposition

The constitutional amendment limiting the service of certain officeholders appointed by the governor and confirmed by the senate after the expiration of the person's term of office.

Analysis of Proposed Amendment

Summary Analysis

Section 17, Article XVI, Texas Constitution, referred to as the "holdover" provision, requires that an officer within the state continue to perform the duties of office until the officer's successor is qualified for office, including after the officer's term expires. S.J.R. 34 proposes a constitutional amendment to end the requirement of continuous performance of duties for gubernatorial appointees to unpaid state offices on the last day of the first regular session of the legislature that begins after the expiration of the officer's term.

Background and Detailed Analysis

Section 17, Article XVI, Texas Constitution, as originally adopted in 1876 requires that an officer of the state continue to perform the duties of office until the officer's successor is qualified for office. The purpose of this provision is to ensure that the duties of the office continue to be performed during the time after an officer's term of office has expired but before a new officer has taken office.

S.J.R. 34 amends Section 17, Article XVI, Texas Constitution, to limit the length of time during which the officer whose term of office has ended may continue to perform the duties of the office. This limitation only applies to an appointive office that is filled by appointment of the governor with the advice and consent of the senate and that is not an office for which the officer receives a salary.

Summary of Comments

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

Comments by Supporters

- S.J.R. 34 would address concerns that unpaid gubernatorial appointees on state boards and commissions hold over in office long after expiration of the appointees' terms and would ensure that unpaid volunteer positions are sufficiently rotated among qualified Texans.
- The senate prerogative for advice and consent would be preserved by placing term limits at the end of a regular legislative session on the service of appointees whose terms have expired, allowing the senate to hold confirmation hearings on replacement appointees.
- The amendment would provide the Office of the Governor ample time to find and appoint a willing and qualified successor after an officer's term expires.

Comments by Opponents

- S.J.R. 34 could result in unfilled vacancies in important state offices if successors are not duly qualified by the deadline proposed by the amendment.
- The existing constitutional provision providing for the continued service of officers until their successors are duly qualified affords the Office of the Governor flexibility in finding qualified replacements for appointive offices.

Senate and House Votes

Senate Committee on State Affairs: 9 yeas; 0 nays

Senate Floor: 31 yeas; 0 nays

House Committee on State Affairs: 10 yeas; 3 nays

House Floor: 142 yeas*; 4 nays; 2 present, not voting

*1 statement of vote: member was shown voting yes but intended to vote no

Text of S.J.R. 34

SENATE JOINT RESOLUTION

proposing a constitutional amendment limiting the service of certain officeholders after the expiration of the person's term of office.

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

SECTION 1. Section 17, Article XVI, Texas Constitution, is amended to read as follows:

Sec. 17. (a) Except as provided by Subsection (b) of this section, all [~~All~~] officers of [~~within~~] this State shall continue to perform the duties of their offices until their successors shall be duly qualified.

(b) Following the expiration of a term of an appointive office that is filled by appointment of the Governor with the advice and consent of the Senate and that is not an office for which the officer receives a salary, the period for which the officer shall continue to perform the duties of office under Subsection (a) of this section ends on the last day of the first regular session of the Legislature that begins after the expiration of the term.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 7, 2017. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment limiting the service of certain officeholders appointed by the governor and confirmed by the senate after the expiration of the person's term of office."

Senate Author: Brian Birdwell
House Sponsor: Charlie Geren

Proposition 4 (S.J.R. 6)

Wording of Ballot Proposition

The constitutional amendment authorizing the legislature to require a court to provide notice to the attorney general of a challenge to the constitutionality of a state statute and authorizing the legislature to prescribe a waiting period before the court may enter a judgment holding the statute unconstitutional.

Analysis of Proposed Amendment

Summary Analysis

S.J.R. 6 proposes an amendment to the Texas Constitution that authorizes the legislature to require a court to provide notice to the attorney general if a party to litigation challenges the constitutionality of a state statute. The amendment authorizes the legislature to prescribe a reasonable period after the notice has been provided, which may not exceed 45 days, during which the court may not enter a judgment holding the statute unconstitutional.

The resolution also proposes a temporary provision to validate an existing statute, which has been held unconstitutional, requiring a court to provide notice to the attorney general of challenges to the constitutionality of state statutes and prescribing a waiting period before the court may enter a judgment holding a statute unconstitutional.

Background and Detailed Analysis

In 2011, the Texas Legislature enacted H.B. 2425, which added Section 402.010, Government Code, which provides that in an action in which a party to the litigation files a petition, motion, or other pleading challenging the constitutionality of a statute of this state, the court shall, if the attorney general is not a party to or counsel involved in the litigation, serve notice of the constitutional challenge and a copy of the petition, motion, or other pleading on the attorney general. Section 402.010 further provides that a court may not enter a final judgment holding a

statute of this state unconstitutional before the 45th day after the date the notice was served on the attorney general. In 2013, the statute was amended to require the Office of Court Administration of the Texas Judicial System to adopt a form that a party challenging the constitutionality of a state statute must file with the court in which the action is pending indicating which pleading should be served on the attorney general.

In 2014, the Texas Court of Criminal Appeals issued an opinion holding key provisions of Section 402.010 unconstitutional because they violate the separation of powers doctrine of the state constitution. *Ex parte Lo*, 424 S.W.3d 10 (Tex. Crim. App. 2014). The court noted that, under Section 1, Article II, Texas Constitution, the constitutional division of the government into three branches, referred to as departments, must remain intact unless "expressly permitted" in the constitution and noted the court's statement in a previous opinion that under the separation of powers doctrine any attempted interference by one department with the powers of another department is null and void. The court concluded that the statute attempts to suspend a court's power to enter a final judgment "virtually indefinitely" or until 45 days after the required notice has been provided to the attorney general. The court stated that the length of the delay was not the problem as much as the attempted interference itself and stated that entering a final judgment is a core judicial power. The court also determined that the statute's notice requirement is unenforceable without the waiting period, making the notice requirement essentially and inseparably connected in substance to the waiting period. For those reasons, the court of criminal appeals held Sections 402.010(a) and (b), Government Code, unconstitutional.

S.J.R. 6 proposes to add Section 32 to Article V, Texas Constitution, to expressly permit the legislature to require a court to notify the attorney general of a constitutional challenge to a state statute and to prohibit the court from entering a judgment holding the statute unconstitutional for a reasonable period not to exceed 45 days after the date the attorney general has been notified of the constitutional challenge. The resolution's proposed temporary provision expressly validates Section 402.010, Government Code, as that section currently exists, thereby restoring the statutory requirement that the court notify the attorney general of

a constitutional challenge and providing for its application to a petition, motion, or other pleading filed on or after January 1, 2018.

Summary of Comments

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

Comments by Supporters

- The proposed amendment would ensure that Texas laws could not be struck down through a constitutional challenge without the attorney general having a fair opportunity to defend the laws.
- S.J.R. 6 is needed to restore Section 402.010, Government Code, which protects the prerogative of the legislature by providing that if private litigants challenge the constitutionality of a state statute, the attorney general must be informed and therefore have the opportunity to intervene and defend the statute. The Texas Court of Criminal Appeals determined in 2013 that it was an unconstitutional violation of the separation of powers for a court to have to notify the attorney general that the constitutionality of a state statute is being challenged.
- The attorney general's office already has a system for receiving notices and deciding how the office should respond to civil challenges to Texas law that works well. Under the system for civil cases, intervention is not a typical course of response because the office usually can determine if there is an interested party other than the attorney general who can maintain a defense of the statute.
- S.J.R. 6 would not substantially alter the state's separation of powers doctrine, restrict the ability of courts to strike down laws on constitutional grounds, or change the authority of the attorney general's office over criminal matters.

Comments by Opponents

- The constitution should not be amended in a manner that may undermine the state's separation of powers doctrine.
- Texans should be able to pursue and receive judicial relief from unconstitutional laws without delay due to a waiting period for the attorney general to consider intervening during which a court may not enter a judgment.
- The constitutional amendment proposed by S.J.R. 6 may create confusion regarding the attorney general's role in criminal cases by requiring notice to be provided to the attorney general in such cases. Under current law, the attorney general is not authorized to represent the state in criminal cases, subject to certain exceptions. Requiring notice to be provided serves little purpose unless the prosecutor requests the attorney general's assistance in a pending case.

Senate and House Votes

Senate Committee on State Affairs: 9 yeas; 0 nays

Senate Floor: 30 yeas; 1 nay

House Committee on Judiciary & Civil Jurisprudence: 7 yeas; 1 nay; 1 absent

House Floor: 136 yeas*; 9 nays; 2 present, not voting

*1 statement of vote: member was shown voting yes but intended to vote no

Text of S.J.R. 6

SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to require a court to provide notice to the attorney general of a challenge to the constitutionality of a state statute and authorizing the legislature to prescribe a waiting period before the court may enter a judgment holding the statute unconstitutional.

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

SECTION 1. Article V, Texas Constitution, is amended by adding Section 32 to read as follows:

Sec. 32. Notwithstanding Section 1, Article II, of this constitution, the legislature may:

(1) require a court in which a party to litigation files a petition, motion, or other pleading challenging the constitutionality of a statute of this state to provide notice to the attorney general of the challenge if the party raising the challenge notifies the court that the party is challenging the constitutionality of the statute; and

(2) prescribe a reasonable period, which may not exceed 45 days, after the provision of that notice during which the court may not enter a judgment holding the statute unconstitutional.

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

TEMPORARY PROVISION. (a) This temporary provision applies with respect to the constitutional amendment proposed by the 85th Legislature, Regular Session, 2017, authorizing the legislature to require a court to provide notice to the attorney general of a challenge to the constitutionality of a state statute and authorizing the legislature to prescribe a waiting period, not to exceed 45 days, before the court may enter a judgment holding the statute unconstitutional.

(b) Section 402.010, Government Code, as added by Chapter 808 (H.B. 2425), Acts of the 82nd Legislature, Regular Session, 2011, and

amended by Chapter 1162 (S.B. 392) and Chapter 1276 (H.B. 1435), Acts of the 83rd Legislature, Regular Session, 2013, is validated and effective on approval of the constitutional amendment described by Subsection (a) of this temporary provision and applies only to a petition, motion, or other pleading filed on or after January 1, 2018.

(c) This temporary provision expires January 2, 2018.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 7, 2017. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing the legislature to require a court to provide notice to the attorney general of a challenge to the constitutionality of a state statute and authorizing the legislature to prescribe a waiting period before the court may enter a judgment holding the statute unconstitutional."

Senate Author: Judith Zaffirini et al.
House Sponsor: Mike Schofield et al.

Proposition 5 (H.J.R. 100)

Wording of Ballot Proposition

The constitutional amendment on professional sports team charitable foundations conducting charitable raffles.

Analysis of Proposed Amendment

Summary Analysis

Section 47(d-1), Article III, Texas Constitution, currently authorizes the legislature to permit a professional sports team charitable foundation to conduct a charitable raffle at games hosted at the home venue of the professional sports team associated with the foundation, but only if the foundation existed on January 1, 2016. The constitutional amendment proposed by H.J.R. 100 removes the temporal limitation of this provision. In addition, the amendment defines "professional sports team" to include a team organized in this state that is a member of one of the professional sports organizations listed in the amendment, a person hosting a motorsports racing team event sanctioned by a nationally recognized motorsports racing association at certain venues, an organization hosting a professional golf association event, or any other professional sports team defined by law.

Background and Detailed Analysis

Section 47, Article III, Texas Constitution, as originally adopted, required the legislature to pass laws prohibiting all lotteries and gift enterprises and has been interpreted to prohibit most types of gambling in Texas. However, Section 47 has been amended several times to provide specific exceptions to the general gaming prohibition, including exceptions authorizing charitable bingo, charitable raffles, and state lotteries. In 1989, Section 47 was amended to allow the legislature by law to authorize qualified religious societies, volunteer fire departments, volunteer emergency medical services, and nonprofit organizations to conduct charitable raffles, provided the raffle proceeds are spent for

the organization's charitable purposes and the organization's members conduct the raffles. In 2015, Section 47 was further amended to authorize the legislature by general law to permit certain professional sports team charitable foundations existing on January 1, 2016, to conduct charitable raffles, under certain terms and conditions imposed by general law, at games hosted at the home venue of the professional sports team associated with the foundation. The constitutional amendment proposed by H.J.R. 100 limits the applicability of the general law enacted under Section 47(d-1) to only an entity defined as a professional sports team charitable foundation under the general law, removes the limitation granting a foundation authority under the general law only if the foundation existed on January 1, 2016, and defines "professional sports team" for purposes of that subsection.

H.B. 3125, Acts of the 85th Legislature, Regular Session, 2017, is the enabling legislation for the proposed amendment. The bill takes effect December 1, 2017, only if H.J.R. 100, amending Section 47, Article III, Texas Constitution, is approved by the voters. The bill amends Section 2004.002, Occupations Code, to conform the definition of "professional sports team" for purposes of Chapter 2004, Occupations Code, to the definition of that term provided by the proposed amendment to Section 47. If it takes effect, H.B. 3125 will authorize a professional sports team charitable foundation, regardless of when the foundation is created, to conduct a charitable raffle at games hosted at the home venue of the professional sports team associated with the foundation. Conforming to the constitutional definition, the bill defines professional sports team as "a team organized in this state that is a member of Major League Baseball, the National Basketball Association, the National Hockey League, the National Football League, Major League Soccer, the American Hockey League, the East Coast Hockey League, the American Association of Independent Professional Baseball, the Atlantic League of Professional Baseball, Minor League Baseball, the National Basketball Association Development League, the National Women's Soccer League, the Major Arena Soccer League, the United Soccer League, or the Women's National Basketball Association; a person hosting a motorsports racing team event sanctioned by the National Association for Stock Car Auto Racing

(NASCAR), INDYCar, or another nationally recognized motorsports racing association at a venue in this state with a permanent seating capacity of not less than 75,000; or an organization hosting a Professional Golf Association event." The bill further authorizes the purchase of a raffle ticket with a debit card for a charitable raffle conducted by a professional sports team charitable foundation under Chapter 2004 and Section 47.

Summary of Comments

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

Comments by Supporters

- By expanding the number of professional sports team charitable foundations eligible to hold charitable raffles at home games, H.J.R. 100 and its implementing legislation, H.B. 3125, would provide opportunities for charitable revenue to be brought to more areas of the state, such as rural and suburban communities.
- Charitable raffles help disadvantaged youth across Texas and also have the potential to help nonprofit and other charitable organizations that have programming geared toward helping cancer research and victims of domestic abuse.
- Charitable raffles held under the current authorization have been successful in raising large amounts of money for charitable purposes without abusing the process.
- The amendment would not remove existing safeguards that protect against improperly conducted raffles.

Comments by Opponents

- The existing constitutional limitation that allows only foundations in operation on January 1, 2016, to operate charitable raffles was established to protect against the creation of new entities solely to take advantage of charitable raffles.

- H.J.R. 100 would expand gambling in Texas by encouraging less well-established professional sports teams to set up charitable foundations to conduct raffles and may prompt other groups to seek similar authorization to conduct charitable gaming.

House and Senate Votes

House Committee on Licensing & Administrative Procedures: 7 yeas; 0 nays; 2 absent

House Floor: 110 yeas; 12 nays*; 2 present, not voting

*1 statement of vote: member was shown voting no but intended to vote yes

Senate Committee on State Affairs: 8 yeas; 1 nay

Senate Floor: 24 yeas; 6 nays

Text of H.J.R. 100

A JOINT RESOLUTION

proposing a constitutional amendment on professional sports team charitable foundations conducting charitable raffles.

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

SECTION 1. Section 47(d-1), Article III, Texas Constitution, is amended to read as follows:

(d-1) The legislature by general law may permit a professional sports team charitable foundation to conduct charitable raffles under the terms and conditions imposed by general law. The law may authorize the charitable foundation to pay with the raffle proceeds reasonable advertising, promotional, and administrative expenses. A law enacted under this subsection applies [~~may apply~~] only to an entity [~~that is~~] defined as a professional sports team charitable foundation under that law [~~on January 1, 2016,~~] and may only allow charitable raffles to be conducted at games hosted at the home venue of the professional sports team associated with a professional sports team charitable foundation. In this subsection, "professional sports team" means:

(1) a team organized in this state that is a member of Major League Baseball, the National Basketball Association, the National Hockey League, the National Football League, Major League Soccer, the American Hockey League, the East Coast Hockey League, the American Association of Independent Professional Baseball, the Atlantic League of Professional Baseball, Minor League Baseball, the National Basketball Association Development League, the National Women's Soccer League, the Major Arena Soccer League, the United Soccer League, or the Women's National Basketball Association;

(2) a person hosting a motorsports racing team event sanctioned by the National Association for Stock Car Auto Racing (NASCAR), INDYCar, or another nationally recognized motorsports racing association at a venue in this state with a permanent seating capacity of not less than 75,000;

(3) an organization hosting a Professional Golf Association event; or

(4) any other professional sports team defined by law.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 7, 2017. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment on professional sports team charitable foundations conducting charitable raffles."

House Author: John Kuempel et al.
Senate Sponsor: Juan "Chuy" Hinojosa

Proposition 6 (S.J.R. 1)

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 first responder who is killed or fatally injured in the line of duty.

Analysis of Proposed Amendment

Summary Analysis

Section 1-b, Article VIII, Texas Constitution, governs residence homestead exemptions from property (or "ad valorem") taxation. The constitutional amendment proposed by S.J.R. 1 amends Section 1-b by adding Subsections (o) and (p). Proposed Subsection (o) authorizes the legislature to provide the surviving spouse of a first responder who is killed or fatally injured in the line of duty a property tax exemption for all or part of the market value of the surviving spouse's residence homestead if the surviving spouse has not remarried since the death of the first responder. Proposed Subsection (p) authorizes the legislature to provide for a surviving spouse who receives an exemption under proposed Subsection (o) to receive an exemption from property taxation on the surviving spouse's subsequently qualified residence homestead in an amount equal to the dollar amount of the exemption for the former homestead under proposed Subsection (o) in the last year in which the surviving spouse received the exemption for the former homestead, if the surviving spouse has not remarried. The proposed amendment applies only to property taxes imposed for a tax year beginning on or after January 1, 2018.

Background and Detailed Analysis

Section 1, Article VIII, Texas Constitution, requires that taxation be equal and uniform and that all real and tangible personal property be taxed in proportion to its value unless the property is exempt as required

or permitted by the constitution. Accordingly, the legislature may not exempt real or tangible personal property from property taxation unless the exemption is required or authorized by the constitution.

Section 1-b, Article VIII, Texas Constitution, provides for various property tax exemptions and limitations for residence homesteads. The constitutional amendment proposed by S.J.R. 1 adds Subsection (o) to Section 1-b to authorize the legislature by general law to provide that the surviving spouse of a first responder who is killed or fatally injured in the line of duty is entitled to receive a property tax exemption for all or part of the market value of the surviving spouse's residence homestead if the surviving spouse has not remarried since the death of the first responder. Proposed Subsection (o) also authorizes the legislature by general law to define the term "first responder" for purposes of the property tax exemption and to prescribe additional eligibility requirements for the exemption.

The proposed amendment also adds Subsection (p) to Section 1-b to authorize the legislature by general law to provide that a surviving spouse who receives an exemption under proposed Subsection (o) and who subsequently qualifies a different property as the surviving spouse's residence homestead is entitled to receive an exemption from property taxation on the subsequently qualified residence homestead in an amount equal to the dollar amount of the exemption from property taxation of the former homestead in accordance with proposed Subsection (o) in the last year in which the surviving spouse received that exemption for that homestead if the surviving spouse has not remarried.

Passed in 2017 by the Texas Legislature, S.B. 15 is the enabling legislation for the proposed amendment. The bill adds Section 11.134 to the Tax Code. Section 11.134 provides a definition of the term "first responder," which includes peace officers, corrections and other custodial officials, firefighters, rescue and emergency services personnel, and certain other personnel, and entitles the surviving spouse of a first responder who is killed or fatally injured in the line of duty to an exemption from property taxation of the total appraised value of the surviving spouse's residence homestead if the surviving spouse is considered an eligible

survivor under Chapter 615, Government Code, which provides assistance payments to survivors of first responders, and has not remarried since the death of the first responder. Section 11.134 also entitles a surviving spouse who subsequently qualifies a different property as the person'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 property taxation of the first homestead for which the person received the exemption in the last year in which the person received the exemption for that homestead if the surviving spouse has not remarried. The bill also makes various conforming changes to the Tax Code relating to the administration of the exemption. The bill applies only to a tax year beginning on or after January 1, 2018, and takes effect only if the constitutional amendment proposed by S.J.R. 1 is approved by the voters.

Summary of Comments

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

Comments by Supporters

- S.J.R. 1 would help ensure that families of fallen first responders, who have already suffered devastating loss in service to their communities, do not face the loss of their home because of the property tax burden, particularly following the death of a first responder who is likely to have been a breadwinner for the family.
- The amendment would extend to surviving spouses of first responders the same well-deserved property tax exemption given to surviving spouses of disabled veterans and members of the armed services killed in action, and would continue the legislature's long-standing practice of addressing the hardships faced by families of fallen first responders.

Comments by Opponents

- While no witnesses opposing S.J.R. 1 appeared before the legislature, the HRO analysis reports that opponents say that the legislature should focus its efforts on reducing the property tax burden for everyone rather than granting exemptions for a specific category of people, regardless of how deserving, which results in higher taxes for others.

Senate and House Votes

Senate Committee on Finance: 15 yeas; 0 nays

Senate Floor: 30 yeas; 0 nays

House Committee on Ways & Means: 10 yeas; 0 nays; 1 absent

House Floor: 147 yeas; 0 nays; 2 present, not voting

Text of S.J.R. 1

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 first responder who is killed or fatally injured in the line of duty.

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 (o) and (p) to read as follows:

(o) The legislature by general law may provide that the surviving spouse of a first responder who is killed or fatally injured in the line of duty is entitled to an exemption from ad valorem taxation of all or part of the market value of the surviving spouse's residence homestead if the surviving spouse has not remarried since the death of the first responder. The legislature by general law may define "first responder" for purposes of this subsection and may prescribe additional eligibility requirements for the exemption authorized by this subsection.

(p) The legislature by general law may provide that a surviving spouse who qualifies for and receives an exemption in accordance with Subsection (o) of this section and who subsequently qualifies a different property as the surviving spouse's residence homestead 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 first homestead for which the exemption was received in accordance with Subsection (o) of this section in the last year in which the surviving spouse received the exemption in accordance with that subsection for that homestead if the surviving spouse has not remarried since the death of the first responder.

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 85th Legislature, Regular

Session, 2017, 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 first responder who is killed or fatally injured in the line of duty.

(b) Sections 1-b(o) and (p), Article VIII, of this constitution take effect January 1, 2018, and apply only to a tax year beginning on or after that date.

(c) This temporary provision expires January 1, 2019.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 7, 2017. 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 first responder who is killed or fatally injured in the line of duty."

Senate Author: Donna Campbell et al.
House Sponsor: Pat Fallon et al.

Proposition 7 (H.J.R. 37)

Wording of Ballot Proposition

The constitutional amendment relating to legislative authority to permit credit unions and other financial institutions to award prizes by lot to promote savings.

Analysis of Proposed Amendment

Summary Analysis

The constitutional amendment proposed by H.J.R. 37 specifies that the constitutional provision requiring the legislature to pass laws prohibiting most lotteries and gift enterprises, which includes most forms of gambling, in Texas does not prohibit the legislature from authorizing credit unions and other financial institutions to promote savings by awarding prizes to one or more of the credit union's or financial institution's depositors selected by lot.

Background and Detailed Analysis

Section 47, Article III, Texas Constitution, as originally adopted in 1876, required the legislature to pass laws prohibiting all lotteries and gift enterprises and has been interpreted to prohibit most types of gambling in Texas. However, Section 47 has been amended several times to provide specific exceptions to the general gaming prohibition. In 1980, the section was amended to allow the legislature by law to authorize and regulate bingo games conducted by certain religious and nonprofit organizations, volunteer fire departments, and fraternal organizations. In 1989, Section 47 was amended to allow the legislature by law to permit charitable raffles conducted by qualified religious societies, volunteer fire departments, volunteer emergency medical services, and nonprofit organizations. In 1991, the provision was amended to allow the legislature by law to authorize the state to operate lotteries or to contract with legal entities to operate lotteries for the state. And, in 2015, Section 47 was amended to allow the legislature by law to permit certain professional sports team

charitable foundations to conduct charitable raffles. The constitutional amendment proposed by H.J.R. 37 provides that the general prohibition against gambling does not restrict the legislature from authorizing credit unions and other financial institutions to promote savings by awarding prizes to depositors selected by lot.

In 2017, the Texas Legislature passed H.B. 471, the enabling legislation for the proposed amendment. Among other provisions, the bill, which takes effect only if the voters approve H.J.R. 37, allows credit unions and financial institutions to conduct savings promotion raffles, defined as raffles in which the sole action required for a chance to win a designated prize is the deposit of at least a specified amount in a savings account or other savings program offered by the credit union or financial institution. The bill requires savings promotion raffles to be conducted in a manner that does not jeopardize the ability of a credit union or financial institution to operate in a safe and sound manner and that does not mislead the credit union's members or the financial institution's depositors. Credit unions and financial institutions must ensure commensurate treatment of savings accounts and programs that are subject to a savings promotion raffle and those that are not. Premiums, fees, withdrawal limits, and interest and dividend rates must be consistent between savings accounts and programs that are subject to a savings promotion raffle and those that are not. However, a credit union or financial institution may require a deposit of a minimum amount to remain in a savings account or program for a certain period of time to represent an entry in a savings promotion raffle. Finally, the bill specifies that the deposit of an amount in a savings account or program that results in an entry in a savings promotion raffle is not consideration.

Summary of Comments

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

Comments by Supporters

- Savings incentives such as savings promotion raffles offering cash prizes to savers are needed in Texas because more than one-third of Texas households lack a savings account, and about half do not have a three-month emergency fund.
- H.J.R. 37 would provide an incentive for individuals, including low-income individuals, to open savings accounts with banks and credit unions instead of relying on more expensive alternative financial services such as consumer loans or on payday lenders and title lenders for which fewer regulations exist.
- Depositors' money is not at risk because prizes are paid from the bank's marketing fund.
- Prize-linked savings accounts are not gambling because there is no payment or consideration.
- A number of other states that have adopted legislation allowing prize-linked savings accounts have seen a substantial increase in consumer savings and new accounts as a result.
- Some banks that offer prize-linked savings accounts may have the opportunity to receive additional credit under the federal Community Reinvestment Act for providing services that encourage savings.
- Offering prize-linked savings accounts would be attractive to banks because it could encourage new business.
- The amendment would resolve any questions about the constitutionality of a statute that authorizes savings promotion prizes, such as the enabling legislation, H.B. 471.

Comments by Opponents

- H.J.R. 37 would provide unfair favoritism to traditional financial institutions by authorizing the only non-charitable raffle allowed in Texas for the benefit of only one industry.
- The amendment is not necessary under the Texas Constitution, which only prohibits lotteries that require a form of payment or consideration.

House and Senate Votes

House Committee on Investments & Financial Services: 6 yeas; 0 nays; 1 absent

House Floor: 141 yeas*; 0 nays; 1 present, not voting

*1 statement of vote: member was shown voting yes but intended to vote no

Senate Committee on Business & Commerce: 8 yeas; 0 nays; 1 absent

Senate Floor: 30 yeas; 1 nay

Text of H.J.R. 37

A JOINT RESOLUTION

proposing a constitutional amendment relating to legislative authority to permit credit unions and other financial institutions to award prizes by lot to promote savings.

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

SECTION 1. Section 47, Article III, Texas Constitution, is amended by adding Subsection (d-2) to read as follows:

(d-2) Subsection (a) of this section does not prohibit the legislature from authorizing credit unions and other financial institutions to conduct, under the terms and conditions imposed by general law, promotional activities to promote savings in which prizes are awarded to one or more of the credit union's or financial institution's depositors selected by lot.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 7, 2017. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment relating to legislative authority to permit credit unions and other financial institutions to award prizes by lot to promote savings."

House Author: Eric Johnson
Senate Sponsor: Kelly Hancock