HOUSE RESEARCH ORGANIZATION *constitutional amendments*

Texas House of Representatives *September 5, 1997*

Fourteen amendments on November ballot

Texas voters have approved 365 amendments to the state Constitution since its adoption in 1876. Fourteen more amendments will be proposed at the general election on Tuesday, November 4, 1997.

Joint resolutions

The Legislature proposes constitutional amendments in joint resolutions that originate in either the House or the Senate. For example, Proposition 1 on the November ballot was proposed by Senate Joint Resolution (SJR) 50, which was introduced by Sen. Robert Duncan and sponsored in the House by Rep. Ron Clark. Constitution Art. 17, sec. 1, requires that a joint resolution be adopted by two-thirds vote of the membership of each house of the Legislature (100 votes in the House of Representatives; 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.

Contents

A joint resolution includes the text of the proposed constitutional amendment and specifies an election date. While a joint resolution may include more than one proposed amendment, each proposition on the November 1997 ballot was proposed by a separate resolution. 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, a proposition authorizing $300 million in general obligation bonds for college student loans was rejected at an August 10, 1991, election, and approved November 5, 1991, after being readopted by the Legislature and resubmitted in essentially the same form. Proposition 6 on the November 4, 1997, ballot, eliminating Texas Growth Fund restrictions on investments in South Africa, has the same intent as a proposal rejected by the voters in 1995.

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 proposed amendments on the basis that the ballot language was vague, incomplete or misleading, the courts generally have ruled that ballot language is sufficient if it identifies the proposed amendment for the voters. 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 sufficient time to provide notice to the voters and print the ballots. Most proposals are submitted at the November general elections held in odd-numbered years. However, this year the Legislature submitted, and voters approved, HJR 4, a proposal to raise the homestead exemption for school property taxes and allow transfer of the 65-and-over tax freeze to a new homestead, at an election held on August 9, 1997.

Publication

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 subsequent 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 prior to the election.

The secretary of state prepares the explanatory statement, which must be approved by the attorney general, and arranges for the required newspaper publication, often by contracting with the Texas Press Association. The average estimated total cost of publication twice in newspapers across the state is $71,000.

Implementing legislation

Some constitutional amendments are self-enacting and require no additional legislation to implement their provisions. Other amendments grant general authority to the Legislature to enact legislation in a particular area or within certain guidelines. These amendments require implementing legislation to fill in the details of how the amendment will operate. The Legislature sometimes adopts implementing legislation in advance, making the effective date of the legislation contingent on voter approval of a particular amendment. If the amendment is rejected by the voters, 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.

November 7, 1995, and August 9, 1997, Election Results: Constitutional Amendments

(Detailed analyses of the November 1995 propositions appear in House Research Organization Report No. 74-15, "Fourteen amendments on November ballot," September 15, 1995. The August 1997 proposition is analyzed in HRO Report No. 75-15, "Proposition 1: Raising homestead exemption, portability of senior tax freeze," June 19, 1997.)

November 7, 1995

Proposition 1: Authorizing $300 million in bonds for student higher education loans

FOR	474,502	64.7%
AGAINST	259,088	35.3%

*** Proposition 2**: Exempting Masonic lodges from property taxes

FOR	333,528	46.4%
AGAINST	385,133	53.6%

Proposition 3: Allowing farm and ranch land purchase bonds to be used for agricultural business loans

FOR	400,968	55.9%
AGAINST	315,880	44.1%

Proposition 4: Authorizing homestead protection exemption for owelty of partition and federal tax lien

FOR	368,486	51.4%
AGAINST	347,858	48.6%

Proposition 5: Increasing veterans' housing bond authorization by $500 million

FOR	428,484	59.7%
AGAINST	289,690	40.3%

Proposition 6: Allowing surviving spouse to retain over-65 homestead tax exemption

FOR	604,604	83.8%
AGAINST	116,888	16.2%

Proposition 7: Reducing by $250 million authorization for super collider bonds

FOR	558,729	78.2%
AGAINST	155,830	21.8%

Proposition 8: Abolishing constable office in Mills, Reagan and Roberts counties

FOR	521,933	76.6%
AGAINST	159,233	23.4%

*** Proposition 9:** Repealing South Africa investment disclosure requirement

FOR	324,813	45.6%
AGAINST	387,087	54.4%

Proposition 10: Abolishing office of state treasurer

FOR	495,181	69.4%
AGAINST	218,473	30.6%

Proposition 11: Allowing agricultural use valuation for wildlife management purposes

FOR	434,643	61.3%
AGAINST	274,736	38.7%

Proposition 12: Authorizing tax exemption for low-value personal property

FOR	495,144	69.9%
AGAINST	213,178	30.1%

*** Proposition 13**: Authorizing local-option property tax exemption for fishing boats and equipment

FOR	267,258	38.2%
AGAINST	432,378	61.8%

Proposition 14: Increasing property tax exemption for veterans

FOR	490,199	69.3%
AGAINST	217,443	30.7%

August 9, 1997

Proposition 1: Increasing homestead exemption; allowing transfer of 65-plus school tax freeze

FOR	693,522	93.8%
AGAINST	45,619	6.2%

**** Failed***

Source: Secretary of State's Office

Proposition 1 (SJR 36 by Duncan/Clark)

Permitting municipal judges to hold office in more than one city

Background

Art. 16, sec. 40, of the Texas Constitution generally prohibits persons who hold a civil office for compensation from holding another civil office. Exceptions include justices of the peace, county commissioners, and notaries public. Citizens may hold more than one nonelective office if this situation is determined to be of benefit to the state.

A recent attorney general opinion held that a municipal court judge holds a civil office for the purposes of Art. 16, sec. 40, and thus is prohibited from serving in two elected offices for compensation (Op. Tex. Att'y Gen. DM-428, 1996). However, the opinion added that a municipal court judge may hold two *appointed* judgeships so long as a factual inquiry determines that such an arrangement is of benefit to the state.

Digest

Proposition 1 would allow a person to hold the position of municipal court judge in more than one municipality at the same time.

The ballot proposal reads: "The constitutional amendment to allow a person who holds the office of municipal court judge to hold at the same time more than one civil office for which the person receives compensation."

Supporters say

Proposition 1 would put underused talents of skilled municipal court judges to good service by allowing them to serve more than one municipality. Texas law creates a municipal court in every incorporated municipality and requires training for the judges who serve in those courts. In many small municipalities, a full-time judge is not needed. A full-time judge who has completed the training and continuing education requirements can serve more than one city without any conflict of interest or time pressures. Texas is wasting its resources by keeping trained and experienced judges from serving more than one municipal court.

Proposition 1 would be especially beneficial to small, rural municipalities that often cannot afford to pay the salary for full-time judges. Municipal court judges in some areas may only need to hold court once or twice a month in order to hear all the cases pending in that municipality. Local city councils in cities that appoint their judges and the voters in cities that elect their judges could best determine whether they should choose as their municipal judge someone holding the same office in another city.

If a single judge could serve more than one municipality, the state would see a savings on training. Every municipal court judge, regardless of docket size, is required to attend 12 hours of continuing education each year. New non-attorney judges must receive 32 hours of training; new judges who are attorneys must receive 12 hours of training. The state provides the training and covers the expenses for judges to attend. Additionally, a judge serving in more than one city would likely be more familiar with court practices and procedures than a judge who only presides in court once or twice a month.

Allowing municipal court judges to serve more than one municipality would not create a conflict of interest. Each municipality is a separate jurisdiction, so judges serving more than one city would not hear the same case in different courts. Municipal judges have jurisdiction only over cases involving enforcement of city ordinances and other offenses punishable by fine only. Cases before municipal courts are relatively informal and do not require a defendant to have an attorney, although defendants may hire one on their own.

Proposition 1 would not allow judges to receive two salaries for the same position. Cities already pay municipal judges based on the time they put into the job. Many part-time judges have a law practice on the side to supplement their incomes. If a judge were to serve two municipalities, each city could determine the amount of time spent in its court and pay the judge accordingly. Each municipality that may be served by a judge could determine through the

appointive or elective process whether a judge serving another city lacked the time necessary to devote to the second position. Because of residency requirements, a municipal judge could not be elected in more than one city, but an elected municipal judge could serve a nearby municipality that appoints its judges without detracting from the duties of the elected judge.

Municipal court judges are in many ways similar to justices of the peace, listed in the Constitution as the first exception to the general prohibition on holding more than one elected office. Because both offices can be part-time in small communities, there is no good reason to allow justices of the peace to hold more than one office but prohibit a municipal court judge from doing the same thing. While the jurisdictions of each court differ, appeals from both courts may go to county courts.

Related legislation to Proposition 1 — SB 1173 by Duncan, which took effect May 5, 1997 — already allows *appointed* municipal court judges to serve in other municipalities as appointed judges by declaring that such an arrangement is of benefit to the state. SB 1173 fulfills the requirements of the attorney general's opinion for allowing appointed judges to serve in more than one city. Approval of Proposition 1 would both ensure that SB 1173 had firm constitutional grounding and extend to elected judges the same authority to hold more than one municipal judgeship. Placing the authority to hold more than one municipal court judgeship in the Constitution would also help prevent frivolous lawsuits attacking judgments of municipal court judges who serve more than one municipality. Art. 16, sec. 40, is already a long, detailed provision, and this simple clarification would be a small but necessary addition.

Proposition 1 would allow municipal court judges to hold that office in more than one municipality but would not allow municipal judges to hold other offices for compensation, as the ballot language suggests. The ballot language for Proposition 1 is somewhat broader than the actual amendment because while the scope of the proposal was narrowed during the legislative process, the ballot language was not changed. Nevertheless, Texas courts have held that ballot language need not be exact to sufficiently describe an amendment, so long as such language is not misleading. This oversight will not affect the validity of the amendment.

Opponents say

Proposition 1 would create an unnecessary exception to the long-standing constitutional prohibition against holding more than one paid public office. This prohibition dates from the first Texas Constitution to prevent people who have a paid public job from being paid for another public job. Municipal court judges are not paid an hourly wage, but a set salary precisely because most municipal courts are much more than part-time or off-hour jobs.

Current law (SB 1173) allows only *appointed* judges to serve more than one municipality, but Proposition 1 would extend the privilege to elected judges. A city council appointing a judge to a second court can determine if the judge has enough time to fulfill the duties of that second office. But the proposed constitutional amendment would go too far, allowing an *elected* judge to serve as a municipal judge in several cities at the same time. Allowing someone to be an appointed official in more than one city may be beneficial in some cases, but allowing an elected judge of one city to serve in other cities would set a bad precedent.

Nearly all of the more than 1,200 municipal judges in Texas are appointed. There is no need to approve a constitutional amendment that fixes a problem for only a few elected judges who might want to take a second judgeship in another city. This type of needless specificity is exactly why the Texas Constitution has become so cluttered with extraneous detail.

Proposition 1 could set a precedent for further constitutional tinkering to provide exceptions for other officers to hold more than one office. Allowing municipal court judges this exemption could open the floodgates to other "part-time" officials seeking constitutional exceptions to the single office rule.

The ballot language for Proposition 1 is misleading because it describes an earlier version of the proposed amendment that would have allowed municipal judges to hold *any* other paid civil office rather than just another municipal judgeship. This discrepacy between the ballot description and the actual proposal could misinform voters.

Proposition 2 (SJR 43 by Cain/Hilbert)

Limiting increases in homestead appraised values and allowing retroactive portability of 65-plus tax freeze

Background

School districts, cities, counties, junior college districts, and certain other special districts raise revenue by levying ad valorem taxes on the appraised value of property. Art 8, sec. 1-a, of the Texas Constitution provides that taxation be equal and uniform; sec. 1-b requires that all taxable property be taxed in proportion to its value.

The Property Tax Code, sec. 25.18, requires that property be appraised at least once every three years. There is no limit on valuation increases, which are based on the market value of the property. Appraisals in each county are made by county appraisal districts, which set the appraised property value used by all local taxing units in taxing property within their jurisdictions.

Art. 8, sec. 1-b, also provides that the amount of school property taxes on residential homesteads may not increase from the time homeowners reach age 65 until they cease to use the property for a homestead or make significant improvements. For example, a property owner paying school property taxes at a rate of $1.00 per $100 of valuation on a homestead with a taxable value of $50,000 at the time of turning 65 would never pay more than $500 in such taxes, regardless of any subsequent increase in value of the property (barring significant improvements) or in the school tax rate. The 65-and-over tax freeze may be passed on to a surviving spouse age 55 and over.

Proposition 1 (HJR 4), approved by the voters on August 9, 1997, amended the Constitution to permit a proportional amount of the 65-and-over school tax freeze to be transferred to another homestead. Elderly persons or their surviving spouse now may pay the same percentage of tax on a new homestead that they paid on their previous homestead. For example, a home with a taxable value of $85,000 taxed at a $1.40 rate would normally generate a tax bill of approximately $1,190. If the 65-and-over tax freeze took effect when the tax rate was $1.25 and the home's taxable value was $75,000, the tax bill would amount to only $937.50, roughly 79 percent of the normal tax assessment. A senior or qualified surviving spouse moving from this house to another home with a taxable value of $60,000 and the same $1.40 tax rate may apply that 79 percent figure to the normal tax bill of $840 and pay only $663.60 as the new frozen school property tax.

Digest

Proposition 2 would allow the Legislature to limit the maximum average annual increase in homestead appraisal valuations to 10 percent or more for each year since the most recent tax appraisal. Any limitation on appraisal increases would take effect on January 1, 1998, or on January 1 of the tax year following the first tax year that a property owner qualified for a homestead exemption, and would expire on January 1 of the first tax year that the owner or surviving spouse no longer qualified for the homestead exemption. SB 841 by Cain, the enabling legislation, would limit the appraised value of a homestead for any tax year to the lesser of either the property's market value or the last appraised value plus 10 percent per year since the appraisal plus the market value of any new improvements.

Proposition 2 also would authorize the Legislature to permit school districts to retroactively apply the 65-and-over tax freeze transfer. Upon voter approval of Proposition 2, SB 841 would permit school districts in counties with a population of less than 75,000 to retroactively apply the 65-and-over tax freeze transfer to a new homestead acquired on or after January 1, 1993. School boards would have until January 1, 1999, to agree to make the 65-and-over tax freeze retroactive, and the transferred freeze would apply only to future school taxes.

The ballot language reads: "The constitutional amendment to authorize the legislature to limit increases in the appraised value of residence homesteads for ad valorem taxation, and to permit a school district to calculate the school property tax freeze applicable to the residence homestead of an elderly person or the surviving spouse of an elderly

person in accordance with the law authorizing the transfer of the school property tax freeze to a different homestead regardless of whether that law was in effect at the time the person established the person's homestead."

Supporters say

Proposition 2 would provide much needed relief to homeowners who are suffering from excessively high property taxes. In fiscal 1996-1997, property taxes accounted for more than 85 percent of all local tax revenues; local sales taxes made up the balance. School district property tax revenues increased by 107 percent from 1984 to 1993, swelling from about $4.2 billion to $8.7 billion. While the state could attempt to provide relief from excessively high property taxes by limiting or capping tax rates, this approach would not prevent the problem of "tax creep" caused by sharp hikes in the appraised valuation of residential properties.

Currently, homes can be reappraised each year, and there is no limit on the increase in appraisal values. This can be particularly onerous for homeowners in areas where values are increasing at a rapid rate and who have experienced ever-growing property tax burdens because of huge increases in their appraised property values.

In the Austin Independent School District, for example, the average homestead increased in value 18.4 percent from 1993 to 1994, with the average property value rising from $82,788 to $98,001. In other school districts around Austin, property values grew by more than 10 percent — Lake Travis ISD experienced an average 15 percent increase from 1993 to 1994 while Eanes ISD saw a 14 percent hike. Although overall average homestead valuation increases have since slowed in the Austin area to about 3.5 percent, some neighborhoods still are experiencing unprecedented growth — in East Austin, some residential property values have shot up more than 100 percent.

Proposition 2 and SB 841, the enabling legislation, would contain increases in homestead appraisal valuations by capping the annual percentage increase in valuations at no more than 10 percent. Homeowners would be assured that the taxable value of their homesteads could increase by no more than 30 percent over a three-year period, not counting any appreciation due to significant improvements on the home.

Limiting appraisal tax creep would not unduly restrict local governments' ability to raise property tax revenue. According to the State Comptroller's Property Value Study, the statewide average annual appraisal valuation increase for residential homes in Texas was 5.4 percent from 1995 to 1996, so Proposition 2 would have a minimal effect on tax collections in most areas.

Proposition 2 would help homeowners in areas with rapidly appreciating property level out their property tax payments to make them more affordable. The higher value would still be taxed but would be spread out in a reasonable manner to avoid huge increases in any single year. Owners of lower value homes would likely benefit as much as if not more than owners of high-value homes. For example, the appraised value of a $300,000 house could increase by up to $30,000 in a single year, but a $60,000 house by no more than $6,000. This would especially benefit homeowners in low-income neighborhoods that become "gentrified" when new owners renovate formerly low-value homes and sharply drive up values — and tax bills — by making the area more desirable for middle- and upper-income buyers.

Proposition 2 and SB 841 would provide special property tax relief to the elderly in smaller counties by allowing their school tax freeze to be transferred retroactively to a new home purchased since January 1, 1993. Senior citizens should not be penalized just because they moved a few years prior to the adoption of a long-overdue change overwhelmingly approved by voters this past August. The additional tax relief provided by transferring a tax freeze from one homestead to another would target the elderly in rural areas who may have been forced to move to town to be near family or medical care because of their age. School boards in the 215 counties with a population of 75,000 or less would have to agree to make the 65-and-over tax freeze portability retroactive and would only do so if it did not impose an undue financial burden on their school districts.

Opponents say

The Constitution provides that taxation be equal and uniform and that all taxable property be taxed in

proportion to its value, which is only fair. Proposition 2 would allow the Legislature to cap the appraised valuations on certain homesteads, giving them special treatment not accorded commercial, industrial or other residential property. Local governments could raise taxes on all property owners to make up for the revenue loss from the appraised valuation limit, which would only compound the inequity.

Property taxes, the primary revenue source for local governments, are based on two factors — the tax rate and the market value of property. Limiting one half of the equation by artificially limiting the percentage increase in the appraised value of residence homesteads would create pressure to raise the tax rate to meet revenue needs, giving one group of property owners a tax break at the expense of other taxpayers. The taxpayers receiving a relatively lighter tax load would be those who own an asset that by definition is rapidly appreciating in value, which would enhance the inequities in the property tax system.

In effect, Proposition 2 would shift the tax burden to all other property owners from homeowners in fast growing areas that are experiencing large annual increases in property values. At most, relief should be provided only to those people who could prove they would be financially burdened by an appraisal hike.

If tax rates were not increased to make up the revenue loss from the valuation limit, then counties, cities, school districts, and other districts relying on property tax collections would be forced to cut their budgets and eliminate some services. In addition, the state would have to reimburse school districts for any loss of funds as a result of the appraisal value limitation on homesteads. The Legislative Budget Board (LBB) estimates that school districts would lose $82 million between 1999 and 2002. Cities and counties would lose between about $5 million and $6 million a year, respectively. While these amounts may be a small fraction of total property taxes collected, they would add up over the years.

Making portability of the 65-and-over tax freeze retroactive to January 1, 1993, would only increase the costs of the proposal. According to LBB estimates, school districts will lose approximately $12 million per year due to tax freeze portability. The state ultimately will pay districts for that loss in property tax revenue after a one-year lag, and the cost to the state would be cumulative: for example, the cost in 2000 is estimated to be $12.4 million; in 2001, it would rise to $24.2 million. Undue pressure would be placed on school boards members to make the freeze transfer retroactive in rural counties where a larger portion of the population may be older.

Other opponents say

The various attempts by the 75th Legislature to provide property tax relief only serve to highlight the fact that the state's tax system needs to be completely overhauled. Texas has relied on essentially the same structure of state and local taxes since it first imposed a general sales tax in the early 1960s. The sales tax and the local property tax account for more than three-fourths of local and state tax collections today. The reason that sales and property taxes are so high is because Texas, like only six other states, does not have a personal income tax. If the state's tax system included income-based taxes, it would not need to artificially limit property taxes for some at the expense of others.

Proposition 3 (SJR 45 by Brown/R. Lewis)

Property tax exemptions for water conservation initiatives

Digest

Proposition 3 would amend the Texas Constitution to allow the Legislature to authorize local taxing units to grant exemptions or other relief from ad valorem taxes on property where water conservation initiatives were implemented.

The ballot proposal reads: "The constitutional amendment to authorize the legislature to permit a taxing unit to grant an exemption or other relief from ad valorem taxes on property on which a water conservation initiative has been implemented."

Supporters say

Property tax exemptions for water conservation initiatives could provide a new water management option for local governments that decided the benefit from additional water supplies would more than offset lost revenues from property tax exemptions. Proposition 3 would permit — not mandate — this purely local decision by allowing property tax exemptions as a local option. Local officials would have little impetus to grant exemptions unless there was a definite benefit to the population they represent. Local officials could also set performance standards for exemptions or require an independent evaluation of a specific measure if they felt this was necessary.

Proposition 3 also would give local authorities full discretion to approve which conservation projects would qualify for a tax exemption and the amount of the exemption. Several years ago voters approved property tax exemptions for pollution control equipment, and ensuring adequate water supplies is another policy that should be encouraged. The benefit to Texas water resources — on both a local and a statewide scale — would more than compensate for the small loss of revenue from property tax exemptions granted for water conservation initiatives. The total value of property taxes exempted by Proposition 3 would never be more than a tiny fraction of the state's tax base.

Proposition 3 would promote voluntary water conservation by providing incentives to landowners to invest in technology designed to conserve or reduce the use of limited water supplies. This is an important goal since Texas could see a crisis situation developing over the next four decades as explosive population growth outstrips the availability of new water supplies. According to the Texas Water Development Board, almost every area of Texas will be short of water in the next 50 years unless the state aggressively moves to develop and conserve its water supplies. Furthermore, the distinct differences among the different regions of Texas mandate that each community develop different strategies appropriate to its area. Encouraging water conservation on the local level is one way to address our water problems.

The exemption proposed by Proposition 3 could be used to extensively promote water conservation within the agricultural sector, which currently accounts for over half of the water used in Texas. Encouraging farmers to install low evaporation irrigation systems, ranchers to build stock tanks instead of pumping water, and property owners located over aquifer recharge zones to implement brush control measures, for example, could lead to substantial water savings and have a significant impact on areas where groundwater supplies are at a critical level. Manufacturers, likewise, could use a local exemption to offset the cost of installing expensive equipment for treating their wastewater and then reusing it, a proven strategy for freeing up water for municipal and domestic use. The cost of developing new water supplies by building dams and pipelines is prohibitive; water conservation measures, on the other hand, can substantially increase water supplies for a minimal investment.

Opponents say

While water conservation is a laudable goal, the state should not allow further property tax exemptions that reduce the amount of money available for financing local needs, including public schools. Lost tax revenue would have to be made up from other sources, which would be unfair to other property owners. The Legislature should be stripping away special tax exemptions in order to broaden the local tax base rather than narrowing the base by allowing

even more tax exemptions. Property tax exemptions merely shift the tax burden from one group of taxpayers to another, increasing the tax burden for those without exemptions. Water conservation initiatives are already being implemented by many water users precisely because the benefits of saving water are cost-effective without any added tax incentives. If Texas is serious about encouraging water conservation, it should directly finance conservation measures statewide through loans and grants rather than indirectly through local option tax breaks.

Under Proposition 3, powerful business or agricultural interests could coerce local governments, including school districts, in their area to give up vitally needed tax revenue that hard-pressed local jurisdictions could ill afford. Even if the exemptions resulted in savings due to increased water supplies, school districts and other local taxing entities may never see any obvious benefits to make up for the lost revenue.

Proposition 3 is too vague and open-ended; it neither defines what kinds of water conservation initiatives could be granted exemptions nor designates a state agency to advise local officials about which conservation measures would be appropriate in their areas. In many jurisdictions, the local officials deciding which water conservation initiatives could be granted exemptions may lack the technical knowledge to judge whether or not such initiatives would truly save water or result in a significant savings. Sometimes even professional hydrologists are hard pressed to judge the tangible benefits of such water conservation measures as brush control. Without built-in mandatory performance standards, those benefitting from an exemption would not be held accountable in any way.

Notes

If voters approve Proposition 3, the implementing legislation, SB 1 by Brown et al., would allow the governing body of a taxing unit, by official action, to exempt from taxation part or all of the assessed value of property on which a conservation initiative was implemented. Approved water conservation initiatives would have to be designated by ordinance or other law adopted by the governing body of the taxing unit.

For an in-depth discussion of water management issues in the state, see House Research Organization Session Focus Report No. 75-13, *Texas at a Watershed: Planning Now for Future Needs*, April 15, 1997.

Proposition 4 (HJR 104 by Mowery/Ogden)

Eliminating certain provisions from the Texas Constitution

Digest

Proposition 4 would make several changes to the Texas Constitution by revising certain provisions to reflect amendments to federal law, deleting moot provisions, and renumbering provisions with duplicate numbering. The amendment would:

- allow all residents, not just resident property taxpayers, to vote on authorizing issuance of bonds in all cities and in Dallas County;

- eliminate references to specific residency requirements for voters and annual voter registration;

- delete voting disqualification for paupers;

- replace voting disqualification for "idiots and lunatics" with a reference to persons determined mentally incompetent by a court, subject to exceptions made by the Legislature;

- lower the minimum voting age from 21 to 18;

- repeal provisions relating to an appropriation to John Tarleton Agricultural College, funding for the superconducting super collider project, and abolition of the office of county surveyor in Jackson County; and

- renumber several provisions with duplicate numbers.

The ballot proposal reads: "The constitutional amendment eliminating duplicate numbering in and certain obsolete provisions of the Texas Constitution."

Supporters say

Proposition 4 would make several technical changes to the Texas Constitution by deleting obsolete and unconstitutional provisions to reflect federal law, removing moot provisions no longer needed, and renumbering provisions with duplicate numbering. It would make no substantive change but merely update the fundamental law of Texas.

Besides correcting duplicate numbering, the principal changes would conform the Constitution to court rulings and changes in federal law. For example, the 26th Amendment to the U.S. Constitution, adopted in 1971, lowered the voting age to 18 in all states. Federal court decisions have struck down voting disqualifications based on wealth, property ownership, duration of residency, and annual voter registration, rendering inoperative these provisions of the Texas Constitution. Other provisions are no longer necessary, such as the authorization of $250 million in state general obligation bonds to help support the now-defunct superconducting super collider project.

Opponents say

The Texas Constitution contains numerous obsolete and duplicative provisions that are not addressed by Proposition 4. Voters should not be asked to correct a few provisions piecemeal; rather, a comprehensive overhaul is needed to clean up all the obsolete and inoperative language, such as references to poll taxes.

Proposition 5 (SJR 19 by Wentworth/Gallego)

Allowing Texas Supreme Court to meet outside Austin

Background

The Texas Supreme Court is the highest court in Texas for civil matters. Under Art. 5, sec. 3(a), of the Texas Constitution, the Texas Supreme Court is authorized to sit at any time at the seat of government — Austin — to transact business. This restriction was added in 1891 by a constitutional amendment. Prior to 1891, most Texas constitutions, of both the state and the Republic, had allowed the court to sit at any location in the state.

Some prior constitutions, including the Constitution of 1876, allowed the Supreme Court to sit in no more than three places, including the capital. Under these provisions, the court often travelled to other cities, in particular Tyler and Galveston, to hear cases. The Supreme Court had offices in Tyler, Galveston and Austin and often spent three months in each city during its yearly term. The 1891 constitutional amendment that placed the Supreme Court permanently in Austin was prompted in part by concerns over problems generated by this schedule. Travel meant that the court sometimes had difficulty in gathering a quorum to hear cases.

The Court of Criminal Appeals, the Supreme Court's counterpart for criminal cases, could sit only in Austin to transact business from the time it was created in 1891 until 1966, when the Constitution was amended to remove this restriction. The Court of Criminal Appeals has travelled to Houston and Dallas a few times to hear cases originating from those areas, but in recent years has not conducted business outside Austin.

Digest

Proposition 5 would amend the Constitution to authorize the Texas Supreme Court to sit at its discretion at any location in the state to transact business.

The ballot proposal reads: "The constitutional amendment authorizing the supreme court to sit to transact business at any location in this state."

Supporters say

Proposition 5 would enable more citizens around the state to attend Supreme Court proceedings and thereby enhance knowledge and promote understanding of the civil justice system in Texas and the operations of our highest civil court. Many Texans are confused about the court's authority and functions. The court often receives hate mail when unpopular decisions are handed down by the U.S. Supreme Court or when prisoners are executed, even though it has nothing to do with these decisions. Allowing the court to travel to other Texas cities would help generate discussion about it and go a long way toward correcting public misperceptions. The current restriction on the location of court hearings is unnecessary and unfair to citizens who might be interested in particular proceedings but who cannot travel to Austin to attend court sessions because of financial or time constraints.

Proposition 5 would help educate the public about the relatively unknown third branch of government. Texas citizens relate more to the executive and legislative branches of government than to the judiciary, in large part because representatives of those branches travel out to the people. Proposition 5 would not only inform Texans about the court but would also create a closer connection between the justices and the people who elect them. Most Texas voters are unable to name the members of the court and even fewer would recognize them. If the court were allowed to travel, voters may take a greater interest in the election of these important officials.

Proposition 5 would enable the court to visit some parts of the state that are very far from Austin, such as El Paso and Amarillo. Amarillo is actually closer to the capitals of five other states than it is to Austin. Citizens in other areas of Texas must travel hundreds of miles to see the Supreme Court in action.

A significant majority of other states allow justices from their highest court to travel to various locations to hear cases. For example, the Wisconsin Supreme Court travels around the state to hear oral arguments. The "Justice on Wheels" program has

been very popular, drawing more than 4,000 citizens since its inception in 1993 as well as a live television audience when it last visited Milwaukee. The Wisconsin program includes a number of educational activities, such as an introduction to the court and a background of the cases to be heard presented by local attorneys.

Eleven of the 14 courts of appeals in Texas already have authority to move within their districts. These courts have found that travel is a good tool for reducing costs for litigants and lawyers appearing before the court and for developing better connections with the attorneys and citizens of their areas.

The Court of Criminal Appeals has abandoned its travelling program for logistical reasons that would not apply to the Supreme Court. Cases before the Court of Criminal Appeals often have 10 times the paperwork of cases before the Supreme Court. Additionally, the Court of Criminal Appeals had to make arrangements for criminal defendants who needed to remain in custody but had the right to attend such a hearing. The Supreme Court can travel much more lightly and without the need for such security arrangements. The court could easily use courtrooms at a law school or for a court of appeals to hear oral arguments.

Proposition 5 would not pose any significant additional cost for the state because the court would likely use its travelling authority sparingly. Overnight stays would not even be required for most trips. The court also would likely travel to locations, such as law school campuses, where interest would be great and the size of the audience would make the hearing a worthwhile endeavor. Proposition 5 would give the Supreme Court discretion to move the court at any time for any case, within its budgetary limits, but it would be highly unlikely that the court would ever abuse this discretion. All justices on the court are elected, and their actions are subject to voter review.

Opponents say

The current procedure for Supreme Court hearings has worked well and there is no compelling reason to change it. Austin is the state capital and home to the Legislature, the Governor's Office, the Court of Criminal Appeals, and many state agencies, in addition to the Texas Supreme Court. These other offices have found no compelling reason to change their location of operation and neither should the court.

Even in Austin the Supreme Court chambers are seldom full when the court is in session because most cases affect only the parties before the court. It is unlikely that a visiting Supreme Court would pack the halls at other cities around the state. If special interests have a stake in a case, they usually are able to find the time and money to attend Supreme Court sessions. Travelling sessions would not likely draw significant attendance from law schools. The largest law school in the state — the University of Texas School of Law — is located only a few blocks from the Supreme Court chambers and rarely do significant numbers of students attend court hearings.

Proposition 5 would increase travel expenses for the justices, court clerks, and briefing attorneys. It would create confusion and expense in additional paperwork and equipment transportation. There are no standards or criteria for deciding when and how often the court would sit outside of Austin. The lack of set rules could generate problems if the justices decided to sit in one location rather than another. For example, if a particular case involved a party from Houston and another from San Antonio and court happened to decide to meet in Houston for that day, the San Antonio litigant would be required to pay additional travel expenses, which could be perceived as unfair. Decisions about travel destination could also be made with an eye to raising the profile of justices in order to help with re-election campaigns.

The Court of Criminal Appeals, an equal branch of the judiciary, has had authority to travel to other locations to conduct its business but stopped doing so after just a few years of trying the system, even though the cases it hears, such as death penalty cases, could generate considerable interest. The court had difficulty moving the necessary files to the different locations and found that travelling strained its budget. The experience of the Court of Criminal Appeals should be sufficient evidence that allowing the Supreme Court to experiment with travel would mean only unnecessary trouble and expense.

Proposition 6 (SJR 39 by Ellis/Giddings)

Eliminating Texas Growth Fund South Africa investment disclosures

Background

Art. 16, sec. 70, of the Texas Constitution, adopted in 1988, created the Texas Growth Fund, a trust fund that can invest in private companies with major business interests in Texas. The fund can make private equity investments for the Permanent University Fund (PUF), Permanent School Fund (PSF), and state-created pension funds, including the Teacher Retirement System (TRS) and Employees Retirement System (ERS). The 75th Legislature, as authorized by the Constitution, approved the extension of the Texas Growth Fund until September 1, 2008, by creating the Texas Growth Fund II in May 1997.

The fund is a type of closed-in mutual fund to which the participants commit a certain amount of money that is invested as appropriate investment opportunities become available. The fund has made two rounds of investments totalling $127 million: in 1991, the PUF and TRS committed $52 million, and in 1995, the PUF, TRS and San Antonio Fire and Police Pension Fund committed $75 million. The PUF, PSF, ERS and TRS have a combined market value of $77.6 billion as of August 31, 1996. These funds may invest up to 1 percent of their value in the Texas Growth Fund. Up to 10 percent of the growth fund can be invested in "venture capital" — stocks and bonds with potential for substantial investment returns.

Art. 16, sec. 70(r), prohibits growth fund investments in businesses that fail to submit an affidavit disclosing whether they have any direct financial investment in or with South Africa or Namibia.

Digest

Proposition 6 would amend the Texas Constitution by repealing Art. 16, sec. 70(r), which prohibits the Texas Growth Fund from investing in businesses that fail to disclose whether they have any direct financial investments in or with South Africa or Namibia.

The ballot proposal reads: "The constitutional amendment allowing the Texas growth fund to continue to invest in businesses without requiring those businesses to disclose investments in South Africa or Namibia."

Supporters say

The requirement that companies disclose whether they have direct investments in South Africa or Namibia in order to qualify for Texas Growth Fund investments is no longer necessary or useful. South Africa's white minority government has been replaced by a democratically elected government under President Nelson Mandela, and Namibia is an independent nation no longer under South African control. The need to screen businesses for ties to a discriminatory regime has vanished.

Such disclosure was intended to permit the fund's board to select among otherwise equal investments to address concerns about supporting the apartheid system of racial separation in South Africa. These concerns have become irrelevant with the dismantling of apartheid and majority rule in South Africa and Namibia. The additional disclosure is now only an unnecessary administrative burden.

Admittedly, an identical amendment was defeated at the polls on November 9, 1995, by a vote of 45.6 percent in favor and 54.4 percent against the measure. However, the defeat was probably due to voter confusion over unclear ballot language. The 1995 ballot language referred to "The constitutional amendment allowing investment of money from the Texas growth fund in a business without the business's disclosure of its investments in or with South Africa or Namibia." The ballot language for Proposition 6 more clearly defines the intent of the amendment.

Opponents say

No apparent opposition.

Proposition 7 (SJR 17 by Brown/R. Lewis)

Bond consolidation within Texas Water Development Fund II

Background

The Texas Water Development Board (TWDB) sells general obligation bonds to finance the construction of local and regional water projects at advantageous interest rates. These projects are financed through the Texas Water Development Fund. In the past, voters have given the TWDB constitutional authority to issue bonds that are limited to specific dollar amounts for specific purposes. The board must issue separate bonds for each of the following purposes: water supply, water quality, flood control projects, agricultural water conservation, and the state participation program.

Under the state participation program, the TWDB purchases equity in water and water quality projects to help local political subdivisions develop regional facilities. To recoup its investment, the state may sell or lease its portion of the project to a local entity. Also, up to $250 million in general obligation bonds authorized for water programs may be used for the Economically Distressed Areas Program (EDAP) as loans and grants for water and wastewater projects in colonias.

The agricultural water conservation program, the smallest of the programs financed through the Texas Water Development Fund, has issued $19 million in bonds out of an authorized amount of $200 million. The status of the other programs is detailed below:

Digest

Proposition 7 would amend the Texas Constitution to allow the TWDB to consolidate the existing total amount of voter-approved bond authorizations for water supply, water quality, flood control, and state participation programs into a new fund, the Texas Water Development Fund II (TWDF II), separate from the Texas Water Development Fund. The amendment also would adjust cash flow and reserve fund requirements for TWDF II and cash flow requirements for the Agricultural Water Conservation Fund.

The board could issue TWDF II bonds for any of the specified constitutional purposes, in amounts that could not exceed the existing total amount of outstanding bond authorizations for all the programs. Separate accounts would be established in TWDF II for administering the state participation and EDAP programs. Bonds could not be issued for EDAP in excess of $250 million (including previously issued bonds), the established limit for that program.

The total remaining amount of bond authorizations could be used for any authorized purpose. Money not immediately committed for outstanding debt, bond enhancement agreement payments, or other obligations could be invested. If TWDF II lacked sufficient funds to pay debt service obligations or make payments under a bond enhancement agreement, money would be

TWDB Bond Authorizations
(in millions of dollars)

Program	Amount authorized	Amount issued	Amount unissued
water supply/storage	$1,040	$968.29	$71.71
water quality	740	416.59	323.41
flood control	300	59.31	240.69
state participation	400	23.00	377.00
Totals	$2,480	$1,467.19	$1,012.81

Source: The Texas Water Development Board

appropriated from the state treasury to make principal and interest payments.

TWDF II bonds could be issued to refund outstanding bonds previously issued for the existing Texas Water Development Fund and to refund general obligations of the state under long-term contracts between the TWDB and the U.S. government or any of its agencies for the state participation program. Refunded money and assets would eventually be transferred to the appropriate account of TWDF II. When all contractual obligations of the Texas Water Development Fund were paid, the assets of the entire fund would be transferred to the credit of TWDF II.

TWDF II could not be used to finance or aid any project that would result in an interbasin transfer of surface water necessary to supply the basin of origin's reasonably foreseeable water requirements for the next 50 years, except on a temporary basis.

Proposition 7 also would delete a requirement that only the amount in the sinking fund as of the close of the prior fiscal year can be taken into account in calculating the amount available for payment of the principal and interest on agricultural water conservation bonds becoming due or maturing during a fiscal year.

The ballot proposal reads: "The constitutional amendment relating to the authorization to the Texas Water Development Board to transfer existing bond authorizations for water supply, water quality, flood control, or state participation from one category of use to another category to maximize the use of existing funds and relating to more efficient operation of the bond programs."

Supporters say

Proposition 7 would forestall the need to increase Texas general obligation bond authorizations to finance water-related programs by combining existing bond authorizations into one more efficient fund. The TWDB estimates that Proposition 7 would expand its lending capacity by approximately $77 million per year, allowing more Texas communities access to reduced interest loans for water projects.

The proposition would not increase the overall amount of bond authorization but merely pool the unissued bonds into one fund to better operate state water programs. Combining bond authorization categories would allow for more efficient issuance of bonds, since one bond issue could be used for multiple purposes, all related to water quality or supply. These savings would maximize the funds available to local governments for different kinds of water projects. The TWDB currently is limited to a specific dollar amount of bonds for each of the various eligible purposes and must issue separate series of bonds for each of these purposes. Once the TWDB has exhausted its authorization for any one purpose, it must request additional constitutional authority to issue bonds for that purpose even though it may have ample authority to issue bonds for other water-related purposes.

Previous voter designations for use of the bond proceeds would not be circumvented. Instead, the voters would just be acknowledging that changed conditions warranted modification of the previous authorization. The original purposes for the bonds and the overall amount limit would remain the same.

The consolidation would not reflect decreased funding of water quality projects. In recent years, the TWDB has been able to aggressively use revenue bond programs and federal funding to provide loan assistance for water quality projects, thereby reducing the need to use general obligation bonds for such purposes. The will of the voters concerning the original constitutional amendments would not be thwarted or ignored; the funding mechanism for state water programs would merely be adjusted to reflect the best use of all available resources.

The TWDB is nearing the ceiling for its water supply bond authorization at a time when water supply projects are desperately needed in many areas of the state. Almost 94 percent of water supply projects are water system improvements and expansions and water supply enhancements from existing sources, including assistance to colonia projects. The TWDB would not allow all or most of the money in TWDF II to go for costly reservoirs.

Proposition 7 would reinforce an existing constitutional limitation on TWDB funding of interbasin transfers, preventing financing of any project that would remove water from the basin of origin on other than a temporary, interim basis, if that water would be needed by the basin within the next 50 years.

Proposition 7 would also eliminate inefficient delays in debt issuance by removing antiquated and redundant reserve fund and cash flow requirements that are far in excess of both modern industry standards and anything the TWDB would ask of its borrowers. Additionally, it would allow the TWDB to use modern fund management tools currently authorized for other agencies and large cities in Texas, such as bond enhancement agreements and interest and currency rate swap agreements. Bond enhancement agreements would promote the marketability, security and creditworthiness of water financial assistance bonds and would provide excellent risk management tools for the TWDB portfolio.

Proposition 7 would allow the TWDB to use loan repayments that are made after the close of the prior fiscal year in calculating the need for general revenue for agricultural water conservation bond debt service. Currently, the board cannot take into account any money coming into the interest and sinking fund during the fiscal year when calculating any draw on general revenue for paying debt service on the bonds, but is limited to whatever amount is in the fund as of the end of the prior fiscal year. This adjustment would give the TWDB more flexibility in calculating the actual amount available for debt service.

Opponents say

The TWDB should not be able to combine bonds that were originally approved by the voters for separate and specific purposes. These bonds should only be used for the purposes for which they were originally intended. Certain special interests are pushing for the state to aggressively resume reservoir construction, and consolidating separate bond authorizations would allow the TWDB to use money from bonds that were originally issued for financing water quality projects to build expensive reservoirs. Like any other state agency, the TWDB is subject to political pressure. Such pressure would be easier to resist if bond money remained specifically dedicated. Otherwise, the state runs the risk of having a disproportionate amount of the money used for only a handful of projects that would benefit relatively few.

Many Texans support water quality programs but are opposed to dam building and would never have approved bonds if they thought those bonds could ever be used to build unneeded reservoirs. It is true that the voters must approve the fund consolidation proposed by Proposition 7, but since no new authorization of bonds is proposed, most voters will not really understand the potential consequences of fund consolidation. If the state wants more money to fund water supply and reservoir projects, it should ask the voters directly to approve money for those purposes.

The TWDB should not be allowed to take risks with public money in an attempt to boost fund yields with the use of bond enhancement agreements, and the state should prohibit money from being appropriated from the state treasury to make bond enhancement payments. Bond enhancement agreements can be highly volatile and are too risky to be a good debt management tool for the TWDB.

Notes

Upon voter approval of Proposition 7, the implementing legislation (SB 1 by Brown et al.) would establish three accounts — state participation, EDAP, and financial assistance — within TWDF II and permit the TWDB to create additional accounts within the fund by resolution. Agricultural water conservation bonds would not be consolidated with the bond authorizations under TWDF II.

SB 1 also would lay out conditions for the issuance of water financial assistance bonds from the fund and specify the kinds of bond enhancement agreements the board could enter into with TWDF II bonds. Under SB 1, the board could transfer money from the financial assistance account to the State Water Pollution Control Revolving Fund and could sell political subdivision bonds purchased with money in TWDF II.

Proposition 8 (HJR 31 by Patterson, Marchant, Danburg/ Patterson, Harris)

Allowing home equity loans

Background

Art. 16, sec. 50, of the Texas Constitution prohibits the forced sale of a borrower's homestead to repay debts, except for the purchase price of a home; improvements to the home; local property taxes or a federal tax lien; or a court-ordered partition of the property. Because of the constitutional restrictions against foreclosure on a homestead, Texas homeowners in effect cannot use their homes as collateral for loans other than these specific exceptions.

Equity is the difference between a home's market value and the amount owed on the home.

Digest

Proposition 8 would allow home equity to be used to secure extensions of credit and reverse mortgages. Agricultural land used as a homestead property — except for land used primarily for milk production — could not be used to secure an extension of credit. If a loan were not repaid or a borrower failed to meet the terms of a loan, the lender could foreclose on the home. Rules and guidelines for the loans would be established in the Constitution.

The constitutional amendment would take effect January 1, 1998.

The ballot proposal reads: "The amendment to the Texas Constitution expanding the types of liens for home equity loans that a lender, with the homeowner's consent, may place against a homestead."

Extensions of credit. Extensions of credit based on home equity would have to meet certain criteria:

• **Voluntary nature** — The loans would have to be created voluntarily with the consent of the property owner and spouse.

• **Loan limits** — Borrowers could have only one equity loan at a time. Open-ended accounts allowing for periodic debiting or credit extensions would be prohibited.

• **Loan cap** — The principal amount of the loan plus any other outstanding debt secured by the homestead could not exceed 80 percent of the property's fair market value on the date the loan was closed.

• **Cooling-off period** — Loans could not be closed sooner than 12 days after the property owner submitted the loan application or the lender gave the owner a copy of the required notice detailing the law, whichever was later, or sooner than one year after a previous extension of credit secured by the same homestead was closed.

• **Recision period** — Borrowers could rescind a loan without penalty within three days after it was made.

• **Rates and fees** — Loans could be for any fixed or variable interest rate allowed under law. The total amount of fees to originate, evaluate, maintain, record, insure or service the loan could not exceed 3 percent of the principal.

• **Other security** — Loans could not be secured by any additional real or personal property other than the homestead, and borrowers could not assign wages as security for the loan.

• **Loan proceeds** — Borrowers could not be required to apply loan proceeds to repay another debt except debt secured by the homestead (refinancing) or debt to another lender.

• **Monthly payments** — Loans would have to be repaid in substantially equal monthly payments, beginning no later than two months after the loan was made. The payments would have to equal or exceed the amount of interest accrued on the payment date.

• **Advance or accelerated payments** — Lenders could not charge a penalty for advance payment nor accelerate loan payments because of a decrease in the market value of the homestead or the borrower's default on another debt not secured by a prior valid encumbrance against the homestead.

• **Non-recourse** — Lenders would have no recourse against the personal assets of borrowers beyond the homestead property unless the loan were obtained by actual fraud.

• **Judicial foreclosure** — Liens could be foreclosed on only by a court order. The Texas Supreme Court would be required to promulgate rules of civil procedure for expedited foreclosure proceedings.

Loans could be made only by banks, savings and loan associations, savings banks, credit unions, federally chartered lending instrumentalities, federally approved mortgagees that can make federally insured loans, persons licensed under state law to make regulated loans, the individual who sold the homestead to the owner and provided all or part of the purchase financing, or persons related to the owner within the second degree of affinity or consanguinity. Loans could not be made by a lender found by federal regulators to have denied loans based on where a loan applicant lived or where the property was located.

Loans could be closed only at the office of a lender, attorney, or title company. Borrowers could not be made to sign a lending instrument with blanks left to be filled in nor a confession of judgment or power of attorney to the lender or another person to transfer authority for a legal proceeding or to appear for the owner in a judicial proceeding.

Lenders would have to give borrowers copies of the promissory note and all other documents signed by the borrower relating to the loan and send borrowers the canceled promissory note and a release of lien after full payment of the loan or a copy of an endorsement and assignment of the lien to another lender refinancing the loan.

Lenders or holders of equity loans would forfeit all principal and interest if they failed to comply with their obligations within a reasonable time of being notified by a borrower of the failure.

Proposition 8 includes a written notice specifying the conditions governing loans. Lenders would have to give borrowers a copy of the notice at least 12 days before closing the loan. If the discussions concerning the loan were made primarily in a language other than English, the lender would have to give the borrower a copy of the notice in the same language as the discussions.

The provisions of Proposition 8 concerning extensions of credit would not be severable. If any of the provisions were preempted by federal law, all of the provisions would be invalid.

Reverse mortgages. Proposition 8 also would allow reverse mortgages, which are extensions of credit that provide advances to borrowers based on the equity in their homestead, so long as the reverse mortgage met certain criteria:

• **Eligibility** — Reverse mortgages could be provided only to persons age 55 or over or with a spouse at least 55 years old and only with the consent of each homestead owner and spouse.

• **Advances** — Multiple advances would have to be made at regular intervals according to a plan in the original loan document. Lenders could not reduce the amount or number of advances because of interest rate adjustments.

• **Recourse** — Lenders would have no recourse against the personal assets of borrowers beyond the homestead property.

• **Repayments** — Lenders could not require payment of principal or interest until the property was sold or otherwise transferred or all borrowers ceased occupying the property as a principal residence for more than 180 consecutive days and the owner's location was unknown to the lender.

Interest rates could be fixed or adjustable and be contingent on appreciation in the property's fair market value. Reverse mortgages could be made without regard to certain state laws that could otherwise conflict. These laws include those concerning the purposes and uses of advances; limits on advances to a term of years or on the term of open-ended account advances; a limit on the term during which future advances have priority over intervening advances; requirements that maximum loan amounts be stated in loan documents; prohibitions on balloon payments and on compound interest and interest on interest; prohibitions on receiving any interest rate authorized by law; and requirements that a portion of the proceeds be advanced before the assignment of the reverse mortgage.

Borrowers would be required to attest in writing that they received counseling on the advisability and

availability of reverse mortgages and other financial alternatives.

Lenders that failed to make required loan advances or to cure a defect as required in the loan documents would forfeit all principal and interest.

For determining eligibility for any means-tested state program — such as low-income energy assistance, property tax relief, supplemental security income, medical assistance, and general assistance — reverse mortgage loan advances would be considered loan proceeds rather than income. Undisbursed funds from a reverse mortgage would be considered equity in the home and not loan proceeds.

Home improvement loans. Proposition 8 also would restrict encumbrances placed on homesteads for home improvement loans, which are already authorized in the Constitution. All work and materials would have to be contracted for in writing, with a 12-day cooling-off period before the contact could be executed. The contract for the work could be executed only at the office of a lender, attorney, or title company. Borrowers could rescind the contract without penalty or charge within three days of its execution. Exceptions to the cooling-off and recision periods could be made if the work and materials were necessary to complete immediate repairs that materially affected the health or safety of the residents.

Research on loans. The Texas Finance Commission would have to appoint a director to conduct research on the availability, quality and prices of financial services and on the business practices of entities making loans. The director would have to report findings to the Legislature by December 1 of each year.

Supporters say

Proposition 8 would give Texas homeowners the right and freedom to use their homes as they see fit, including as collateral for secondary loans, while providing substantial safeguards to protect homeowners and prevent abuses. Texas should not continue to be the only state to limit a legitimate use of private property in transactions between homeowners and lenders. The Constitution's homestead provisions barring home equity loans and reverse mortgages are paternalistic, outdated, and rooted in the needs of a different era. There is no good reason to allow homeowners to borrow against their equity for home improvement loans to build swimming pools but not to send a child to college, pay for medical care, or capitalize a business.

Home equity loans offer borrowers a double benefit now unavailable to Texans because interest on loans secured by a home is deductible for federal income tax purposes and generally lower than the interest on other loans. Since Texans cannot use their home equity to secure a loan, in most cases their only alternatives are either to seek a high-interest unsecured loan that does not even offer a break at income-tax filing time or to sell their home.

Fears that borrowers would lose their homes as a result of a default on a home equity loan are overblown and unfounded. Foreclosure rates are driven by such factors as the general economic conditions of an area, not the availability of home equity loans. Home equity loan defaults in other states are rare because borrowers go to great lengths to make payments on a loan secured by their home. Borrowers who obtain home equity loans and second mortgages must have a significant amount of equity in a home in order to secure these loans.

Unsecured credit would not dry up if home equity loans became available in Texas. As long as borrowers want unsecured loans, lenders will offer them. Lenders would continue to offer all types of credit to satisfy potential borrowers who do not own homes, who choose not to use their home as collateral for a loan, or who need amounts too small to justify a home equity loan.

The possibility of using a homestead as collateral for a loan would greatly expand the number of people able to borrow money to start a new business. The value of untapped home equity in Texas is estimated to be between $124 billion and $142 billion. Allowing entrepreneurs access to low-interest-rate loans would help build the economy and create new jobs.

Most agricultural homesteads, however, should not be used as security for an equity loan, since agricultural property represents both a person's home and livelihood. Agricultural property has always been subject to unique treatment under the law, so it would not be an aberration to exempt it from being used as collateral for equity loans. Allowing equity

loans could result in farmers being forced to put up their homesteads as security for production loans, often used to tide farmers over until their crops produce income. In addition, farmers and ranchers can turn to numerous lending programs for funds in lieu of an equity loan.

Homesteads involved in milk production are somewhat unique, on the other hand, and dairy farmers should have the option of using their homestead equity. Most dairy farmers have a large amount of capital invested in their dairy operations, which are often less than 200 acres (the limit for a rural homestead), with a large concentration of animals in a small area, so their business equity is tied up in the rural homestead and thus cannot be tapped like other business equity. Equity loans would be especially important to dairy farmers faced with the current combination of reduced milk prices and high feed costs. An equity loan could result in lower debt payments for dairy farmers than under traditional lending. Home equity loans for dairy farmers could help turn the tide for dairy operations in Texas, where in 1996, 10 percent of the dairies went out of business, the highest percentage for any state.

Extensions of credit. Proposition 8 offers a prudent, reasonable approach to home equity loans in Texas that would protect consumers and minimize abuses. Extensions of credit and reverse mortgages would have to be voluntary; involuntary liens against homesteads would still be prohibited.

All safeguards governing equity lending and protecting consumers would be in the Constitution so they could not be easily altered or undermined. A severability clause in Proposition 8 would make all provisions governing extensions of credit, other than those for reverse mortgages, invalid if any one of them was preempted by federal law. This would help the Legislature and Texans retain full control over the conditions for home equity loans because persons unhappy with one aspect of the Texas law would not have an incentive to seek a federal preemption that could cause all equity lending to be halted. The consumer credit commissioner, banking commissioner, attorney general, and other authorities would have authority to enforce the constitutional requirements for the loans.

The rules governing equity loans would ensure that borrowers taking out home equity loans were treated fairly and understood their responsibilities and that lenders were fairly and adequately regulated and enjoyed a level playing field on which to compete for loans. Lenders would forfeit principal and interest if they failed to comply with their obligations after notice of an error.

Proposition 8 would cap the amount of debt that could be borrowed against a homestead to act as a cushion if the value of the home dropped. The home equity loan and all other debt against a property could not exceed 80 percent of the market value of the property. This means, for example, that if the market value of a home was $100,000, the total debt secured by the homestead could not exceed $80,000. A homeowner who owed $60,000 on the home and had no other debt backed by the home could get an equity loan for up to $20,000.

In addition, persons could have only one equity loan at a time. To prevent the “flipping” of loans by lenders, borrowers could receive only one equity loan per year. Lines of credit or open-ended accounts, similar to credit cards, for which lenders approve an amount against which borrowers draw upon at their own discretion, could not be backed by home equity since borrowers could easily forget that the money they draw is secured by their home.

Home equity loans would have to stand alone. Only a person’s house, and nothing else, could be used to secure a home equity loan. These would be non-recourse loans; in the event of a default, lenders would not be able to go after a borrower’s other assets for the debt. Furthermore, lenders could not require payment on an equity loan because of default on another debt or because the home declined in market value.

Home equity loans could be foreclosed upon only with a court order. This would protect the rights of both borrowers and lenders and ensure that each case was presented for impartial review before foreclosure, giving lenders and borrowers a formal opportunity to negotiate a loan payment plan as an alternative to foreclosure. Judicial foreclosure would help consumers by allowing questions of fact about the loan to be reviewed by someone outside of a financial institution. In addition, holders of a second mortgage in most cases would be second in line behind the primary mortgage lender, and the amount secured by a second lien would likely be smaller; consequently,

home equity lenders would be less likely to seek judicial foreclosure in case of default. The Texas Supreme Court would establish rules for expedited proceedings in order to prevent foreclosures from becoming overly time consuming.

Proposition 8 would ensure that borrowers were treated fairly and that they understood their responsibilities by stipulating a variety of procedural safeguards, including written notices in an appropriate language and mandatory cooling-off and recision periods. Equity loans could be made only by standard, licensed financial institutions, not by such other lending establishments as pawnshops or check-cashing businesses or by lenders found to have engaged in discriminatory practices.

Other strong consumer protection provisions would cap fees, prohibit pre-payment penalties and balloon payments, and cap interest rates at levels authorized by law. The market would set rates, and borrowers would be able to shop around and find a lender offering the most favorable rate. Imposing a specific cap on interest rates for equity loans could result in most lenders charging the cap as the standard rate.

Proposition 8 would ensure that all homeowners could take advantage of equity loans by allowing extensions of credit to persons who have paid off their mortgages, paid cash for a home, or inherited a house. These homeowners could refinance their homes and also receive cash as part of the deal.

Reverse mortgages. Proposition 8 also would allow reverse mortgages. With reverse mortgages, the lender makes payments to the homeowner, usually monthly, and in return the homeowner pledges to repay the loan from the equity accumulated in the home. The loan is usually repaid when the house is sold because the borrower has died or moved from the house. Reverse mortgages would help meet the needs of elderly Texans who would like to convert their home equity into income but do not want to sell their home and move. Proceeds from a reverse mortgage would not affect a borrower's eligibility for such public benefits as supplemental security income or medical assistance. Borrowers would have to attest in writing that they received counseling about reverse mortgages and other financial options; details about who conducts the counseling could be addressed by regulation.

Reverse mortgages would have the same protections afforded other home equity loans. Loans would be non-recourse, payments to borrowers could not be reduced because of an interest rate adjustment, and lenders who failed to cure problems would forfeit loan principal and interest. In addition, borrowers could not be forced out of their homes.

However, because reverse mortgages are fundamentally different from other equity loans, they would be exempt from other conflicting laws. For example, with a reverse mortgage, borrowers would be receiving regular payments, so a maximum loan amount could not be stated in the loan document. A prohibition against balloon payments would be waived because the loan would be paid off in one large payment after the borrower left the home. Borrowers would not need protections against foreclosure because property secured by a reverse mortgage could not be foreclosed on in the traditional sense; the loan would not be due until the house was vacated, usually because the borrower died or the house was sold.

Home improvement loans. Proposition 8 also would add many important consumer safeguards to home improvement loans by mandating a 12-day cooling-off period and a three-day right of recision in most cases. This would help ensure that borrowers had enough time to consider their decision fully and were not talked into unneeded or unwanted improvements touted as "emergency repairs" by scam artists. Proposition 8 would require that contracts for home improvement loans be executed only at the office of a lender, attorney, or title company in order to prevent abuses that have occurred when borrowers — especially elderly homeowners — have been pressured in their homes to take out loans.

Opponents say

Texans should not risk losing their homes through foreclosure because they default on a loan secured by their homestead for purposes unrelated to the homestead. The state should not dilute its long-standing homeowner protections, which are even more important today than when they were enacted in the 1800s because of rising pressures on consumers to incur debt. An economic downturn — such as the one that hit Texas in the 1980s — could result in many more

foreclosures, forcing persons out of their homes for defaulting on debt unrelated to the homestead itself.

The best stimulant to a strong economy is home ownership and increasing home equity. Allowing debt to finance consumer spending might create a short-term burst of economic activity, but a decline would follow — the period of remorse and depression after the binge. Texans should be increasing their savings, not inflating their debt burden.

Dropping the Constitution's homestead exemption may well tempt many Texans to risk their homes to finance routine consumer spending and could lead to substantial numbers of Texans losing their homes to lenders. It also could result in shaky loans to persons who might not be able to repay them.

Furthermore, allowing lenders to extend money on a homestead may well mean the end of unsecured personal loans. Lenders prefer to make loans backed by a tangible asset that can be seized and sold to make payment on a defaulted loan. Lenders could force homeowners to put up their homes to obtain credit and could squeeze renters and new homeowners, who have little equity, out of the credit market. The elderly and the poor could be particularly vulnerable to being forced into pledging their homes to get funds for ordinary expenses.

Other avenues exist for consumers to finance such needs as college costs and medical expenses. Home equity loans have potential drawbacks, such as high interest rates or other hidden costs for consumers, that could turn out to be less than the economic panacea portrayed by lenders.

At most, home equity lending should be limited to certain essential uses, such as medical or educational purposes, in order to prevent abuses. And allowable interest should be capped at a rate lower than that now authorized by law. Currently, interest rates may be as high as 18 percent; because equity loans are lower risk for lenders than other consumer debt, including credit cards or personal loans, the maximum rate should be lower. Without a cap lower than that allowed by statute, unscrupulous lenders could target borrowers with high rates.

Special precautions also should be extended to older persons eligible for reverse mortgages. While Proposition 8 would require counseling before anyone could receive a reverse mortgage, it should also specify that the counseling be done by a qualified third-party.

Other opponents say

Proposition 8 errs by including overly detailed regulation of equity lending. The Constitution should be amended only to authorize equity lending, and the details concerning such loans should be placed in statute where they could be more easily modified as need dictated. On the other hand, the proposition fails to give any state entity clear regulatory authority over equity loans. This could raise problems as different entities — for example, the consumer credit commissioner, the banking commissioner, and the attorney general — issue conflicting regulations and opinions pertaining to home equity lending.

Many of the provisions in Proposition 8 are overly restrictive and would unfairly limit the availability of home equity loans. For example, all agricultural properties — not just those involved in milk production — should be eligible for home-equity lending. Restricting farmers and ranchers from using their equity would cut them off from a lending option that could help them manage their debt or finance their operations and keep them viable. Prohibiting agricultural property from being used for extensions of credit also could raise federal constitutional questions of fairness and equal protection.

Limiting reverse mortgages to persons age 55 and older could be preempted by federal laws and regulations that prohibit age discrimination in some credit situations but allow exceptions for persons age 62 or older.

Proposition 8 also would disallow lines of credit, a popular, convenient and flexible way of making equity loans that allow homeowners to borrow money and accrue interest as they need it. With a line of credit, for example, a homeowner could borrow money every month to help pay the expenses of sending a child to college instead of taking out one large loan or several successive loans, each requiring fees.

Other restrictive provisions may keep lenders from offering any type of home equity loan or encourage

them to make loans only at higher interest rates. These provisions would unfairly require:

• **Nonrecourse lending —** Nonrecourse loans could place small lenders at a disadvantage to large lenders that can spread the risk from home equity loans among their larger portfolios. Lenders should be able to look at a person's overall ability to pay a loan, including all assets, not just loan collateral. This is especially important in times of dropping property values. Giving lenders access to other assets would motivate borrowers to negotiate loan terms if they were having difficulty paying their equity loan and provide lenders with options to foreclosing on a home. This could help avoid a situation like the economic downturn of the 1980s when borrowers walked away from mortgage loans after their property value dropped, hurting both lenders and consumers. Borrowers should be held responsible for their debts, even to the point of allowing the lender recourse to other assets.

• **Court-ordered foreclosures —** Judicial foreclosures can be costly, inefficient and time-consuming and would make collection of defaulted loans especially difficult for holders of equity liens, which are usually a second lien behind a first lien. Lenders trying to foreclose on a property also could be unfairly subjected to frivolous counter claims intended to delay a foreclosure. A better option would be to apply the "power of sale" method already used in Texas to foreclose on homes. In this type of foreclosure, borrowers are given notice of their default and a chance to cure it before a lender can sell the property on the courthouse steps.

• **Loan fee limits** — Limiting loan fees to 3 percent of the loan principal could result in the fees being less than the cost of processing the loan, given appraisal, attorney and insurance fees. This arbitrary limit could mean higher interest rates to make up for this expense.

• **Debt-to-value limits —** Homeowners should be able to tap all of their equity, not just some arbitrary portion.

• **Principal and interest penalties —** Stripping lenders of principal and interest for failure to comply with their obligations after being notified of a mistake would be a draconian penalty. Some requirements of Proposition 8 could not be cured after notification. For example, a lender who closed a loan before the 12-day cooling off period would have no way to cure the problem if notified years after the error.

• **Home improvement restrictions —** Many homeowners would find the two-week waiting period before commencing home improvements an onerous and unnecessary imposition. Furthermore, the proposed rules for home improvement loans are at best unclear and at worst confusing. For example, there may be a question about whether these deadlines and rules would apply when a lien is placed on a house to secure payment for a home improvement project for which no loan has been taken out but will be paid for with cash. Important terms that govern when the waiting periods could be waived, such as for repairs that "materially affect the health or safety of the owner," are not defined.

Also at issue is the severability clause of Proposition 8, which would make all provisions relating to extensions of credit invalid if any one of them were preempted by federal law. It is unclear whether this provision would be triggered only by current law or also by future laws.

Proposition 9 (HJR 96 by Hamric/Lindsay)

Permitting Harris County rural fire districts to increase tax rate

Background

The Texas Constitution authorizes the Legislature to provide for the establishment of rural fire prevention districts in unincorporated areas, but limits the ad valorem tax districts may charge to 3 cents per $100 of the value of taxable property. No tax may be levied without approval of district voters. Besides protecting life and property from fire, rural fire prevention districts may provide emergency ambulance and rescue services.

Digest

Proposition 9 would amend the Texas Constitution to allow the Legislature to authorize a tax of up to 5 cents per $100 of property valuation in a rural fire prevention district located partly or completely in Harris County, with voter approval.

The ballot proposal reads: "The constitutional amendment to authorize the legislature to authorize an ad valorem tax rate in rural fire prevention districts located in Harris County of five cents on each $100 of taxable value of property."

Supporters say

Proposition 9 would allow rural fire protection districts in Harris County to continue to provide the fire protection services for which they were created. The constitutional cap on taxes for such services makes it extremely difficult for these districts to adequately protect residents in emergencies. Inflation and higher costs of providing fire protection services in the unincorporated areas of the state's most heavily populated county require additional revenue from a slightly higher tax rate.

Proposition 9 would allow local voters to approve raising their tax rate from 3 to 5 cents to ensure adequate funding of rural fire departments in Harris County. The tax rate cap of 3 cents has remained unchanged for 40 years. Despite increased property values, existing revenue cannot cover higher costs for equipment, insurance, and unfunded mandates.

Harris County has 14 rural fire prevention districts and seven emergency service districts (ESDs) that serve 800,000 residents in a 700-square mile area. The Constitution authorizes ESDs, with voter approval, to levy a tax of up to 10 cents per $100 valuation to support their services. Although rural fire departments in Harris County located within an ESD have the option of converting to another type of district to increase funding, this option is available to only six of the 14 rural fire districts in Harris County. Proposition 9 is necessary to allow Harris County residents to decide for themselves whether they want to raise taxes to improve the services they may need in fire emergencies.

Opponents say

Proposition 9 would undermine current efforts to reduce property taxes. Furthermore, this proposition would open the door to other rural fire prevention districts to seek similar amendments in the future.

Other opponents say

Voters in every rural fire prevention district in the state should have the option of approving this type of tax increase. Inflation and higher costs for providing fire service affect not only Harris County but also other counties across Texas and warrant statewide application. A more equitable solution to the problem would be to approve an amendment increasing the cap statewide. Ideally, the cap should be eliminated entirely, but at a minimum, it should mirror the 10 cents per $100 of valuation now allowed ESDs.

Notes

HB 2649 by Hamric, which is contingent upon voter approval of Proposition 9, would allow rural fire prevention districts boards located in Harris County to order an election to levy a tax of up to 5 cents per $100 of the value of taxable property. The election would be held on the first uniform election date after notice of the election; the ballot would have to specify the tax rate.

Proposition 10 (SJR 33 by Moncrief/Gallego)

Constitutional dedication of crime victims' compensation funds

Background

The Crime Victims' Compensation Act, enacted in 1979, established the crime victims' compensation fund to reimburse victims of violent crimes for certain expenses that are not recoverable from such other sources as insurance, workers' compensation, Social Security, Medicaid or Medicare. Another fund — the crime victims' compensation auxiliary fund — also can used to compensate victims, and, effective June 1997, both funds can be used to pay for victim-related services or assistance. The attorney general administers the funds.

About 89 percent of the money in the crime victims' compensation fund comes from court costs and fees imposed on criminal offenders; other monies come from donations, grants and gifts. The crime victims' compensation auxiliary fund is composed of offender-made restitution payments that have not been claimed by victims. The Code of Criminal Procedure, art. 56, subchapter B, outlines eligibility, covered expenses, and limits on awards. In addition to crime victims, other persons with some connection to the victim can receive payments from the fund for certain expenses. These persons include dependants, immediate family members, household members related to the victim, and persons who voluntarily pay certain expenses for the victim or who legally assume the obligation for a victim's expenses.

Reimbursement is allowed for such expenses as medical care, counseling, rehabilitation, funeral, loss of wages, and child care, but not for property damage. Since 1979, the two funds have made about 66,700 awards totalling about $230 million. Awards in fiscal 1996 totalled about $27 million to some 8,000 persons.

Digest

Proposition 10 would amend the Texas Constitution to make the crime victims' compensation fund and the crime victims' auxiliary compensation fund separate dedicated accounts in the general revenue fund. The Legislature could appropriate money in the two funds only for delivering or funding victim-related compensation, services or assistance. The Legislature would be authorized to use money in the two funds for assisting victims of episodes of mass violence if other money appropriated for emergency assistance had been depleted.

If approved by the voters, Proposition 10 would take effect January 1, 1998. The ballot proposal reads: "The constitutional amendment designating the purposes for which money in the compensation to victims of crime fund and the compensation to victims of crime auxiliary fund may be used."

Supporters say

Proposition 10 would reflect the state's strong commitment to aiding Texans who have been victims of crime. For almost 20 years, the Legislature has maintained the statutory dedication of these funds; by putting these statutory provisions into the Constitution, Proposition 10 would ensure that the funds would continue to be used only to help crime victims.

Although the funds have always been statutorily dedicated to help crime victims, in recent legislative sessions several attempts have been made to divert the funds for unrelated purposes. For example, in the 1997 session, proposals included using funds to pay for apprehending parole violators and for a university DNA testing program. While these proposals may have merit, they are far afield from the original purposes of the funds — to help crime victims. Proposition 10 would guard against such diversions and head off future legislative battles over fund uses unrelated to victim compensation.

While the funds are now statutorily dedicated to helping crime victims, a constitutional dedication would help cement this situation by requiring a constitutional amendment before they could be used for other purposes. Because money in the two funds comes from payments made by criminal offenders and donations, gifts and grants and involves no general revenue, it is appropriate that this money be dedicated to helping crime victims and not be available

— even in a fiscal emergency — for other state needs.

Proposition 10 would not be a significant reduction in the Legislature's spending discretion because these funds are already statutorily dedicated to helping crime victims. In addition, the Legislature would have to continue to appropriate money from the funds before it could be spent.

Allowing the funds to be used for victim-related compensation, services or assistance would be in line with the current statutory dedication of the fund, as amended by the 75th Legislature. In 1997 the Legislature broadened the traditional dedication of the fund for only victim compensation to include victim-related services or such assistance as programs for family violence prevention or sexual assault counseling. Proposition 10 also would allow the funds to be used to help victims of episodes of mass violence, such as a bombing. HB 3062 by Hightower, Gutierrez, et al., enacted in 1997, allows the attorney general to place a portion of the money in the crime victims' compensation fund that is in excess of that needed to compensate victims in a fiscal year into an emergency fund that can be used to assist victims of mass violence or acts of international terrorism.

Constitutional dedication of state funds is not unusual. The Constitution already shields numerous funds dedicated to such purposes as road construction and maintenance and higher education funding. Furthermore, Proposition 10 is worded narrowly enough that the funds could be used only for purposes related to crime victims but broadly enough so that frequent changes to the Constitution would not be needed.

Opponents say

Proposition 10 would be an unwise constitutional dedication of state revenue. Constitutionally dedicated funds can only be used for their stated purpose; this limits the Legislature's discretion and flexibility to meet the spectrum of state needs and priorities. Even in fiscal emergencies, constitutionally dedicated funds cannot be used to sustain other programs or needs.

Although the compensation of crime victims is a worthy endeavor, many equally worthy programs do not enjoy similar constitutional protection of their funding. The Legislature spends a good deal of its time prioritizing demands on the state's fiscal resources. Its deliberations should not be further limited by the Constitution, even to protect funding for what are now considered valuable state programs. Proposition 10 would be a departure from recent legislative initiatives to eliminate and consolidate dedicated funds and so allow for increased flexibility in the appropriation process.

Proposition 10 would place in the Constitution a revenue dedication that rightfully belongs in statute. With a statutory dedication, the funds are protected against other uses but can be considered with other competing demands; if necessary, the Legislature can change the dedication. For example, until 1997 the crime victims' funds could be used only to compensate authorized persons and to administer the fund. However, the 75th Legislature changed the statutory dedication to include funding for victim-related services or assistance. If Proposition 10 were approved, these types of changes could not be made by the Legislature alone but would have to work through the time-consuming and expensive process of a public vote to amend the Constitution.

The crime victims' compensation fund and the crime victims' auxiliary fund have survived recent efforts to consolidate state funds and have retained an exemption from statutory requirements that dedicated funds be made available for general government spending. Having kept their dedication throughout the state's fund consolidation efforts, the funds are not in need of constitutional protection now.

Other opponents say

Proposition 10 would lock into the Constitution the unwise policy, enacted in 1997, of allowing the crime victims' compensation fund and the crime victims' auxiliary fund to be spent on services for victims, rather than just payments to victims and others with a relationship to victims. This opens the door to using the funds for a variety of purposes with varying degrees of pertinence to crime victim compensation and could divert money from the purpose the Legislature envisioned when it established the funds — to compensate crime victims who have suffered through no fault of their own.

Proposition 11 (HJR 59 by Delisi/Ratliff)

Limiting state debt

Background

State debt is limited by the Constitution and by statute. Art. 3, sec. 49, of the Constitution prohibits state borrowing except to supply casual deficiencies of revenue of less than $200,000, repel invasion, suppress insurrection, or defend the state. This provision has been amended some 20 times to authorize the issuance of general obligation bonds backed by the full faith and credit of the state.

The state also may issue revenue bonds, which carry a higher interest rate because they are not backed by the state's full faith and credit, and authorize lease-purchase agreements, which finance through an amortized payment schedule the purchase of capital equipment and other items too expensive to pay for with cash. Unless another source of repayment is specified, the state uses general revenue to pay principal and interest on these debt instruments.

VACS art. 717k-7, sec. 8, prohibits the Legislature from authorizing general obligation or revenue bonds or large lease-purchase agreements designed to be repaid from general revenue if the resulting annual debt service from the general revenue fund would be more than 5 percent of the average amount of general revenue (excluding constitutionally dedicated funds) over the preceding three fiscal years.

The state debt limit is calculated annually by the Texas Bond Review Board upon release of general revenue figures in the comptroller's annual *Cash Report*. In November 1996, the board reported the debt-limit ratio was 1.9 percent for bonds outstanding as of August 31, 1996, and would have been 2.7 percent if authorized but unissued bonds were included in the calculation. The fiscal 1996 figure was based on a three-year average of $17.5 billion in undedicated general revenue (for fiscal years 1994, 1995, 1996).

For HB 1, the General Appropriations Act for fiscal 1998-99, the Legislative Budget Board has projected debt service on outstanding debt, including authorized but unissued debt, to be 2.2 percent for fiscal 1998 and 2.3 percent for fiscal 1999.

Digest

Proposition 11 would amend the Constitution to prohibit the Legislature from authorizing additional state debt if the resulting annual debt service on state debt payable from the general revenue fund exceeded 5 percent of the average amount of general revenues, excluding constitutionally dedicated revenues, for the preceding three fiscal years.

"State debt payable from the general revenue fund" would be defined as general obligation and revenue bonds, including authorized but unissued bonds, and lease-purchase agreements in amounts greater than $250,000 that were designed to be repaid with state general revenues. The term would not include bonds that, although backed by the full faith and credit of the state, were reasonably expected to be paid from other revenue sources and not expected to create a draw on general revenues.

Bonds or agreements expected to be repaid from other revenue sources but that subsequently required the use of state general revenue would be considered "state debt payable from the general revenue fund" until (1) they were backed by insurance or another form of guarantee that ensured payment from another source, or (2) the issuer demonstrated to the satisfaction of the Bond Review Board that the bonds no longer required payment from general revenue and the board so certified to the Legislative Budget Board.

The ballot proposal reads: "The constitutional amendment limiting the amount of state debt payable from the general revenue fund."

Supporters say

Proposition 11 would make the reasonable debt limit restriction currently set in statute more effective by placing it in the Constitution, thereby giving voters the final say over the amount of debt the Legislature can incur.

Statutory debt restrictions provide insufficient restraint against rising debt because the Legislature can

simply raise the debt limit when it wants to borrow more money. There is no guarantee that the Legislature will not incur excessive debt. The federal government's budget deficit provides a prime example of the historical and political tendency to take care of today's problems by spending tomorrow's revenues.

Excessive debt impinges on the state's ability to fund future government operations because taxpayers end up paying for interest expenses on borrowed money for years to come. State debt service payable from general revenue has grown significantly in the past 10 years, according to the 1996 report of the Texas Bond Review Board.

A constitutional amendment must be approved by both the Legislature and the voters, thereby creating an effective check on the amount of debt taxpayers are willing to risk and support. Even though the Constitution requires voter approval to authorize the issuance of general revenue bonds for specific purposes, the voters now have no say over the establishment of an overall state debt service ceiling. The public policy debate involved in setting and calculating a new debt-service limit, should the Legislature choose to propose one, would certainly be understandable to informed voters.

The debt-ratio limit of 5 percent of the average amount of general revenue over the preceding three years, excluding constitutionally dedicated funds, is fair and reasonable. The debt service ratio expected at the close of fiscal 1999 for all authorized (issued and unissued) bonds is 2.3 percent, giving sufficient room to grow if more debt were needed in the future. With this limit, the state could more than double the current level of debt service. The influence that inflation and other possible cost increases could have on pushing state debt close to the limit would be negligible because the debt service limit would be proportionate to general revenues; as general revenues grew, the dollar amount of state debt could also grow without affecting the 5 percent limit.

Opponents say

Putting the current statutory debt limit in the Constitution is unnecessary and could hinder the state's ability to meet state needs and priorities. The Texas Legislature has neither the propensity for nor a compelling incentive to create excessive state debt, and current statutory law imposes an effective and sufficiently restrictive guideline.

Texas has consistently ranked low in comparison to other states in state debt burden. According to preliminary statistics compiled by the Bond Review Board, Texas ranks 34 out of 50 states in net tax-supported debt per capita at $312, which is below the U.S. median and mean of $422 and $662, respectively. It also has the lowest outstanding state debt among the 10 most populous states in the United States. Since the debt limit was adopted in 1992, the debt-limit ratio on outstanding debt has remained below 2 percent, and on total authorized debt no greater than 3.2 percent.

The Constitution already sufficiently protects against excessive state debt by allowing the issuance of general obligation bonds only under specified circumstances that have received voter approval. At least 85 percent of the debt Texas now holds has been approved by voters by constitutional amendments, mostly for state priorities with broad support such as construction of prison facilities; the remainder pays for such expenses as equipment and state office buildings using non-general obligation bonds.

State debt service formulas and state debt limits are best left to statute and approval by the Legislature. This system allows for smooth handling of unanticipated problems, such as the need for another prison building program, through bonds or other financing mechanisms. Such flexibility is actually favored by some bond rating services over a fixed constitutional debt-limit ratio, which would not help improve the state's debt rating or creditworthiness. Also, the standards used in setting the debt limit and calculating state debt service are complex; many voters would assume the debt limit applies to all state debt, not just general revenue-backed debt, and that the 5 percent limitation would apply to an annual general revenue amount, not a three-year average.

It would be short-sighted to institute a 5 percent debt limit in the Constitution; the limit should be set higher or made more flexible. Although current debt service is comfortably below the 5 percent limit, a decrease in collection of unrestricted general revenue

caused by a downturn in the economy could increase existing debt beyond the percentage-based limit, and inflation and other factors could make a hard-to-change constitutional limit unnecessarily restrictive in the future. It may be very difficult to obtain voter approval of an additional constitutional amendment to raise the limit because many people would vote against any debt service limit increase regardless of the circumstances facing the state or how that limit was calculated.

Other opponents say

The debt service limit currently set in statute is too high — if a debt limit were to be added to the Constitution, it should be lower to give voters more effective control over state debt. Texas is now expected to operate comfortably with a debt service ratio of 2.3 percent; state debt should not go much higher than that, certainly not to the 5 percent limit proposed by Proposition 11, which would allow general revenue-backed debt to more than double.

Proposition 12 (HJR 55 by Dutton/Ellis)

Deadline for Supreme Court action on motions for rehearing

Background

Applicants appealing civil cases to the Texas Supreme Court file a petition for writ of error. The court agrees to decide a case by granting the petition. If the court denies the petition, the applicant may file a motion for rehearing within 15 days. A motion for rehearing also may be filed by either party after the Supreme Court renders a judgment in a case. If a motion for rehearing is filed in either instance, the decision of the court is not considered final until it rules on the motion. There is no deadline for court action on a motion for rehearing.

Digest

Proposition 12 would require the Texas Supreme Court to rule on a motion for rehearing within 180 days of its filing. If the court did not rule within that time period, the motion would be deemed denied.

The ballot proposal reads: "The constitutional amendment to establish a deadline for supreme court action on a motion for rehearing."

Supporters say

Proposition 12 would help ensure that final decisions by the Texas Supreme Court on motions for rehearing were made in a reasonable length of time. The denial of a petition for a writ of error is essentially the same as a judgment; the court allows the ruling of the court of appeals to stand. But such a denial is not final until the motion for rehearing is denied. Also, when the Supreme Court renders a judgment in a case, the decision is not final until the court rules on a motion for rehearing.

The absence of a deadline for the court to decide motions for rehearing means a case may be tied up for years before a final judgment is reached. While a case is pending, winning plaintiffs are unable to collect money owed them on a judgment, and winning defendants still have the possibility of having a judgment entered against them.

The procedure proposed by this amendment is used in other circumstances. For example, a trial court must rule on a motion for a new trial within 90 days or that motion is deemed denied. This deadline helps move cases through the court system efficiently because a case cannot be appealed until a motion for new trial is denied. Like motions for rehearing, the vast majority of motions for new trial are denied.

Proposition 12 would not be burdensome because six months is ample time to fully review all issues related to a case, even in the most complex cases. Nearly all motions for rehearing filed with the Texas Supreme Court are decided within one to two months, and nearly all such motions are also overruled. During fiscal 1996, 497 motions for rehearing on various matters were before the court; the vast majority — 329 — were motions for rehearing after the denial of a petition for a writ of error. During the fiscal year, 427 motions were overruled, dismissed or withdrawn and only 10 motions were granted. Proposition 12 seeks to give those few whose cases could drag on for years the same efficiency of justice enjoyed by nearly all other litigants.

The Supreme Court has never set a deadline for deciding motions for rehearing in the Texas Rules of Appellate Procedure, nor is one proposed in the next draft of the rules currently being circulated for comment. The court has always informally attempted to decide on motions for rehearing as soon as possible in order to render a final judgment on a case. Only in certain cases where a clarification is needed or when there are other questions of law that must be considered does the court further study a case on a motion for rehearing.

Proposition 12 would not intrude on the authority of the Supreme Court but would merely be a directive from the Legislature and the voters of the state that all motions for rehearing should be disposed of within six months. It does not attempt to dictate how the court should dispose of legal matters, and the court does not oppose adoption of this amendment.

Recently, members of the Supreme Court took note of Proposition 12 in a dissenting opinion that opposed granting two motions for rehearing. On July 9, 1997,

the court granted motions for rehearing in *State Farm Fire & Casualty Co. v. Simmons*, No. D-4095 and *Maritime Overseas Corp. v. Ellis*, No. 94-1057, 40 Tex. Sup. Ct. J. 930. In each case, the motions for rehearing had been pending before the court for longer than Proposition 12 would have allowed — seven months in *Ellis* and more than three years in *Simmons*. Justice John Cornyn, joined by three other justices, dissented from granting the motions for rehearing. In speaking of Proposition 12 he said, "I do object to the unconscionable delay in [granting motions for rehearing] in these two cases. The delay cannot be justified. The people of this State have every right to expect and demand that this Court perform its duties in a timely manner . . . . That [Proposition 12] should be necessary at all does not reflect well on this Court. We should have the self-discipline to timely dispose of our own business."

Opponents say

Proposition 12 amounts to unnecessary legislative interference in the internal workings of the Texas Supreme Court. The justices on the court have no reason to deliberately delay the judicial process and should be allowed to consider each case based on individual circumstances rather than being constrained by an arbitrary deadline. The separation of powers doctrine dictates that the Legislature should not govern how the judiciary conducts its internal affairs. Regardless of whether or not this particular deadline would affect the timeliness of court decisions and or hamper the court's decisionmaking process, this amendment may become the first of future intrusions by the Legislature in how the judiciary manages its own operations.

There are some legitimate reasons for delaying a response on a motion for rehearing. For example, the court may delay deciding such a motion while waiting for a case in another court, such as the U.S. Supreme Court, that would clarify the law. Another pending case may have a direct impact on the case before the court, and by waiting until that case is decided, the court could avoid making a mistake or setting a precedent contrary to another court. While the court has not delayed many cases for such reasons in the past, there is no need to restrict the court's ability to do so in the future. To alleviate that problem, there should be some discretion given to the court to extend the deadline in special circumstances.

New computerized docketing systems recently put into practice at the court should eliminate any possibility of cases being lost or forgotten — the most likely culprit when a case is not disposed of within six months. A less intrusive way of expressing legislative concern over the time the court takes in making a final judgment on these motions would be to require the Office of Court Administration to use the new docketing system to track the time it takes to decide such motions.

Other opponents say

This amendment does not address a more serious problem with the Texas Supreme Court because it would not affect the length of time required to decide a case once it has been accepted by the Supreme Court. After a petition for a writ of error is granted, a year or more may pass before a decision is rendered. Long delays in deciding cases before the Supreme Court are a far greater problem than any delay in deciding a motion for rehearing.

Proposition 13 (HJR 8 by Stiles, et al./Barrientos)

Full faith and credit backing for the Texas Tomorrow Fund

Background

In 1995 the Legislature by statute established the Texas Tomorrow Fund to allow individuals or groups to prepay higher education tuition and fees at prices that are locked in at the time payments begin. Education Code sec. 54.619(g) provides that if there is not enough money in the fund to pay a prepaid tuition contract in full, the Legislature may appropriate to the fund the amount necessary to pay the applicable amount of tuition and fees.

The Texas Tomorrow Fund is administered by the seven-member Prepaid Higher Education Tuition Board. The purchaser enters into a contract with the board to prepay, by lump sum or installments, the tuition and fees of a designated beneficiary to attend up to four years at a public or private institution of higher education. The program does not pay for housing, books, food, or other costs of attending a college or university. The public college program covers tuition and required fees at any state-supported college or university in Texas; the private college plan pays the estimated average costs of tuition and required fees at private colleges and universities in Texas.

In 1997 the Legislature expanded the prepaid tuition program to allow contracts to attend a public university in Texas for five years. The fifth year may be used for additional undergraduate study or to cover a portion of graduate school expenses.

In the two years since its inception, about 65,000 contracts with a total value of $625 million have been purchased. According to the Comptroller's Office, most of the participating families voluntarily disclosing their incomes have reported annual household incomes of $50,000 or more.

The Prepaid Higher Education Tuition Board is authorized to make investments according to the provisions of the Public Funds Investment Act. The act requires investments in certain specified securities, including federal securities, federally backed securities, securities backed or fully guaranteed by state or local governments, certificates of deposit, fully collateralized repurchase agreements, bankers acceptances with a maturity of 270 days or less, and certain mutual funds.

Digest

Proposition 13 would amend the Texas Constitution to establish the Texas Tomorrow Fund as a trust fund dedicated to the prepayment of tuition and fees for higher education. Assets of the fund would be held in trust for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable administrative expenses.

If the fund in any fiscal year lacked enough monies to pay the tuition and required fees for a beneficiary under a prepaid tuition contract, funds sufficient to pay the applicable amount of tuition and fees would be appropriated out of the first money coming into the state treasury that was not otherwise constitutionally appropriated.

The amount to be contributed by participants in the program would be provided by law but could not be less than the amount anticipated to pay for the tuition and fees, based on sound actuarial principles.

Proposition 13 would permit the Prepaid Higher Education Tuition Board to invest the fund in any securities considered prudent investments according to the "prudent person" standard, i.e., not for speculation but for permanent disposition of funds, considering probable income as well as probable safety of the capital.

The comptroller would be authorized to take any action necessary to implement the constitutional requirements, which would control over any other conflicting constitutional provision.

The ballot proposal reads: "The constitutional amendment to encourage persons to plan and save for young Texans' college education, to extend the full faith and credit of the state to protect the Texas tomorrow fund of the prepaid higher education tuition program, and to establish the Texas tomorrow fund as a constitutionally protected trust fund."

Supporters say

Proposition 13 would demonstrate the state's commitment to providing Texans with opportunities to pursue higher education at affordable prices by putting its full financial backing behind the prepaid tuition program. Proposition 13 would assure parents and others participating in the Texas Tomorrow Fund prepaid tuition program that enough money would always be available to pay amounts contracted for by committing the first non-dedicated revenue coming into the state treasury to cover any payment in the highly unlikely event that sufficient funds were not available. The Texas Veterans Land Board loan programs and Hinson-Hazelwood student loan programs also have the full faith and credit guarantee of the state, and while an important assurance, these guarantees have never had to be used.

The Texas Tomorrow Fund is providing an essential service to Texas families, allowing more students access to higher education, which is increasingly essential to the success of the Texas economy. Providing greater opportunities for higher education for students in Texas benefits everyone, and Proposition 13 would help ensure the future success of this program.

Investors need assurance that their investments in the Texas Tomorrow Fund will grow over the years and remain secure until their children and grandchildren are ready to take advantage of them. Although the contract costs are actuarially adjusted each year to cover program costs, the added degree of security from backing the fund with the state's full faith and credit would encourage more individuals to invest in the fund. Currently, there is only an implied guarantee that tuition and fees will be paid; the Legislature *may* cover any shortfall but it is not *required* to do so. Proposition 13 would make such a guarantee clear and explicit in the Constitution.

The fund's constitutional dedication also would ensure that no part of the fund could be diverted or raided by the Legislature for any other purpose. At present the fund has about $200 million in assets.

The Texas Tomorrow Fund would best be managed through long-term "prudent person" investment policies. The Prepaid Higher Education Tuition Board that oversees the fund should be granted the same latitude for investing as other funds, such as the Employee Retirement System, the Teacher Retirement System, and the Permanent University Fund, which have similarly long-term investment cycles. The board has exercised responsible money management during its first two years of existence and would continue to make sound, prudent investments under the well established standard laid out in the amendment.

Allowing investment in equity securities would enable the fund to pursue a more diversified portfolio, which would help increase overall returns while minimizing overall risk. At present, funds must be invested according to the Public Funds Investment Act and are thereby limited to government-backed securities and short-term money-market type vehicles, which are more appropriate for short-term investing. Expanding the investment alternatives to equity securities would allow the fund to better keep up with inflation over time and would be in line with long-term investment strategy programs.

Opponents say

The Texas Tomorrow Fund, like any other investment fund, should continue only as long as it is able to fund itself. If the state commits its full faith and credit to the program and higher education costs rise more rapidly than expected, Texas taxpayers could be forced to bail out the fund, potentially siphoning state money away from other important needs.

The Texas Tomorrow Fund is a state-created vehicle for private investors, mostly middle- or upper-income persons who can afford to make such investments, to save for college education by locking in tuition and fee costs. Proposition 13 would in effect have the state guarantee a specific rate of return on a private investment by ensuring investors that any shortfall, whether caused by investment losses or higher than anticipated increases in tuition or fees, would be covered by taxpayer dollars. Although the assets of other constitutionally dedicated funds, such as the Permanent University Fund and the Permanent School Fund, are guaranteed by the Constitution, their investment returns are not guaranteed but depend on the marketplace. Also, these funds are endowments established to benefit the state as a whole, not vehicles for private investment. Constitutionally guaranteeing a return on investment would elevate the Texas Tomorrow Fund above other state priorities.

The cost of higher education, both public and private, has been rising at a rate of about 8 percent each year for the past 10 years. There is some question about whether the fund's investments will be adequate to match this growth rate. Further, in order for the fund to be self-sufficient over time, investment earnings should cover the cost of tuition and fees when contracts come due. If investment earnings are insufficient to cover costs, then costs would have to be covered by incoming contract premiums. The use of new monies to cover contract costs would lessen the amount of principal available for investment. It is conceivable that this situation could cascade to the point that the amount of incoming monies and interest would be insufficient to fund program costs. Under the amendment, the state then would be left holding the bag and would have to cover any shortfalls.

With Proposition 13, the state would automatically be forced to cover any shortfall with the first monies coming into the state treasury. Such constitutional underwriting of the Texas Tomorrow Fund would make it a top state spending priority and could affect the state's overall funding of higher education in the future. If a shortfall in the program required an automatic infusion of state money, leaving less money available for other state programs, then the Legislature could be forced to cut appropriations for higher education and other state priorities.

The Texas Tomorrow Fund should not be allowed to use the broad "prudent person" investment authority. The money in the fund should be invested with utmost caution in sound, safe investment securities as provided by law, not in potentially risky investments allowable under this vague standard.

Proposition 14 (HJR 83 by Gutierrez/Lucio)

Authorizing the Legislature to establish constable qualifications

Background

Art. 5, sec. 18, of the Texas Constitution provides for constables to be elected to four-year terms by the voters from each county, except for Mills, Reagan and Roberts counties, where the office has been abolished by constitutional amendment. Constables and justices of the peace are elected from precincts that vary in number depending on the population of the county.

Constables are local peace officers with general jurisdiction in their home county over criminal and civil law enforcement matters. Although constables primarily serve as officers of justice of the peace courts, they have the same authority as other peace officers in Texas. Their salaries are set by county commissioner courts.

There are no minimum qualifications for constables other than the general provisions in Election Code sec. 141.001, which require that all persons running for public office be a U.S. citizen at least 18 years old when their term of office begins, have no final felony conviction from which they have not been pardoned or otherwise released, and comply with state and precinct residency mandates.

The duties of constables listed in Local Government Code sec. 86.021 primarily involve attending justice of the peace courts and serving court papers. Constables are required to attend each justice court held in their precinct and to execute and return each process, warrant and precept that is directed to them and delivered by a lawful officer. Constables can execute civil and criminal process throughout the county in which their precinct is located and in other locations as provided by law. They also can perform any act or service — including serving citations, notices, warrants, subpoenas or writs — anywhere in the county in which their precinct is located. Under the Local Government Code, constables also may serve civil process in a county contiguous to their county. Under the Texas Rules of Civil Procedure, they may serve citations and other notices anywhere in the state.

Government Code sec. 415.053 requires peace officers elected under the Constitution — including constables — to become licensed as a peace officer by the Texas Commission on Law Enforcement Officer Standards and Education within two years of taking office. Failure to obtain a license within the required time constitutes incompetence and grounds for removal from office. The minimum standards for peace officer licensing require the officer to be at least 21 years old (in some circumstances 18 years old), have no felony convictions, and possess a high school diploma or high school equivalency certificate or have completed at least 12 hours of college or university studies.

Digest

Proposition 14 would authorize the Legislature to establish qualifications for constables.

The ballot proposal reads: “The constitutional amendment to allow the legislature to prescribe the qualifications of constables.”

Supporters say

By allowing the Legislature to prescribe qualifications for constables, Proposition 14 would help ensure that these public servants have the basic skills necessary to carry out their duties. Currently, constables are not required to meet any eligibility requirements in order to take office other than the general age, criminal history, and residency requirements imposed on all individuals seeking election to any kind of public office. A constitutional amendment is needed to give the Legislature explicit authority to set minimum qualifications for constables.

By approving Proposition 14, voters would allow HB 2071 by Gutierrez to take effect. Under HB 2071, constables would be required to have a high school diploma or high school equivalency certificate, have no felony convictions, and be at least 21 years old, or at least 18 years old if they had received an

honorable discharge from the U.S. armed forces after at least two years of service or had at least 60 hours of credit or an associate degree from a college or university. A "grandfather clause" would exempt from these requirements any constable first elected or appointed before January 1, 1998, so that experienced constables could continue in office and seek re-election, even if they did not meet the new standards.

Requiring constables to be a minimum age and have a high school education and clean criminal history would be a reasonable way to ensure that qualified candidates ran for this important community office. In the past, persons with limited education have been candidates for constable. In addition, because constables now need only meet qualifications set for any person running for public office, candidates could have felony convictions for which they had been pardoned or released from the legal restrictions; Proposition 14 would allow the Legislature to stipulate that prospective constables have no felony conviction at all.

Such minimal requirements would not decimate the pool of qualified candidates in any area. In fact, constables must meet these same standards to fulfill the Government Code requirement that they become licensed peace officers within two years of taking office. There is no reason that these age, education and criminal history requirements could not be met by all constables at the time they are elected. Proposition 14 and HB 2071 would just close the loophole that allows constables two years to meet these basic standards.

Proposition 14 would not erode voters' ability to chose constables. Voters would continue to cast their ballot, selecting from among those qualified for the office in the same way they currently cast a vote for those who meet the criteria to run for any other public office. Legislators, who represent the localities throughout the state, would not set qualifications so narrowly that no candidates could qualify for the office.

Setting basic qualifications for constables would be in line with requirements placed on other elected officials. In 1993 the Legislature proposed, and the voters approved, an amendment similar to Proposition 14 to allow minimum qualifications to be set for sheriffs. Since constables are law enforcement officials, they should be held to minimum standards just as sheriffs are. The state also sets minimum requirements for other elected officers, including some judges. It is proper for the state to set minimum standards for constables, since they work for counties, which are political subdivisions of the state.

Minimum standards for constables would increase the professionalism of law enforcement in Texas, part of a trend to ensure that peace officers are well qualified to do their jobs. The vast majority of constables would meet the qualifications set by Proposition 14 and HB 2071. If citizens of urban counties sought more rigorous qualifications for their constables, the Legislature would have the flexibility to make such distinctions, while leaving more general minimum qualifications for rural counties where the pool of potential candidates is smaller.

While the Constitution does contain a provision for removing incompetent constables from office, a preventive approach would be vastly preferable. It would be better to ensure that all constables were qualified to begin with than to rely on a time-consuming and costly judicial procedure for removing an unqualified constable from office. In addition, in some cases removing an incompetent constable can be difficult because of local political pressures.

Opponents say

A county's voters alone should decide who is competent to serve as constable. The office of constable is constitutional, and county voters, not the Legislature, should decide who is qualified to serve. Voters know the qualifications of the candidates they choose, and the decision should be left to them.

With Proposition 14, the Legislature could set qualifications so tightly that only a select few could serve as constable. Restricting the pool of qualified persons would not necessarily ensure election of more qualified candidates. While the qualifications initially may be minimal, the door would be opened for stricter eligibility requirements in the future.

Proposition 14 would grant the Legislature open-ended authority to set qualifications for constables without requiring that it take unique local circumstances into consideration. The 251 counties where constables are elected are diverse and have special needs, making it difficult to set fair, meaningful

statewide standards for constable. Allowing the Legislature to set constable qualifications could pose problems for some sparsely populated rural counties that may have a hard time finding a resident with the necessary eligibility requirements who is willing to serve as constable.

A constitutional amendment is not necessary to ensure that constables are competent. Art. 5, sec. 24, of the Constitution already allows district judges to remove constables for incompetency, official misconduct, habitual drunkenness or other causes defined by law. This provision effectively authorizes the Legislature to set grounds for removal should problems arise.

Texas constables have been and are doing a good job throughout the state. Most Texas constables already meet the requirements that would be established by HB 2071, the implementing legislation for Proposition 14. This constitutional amendment addresses what is a non-issue for most Texans, at the risk of creating unforseen problems.

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