

# HOUSE RESEARCH ORGANIZATION

*focus report*

Texas House of Representatives

August 7, 2013

CONSTITUTIONAL

## Amendments Proposed

for November 2013 Ballot

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# Amending the Constitution

Texas voters have approved 474 amendments to the state Constitution since its adoption in 1876, according to the Legislative Reference Library. Nine more proposed amendments will be submitted for voter approval at the general election on Tuesday, November 5, 2013.

## Joint resolutions

The Texas Legislature proposes constitutional amendments in joint resolutions that originate in either the House of Representatives or the Senate. For example, Prop. 1 on the November 5, 2013, ballot was proposed by House Joint Resolution (HJR) 62, introduced by Rep. C. Turner and sponsored in the Senate by Sen. Van de Putte. Art. 17, sec. 1 of the Texas Constitution requires that a joint resolution be adopted by at least a two-thirds vote of the membership of each house of the Legislature (100 votes in the House, 21 votes in the Senate) to be presented to voters. The governor cannot veto a joint resolution.

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

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

## Ballot wording

The ballot wording of a proposition is specified in the joint resolution adopted by the Legislature, which has broad discretion concerning the wording. In rejecting challenges to the ballot language for proposed amendments, the courts generally have ruled that ballot language is sufficient if it describes the proposed amendment with such definiteness and certainty that voters will not be misled and if it allows a voter of average intelligence to distinguish one proposition from another on the ballot. The courts have assumed that voters become familiar with the proposed amendments before reaching the polls and that they do not decide how to vote solely on the basis of the ballot language.

## Election date

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

## Publication

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

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The secretary of state prepares the explanatory statement, which must be approved by the attorney general, and arranges for the required newspaper publication. The estimated total cost of publication twice in newspapers across the state for the November 5 election is \$108,921, according to the Legislative Budget Board.

## **Enabling legislation**

Some constitutional amendments are self-enacting and require no additional legislation to implement their provisions. Other amendments grant discretionary authority to the Legislature to enact legislation in a particular area or within certain guidelines. These amendments require “enabling” legislation to fill in the details of how the amendment would operate. The Legislature often adopts enabling legislation in advance, making the effective date of the legislation contingent on voter approval of a particular amendment. If voters reject the amendment, the legislation dependent on the constitutional change does not take effect.

## **Effective date**

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



# Previous Election Results

Analyses of the 10 proposals on the November 8, 2011, ballot appear in House Research Organization Focus Report No. 82-6, *Constitutional Amendments Proposed for November 2011 Ballot*, July 20, 2011.

**Prop. 1:** *Allowing surviving spouse of totally disabled veteran to receive homestead tax exemption*

FOR	572,066	82.9%
AGAINST	117,986	17.1%

**Prop. 2:** *Renewing authority for Texas Water Development Board bonds*

FOR	349,534	51.5%
AGAINST	328,834	48.5%

**Prop. 3:** *Renewing state bond authority to finance low-interest student loans*

FOR	373,752	54.5%
AGAINST	311,938	45.5%

**Prop. 4:** *Allowing counties to participate in certain tax financing zones*

FOR	270,610	40.3%
AGAINST	401,381	59.7%

**Prop. 5:** *Allowing city and county interlocal contracts without tax sinking fund*

FOR	386,204	57.8%
AGAINST	282,046	42.2%

**Prop. 6:** *Distribution from Permanent School Fund to Available School Fund*

FOR	347,801	51.6%
AGAINST	326,639	48.4%

**Prop. 7:** *Authorizing districts in El Paso County to issue bonds for parks and recreational facilities*

FOR	317,206	48.3%
AGAINST	339,577	51.7%

**Prop. 8:** *Appraising open-space land for water stewardship*

FOR	311,427	47.0%
AGAINST	351,116	53.0%

**Prop. 9:** *Allowing pardon by the governor after successful deferred adjudication*

FOR	385,896	57.3%
AGAINST	287,312	42.7%

**Prop. 10:** *Lengthening period before county officials must resign to run for another office*

FOR	373,494	56.0%
AGAINST	293,917	44.0%

*Source: Secretary of State's Office*

# Property tax exemption for surviving spouses of certain service members

HJR 62 by C. Turner (Van de Putte)



## Background

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

Texas Constitution, Art. 8, sec. 1-b(j) allows the surviving spouse of a 100 percent or totally disabled veteran to inherit the deceased veteran's property tax exemption if the surviving spouse has not remarried and the property was the residence homestead of the surviving spouse when the disabled veteran died.

## Digest

Prop. 1 would amend Art. 8, sec. 1-b of the Texas Constitution to authorize the Legislature to grant the surviving spouse of a member of the armed services who was killed in action a property tax exemption of all or part of the surviving spouse's residence homestead if the surviving spouse had not remarried. The change would apply starting with tax year 2014.

Prop. 1 would allow the Legislature to provide that the exemption follow the surviving spouse to a new homestead. The exemption would be limited to the dollar amount of the exemption in the prior qualifying homestead and would end if the surviving spouse remarried.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a member of the armed services of the United States who is killed in action."

## Supporters say

Prop. 1 would allow for spouses of active duty service members who were killed in action to receive a property tax exemption for the total appraised value of the surviving spouse's residence homestead. Texas is a national leader in honoring the service and sacrifice of veterans and their families — not just with words, but with meaningful assistance. In this spirit, Prop. 1 would provide an exemption for the total appraised value of the surviving spouse's residence homestead.

Six years ago, Texans voted to amend the Constitution to grant veterans who were rated 100 percent disabled a complete property tax exemption. Last session, the voters extended that exemption to a veteran's surviving spouse to protect against sudden spikes in property taxes due. The Legislature should extend this same protection to the surviving spouses of military members killed in action.

Prop. 1 would provide real assistance to a surviving spouse who, after the awful shock of losing a husband or wife, must suddenly try to prepare for the future. According to the Texas comptroller, the average Texas homeowner pays about \$3,170 a year in property taxes. For many taxpayers, these taxes are due in a lump sum. The proposed amendment would provide real relief to surviving spouses in a time of need.

Under the proposed resolution, a surviving spouse would lose the property tax exemption upon remarriage because the exemption would be designed to help offset the loss of income the service member brought to the marriage. If and when a surviving spouse remarried, the assistance should no longer be needed. Prop. 1 would not provide an incentive against remarriage that skews marriage rates because it would apply only to a small number of surviving spouses.

Because the exemptions would apply to such a small group of people, they would not impose an economic burden on local governments or the state. According to the fiscal note for the enabling legislation,

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SB 163 by Van de Putte, such exemptions would cost the state only \$98,000 during fiscal 2014-15 in providing a total exemption.

Prop. 1 deliberately would not require that the surviving spouse already have a homestead in Texas at the time of the service member's death. This would allow military families who rent or live in on-base housing to benefit from the exemption if they later became homeowners.

## Opponents say

No one disagrees with granting benefits to the spouses of those who were killed in action, but Prop. 1 would reduce revenue available to local governments. If the Legislature continues to expand the groups of people who are awarded total property tax exemptions, local governments will need to raise property taxes on the groups that remain in order to stay revenue neutral.

Because Prop. 1 would not impose a time limit on the property tax exemption, a surviving spouse in some cases could receive an exemption for several decades, costing local taxing authorities hundreds of thousands of dollars. The length of time and cost attached to this proposition make it unlike existing inherited exemptions, including the school property tax homestead exemption that may be transferred from one spouse of advancing age to another.

The loss of the exemption upon remarriage also could, for some people, provide an economic incentive against remarrying.

The proposition would not include a value limit. Any property, regardless of value, would be exempted from property taxes as long as the property was the homestead of the surviving spouse who did not remarry. Widows and widowers of limited means are the only ones who need tax relief. Those wealthy enough to afford extravagant homes need no such protection from property taxes.

By adopting Prop. 1, Texas taxpayers might be required to support more than just Texas families because the homestead exemption would apply regardless of whether the property was the residence of the surviving spouse at the time of the service member's

death. This could create an incentive for out-of-state surviving spouses to purchase a homestead in Texas without any obligation to pay property taxes.

## Other opponents say

If the purpose of the proposition is to help surviving spouses deal with and recover from the loss of a spouse, the exemption should not be permanent. Instead, it should have a sunset provision, value threshold, or similar mechanism so that families who eventually recovered and could afford to pay property taxes did so.

## Notes

The enabling legislation, SB 163 by Van de Putte, will take effect January 1, 2014, if the voters approve Prop. 1. SB 163 would allow for a full property tax exemption of the homestead of the surviving spouse whose spouse was killed in action as a member of the armed forces. If the unmarried, surviving spouse subsequently moved to another qualifying homestead, the exemption would transfer in the amount equal to the exemption on the initial homestead property.

# Removing provisions for the State Medical Education Board

HJR 79 by Branch (Birdwell)

2

Proposition

## Background

In November 1952, Texas voters approved the addition of Art. 3, sec. 50a to the Constitution, requiring the Legislature to create a six-member State Medical Education Board and establish a State Medical Education Fund to provide grants, loans, or scholarships to students who wished to study medicine and agreed to practice in rural areas of Texas.

The enactment of HB 683 by Heatly in 1973 created the State Rural Medical Education Board. Its purpose was to provide financial aid to medical students agreeing to practice medicine in rural areas of Texas. Loans were made at 5 percent interest, and a recipient would receive credit for one-fifth of the principal and interest for each year of rural practice after graduation. The board could sue for the balance due on a contract and could contract with state-licensed insurance companies for issuance of life insurance on the student borrower.

Subsequent legislatures made other changes to limit medical schools at which students could use grants, loans, or scholarships provided by the board and to expand the definition of a “rural area.”

In 1987, the general appropriations act for fiscal 1988-89 included a rider stating the Legislature’s intent to transfer the duties of the State Rural Medical Education Board to the Texas Higher Education Coordinating Board. However, the medical education board declined to enter into an interagency contract with the coordinating board. Atty. Gen. Opinion, No. JM-1018, February 17, 1989, said the rider was unconstitutional and that the functions and duties of the State Rural Medical Education Board could not be transferred to the coordinating board by means of a rider.

In 1989, SB 457 by C. Parker removed “rural” from the board’s name and administratively attached the board to the coordinating board. According to the coordinating board’s self-evaluation report to the Sunset Advisory Commission in 2001, the State Medical

Education Board’s agency status was dissolved in 1989. The administrative attachment also marked the end of state appropriations to the board, which was left to service outstanding loans.

## Digest

Prop. 2 would remove constitutional authorization for the State Medical Education Board and the State Medical Education Fund by repealing Texas Constitution, Art. 3, sec. 50a.

The ballot proposal reads: “The constitutional amendment eliminating an obsolete requirement for a State Medical Education Board and a State Medical Education Fund, neither of which is operational.”

## Supporters say

Prop. 2 would repeal the constitutional language authorizing the inactive State Medical Education Board and State Medical Education Fund. This effort to help prospective physicians fund their education in return for promising to practice in rural counties was ineffective in its day, and these functions have been transferred to the more efficient Texas Higher Education Coordinating Board and the Office of the Attorney General.

The Legislative Budget Board (LBB) and the Sunset Advisory Commission recommended decades ago that the medical education board be abolished. The enactment by the 83rd Legislature of HB 1061 by Branch already has eliminated references to these defunct entities in state law, and Prop. 2 would follow suit by removing constitutional authorization for the board and the fund.

Throughout its history, the board has had a troubled existence and an unimpressive track record. In 1987, the LBB reported that only 11 percent of loan recipients since 1973 were practicing in rural Texas counties, and a mere 14 percent of those were in medically underserved

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areas. Due to the program's ineffectiveness, no new loans have been issued since January 1988. That same year, the Sunset commission recommended that the medical education board be abolished. The board has since finished servicing existing loans and has turned all remaining loans over to the attorney general for default collection. Many of the loans issued by the State Medical Education Board have gone into default and have been deemed uncollectable, leaving taxpayers on the hook.

In its 2001 self-evaluation report to the Sunset commission, the coordinating board cited two reasons for the low percentage of participants fulfilling their service obligations. One issue involved allowing participation by physicians trained outside the United States, many of whom were unable to secure a Texas medical license. Another reason cited was the fact that by the time professional school is completed, an individual may have married, had children, or experienced other life-changing circumstances. The prospect of practicing medicine in a more lucrative urban practice likely persuaded many in the program to move to big cities rather than fulfilling the service obligation to practice medicine in a county in Texas with a population less than 30,000.

Lawmakers and the coordinating board now use loan repayment programs instead of direct loans to medical students as their primary method of attracting physicians to practice in rural Texas. These programs help already licensed physicians retire their student-loan debt through annual payments in return for practicing in medically underserved parts of the state. Unlike the Texas Medical Education Board's loan-issuance programs, which often paid to educate students who never honored their agreement to practice in rural Texas, loan repayment programs have the advantage of paying for services already performed.

## Opponents say

No apparent opposition.

## Notes

A related bill enacted by the 83rd Legislature, HB 1061 by Branch, repeals the statutory authorization for the State Medical Education Board and the State Medical Education Fund.

# Allowing extension of exemption from inventory taxes for aircraft parts

HJR 133 by Harper-Brown, et al. (Deuell)

3

Proposition

## Background

Both the Texas Constitution and state statutes exempt from ad valorem taxation “freeport” property that is located in the state temporarily. Under Texas Constitution, Art. 8, sec. 1-j, to qualify for the exemption from inventory taxes, such goods, wares, merchandise, and other tangible personal property must have been:

- acquired in or imported into Texas;
- detained for assembly, storage, manufacturing, processing, or fabrication; and
- shipped out of Texas no later than 175 days after acquisition or importation.

Tax Code, sec. 11.251 provides the statutory framework for the freeport exemption and establishes processes for discounting such property from tax rolls.

## Digest

Prop. 3 would amend Art. 8, sec. 1-j of the Texas Constitution to authorize the governing body of a political subdivision to extend the date by which aircraft parts with a freeport exemption were required to be transported outside of the state. Eligible goods could be exempt from taxes up to 730 days after being imported into or acquired in the state. An extension would apply only to the adopting political subdivision.

If approved at the election, the amendment would take effect beginning in tax year 2014.

The ballot proposal reads: “The constitutional amendment to authorize a political subdivision of this state to extend the number of days that aircraft parts that are exempt from ad valorem taxation due to their location in this state for a temporary period may be located in this state for purposes of qualifying for the tax exemption.”

## Supporters say

Prop. 3, in combination with its enabling legislation, HB 3121 by Harper-Brown, would provide the constitutional authorization necessary to allow a political subdivision to extend the so-called “freeport” exemption from inventory taxes to 730 days (two years) for certain aircraft parts.

This measure, which would be applied entirely at the discretion of local taxing entities, would accommodate the particular nature of the specialized aircraft parts industry. Airplane parts are expensive and, when needed, must be shipped to a customer with haste. However, because requests for special parts are rare, inventory often sits on the shelves prior to sale for longer than in other industries. It is not unusual for airplane parts to sit in a warehouse for 600 days.

Texas is one of a small number of states that assesses a property tax on inventory. Certain freeport goods that are in the state for no longer than 175 days and that meet other criteria under current law are exempt from this tax. While aircraft parts are granted a freeport exemption under current law, the maximum period is of insufficient duration to benefit many airplane part manufacturers. For example, Aviall, which is a provider of aircraft parts and related support services located in Irving, is considering opening a second warehouse in Texas or another state. Extending the freeport exemption to two years could be a determining factor in Aviall’s decision about whether to locate their new warehouse in Texas.

The proposed tax exemption has all the major elements often considered by the Legislature in deciding whether to grant similar tax exemptions — it would promote economic development, it would have a proven positive impact, and it would be entirely at the option of the local government granting the exemption. Measuring proposed tax exemptions against these criteria provides a fair and uniform assessment of specific requests for tax relief.

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In addition, state education financing formulas ensure that any school district offering an extension would retain adequate funding.

## Opponents say

Prop. 3 would allow a political subdivision to extend a freeport exemption for a specific group selling goods for certain purposes. Singling out one group for a tax exemption, even for a meritorious purpose, raises issues of uniformity in taxation. If the extension were authorized for aircraft parts, similar industries that make specialized parts and accumulate a great deal of idle inventory would be justified in seeking a similar extension. The Legislature would have difficulty giving similar industries a principled explanation as to why they should not be granted the same extension as those in the business of selling aircraft parts.

Prop. 3 and its enabling legislation, HB 3121 by Harper-Brown, would have an unknown fiscal impact on the state by reducing revenue available for education funding, as well as for local governments. The Legislature should not contemplate measures that reduce funds available for public education and other important priorities when it has not maintained funding levels to keep pace with a growing population and needs for services.

## Other opponents say

Instead of granting extensions to the freeport exemption, the Legislature should consider eliminating the antiquated and punitive inventory tax. Texas is one of the few states that still assesses an inventory tax, a fact that places businesses in the state at a competitive disadvantage. Texas could greatly enhance its appeal to many inventory-heavy businesses by repealing this outdated and unnecessary tax.

## Notes

According to the Legislative Budget Board, the bill would create an unknown cost to the state through the operation of the school finance formula.

HB 3121 by Harper-Brown, the enabling legislation enacted by the 83rd Legislature during its 2013 regular session, would provide the statutory authority necessary for a political subdivision to extend to 730 days the date by which freeport goods that were aircraft parts had to be transported outside the state after the property was imported or acquired.

# Tax exemption for disabled veterans whose homesteads were donated by a charity

HJR 24 by Perry (Van de Putte)

4

Proposition

## Background

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

Texas Constitution, Art. 8, sec. 1-b(j) allows the surviving spouse of a 100 percent or totally disabled veteran to inherit the deceased veteran's property tax exemption if the surviving spouse has not remarried and the property was the residence homestead of the surviving spouse when the disabled veteran died.

## Digest

Prop. 4 would amend Art. 8, sec. 1-b of the Texas Constitution to allow the Legislature to exempt from property taxation a percentage of the market value of the residence homestead of a partially disabled veteran or that person's surviving spouse that was equal to the disabled veteran's percentage of disability if the residence homestead was donated by a charitable organization at no cost to the veteran.

The proposed amendment would not affect whether a qualified disabled veteran was entitled to another exemption for veterans that was granted in the Constitution for which that person might qualify.

The ballot proposal reads: "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."

## Supporters say

Prop. 4, in conjunction with the enabling legislation, HB 97 by Perry, would help certain disabled veterans injured during their military service to stay in homes that were donated to them by charitable organizations. The service injuries suffered by partially disabled veterans often limit their job opportunities, and the tax liability on a donated home could become an expensive burden. This proposition would help ensure that homes donated by builders and charitable organizations did not become a burden to the recipient because of the property taxes associated with these gifts.

Donated homes are a tangible way to help returning disabled veterans transition to civilian life, and this proposed amendment would allow legislation designed to ensure that veterans could remain in those homes. Disabled veterans who have received homes as charitable gifts also may gain the freedom to pursue an education, find a suitable job, and start a business.

The proposal is tailored to apply only to veterans who were disabled during their military service and who received a home from a charitable organization. This tax exemption would cost local governments very little and, regardless of cost, would be appropriate considering the sacrifices made by these veterans.

## Opponents say

Prop. 4 would place Texas further down the slippery slope of carving out property-tax exemptions for certain favored groups. Singling out one group for a tax exemption, regardless of how deserving that group may be, raises issues of uniformity in taxation and could open the door for continued erosion of the local tax base. If the Legislature continues to expand the groups of people who receive property tax exemptions, local governments will need to collect more tax revenue from the remaining taxpayers in order to raise the same amount of money.

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## **Other opponents say**

If the purpose of the proposition is to help disabled veterans, it should have a sunset provision, value threshold, or similar mechanism so those families who eventually adjusted and could afford to pay property taxes did so.

## **Notes**

The enabling legislation, HB 97 by Perry, will take effect January 1, 2014, if the voters approve Prop. 4. HB 97 would allow for a homestead exemption from property taxes equal to the veteran's degree of disability if the residence homestead was donated to the disabled veteran by a charitable organization at no cost to the veteran.

# Authorizing a reverse mortgage loan for the purchase of homestead property

SJR 18 by Carona (Villarreal)



## Background

Texas Constitution, Art. 16, sec. 50 allows homeowners to obtain loans and other extensions of credit based on the equity in their residence homesteads. This includes reverse mortgages, which the Constitution limits to homeowners who are or whose spouses are at least 62 years old.

A reverse mortgage is a loan advanced on the basis of equity in the borrower's homestead, which is the difference between a home's market value and what is owed on the home. These advances may be provided in a lump sum or in monthly installments or structured as a line of credit. Repayment of reverse mortgage loans does not begin until the homeowner transfers the home to another owner, passes away, or no longer occupies the property. At that time, the home often is sold, and the proceeds are used to pay off the loan.

The U.S. Department of Housing and Urban Development (HUD) oversees a Home Equity Conversion Mortgage (HECM) for Purchase program, which allows seniors age 62 or older to purchase a new principal residence using loan proceeds from a reverse mortgage. The program allows qualifying seniors to purchase a new principal residence and obtain a reverse mortgage with a single transaction.

## Digest

Prop. 5 would amend Art. 16, sec. 50 of the Texas Constitution to allow a reverse mortgage for the purchase of a residence homestead. The borrower would have to occupy the property as a principal residence by a date specified in the contract closing the reverse mortgage. The proposal would require a prospective reverse mortgage borrower and the borrower's spouse to complete financial counseling before using a reverse mortgage for a home purchase.

It also would require a lender to provide to a prospective borrower a disclosure with a detailed description of borrower behavior that could lead

to foreclosure, including, among other things, the borrower's requirement to pay property taxes. Both the lender and borrower would have to sign the disclosure.

The ballot proposal reads: "The constitutional amendment to authorize the making of a reverse mortgage loan for the purchase of homestead property and to amend lender disclosures and other requirements in connection with a reverse mortgage loan."

## Supporters say

Prop. 5 would allow seniors to make an informed decision to use a reverse mortgage to purchase a home. Giving seniors this option would allow them to take advantage of HUD's HECM program to buy a home closer to family members, downsize to a smaller home, or upgrade to a home fitted and designed to meet the needs of aging householders. Virtually all reverse mortgages are issued as HECM and thereby are subject to oversight and regulation from HUD, the agency responsible for monitoring market practices and changing rules to guard against common abuses observed in the marketplace.

While the Texas Constitution does not specifically forbid using reverse mortgages for home purchases, HUD has affirmed that it would not make these loans available to Texans due to the lack of an express authorization. As such, Texas is the only state in which seniors cannot get reverse mortgages for home purchases. In order to obtain a reverse mortgage for a home purchase under current law, seniors have to purchase a home with a conventional mortgage and then take out a reverse mortgage on equity in the new home. This two-step process is cumbersome and costly.

Prop. 5 would allow Texas seniors to combine these steps into a single transaction, thereby saving money on closing costs and allowing them to move into a new home without a mortgage payment. While it is prudent to avoid accumulating unnecessary debt, it is important to select the loan product most appropriate to the purpose when borrowing turns out to be the best

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option. Other forms of home equity loans could require repayment to begin immediately, giving the consumer fewer protections against foreclosure than those afforded by reverse mortgages. Also, consumers could use credit cards, but these typically carry a much higher interest rate than reverse mortgages, with the potential for higher fees and damaging impacts on credit scores if the consumer cannot make a payment every month.

Prop. 5 would maintain extensive consumer protections established in current law governing reverse mortgages, and it would extend these protections to any senior considering a reverse mortgage for a home purchase. In addition, it would ensure that borrowers considering a reverse mortgage received a detailed disclosure that described the borrower's obligations upon closing and ways in which foreclosure could occur. The disclosure language would be detailed and specific to ensure that potential borrowers were well informed about their ongoing duty to pay property taxes and additional housing costs — dispelling potential misunderstandings about what payments are necessary under a reverse mortgage.

While it is possible for interest charges eventually to exceed an owner's equity in the home, the reverse mortgage does not become due until the house is vacated or upon death of the mortgagees. In the latter case, the debt is not necessarily passed on to next of kin. Anyone who stood to inherit the property could walk away from the debt and leave the property to the bank.

## Opponents say

Texas was slow to embrace reverse mortgages as a result of the long history of skepticism toward home equity lending in this state. Many argue that the state's sharp restrictions on home equity lending sheltered Texans from much of the fallout from the 2008 financial crisis. Loosening these restrictions by allowing reverse mortgages for the purchase of homes could make Texans more vulnerable to future financial difficulties.

Prop. 5 could expand the demand for a type of loan product that often results in significant interest charges and can leave senior homeowners with greater debt than equity in their homes. In addition, there have been reports of reverse mortgages being used in a predatory manner and lenders providing incomplete or inaccurate information to potential clients. Expanding opportunities for complicated loan products that could result in people going underwater on their home loans could have negative consequences in the long run.

# Creating funds to assist in the financing of priority projects in the state water plan

SJR 1 by Williams (Pitts, Ritter)



## Background

The state water plan is designed to meet water needs during times of drought. Its purpose is to ensure that cities, rural communities, farms, ranches, businesses, and industries have enough water during a repeat of 1950s drought conditions. In Texas, each of 16 regional water-planning groups is responsible for creating a 50-year regional plan and refining it every five years so conditions can be monitored and assumptions reassessed. The Texas Water Development Board (TWDB) uses information from regional plans to develop the state plan, which includes policy recommendations to the Legislature.

The 2012 state water plan includes the cost of water management strategies and estimates of state financial assistance required to implement them. Regional water-planning groups recommended water management strategies that would account for another 9 million acre-feet of water (an acre-foot of water is 325,851 gallons) by 2060 if all strategies were implemented, including 562 unique water supply projects. About 34 percent of the water would come from conservation and reuse, about 17 percent from new major reservoirs, about 34 percent from other surface water supplies, and about 15 percent from various other sources.

Among TWDB's recommendations to the Legislature to facilitate implementation of the 2012 state water plan is the development of a long-term, affordable, and sustainable method to provide financing assistance to implement water supply projects.

Existing state funding for water management strategies within the state water plan relies primarily on general obligation bond issuances that finance loans to local and regional water suppliers. On November 8, 2011, voters approved a constitutional amendment (Prop. 2) authorizing additional general obligation bond authority not to exceed \$6 billion at any time. With this authority, the TWDB may issue additional bonds through ongoing bond authority, allowing it to offer

access to financing on a long-term basis. Bonds issued by the TWDB are either self-supporting, with debt service that is met through loan repayments, or non-self-supporting, which requires general revenue to assist with debt service payments, as directed by the Legislature through the appropriations process.

## Digest

Prop. 6 would amend the Texas Constitution to create the State Water Implementation Fund for Texas (SWIFT) and the State Water Implementation Revenue Fund for Texas (SWIRFT) as special funds in the state treasury outside the general revenue fund.

Money in the funds would be administered, without further appropriation, by the Texas Water Development Board (TWDB) for the purpose of implementing the state water plan, with oversight by the Legislative Budget Board.

Money in the funds and any money appropriated from the Economic Stabilization Fund, also known as the "Rainy Day Fund," would be dedicated for the purpose of complying with constitutional provisions that exempt constitutionally dedicated funds from counting toward the spending cap.

The SWIFT and the SWIRFT would consist of:

- money transferred or deposited by law to the credit of the funds, including money from any source transferred or deposited at the TWDB's discretion;
- the proceeds of any state fee or tax that by statute was dedicated for deposit to the credit of the funds;
- any other revenue that the Legislature by statute dedicated for deposit to the credit of the funds; and
- investment earnings and interest earned on amounts credited to the funds.

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In addition, money would be transferred to the SWIFT under a bond enhancement agreement, and proceeds from the sale of bonds, including revenue bonds, would provide money for the SWIRFT. The SWIRFT also would consist of money disbursed to the fund from the SWIFT.

The Legislature, by general law, could allow the TWDB to enter into bond enhancement agreements to provide additional security for general obligation bonds or revenue bonds, the proceeds of which would be used to finance state water plan projects. The TWDB could also provide direct loans for water projects in the state water plan.

The Legislature, by general law, could allow the TWDB to issue bonds and enter into related credit agreements payable from all revenues available to the SWIRFT.

Any bond enhancement agreements or obligations would have to be payable solely from the SWIFT or from amounts in the SWIRFT and would not be constitutional state debt payable from the general revenue of the state.

The TWDB would be required to set aside amounts sufficient to make payments that became due that fiscal year.

A statement of legislative intent in Prop. 6 holds that the proposed amendment is intended only to establish a basic framework and not to be a comprehensive treatment of the SWIFT or the SWIRFT. The Legislature would have full power to delegate duties, responsibilities, functions, and authority to the TWDB as necessary.

The ballot proposal reads: “The constitutional amendment providing for the creation of the State Water Implementation Fund for Texas and the State Water Implementation Revenue Fund for Texas to assist in the financing of priority projects in the state water plan to ensure the availability of adequate water resources.”

## Supporters say

Prop. 6 would constitutionally create two funds for the implementation of water projects in the state water plan. It would work together with two bills recently enacted by the 83rd Legislature — HB 4 by Ritter and HB 1025 by Pitts. HB 4, the enabling legislation, contains the mechanics of the funds, including the prioritization of projects that would receive funding. HB 1025 would make the appropriation from the Rainy Day Fund for the initial capitalization of the SWIFT, contingent on voter approval of the proposed amendment.

Prop. 6 would constitutionally create the SWIFT to assist in the financing of priority projects in the state water plan. The SWIFT would serve as a water infrastructure bank to enhance TWDB’s financing capabilities. The fund would serve as a source of revenue for debt service payments in place of general revenue or as security for principal and interest payments on general obligation bonds or revenue bonds to finance or refinance projects included in the state water plan. It also would provide a revolving cash flow mechanism that would recycle money back to the fund to protect the corpus. Money in the fund would be available immediately to provide support for low-interest loans, longer loan repayment terms, incremental repurchase terms for projects in which the state owned an interest, and deferral of loan payments. Prop. 6 also would constitutionally create the SWIRFT to manage revenue bonds issued by the TWDB and supported by the SWIFT.

These funds would be special funds created inside the treasury but outside the general revenue fund, without further appropriation, but with oversight from the Legislative Budget Board. The proposed amendment would ensure that establishing these funds did not create state debt by providing that any bond enhancement agreement or obligation was payable solely from the two funds and would not be constitutional state debt payable from the general revenue of the state. Also, money in the funds would be constitutionally dedicated. Any money appropriated from the Rainy Day Fund also would be dedicated for the purpose of complying with constitutional provisions that exempt constitutionally dedicated funds from counting toward the spending cap.

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According to TWDB, critical water shortages will increase during the next 50 years, requiring a long-term, reliable funding source to finance water and wastewater projects. The state water plan has identified projects intended to help avoid catastrophic conditions during a drought. However, rising costs for local water providers, the capital-intensive investment required to implement large-scale projects, and the financial constraints on some communities necessitate a dedicated source of funding to help develop those projects. The capital cost to design, build, or implement the recommended strategies and projects between now and 2060 will be \$53 billion, according to TWDB, and municipal water providers are expected to need nearly \$27 billion in state financial assistance to implement these strategies. Any delay in funding would put long-term planning of water projects in jeopardy and increase the overall cost to customers.

Unless the state fully implements its state water plan, 50 percent of Texans by 2060 will lack an adequate supply of water during times of drought. Without an adequate supply of clean, affordable water, the state's economy and public health would be irrevocably harmed. Water shortages during drought conditions cost Texas business and workers billions of dollars in lost income every year. If Texas does not implement the state water plan, those losses could grow to \$116 billion annually. Until the state identifies and dedicates a permanent source of revenue to pay for the water infrastructure projects outlined in the state water plan, the future of the state's water supply will be in jeopardy.

The Rainy Day Fund would provide an ideal source of funding for the initial capitalization of the SWIFT. This investment would seed a revolving fund that could grow with only limited need for further state allocations. A one-time, \$2 billion capitalization of the SWIFT could be used in conjunction with the TWDB's existing \$6 billion evergreen bonding authorization to provide a meaningful funding solution for larger Texas water projects and financing for many of Texas' smaller communities. Without the initial capitalization of \$2 billion from the Rainy Day Fund, revenue would have to be raised elsewhere, such as with a fee or tax.

Providing a funding program for water infrastructure to ensure an adequate water supply would be an appropriate use of the Rainy Day Fund. It was created

as a savings account from which the Legislature may appropriate funds in times of emergency, and the state is on the cusp of a drought worse than the 1950s drought of record.

Use of the Rainy Day Fund would not jeopardize the state's credit rating or ability to handle an emergency. The Rainy Day Fund is expected to reach \$11.8 billion by the end of fiscal 2015, according to the comptroller's January 2013 Biennial Revenue Estimate. A transfer of \$2 billion from the fund would leave a comfortable balance for handling an emergency while preserving the state's superior credit rating. Given that the boom in the oil and gas sector shows no sign of slowing, any funds appropriated from the Rainy Day Fund would be replenished quickly. In addition, spending down a portion of the fund to support urgently needed water projects would help prevent the eventual spillover of Rainy Day funds into general revenue for spending on less pressing priorities.

Many entities that have the credit rating to finance projects on their own typically are not interested in using state financial assistance that is currently available due to the administrative burden and additional oversight involved. Financing projects through the SWIFT, by contrast, would offer several loan enhancements that would make financial sense to such entities, such as a lower loan rate and a deferral of principal and interest for a specified amount of time. This would encourage development and build-up of projects ahead of the critical need, which would facilitate the timely implementation of the state water plan.

## Opponents say

If Prop. 6 won voter approval, the SWIFT would be capitalized initially by a one-time, \$2 billion transfer from the Rainy Day Fund, which would not be an appropriate source of funding. Taking \$2 billion out of the fund could result in a credit downgrade and curtail the state's ability to deal with a revenue shortfall, a natural disaster, or a school finance case decision that required additional state spending on public education. The provision in Prop 6 that would constitutionally dedicate the money in the funds, including money used to capitalize the funds, would allow the Legislature to circumvent the constitutional spending limit on undedicated funds.

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Texas has a Moody's Aaa bond rating, which allows tens of millions of dollars a year in lower borrowing costs for the state. Texas needs to keep sufficient revenue in the Rainy Day Fund, and this large an appropriation out of the fund could put at risk the state's ability to maintain its Aaa bond rating and could imperil what has become a major state asset.

The comptroller estimates that the Rainy Day Fund will reach \$11.8 billion by the end of fiscal 2015. However, deposits into the Rainy Day Fund have been historically hard to estimate, and the last seven estimates have been off by an average of 166 percent, with the closest estimate off by 23 percent. The Rainy Day Fund primarily is funded by oil and natural gas production tax revenue. The oil and gas industry is both cyclical and volatile, and it would not be responsible for the state to act in a way that assumes the fund will continue to grow at its current rate.

Funding another water lending program would be unnecessary and an inefficient use of Rainy Day funds because entities needing water infrastructure project funding already have tremendous access to capital. TWDB has several lending programs for water infrastructure through bonding programs that use the state's superior credit rating to guarantee water debt, enabling TWDB to offer inexpensive financing on a long-term basis. TWDB recently received approval for ongoing general obligation bond authority not to exceed \$6 billion at any time. This financing is available even though many entities that are asking for help with projects in the state water plan already have a sufficient credit rating to complete a project without financial assistance from the state. Spending Rainy Day funds for infrastructure projects that already have access to capital would be inappropriate, given that there are several other critical needs in the state with limited funding options.

## Notes

Prop. 6 would work together with two bills recently enacted by the 83rd Legislature — HB 4 by Ritter and HB 1025 by Pitts. HB 4, the enabling legislation, contains the mechanics of the funds, including the prioritization of projects that would receive funding. HB 1025 would make the appropriation from the Rainy Day Fund for the initial capitalization of the SWIFT. These provisions of HB 4 and HB 1025 are contingent on voter approval of Prop. 6.

# Allowing home-rule cities to decide how to fill vacant elected seats



HJR 87 by Muñoz (Hinojosa)

## Background

Art. 11, sec. 11 of the Texas Constitution prohibits a city with terms of office between two and four years from filling vacancies by appointment. Instead, cities must fill vacancies by majority vote during a special election held within 120 days after the start of the vacancy.

A home-rule municipality is a city with a population of more than 5,000 that has adopted a home-rule charter.

## Digest

Prop. 7 would amend Texas Constitution, Art. 11, sec. 11 to allow a home-rule city to specify through its charter the procedure to fill a vacancy in city government that had an unexpired term of 12 months or less.

The ballot proposal reads: “The constitutional amendment authorizing a home-rule municipality to provide in its charter the procedure to fill a vacancy on its governing body for which the unexpired term is 12 months or less.”

## Supporters say

By allowing home-rule cities to specify through their charters how they will fill certain vacancies with unexpired terms, Prop. 7 could allow some cities to avoid certain expensive special elections currently required under the Constitution, thus cutting taxpayer costs while preserving accountability. Taxpayers sometimes must unnecessarily pay tens of thousands of dollars to hold special elections only a few months before a regular election. Candidates also must pay for the cost of both a special election campaign and a regular election campaign in close proximity. The proposed amendment, while allowing cities to avoid such a process, would nevertheless preserve democratic

accountability because cities still would have to hold elections as usual after the expiration of an appointed official’s term.

Citizens of home-rule cities should be able to decide through their charters how they want to fill vacancies. A number of the state’s roughly 360 home-rule cities have already voted to amend their charters to allow appointment to fill short-term vacancies, but the Constitution prohibits them from implementing those amendments.

## Opponents say

The cost of special elections is a small price to pay to ensure accountability in city government. Voting and elections are essential functions of government and the best way to ensure democratic accountability. Prop. 7 could increase the opportunity for corruption in local government by allowing city officials to avoid elections and appoint political allies.

## Notes

The enabling legislation for HJR 87, HB 1372 by Muñoz, will take effect if voters approve Prop. 7. HB 1372 would allow home-rule cities to choose a procedure by charter or charter amendment for filling a city government vacancy with an unexpired term of 12 months or less.

# 8

Proposition

## Repealing the provision authorizing a hospital district in Hidalgo County

HJR 147 by Guerra (Hinojosa); SJR 54 by Hinojosa (Guerra)

### Background

Texas voters in 1960 approved a constitutional amendment that authorized the Legislature to create special hospital districts in certain counties, including one in Hidalgo County at a maximum tax rate of 10 cents per \$100 valuation of taxable property value (Art. 9, sec. 7).

Two years later, voters approved the addition of Art. 9, sec. 9 to the Texas Constitution, which allows the Legislature to provide for the creation of hospital districts composed of one or more counties, or all or any part of one or more counties, at a maximum tax rate of 75 cents.

### Digest

Prop. 8 would repeal Art. 9, sec. 7 of the Texas Constitution, which authorizes the creation of a hospital district in Hidalgo County and authorizes a maximum tax rate of 10 cents per \$100 valuation of taxable property for the hospital district.

The ballot proposal reads: “The constitutional amendment repealing Section 7, Article IX, Texas Constitution, which relates to the creation of a hospital district in Hidalgo County.”

### Supporters say

Prop. 8 would remove a provision in the Texas Constitution that limits the ability of Hidalgo County to create and operate a sustainable hospital district. Art. 9, sec. 7 sets the maximum tax rate for the district in Hidalgo County at 10 cents per \$100 valuation of taxable property value. This rate is far lower than the rate available to other Texas counties under Art. 9, sec. 9, which authorizes the creation of hospital districts at a maximum tax rate of 75 cents. The proposed amendment would remove this outdated provision from

the Constitution, allowing Hidalgo County to create a hospital district under the more favorable conditions available to other counties.

Hidalgo is the largest county in Texas without a hospital district and the only one in the state required to have a maximum tax rate of 10 cents per \$100 property valuation for a hospital district. It also has one of the lowest tax bases per capita, making it difficult to raise sufficient money at the maximum tax rate.

Other Texas counties have shown the ability to operate successful hospital districts with tax rates that range on average between 20 and 40 cents per \$100 property valuation. Prop. 8 would allow Hidalgo County, with voter approval, to create a district capable of serving a community with a high rate of uninsured residents, making health care more affordable, and strengthening the region’s ability to draw federal funds to pay for emergency care for the poor.

Art. 9, sec. 9 of the Texas Constitution ended the need to adopt a separate constitutional amendment each time a local government wished to establish a hospital district. Prop. 8 would afford Hidalgo County the same taxing rate range that other counties enjoy for their hospital districts.

The 83rd Legislature enacted HB 3793 by Coleman, which includes procedures for Hidalgo County commissioners and voters to create a hospital district with a maximum tax rate of 75 cents per \$100 property valuation. The proposed amendment would allow local officials and voters to take advantage of this new law to create a sorely needed hospital district.

### Opponents say

Prop. 8 could open the door to an increase in taxes for Hidalgo County property owners. The new tax rate for a hospital district in Hidalgo County could be set as high as 75 cents per \$100 property valuation.

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The proliferation of hospital and other special-purpose districts has had the undesirable consequence of fragmenting local government and increasing its administrative complexity. This can result in taxpayer confusion about how their tax dollars are being spent. A better solution would be to remove constitutional limitations on the taxing power of counties and cities.

## Notes

On June 28, the secretary of state, in Election Law Opinion JS-1, concluded that the identical propositions in HJR 147 and SJR 54 will be presented together on the ballot as a single proposition. The two proposed constitutional amendments will be identified as “HJR 147 (SJR 54)” in all notices to the public and other official documentation.

HB 3793 by Coleman, which makes numerous changes to the powers, duties, and services of entities serving counties, includes provisions for Hidalgo County commissioners and voters to create a hospital district with a maximum tax rate of 75 cents per \$100 property valuation. The bill takes effect September 1.

# Expanding the State Commission on Judicial Conduct's sanctioning authority

SJR 42 by Huffman (Dutton)

## Background

Texas Constitution, Art. 5, sec. 1-a (2) establishes the State Commission on Judicial Conduct, which investigates allegations of misconduct against Texas judges. It may assess sanctions against judges if it finds willful or persistent misconduct or recommend removal or retirement for serious misconduct or incapacity.

Under Art. 5, sec. 1-a (8), after its investigation, the commission has discretion to issue a private or public admonition, warning, or reprimand to a judge, as well as to require that the judge obtain additional training or education. If the commission deems it necessary, it may order formal hearings concerning the public censure, removal, or retirement of a judge or justice. The commission also may request that the Supreme Court appoint certain judges or justices as masters to hear, take evidence, and report to the commission in these cases. If, after a formal hearing or having considered a report from a master, the commission finds good cause, the commission "shall issue an order of public censure or it shall recommend to a review tribunal the removal or retirement" of the judge or justice.

The commission and its proceedings are governed by Government Code, ch. 33, along with the Procedural Rules for the Removal or Retirement of Judges and the Code of Judicial Conduct, both of which are promulgated by the Texas Supreme Court.

## Digest

Prop. 9 would amend Art. 5, sec. 1-a of the Texas Constitution to expand the actions that the State Commission on Judicial Conduct could take after formal proceedings into judicial misconduct or after considering the record and report of a master appointed to look into judicial misconduct. In addition to its current authority after a formal hearing to issue a public censure or recommend removal or retirement of a judge, the commission could issue a public admonition, warning, or reprimand or require that the judge or justice obtain training or education.

The change would take effect January 1, 2014, and would apply only to formal proceedings instituted by the commission on or after that date.

The ballot proposal reads: "The constitutional amendment relating to expanding the types of sanctions that may be assessed against a judge or justice following a formal proceeding instituted by the State Commission on Judicial Conduct."

## Supporters say

Prop. 9 would ensure that the State Commission on Judicial Conduct had adequate tools to respond to allegations of alleged judicial misconduct investigated by the commission through formal, public hearings. This would allow the commission to discipline judges appropriately after all types of investigations into judicial misconduct.

Currently, if the commission opts to hold a formal proceeding about a complaint of judicial misconduct its options are limited to public censure or recommending the removal or retirement of the judge. By contrast, in a proceeding into alleged judicial misconduct that does not involve a formal hearing, the commission is authorized by the Constitution to issue private or public admonitions, warnings, reprimands, or orders for additional training or education.

Problems with this structure came to light in 2010 after the commission held formal proceedings, then issued a public warning to a judge of the Texas Court of Criminal Appeals. The decision was appealed, and a Court of Review concluded that under the Texas Constitution and the Government Code the commission cannot assess sanctions following a formal proceeding. The ruling said that once formal proceedings had begun, the commission could only issue a censure, recommend removal or retirement, or dismiss the case. The public warning was overturned and the charges dismissed. The judge received no sanction.

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The limited available penalties after formal proceedings could deter the commission from pursuing this avenue even when it was appropriate, such as when a full, evidentiary investigation is needed for a complex case.

Prop. 9 would expand the options available to the commission after a formal proceeding to include an admonition, warning, reprimand, or requirement that the judge or justice obtain training or education. This would give the commission a full range of options, allowing its decision to hold a formal or informal hearing to be based on the individual case, not on the penalties or sanctions available. The commission would have discretion in choosing whether to pursue formal proceedings, so only allegations that merited a public avenue would be subject to such proceedings.

Public information about investigations into alleged judicial misconduct could help Texans accurately assess the judiciary and judges and whether the process was fair and effective. The availability of more information would promote transparency and help the public understand the commission's decisions. It could enhance confidence in the judiciary and judges.

If the commission needed more resources to handle a higher volume of formal proceedings, a request could be made through the appropriations process.

## Opponents say

Current constitutional provisions limiting the options available to the State Commission on Judicial Conduct after a formal proceeding into alleged judicial misconduct should not be expanded. Provisions restricting potential actions by the commission after a formal proceeding are appropriate because they help ensure that formal proceedings are used only in the most serious cases of alleged judicial misconduct. This helps protect the confidentiality of judges and shields them from public exposure resulting from low-level or unwarranted allegations and from those unhappy with the results of a case or from political opponents.

Under the proposed amendment, the use of formal proceedings could increase to include cases that warranted lower-level actions, such as admonitions and warnings, or cases that were unfair or unsubstantiated, which could diminish the public's confidence in the judiciary and unfairly harm individual judges. The commission could feel pressure from an accuser, the media, or the public to hold formal, public proceedings in cases that did not merit them.

Formal proceedings that expose all information — both supporting and refuting an allegation — to the media and the public could harm the judiciary. Exposure and debate over allegations that may turn out to be unsubstantiated or minor could taint the public's perception of a judge and the judiciary as a whole.

The commission might need additional resources to handle the increased number of formal proceedings following voter approval of Prop. 9.

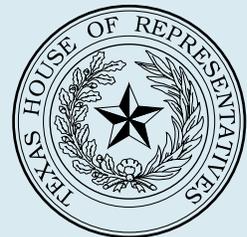
## Notes

During its regular session, the 83rd Legislature enacted the State Commission on Judicial Conduct Sunset bill — SB 209 by Huffman — which is the enabling legislation for Prop. 9. The provisions in SB 209 that would allow the commission to institute additional sanctions following a formal proceeding will not take effect without voter approval of the proposed amendment.

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