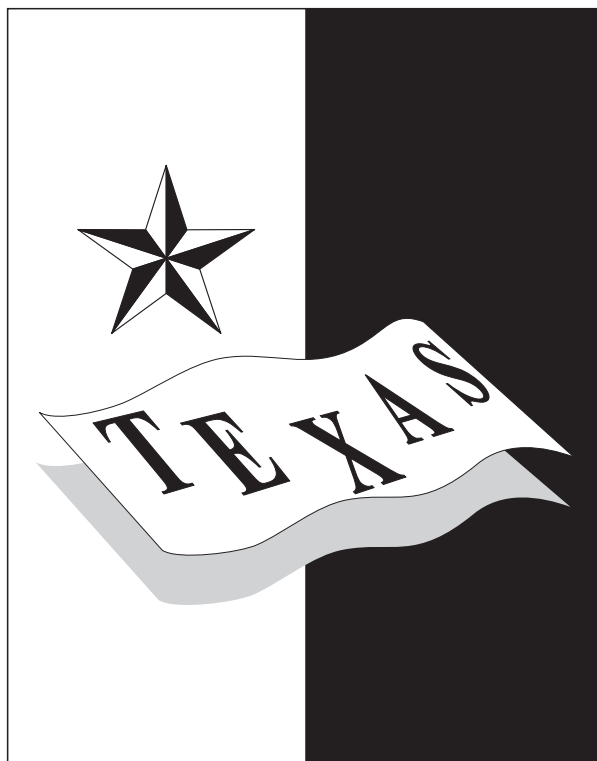


Analyses of Proposed Constitutional Amendments

September 13, 2003, Election



Texas Legislative Council
July 2003

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Prepared by the Staff
of the
Texas Legislative Council

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Lieutenant Governor David Dewhurst, Chairman
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Table of Contents

Introduction

General Information	3
Table of Amendments Proposed and Adopted	4

Proposed Amendments

Amendment No. 1	9
Authorizing the Veterans’ Land Board to use assets in certain veterans’ land and veterans’ housing assistance funds to provide veterans homes for the aged or infirm and to make principal, interest, and bond enhancement payments on revenue bonds	
Amendment No. 2	19
Establishing a two-year period for the redemption of a mineral interest sold for unpaid ad valorem taxes at a tax sale	
Amendment No. 3	25
Authorizing the legislature to exempt from ad valorem taxation property owned by a religious organization that is leased for use as a school or that is owned with the intent of expanding or constructing a religious facility	
Amendment No. 4	31
Relating to the provision of parks and recreational facilities by certain conservation and reclamation districts	
Amendment No. 5	37
Authorizing the legislature to exempt from ad valorem taxation travel trailers not held or used for the production of income	

Amendment No. 6	45
Permitting refinancing of a home equity loan with a reverse mortgage	
Amendment No. 7	49
Permitting a six-person jury in a district court misdemeanor trial	
Amendment No. 8	53
Authorizing the legislature to permit a person to take office without an election if the person is the only candidate to qualify in an election for that office	
Amendment No. 9	57
Relating to the use of income and appreciation of the permanent school fund	
Amendment No. 10	67
Authorizing municipalities to donate surplus fire-fighting equipment or supplies for the benefit of rural volunteer fire departments	
Amendment No. 11	71
Allowing the legislature to enact laws authorizing and governing the operation of wineries in this state	
Amendment No. 12	75
Concerning civil lawsuits against doctors and health care providers, and other actions, authorizing the legislature to determine limitations on non-economic damages	
Amendment No. 13	85
Permitting counties, cities and towns, and junior college districts to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses	

Amendment No. 14	93
Providing for authorization of the issuing of notes or the borrowing of money on a short-term basis by a state transportation agency for transportation-related projects, and the issuance of bonds and other public securities secured by the state highway fund	
Amendment No. 15	99
Providing that certain benefits under certain local public retirement systems may not be reduced or impaired	
Amendment No. 16	105
Authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans	
Amendment No. 17	123
Prohibiting an increase in the total amount of school district ad valorem taxes that may be imposed on the residence homestead of a disabled person	
Amendment No. 18	129
Authorizing the legislature to permit a person to assume an office of a political subdivision without an election if the person is the only candidate to qualify in an election for that office	
Amendment No. 19	133
Repealing the authority of the legislature to provide for the creation of rural fire prevention districts	

Amendment No. 20	137
<p>Authorizing the issuance of general obligation bonds or notes not to exceed \$250 million payable from the general revenues of the state to provide loans to defense-related communities, that will be repaid by the defense-related community, for economic development projects, including projects that enhance the military value of military installations</p>	
Amendment No. 21	143
<p>Permitting a current or retired faculty member of a public college or university to receive compensation for service on the governing body of a water district</p>	
Amendment No. 22	149
<p>Authorizing the appointment of a temporary replacement officer to fill a vacancy created when a public officer enters active duty in the United States armed forces</p>	

Introduction

General Information

In the 2003 regular session, the 78th Texas Legislature passed 21 joint resolutions proposing 22 constitutional amendments. House Joint Resolution No. 68 proposes two amendments—Amendment No. 1 and Amendment No. 9. All of the proposed amendments will be offered for ratification on the September 13, 2003, election ballot.

The Texas Constitution provides that the legislature, by a two-thirds vote of all members of each house, may propose amendments revising the constitution and that proposed amendments must then be submitted for approval to the qualified voters of the state. A proposed amendment becomes a part of the constitution if a majority of the votes cast in an election on the proposition are cast in its favor. An amendment approved by voters is effective on the date of the official canvass of returns showing adoption. The date of canvass, by law, is not earlier than the 15th or later than the 30th day after election day. An amendment may provide for a later effective date.

Since adoption in 1876 and through July 2003, the state's constitution has been amended 410 times, from a total of 587 proposed amendments, 584 of which were submitted to the voters for their approval. The 22 proposed amendments approved by the 78th Legislature brings the total number of amendments passed by the legislature to 609. The following table lists the years in which constitutional amendments have been proposed by the Texas Legislature, the number of amendments proposed, and the number of those adopted. The year of the vote is not reflected in the table.

The remaining section of this publication contains the ballot language, analyses of the propositions, and the text of the joint resolutions proposing the constitutional amendments that will appear on the September 13, 2003, ballot. The analyses include background information and arguments for and against each proposed constitutional amendment.

The propositions are presented in the order in which they will appear on the election ballot.

Table
1876 Constitution Amendments Proposed and Adopted

year proposed	number proposed	number adopted	year proposed	number proposed	number adopted
1879	1	1	1947	9	9
1881	2	0	1949	10	2
1883	5**	5	1951	7	3
1887	6	0	1953	11	11
1889	2	2	1955	9	9
1891	5	5	1957	12	10
1893	2	2	1959	4	4
1895	2	1	1961	14	10
1897	5	1	1963	7	4
1899	1	0	1965	27	20
1901	1	1	1967	20	13
1903	3	3	1969	16	9
1905	3	2	1971	18	12
1907	9	1	1973	9	6
1909	4	4	1975	12 [†]	3
1911	5	4	1977	15	11
1913	8*	0	1978	1	1
1915	7	0	1979	12	9
1917	3	3	1981	10	8
1919	13	3	1982	3	3
1921	5**	1	1983	19	16
1923	2***	1	1985	17**	17
1925	4	4	1986	1	1
1927	8**	4	1987	28**	20
1929	7**	5	1989	21**	19
1931	9	9	1990	1	1
1933	12	4	1991	15	12
1935	13	10	1993	19**	14
1937	7	6	1995	14	11
1939	4	3	1997	15	13
1941	5	1	1999	17	13
1943	3**	3	2001	20	20‡
1945	8	7			

Total Proposed 587 — Total Adopted 410

Notes

- * There were eight joint resolutions, but one of them was a U.S. constitutional amendment ratification. Seven joint resolutions proposing amendments were approved by the legislature, but only six proposals were actually submitted on the ballot. The unsubmitted proposal included two amendments.
- ** Total reflects two amendments that were included in one joint resolution.
- *** Two joint resolutions were approved by the legislature, but only one proposal was actually submitted on the ballot.
- † Total reflects eight amendments that would have provided for an entire new Texas Constitution and that were included in one joint resolution.
- ‡ Nineteen of the amendments approved by the 77th Legislature during the 2001 regular session appeared on the November 6, 2001, ballot and were adopted. The remaining amendment appeared on the November 5, 2002, ballot and was also adopted.

Proposed Amendments

Amendment No. 1 (H.J.R. No. 68, Section 1)

Wording of Ballot Proposition:

The constitutional amendment authorizing the Veterans' Land Board to use assets in certain veterans' land and veterans' housing assistance funds to provide veterans homes for the aged or infirm and to make principal, interest, and bond enhancement payments on revenue bonds.

Analysis of Proposed Amendment:

The proposed amendment would allow the Veterans' Land Board to use excess receipts in the veterans' land fund, the veterans' housing assistance fund, and the veterans' housing assistance fund II to pay the debt service on any revenue bonds issued by the board. Specifically, the board could use those receipts to pay principal and interest and make bond enhancement payments with respect to revenue bonds issued under a veterans homes program or other veterans programs administered by the board, and not solely in connection with its land and housing assistance programs for veterans.

The proposed amendment would also allow the Veterans' Land Board to use excess assets in the three funds to plan and design, operate, maintain, enlarge, or improve veterans homes. This new language would supplement the effect of an earlier constitutional amendment that granted the board similar authority with respect to veterans cemeteries.

Background

Created in 1946, the Veterans' Land Board administers a number of programs designed to improve the lives of veterans or otherwise reward veterans for their service to the nation. Through the Veterans' Land Program and the Veterans' Housing Assistance Program, for example, the board makes low-interest loans that enable certain veterans in this state to purchase land and homes and to make home improvements. The board also administers the Veterans Homes Program and the Veterans Cemeteries Program for the benefit of these veterans.

Currently, the Veterans' Land Board is authorized by the Texas Constitution to use excess receipts in the veterans' land fund, the veterans' housing assistance fund, and the veterans' housing assistance fund II to pay the debt service on revenue bonds issued only in connection with the land and housing assistance programs affiliated with those three funds. The constitution also allows the board to determine whether excess assets exist in any of those funds and to either transfer the excess assets between the funds or use the excess assets to secure any revenue bonds issued by the board. The board may also use the excess assets in the funds to plan, design, construct, acquire, own, operate, maintain, enlarge, improve, furnish, or equip state veterans cemeteries, but does not possess the same authority with respect to veterans homes.

House Joint Resolution No. 68 seeks voter approval to allow the Veterans' Land Board to use excess receipts in the veterans' land fund, the veterans' housing assistance fund, and the veterans' housing assistance fund II to pay principal and interest and make bond enhancement payments with respect to any revenue bonds issued by the board, regardless of the particular program for which the bonds are initially issued. This would include revenue bonds for the veterans homes program, as well as any other veterans program for which the board decides to issue such bonds. House Joint Resolution No. 68 also would allow the Veterans' Land Board to use excess assets in the three land and housing assistance funds to plan and design, operate, maintain, enlarge, or improve veterans homes, in addition to the related powers of the board with respect to veterans cemeteries.

House Bill No. 1749 is the enabling legislation for the portion of the proposed amendment concerning the use of certain excess receipts by the Veterans' Land Board. The bill would amend Section 164.009(a)(1), Natural Resources Code, to allow the board to use excess receipts in the veterans' land fund, the veterans' housing assistance fund, and the veterans' housing assistance fund II to secure any revenue bonds issued by the board; specifically, the bill removes the language funneling the receipts toward revenue bonds that are issued simply to "provide funds to purchase land and sell land to veterans or to make home mortgage loans to veterans."

House Bill No. 1749 also amends Section 164.009(a)(2), Natural Resources Code, the enabling legislation for existing Section 49-b(s)(2), Article III, Texas Constitution, by removing a similar restriction regarding the use of excess assets in those three funds by the board. Lastly, the bill amends Section 164.009(a)(1), Natural Resources Code, to correct a cross-reference error caused by a previous constitutional amendment and to clarify language regarding board-issued general obligation bonds to more accurately reflect the scope of current board authority and practice in that area.

House Bill No. 1749 is contingent on voter approval of House Joint Resolution No. 68.

Arguments For:

1. Security for revenue bonds issued by the Veterans' Land Board would increase because the debt service on those bonds could be paid with money produced from multiple board programs. Less overall risk associated with the revenue bonds would mean that the board could obtain a more favorable credit rating and pay interest at a lower rate on the bonds, thereby saving money for the state.

2. The use of excess assets from certain Veterans' Land Board funds would preclude the necessity of issuing more revenue bonds for veterans homes, thus saving money for the state by reducing transaction costs associated with funding the construction of veterans homes and possibly leading to a reduction in room rates charged to veterans.

3. The excess money in the veterans' land and housing assistance programs was primarily paid for by veterans for the benefit of veterans and should be available to assist all veterans programs administered by the Veterans' Land Board.

Arguments Against:

1. At least some of the money, the excess receipts and assets from certain funds, that was formerly earmarked for veterans' land and housing assistance programs may go to entirely different programs administered

by the Veterans' Land Board; the board has complete discretion to determine how much money to retain within the land and housing assistance programs.

2. Adoption of the amendment would lead to dilution of money currently reserved for two veterans programs, the land and housing assistance programs, so that it would be spread out over twice as many programs. The Veterans' Land Board could redirect excess receipts in certain funds to the veterans homes program and, depending on whether revenue bonds are issued, to the veterans cemeteries program and could redirect excess assets in those funds not only to the veterans cemeteries program but also to the veterans homes program.

Text of H.J.R. No. 68: HOUSE AUTHOR: Suzanna Gratia Hupp et al.
SENATE SPONSOR: Troy Fraser

HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing the Veterans' Land Board to make certain payments on revenue bonds and to use assets in certain funds to provide for veterans homes and a constitutional amendment relating to the use of income and appreciation of the permanent school fund.

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

SECTION 1. Subsections (r) and (s), Section 49-b, Article III, Texas Constitution, are amended to read as follows:

(r) Receipts of all kinds of the Veterans' Land Fund, the Veterans' Housing Assistance Fund, or the Veterans' Housing Assistance Fund II that the Board determines are not required for the payment of principal of and interest on the general obligation bonds benefiting those funds, including payments by the Board under a bond enhancement agreement with respect to principal of or interest on the bonds, may be used by the Board, to the extent not inconsistent with the proceedings authorizing the bonds to:

(1) make temporary transfers to another of those funds to avoid a temporary cash deficiency in that fund or make a transfer to another of those funds for the purposes of that fund;

(2) pay the principal of and interest on general obligation bonds issued to provide money for another of those funds or make bond enhancement payments with respect to the bonds; or

(3) pay the principal of and interest on revenue bonds of the Board or make bond enhancement payments with respect to the bonds [~~if the bonds are issued to provide funds to purchase lands and sell lands to veterans or make home mortgage loans to veterans~~].

(s) If the Board determines that assets from the Veterans' Land Fund, the Veterans' Housing Assistance Fund, or the Veterans' Housing

Assistance Fund II are not required for the purposes of the fund, the Board may:

- (1) transfer the assets to another of those funds;
- (2) use the assets to secure revenue bonds issued by the Board; ~~or~~
- (3) use the assets to plan and design, operate, maintain, enlarge, or improve veterans cemeteries; or
- (4) use the assets to plan and design, construct, acquire, own, operate, maintain, enlarge, improve, furnish, or equip veterans homes.

SECTION 2. Section 5, Article VII, Texas Constitution, is amended to read as follows:

Sec. 5. (a) The permanent school fund consists of all land appropriated for public schools by this constitution or the other laws of this state, other properties belonging to the permanent school fund, and all revenue derived from the land or other properties. The available school fund consists of the distributions made to it from the total return on all investment assets of ~~[principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be]~~ the permanent school fund, [and all the interest derivable therefrom and] the taxes [herein] authorized by this constitution or general law to be part of [and levied shall be] the available school fund, and appropriations made to the available school fund by the legislature. The total amount distributed from the permanent school fund to the available school fund:

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

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

(B) the legislature by general law or appropriation, if the State Board of Education does not adopt a rate as provided by Paragraph (A) of this subdivision; and

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

(b) The expenses of managing permanent school fund land and investments shall be paid by appropriation from the permanent school fund.

(c) The available school fund shall be applied annually to the support of the public free schools. Except as provided by this section, the legislature may not enact a [no] law [shall ever be enacted] appropriating any part of the permanent school fund or available school fund to any other purpose. The permanent school fund and the available school fund may not [whatever; nor shall the same, or any part thereof ever] be appropriated to or used for the support of any sectarian school. The[; and the] available school fund [herein provided] shall be distributed to the several counties according to their scholastic population and applied in the [such] manner [as may be] provided by law.

(d) [(b)] The legislature by law may provide for using the permanent school fund [and the income from the permanent school fund] to guarantee bonds issued by school districts or by the state for the purpose of making loans to or purchasing the bonds of school districts for the purpose of acquisition, construction, or improvement of instructional facilities including all furnishings thereto. If any payment is required to be made by the permanent school fund as a result of its guarantee of bonds issued by the state, an amount equal to this payment shall be immediately paid by the state from the treasury to the permanent school fund. An amount owed by the state to the permanent school fund under this section shall be a general obligation of the state until paid. The amount of bonds

authorized hereunder shall not exceed \$750 million or a higher amount authorized by a two-thirds record vote of both houses of the legislature. If the proceeds of bonds issued by the state are used to provide a loan to a school district and the district becomes delinquent on the loan payments, the amount of the delinquent payments shall be offset against state aid to which the district is otherwise entitled.

(e) [(e)] The legislature may appropriate part of the available school fund for administration of [~~the permanent school fund or of~~] a bond guarantee program established under this section.

(f) [(f)] Notwithstanding any other provision of this constitution, in managing the assets of the permanent school fund, the State Board of Education may acquire, exchange, sell, supervise, manage, or retain, through procedures and subject to restrictions it establishes and in amounts it considers appropriate, any kind of investment, including investments in the Texas growth fund created by Article XVI, Section 70, of this constitution, that persons of ordinary prudence, discretion, and intelligence, exercising the judgment and care under the circumstances then prevailing, acquire or retain for their own account in the management of their affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(g) Notwithstanding Subsection (a) of this section, the total amount distributed from the permanent school fund to the available school fund for the state fiscal years beginning September 1, 2003, and September 1, 2004, must be an amount equal to 4.5 percent of the average of the market value of the permanent school fund, excluding real property belonging to the fund that is managed, sold, or acquired under Section 4 of this article, on the last day of each of the 16 state fiscal quarters preceding the regular session of the 78th Legislature.

(h) Subsection (g) of this section and this subsection expire December 1, 2006.

SECTION 3. The constitutional amendment proposed by SECTION 1 of this resolution shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for

or against the proposition: “The constitutional amendment authorizing the Veterans’ Land Board to use assets in certain veterans’ land and veterans’ housing assistance funds to provide veterans homes for the aged or infirm and to make principal, interest, and bond enhancement payments on revenue bonds.”

SECTION 4. The constitutional amendment proposed by SECTION 2 of this resolution shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment relating to the use of income and appreciation of the permanent school fund.”

Amendment No. 2 (H.J.R. No. 51)

Wording of Ballot Proposition:

The constitutional amendment to establish a two-year period for the redemption of a mineral interest sold for unpaid ad valorem taxes at a tax sale.

Analysis of Proposed Amendment:

The proposed amendment to Section 13(c), Article VIII, of the Texas Constitution increases the period in which the former owner of a mineral interest that is sold at a tax sale for unpaid ad valorem taxes may redeem the property from the person who purchased it. The redemption period is increased from six months after the date the purchaser's deed is filed for record to two years after that date. To redeem the property, the former owner must pay to the person who purchased the property the amount the purchaser at the tax sale paid for the property, including the tax deed recording fee and all taxes, penalties, interest, and costs paid, plus an amount not exceeding 25 percent of the aggregate total in the first year of the redemption period or 50 percent of the aggregate total in the second year. The proposed amendment to Section 13(d), Article VIII, of the Texas Constitution makes a conforming change.

The amendment takes effect January 1, 2004, and applies only to the redemption of a mineral interest sold at a tax sale for which the purchaser's deed is filed for record on or after January 1, 2004.

Background

Before 1993, Section 13, Article VIII, of the Texas Constitution permitted the former owner of land or other property sold at a tax sale for unpaid ad valorem taxes to redeem the property within two years from the date the purchaser's deed was filed for record. To redeem the property, the former owner was required to pay the purchaser the amount the purchaser at the tax sale paid for the property, including the tax deed recording fee and all taxes, penalties, interest, and costs paid, plus an

amount not exceeding 25 percent of the aggregate total in the first year of the redemption period or 50 percent of the aggregate total in the second year. In 1993, Section 13 was amended to limit the two-year redemption period only to residence homesteads and land designated for agricultural use sold at tax sales. The former owner of any other type of real property sold for unpaid ad valorem taxes had only six months from the date the purchaser's deed from the tax sale was filed for record to redeem the property on the payment of the amount the purchaser at the tax sale paid for the property, including the tax deed recording fee and all taxes, penalties, interest, and costs paid, plus an amount not exceeding 25 percent of the aggregate total. Among other things, the 1993 amendment had the effect of reducing the period for redeeming a mineral interest that is sold at a tax sale for unpaid ad valorem taxes from two years after the date the purchaser's deed is filed for record to six months after that date.

The proposed amendment would treat mineral interests in the same manner as residence homesteads and land designated for agricultural use by permitting the former owner of a mineral interest that is sold for unpaid ad valorem taxes to redeem the property within two years from the date the purchaser's deed is filed for record. The provisions governing the amount that must be paid the purchaser to redeem a residence homestead or land designated for agricultural use would also apply to redemption of a mineral interest. The redemption period for all other real property would remain six months.

H.B. No. 1125, the enabling act for the proposed amendment, takes effect January 1, 2004, but only if the proposed amendment is approved by the voters. The enabling act makes conforming changes to Section 34.21, Tax Code.

Arguments For:

1. Since 1876, the Texas Constitution provided for a two-year redemption period for property sold at a tax sale. Only recently was the constitution amended to limit the redemption period for most property, including a mineral interest, to six months. Unlike the case with respect to other real property, the information used to identify and list mineral

interests on the tax rolls is frequently derived not from instruments recorded in the county where the property is located but from private industry. Consequently, the information may be outdated or inaccurate. In addition, due to the usual business practices associated with developing a mineral interest, there are frequently numerous fractional owners who depend on the owner of the working interest to pay the taxes on the property. For these reasons, the owner of a mineral interest may not receive timely notice that taxes on the property are delinquent or that the property has been ordered to be sold in satisfaction of a judgment for delinquent taxes. Increasing the redemption period from six months to two years, as it was previously, would reduce the chance that the redemption period would expire before the owner of a mineral interest learned that the property had been sold and that the owner needed to redeem the property to maintain ownership.

2. Current law unfairly distinguishes between residence homesteads and agricultural land on one hand and mineral interests on the other hand for purposes of the right of redemption, providing for a two-year redemption period in the case of the former and a six-month redemption period in the case of the latter. There is no principled basis for such a distinction.

Arguments Against:

1. The amendment would discourage investors from purchasing mineral interests at tax sales and make it more difficult for taxing units to dispose of property at a tax sale. Under current law, a purchaser of a mineral interest at a tax sale is required to wait only six months before obtaining clear title to the property. If the purchaser incurs expenses in developing the minerals and the former owner exercises the right of redemption, the former owner may profit unfairly from the expenses incurred by the purchaser. A prospective purchaser may be reluctant to purchase a mineral interest and wait two years before developing the property. By extending the redemption period for a mineral interest from six months to two years, the amendment would discourage persons from bidding on the property at a tax sale. Taxing units would experience delays in getting mineral interests back onto their tax rolls, incur expenses

in maintaining cost-bearing interests in minerals that are being produced pending tax sales, and obtain lower prices at tax sales.

2. The amendment would not resolve the inequity in current law of having different redemption periods apply to different types of real property, in that commercial property would continue to be subject to a shorter redemption period than residence homesteads, agricultural land, and mineral interests.

Text of H.J.R. No. 51: **HOUSE AUTHOR:** Ismael “Kino” Flores
SENATE SPONSOR: Todd Staples

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to establish a two-year period for the redemption of a mineral interest sold for unpaid ad valorem taxes at a tax sale.

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

SECTION 1. Sections 13(c) and (d), Article VIII, Texas Constitution, are amended to read as follows:

(c) The former owner of a residence homestead, ~~[sold for unpaid taxes and the former owner of]~~ land designated for agricultural use, or a mineral interest sold for unpaid taxes shall within two years from date of the filing for record of the Purchaser’s Deed have the right to redeem the property on the following basis:

(1) Within the first year of the redemption period, upon the payment of the amount of money paid for the property, including the Tax Deed Recording Fee and all taxes, penalties, interest, and costs paid plus an amount not exceeding 25 percent of the aggregate total; and

(2) Within the last year of the redemption period, upon the payment of the amount of money paid for the property, including the Tax Deed Recording Fee and all taxes, penalties, interest, and costs paid plus an amount not exceeding 50 percent of the aggregate total.

(d) If the residence homestead or land designated for agricultural use ~~[property]~~ is sold pursuant to a suit to enforce the collection of the unpaid taxes, the Legislature may limit the application of Subsection (c) of this section to property used as a residence homestead when the suit was filed and to land designated for agricultural use when the suit was filed.

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

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 78th Legislature, Regular Session, 2003, to establish a two-year period for the redemption of a mineral interest sold for unpaid ad valorem taxes at a tax sale and expires January 1, 2005.

(b) The amendments to Sections 13(c) and (d), Article VIII, of this constitution, take effect January 1, 2004, and apply only to the redemption of a mineral interest sold at a tax sale for which the purchaser's deed is filed for record on or after January 1, 2004. The redemption of a mineral interest sold at a tax sale for which the purchaser's deed is filed for record before January 1, 2004, is covered by the law in effect when the deed is filed, and the former law is continued in effect for that purpose.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to establish a two-year period for the redemption of a mineral interest sold for unpaid ad valorem taxes at a tax sale."

Amendment No. 3 (H.J.R. No. 55)

Wording of Ballot Proposition:

The constitutional amendment to authorize the legislature to exempt from ad valorem taxation property owned by a religious organization that is leased for use as a school or that is owned with the intent of expanding or constructing a religious facility.

Analysis of Proposed Amendment:

The proposed amendment amends Section 2(a), Article VIII, Texas Constitution, to authorize the legislature by general law to exempt from ad valorem taxation the property owned by a religious organization that also owns a place of religious worship, such as a church or temple, if the property is owned for the purpose of expanding the place of religious worship or constructing a new place of religious worship and if the property does not produce any revenue for the religious organization. The proposed amendment also authorizes the legislature by general law to provide eligibility limitations for the exemption and to impose sanctions related to the exemption. In addition, the amendment authorizes the legislature by general law to exempt from ad valorem taxation any property owned by a religious organization that is leased to a person for use as a school that meets the statutory definition for a school that is exempt from taxation.

Background

Section 1, Article VIII, Texas Constitution, provides that all real property and tangible personal property, unless exempt as required or permitted by the constitution, must be taxed according to its value. Any exemption from ad valorem taxation not authorized by the Texas Constitution is void; neither the legislature nor local governments imposing ad valorem taxes may exempt any property from ad valorem taxation without constitutional authority.

Section 2(a), Article VIII, Texas Constitution, authorizes the legislature by general law to grant certain exemptions from ad valorem taxation, including an exemption for “actual places of religious worship” and for the “property . . . reasonably necessary for a dwelling place” for the ministry. The courts have held that a place of worship includes only as much of the grounds adjacent to the building where services are held as is necessary for proper occupancy, use, and enjoyment of the building. *Davies v. Meyer*, 528 S.W.2d 864, 868 (Tex. Civ. App.—Fort Worth 1975), *aff’d* 541 S.W.2d 827 (Tex. 1976); see also Op. Tex. Att’y Gen. No. M-1241 (1972).

The proposed amendment broadens the authority of the legislature to exempt from ad valorem taxation the property of religious organizations. Under the amendment, the legislature may exempt property held by a religious organization that already owns a place of religious worship if the organization intends to use the property in the future for expansion of the organization’s existing place of religious worship or for construction of a new place of religious worship. Under current law, only the property the religious organization uses for its existing place of religious worship may be exempted. In addition, the amendment authorizes the legislature to exempt property a religious organization leases to another person for use as a school as defined by Section 11.21, Tax Code, or a successor statute. That section applies only to schools that are not operated for profit. Under current law, property may not be exempted on the basis of use for school purposes unless the owner of the property uses it for those purposes. Property that is leased to another person to be used for school purposes would currently not qualify for an exemption. Although the amendment broadens the authority of the legislature to exempt from ad valorem taxation property a religious organization holds for future use as a place of religious worship, the amendment also provides the legislature with the power to provide eligibility limitations for the exemption and to impose sanctions to further the taxation policy of the state.

House Bill No. 1278, also passed by the 78th Legislature, Regular Session, 2003, is the enabling act for the constitutional amendment proposed by House Joint Resolution No. 55. The bill takes effect

January 1, 2004, and applies only to a tax year that begins on or after that date, but only if the constitutional amendment is adopted. The bill amends Section 11.20, Tax Code, and adds Section 11.201, Tax Code. As amended by House Bill No. 1278, Section 11.20 would exempt from taxation land owned by a religious organization for future expansion if the land is not generating revenue. The land may be exempted for not more than six years if the land is contiguous to the tract of land on which the organization's existing place of regular religious worship is located and for not more than three years if the land is not contiguous to that tract. Additionally, Section 11.20, as amended by House Bill No. 1278, would exempt from taxation land owned by a religious organization that is leased to a person for operation of a school that qualifies as a school under Section 11.21(d), Tax Code. Section 11.21, Tax Code, exempts from taxation nonprofit schools operated by the owner. Section 11.201, Tax Code, as added by House Bill No. 1278, provides that if exempt land held for expansion or construction of a place of religious worship is transferred or sold by the religious organization, the new owner must pay taxes on the property as if the property had been taxed for each of the five years preceding the year in which the transfer occurs.

Arguments For:

1. The proposed amendment permits a religious organization to plan for the future growth of the organization's congregation by acquiring property for future expansion without incurring ad valorem taxes on the property pending the beginning of construction on the property. The exemption cannot be abused as the legislature has the authority to impose eligibility limitations for the exemption, including a time limit on the exemption, and to require the payment of back taxes if the property is not ultimately used as intended for a place of religious worship.

2. The proposed amendment allows a religious organization that leases its property for use as a nonprofit school to enjoy the same exemption from taxation as a person who owns property that the person uses as a school. The amendment eliminates an unjustified distinction between property owners who operate schools on their property and

property owners who lease their property to others to operate schools on the property and encourages religious organizations to use their property for educational purposes.

Arguments Against:

1. The Texas Constitution and the Tax Code already allow a religious organization to receive an ad valorem tax exemption for the organization's place of religious worship, including an exemption for not more than three years while the place of religious worship is under construction. The proposed amendment's broadening of the exemption to include future expansion of a religious organization's place of religious worship or construction of a new place of religious worship will take property off the tax rolls even though it may not actually be used for religious purposes for years, could be abused by religious organizations that seek to engage in land speculation under the guise of acquiring property for future expansion, and will be a burden to local governments as well as to other property owners who may have to pay higher taxes to offset the lost tax revenue.

2. The Texas Constitution and the Tax Code already provide for an exemption from ad valorem taxation for property a person owns and uses as a school. Allowing a religious organization to receive an exemption from ad valorem taxation for property that is leased to another person to be used as a school will encourage religious organizations to use property for nonreligious purposes, unfairly discriminate between religious organizations that lease property for use as a school and other property owners who lease property for that purpose, deprive school districts and other local governments of tax revenue, and put an unfair burden on other property owners who may be required to pay higher taxes to make up that revenue.

Text of H.J.R. No. 55: **HOUSE AUTHOR:** Bill Zedler et al.
SENATE SPONSOR: Kyle Janek

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to authorize the legislature to exempt from ad valorem taxation property owned by a religious organization that is leased for use as a school or that is owned with the intent of expanding or constructing a religious facility.

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

SECTION 1. Section 2(a), Article VIII, Texas Constitution, is amended to read as follows:

(a) All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the legislature may, by general laws, exempt from taxation public property used for public purposes; actual places of religious worship, also any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of such church or religious society, and which yields no revenue whatever to such church or religious society; provided that such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; any property owned by a church or by a strictly religious society that owns an actual place of religious worship if the property is owned for the purpose of expansion of the place of religious worship or construction of a new place of religious worship and the property yields no revenue whatever to the church or religious society, provided that the legislature by general law may provide eligibility limitations for the exemption and may impose sanctions related to the exemption in furtherance of the taxation policy of this subsection; any property that is owned by a church or by a strictly religious society and is leased by that church or strictly religious society to a person for use as a school, as defined by Section 11.21, Tax Code, or a successor statute, for educational purposes; places of burial not held for private or corporate profit; solar or wind-powered energy devices; all buildings

used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools and property used exclusively and reasonably necessary in conducting any association engaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a State or National organization of like character; also the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages, or in land or other property which has been and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, and institutions engaged primarily in public charitable functions, which may conduct auxiliary activities to support those charitable functions; and all laws exempting property from taxation other than the property mentioned in this Section shall be null and void.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment to authorize the legislature to exempt from ad valorem taxation property owned by a religious organization that is leased for use as a school or that is owned with the intent of expanding or constructing a religious facility.”

Amendment No. 4 (S.J.R. No. 30)

Wording of Ballot Proposition:

The constitutional amendment relating to the provision of parks and recreational facilities by certain conservation and reclamation districts.

Analysis of Proposed Amendment:

The proposed amendment amends Section 59, Article XVI, Texas Constitution, to provide that conservation and reclamation districts have the specific right and duty to develop parks and recreational facilities. The amendment requires the legislature to pass laws concerning the development of parks and recreational facilities by districts. The amendment, without limiting the power to finance parks and recreational facilities that currently exists, provides for the issuance of bonds financed by taxes in districts located completely or partially in a limited number of areas.

Background

Whether a conservation and reclamation district has constitutional authority to create and finance parks and recreational facilities has been at issue for many years. Section 59, Article XVI, Texas Constitution, provides that the preservation and conservation of the state's natural resources is a public right and duty and requires the legislature to pass laws to achieve that goal. The section also authorizes the creation of conservation and reclamation districts to conserve and develop the state's natural resources and authorizes indebtedness, including indebtedness supported by taxes, to finance improvements related to, and allow for maintenance of, the state's natural resources. In addition, the section lists specific activities included within the larger category of "conservation and development of all natural resources of this State." The list does not include the development of parks and recreational facilities. The legislature, however, has enacted laws under Chapter 54, Water Code, specifically authorizing municipal utility districts to develop and maintain

parks and recreational facilities. *See* Section 54.201(b)(7) and Subchapter I, Chapter 54, Water Code.

The courts first addressed the question when a resident of the Harris County Water Control and Improvement District No. 110 filed a complaint questioning the district's authority to develop a proposed purely recreational facility that would include a community center, swimming pool, and tennis courts. The court held that a municipal utility district may develop parks and recreational facilities only if that development furthers a constitutional purpose, that the recreational facility proposed by the district did not further a constitutional purpose listed in Section 59, Article XVI, Texas Constitution, and therefore that the district did not have the authority to build the facility. *Harris County Water Control and Improvement District No. 110 v. Texas Water Rights Commission*, 593 S.W.2d 852 (Tex. Civ. App.—Austin 1980, no writ).

A year later the attorney general's office considered whether the Upper Guadalupe River Authority, as part of a project to build a reservoir, could also provide swimming areas, boating facilities, and related recreational amenities. The attorney general found that the reservoir was being constructed primarily to provide surface water supply for the city of Kerrville, in keeping with constitutional and statutory authority, and that the "relatively minor" recreational improvements proposed were "necessary" to the constitutional purpose of the district. Op. Tex. Att'y Gen. No. MW-313 (1981); see also Section 59(a), Article XVI, Texas Constitution.

The use of tax and revenue bonds by conservation and reclamation districts to finance parks and recreational facilities has also been at issue. When the Spencer Road Public Utility District, with voter approval, planned to buy land for a public park and finance the purchase with tax dollars, the attorney general determined that a district may not use taxes to buy real property "for the independent purpose of having it used as a public park and developed recreational area." Op. Tex. Att'y Gen. No. JM-1173 (1990). However, the attorney general's office subsequently found that a district may use non-tax revenue to "acquir[e] . . . park land and park facilities." Op. Tex. Att'y Gen. No. JM-1259 (1990). In the most recent attorney general opinion on point, the attorney general

considered whether the Harris County Flood Control District, under its enabling statute, had authority to finance recreational and environmental improvements using tax dollars. While a district may use tax funds to finance a project if the project furthers a constitutional purpose, the opinion says, an environmental improvement is more likely to meet that standard than a recreational improvement. The opinion goes on to say that a district may use tax funds for a “secondary action which promotes a constitutional purpose,” and that a recreational facility might qualify as a “secondary action,” depending on the facts. Op. Tex. Att’y Gen. No. DM-420 (1996); see also Op. Tex. Att’y Gen. No. MW-313 (1981). However, a facility that does not further a constitutional purpose or that is solely recreational in purpose may not be financed using tax dollars. Op. Tex. Att’y Gen. No. DM-420 (1996).

The proposed amendment is intended to resolve the issues and questions surrounding the development and financing of parks and recreational facilities by conservation and reclamation districts. The amendment adds the development of parks and recreational facilities to the list of constitutional rights and duties given to conservation and reclamation districts and continues the existing permissible financing of facilities that further a constitutional purpose. The amendment also specifically limits the financing by taxation of purely recreational developments to developments located in the Tarrant Regional Water District or in a district located in any of 10 counties (the counties of Bexar, Bastrop, Waller, Travis, Williamson, Harris, Galveston, Brazoria, Fort Bend, and Montgomery).

Arguments For:

1. The proposed amendment clarifies an area of the law that has been at issue for many years by stating clearly that conservation and reclamation districts may create parks and recreational facilities. The clarification of the law may encourage districts to pursue recreational improvements.
2. The proposed amendment would empower the voters in certain areas to choose to finance parks and recreational facilities in their area with tax dollars if they feel the need exists. It is proper to place this

decision in the hands of the affected voters, and restricting this power to certain areas limits the power to localities where the greatest need exists.

3. The proposed amendment would allow conservation and reclamation districts to meet the recreational needs of communities whose needs are not being met by the city, town, or county in which they live. Many citizens live in unincorporated areas not adequately serviced. Authorizing conservation and reclamation districts to improve the civic spaces of a community will improve the quality of life for the residents within that district and the surrounding areas.

Arguments Against:

1. There is no rational reason for allowing only districts in the listed areas to use tax dollars to finance parks and recreational facilities while districts elsewhere in the state may not use tax dollars for that purpose.

2. Conservation and reclamation districts should focus on water and conservation issues. Other political subdivisions that are already multipurpose entities, such as municipalities and counties, currently have the ability to address parks and recreational needs and, therefore, are more appropriate entities to satisfy those needs.

3. The creation of some conservation and reclamation districts is initiated by and significantly benefits private developers. Allowing districts to provide parks and recreational facilities and to finance them with tax money creates too much of a risk that the facilities would be provided at public expense, not to satisfy a public need, but to create an amenity that a private developer can use to promote a land development.

Text of S.J.R. No. 30: SENATE AUTHOR: Jon Lindsay
HOUSE SPONSOR: William “Bill” Callegari

SENATE JOINT RESOLUTION

proposing a constitutional amendment relating to the provision of parks and recreational facilities by certain conservation and reclamation districts.

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

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

(a) The conservation and development of all of the natural resources of this State, and development of parks and recreational facilities, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its overflowed lands, and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.

(c-1) In addition and only as provided by this subsection, the Legislature may authorize conservation and reclamation districts to develop and finance with taxes those types and categories of parks and recreational facilities that were not authorized by this section to be developed and financed with taxes before September 13, 2003. For development of such parks and recreational facilities, the Legislature may authorize indebtedness payable from taxes as may be necessary to provide for improvements and maintenance only for a conservation and reclamation district all or part of which is located in Bexar County, Bastrop County, Waller County, Travis County, Williamson County, Harris County, Galveston County, Brazoria County, Fort Bend County, or Montgomery

County, or for the Tarrant Regional Water District, a water control and improvement district located in whole or in part in Tarrant County. All the indebtedness may be evidenced by bonds of the conservation and reclamation district, to be issued under regulations as may be prescribed by law. The Legislature may also authorize the levy and collection within such district of all taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of the bonds and for maintenance of and improvements to such parks and recreational facilities. The indebtedness shall be a lien on the property assessed for the payment of the bonds. The Legislature may not authorize the issuance of bonds or provide for indebtedness under this subsection against a conservation and reclamation district unless a proposition is first submitted to the qualified voters of the district and the proposition is adopted. This subsection expands the authority of the Legislature with respect to certain conservation and reclamation districts and is not a limitation on the authority of the Legislature with respect to conservation and reclamation districts and parks and recreational facilities pursuant to this section as that authority existed before September 13, 2003.

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

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment relating to the provision of parks and recreational facilities by certain conservation and reclamation districts.”

Amendment No. 5 (S.J.R. No. 25)

Wording of Ballot Proposition:

The constitutional amendment to authorize the legislature to exempt from ad valorem taxation travel trailers not held or used for the production of income.

Analysis of Proposed Amendment:

Section 1(d), Article VIII, Texas Constitution, currently authorizes the legislature to exempt from ad valorem taxes certain tangible personal property but excludes the legislature from exempting tangible personal property structures used or occupied as residential dwellings. The proposed constitutional amendment amends Subsection (d) to exclude from being exempt only those structures used or occupied as residential dwellings that are substantially affixed to real estate. The proposed constitutional amendment repeals Section 1(j), Article VIII, Texas Constitution, which authorizes the legislature to allow a taxing unit, other than a school district, to exempt travel trailers from ad valorem taxes.

Background

Section 1, Article VIII, Texas Constitution, provides that all real property and tangible personal property, unless exempt as required or permitted by the constitution, shall be taxed according to its value. Any exemption from ad valorem taxation not granted or authorized by the Texas Constitution is void. Neither the legislature nor a local government that imposes ad valorem taxes may exempt any property from ad valorem taxation without constitutional authority.

Section 1(d), Article VIII, requires the legislature to exempt from ad valorem taxation household goods and personal effects not held or used for the production of income. That subsection also authorizes the

legislature to exempt certain other personal property from ad valorem taxes, including personal property homesteads (personal property exempt by law from seizure to satisfy debt), leased motor vehicles not held primarily to produce income, and all other tangible personal property not held or used for the production of income, other than structures used or occupied as residential dwellings. Section 1(j), Article VIII, authorizes the legislature to allow taxing units, except school districts, to exempt travel trailers, as defined by the legislature, from ad valorem taxation. The addition of Subsection (j) to Section 1 was approved in a constitutional amendment election held on November 6, 2001. As authorized by Subsection (j), the 77th Legislature in 2001 amended the Tax Code by adding Section 11.142, which authorized the governing body of any taxing unit, other than a school district, to exempt travel trailers from ad valorem taxation by the taxing unit regardless of whether the travel trailers are real or personal property.

Although Section 1(j), Article VIII, Texas Constitution, and Section 11.142, Tax Code, authorized most taxing units to exempt travel trailers from ad valorem taxation, those provisions also had the effect of requiring school districts to tax those travel trailers regardless of whether they are real or personal property. Formerly, travel trailers not used to produce income that were not affixed to real estate constituted tangible personal property that was exempt from taxation by a school district unless the governing body of the school district took action to tax them. When they became aware of this situation, the governor and several members of the Texas Legislature, including the state representative and the state senator who had proposed the 2001 constitutional amendment, sent a letter to all the chief appraisers in this state asserting that they and other members of the legislature had intended to eliminate all ad valorem taxes on travel trailers and that corrective legislation would be introduced in the 2003 legislature.

Senate Joint Resolution No. 25, if adopted, will amend Section 1(d), Article VIII, Texas Constitution, to authorize the legislature to exempt from ad valorem taxation structures used or occupied as residential dwellings, except structures that are substantially affixed to real estate.

Senate Joint Resolution No. 25, if adopted, will also repeal Section 1(j), Article VIII, described above.

Senate Bill No. 510, enacted by the 78th Legislature, Regular Session, 2003, implements the exemption authorized by the constitutional amendment proposed by S.J.R. No. 25. The bill, which takes effect September 1, 2003, and applies beginning with the 2002 tax year, amends Section 11.14(a), Tax Code, which currently exempts most tangible personal property not used to produce income from ad valorem taxation by all taxing units in this state but excludes travel trailers from the exemption. The governing body of a taxing unit may take action to tax the otherwise exempt personal property under Section 11.14(c), Tax Code. The amendment to Section 11.14(a), Tax Code, eliminates the travel trailer exclusion and instead provides that the exemption does not apply to a structure that a person owns which is substantially affixed to real estate and is used or occupied as a residential dwelling. Senate Bill No. 510 also repeals Section 11.142, Tax Code, the local option travel trailer exemption described above. The amendment to Section 11.14(a), and the repeal of Section 11.142 apply to ad valorem taxes imposed in 2002 and subsequent years.

Senate Joint Resolution No. 25 and S.B. No. 510 will have the effect of requiring the ad valorem taxation of travel trailers and other structures that are substantially affixed to real estate and used or occupied as residential dwellings while exempting from ad valorem taxation by all taxing units, including school districts, all other travel trailers that constitute personal property and are not used for the production of income, subject to taxation by a taxing unit whose governing body takes action to tax those travel trailers.

Arguments For:

1. Texas is one of only a few states in which school districts and other local governments are authorized to impose ad valorem taxes on travel trailers that are used only for personal use. Approval of the amendment will eliminate the mandatory school taxes on travel trailers and provide travel trailers with the same tax treatment as other

noncommercial personal property, such as motor vehicles. The exemption will eliminate the current disincentive for consumers in Texas to purchase travel trailers that will not be attached to real property and will also promote tourism and economic development in this state.

2. Imposition of the ad valorem tax on travel trailers by those school districts and other taxing units that elect to tax travel trailers amounts to “double taxation” because the purchaser of a travel trailer is also required to pay sales and use taxes and annual vehicle registration fees on the trailer. In 2001, the legislature and the voters intended to authorize the elimination of ad valorem taxes on travel trailers. Approval of the amendment will authorize the legislature to rectify the unintended effect of the 2001 amendment and end the double tax on travel trailers.

3. Ad valorem taxation of travel trailers is very inefficient, due to the costs of identifying and appraising them and of billing for and collecting the relatively small amount of taxes imposed on each of them. Approval of the amendment will require a school district or other taxing unit that elects to tax travel trailers to bear the full costs of taxation, which are currently borne in large part by the appraisal district.

Arguments Against:

1. Exempting travel trailers from ad valorem taxation will erode the property tax base of those school districts and other taxing units that do tax travel trailers. If the proposed amendment is adopted, those school districts and other taxing units will lose what property tax revenue they currently receive from the taxation of travel trailers unless their governing bodies act affirmatively to impose an ad valorem tax on those trailers. To make up any shortfall, those school districts and taxing units may have to impose higher property taxes on other property owners, including persons who own and reside in manufactured homes and other types of homes.

2. The owner of a travel trailer that is not affixed to real property but is used for residential purposes should not be treated differently from the owner of a manufactured home who resides in the home. A person who resides in a travel trailer, regardless of whether it is affixed to real

property, should be required to pay property taxes on the trailer, just like other home owners, including those who reside in manufactured homes. The proposed exemption of travel trailers creates a property tax break for a small group of persons who will no longer pay their fair share of taxes.

3. By requiring a school district or other taxing unit to take affirmative action to tax travel trailers, and imposing all the costs of appraising those travel trailers on a school district or other taxing unit choosing to tax them, the legislature in the implementing legislation is unfairly discouraging those school districts and other taxing units that have previously taxed travel trailers from continuing to tax them in order to maintain their current tax base.

Text of S.J.R. No. 25:

SENATE AUTHOR: Todd Staples et al.

HOUSE SPONSOR: Warren Chisum

SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to exempt certain travel trailers from ad valorem taxation.

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

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

(d) The Legislature by general law shall exempt from ad valorem taxation household goods not held or used for the production of income and personal effects not held or used for the production of income. The Legislature by general law may exempt from ad valorem taxation:

(1) all or part of the personal property homestead of a family or single adult, "personal property homestead" meaning that personal property exempt by law from forced sale for debt;

(2) subject to Subsections (e) and (g) [~~and (j)~~] of this section, all other tangible personal property, except structures which are substantially affixed to real estate [~~personal property~~] and are used or occupied as residential dwellings and except property held or used for the production of income; and

(3) subject to Subsection (e) of this section, a leased motor vehicle that is not held primarily for the production of income by the lessee and that otherwise qualifies under general law for exemption.

SECTION 2. Subsection (j), Section 1, Article VIII, Texas Constitution, is repealed.

SECTION 3. Section 1, Article VIII, Texas Constitution, is amended by adding Subsection (i-1) to read as follows:

(i-1) TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 78th Legislature, Regular Session, 2003, authorizing the legislature to exempt from ad

valorem taxation a travel trailer not held or used for the production of income and expires January 1, 2005.

(b) The amendment to Section 1(d), Article VIII of this constitution, takes effect January 1, 2004, and applies only to a tax year that begins on or after January 1, 2002. The repeal of Section 1(j), Article VIII of this constitution, takes effect January 1, 2004.

SECTION 4. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment to authorize the legislature to exempt from ad valorem taxation travel trailers not held or used for the production of income.”

Amendment No. 6 (H.J.R. No. 23)

Wording of Ballot Proposition:

The constitutional amendment permitting refinancing of a home equity loan with a reverse mortgage.

Analysis of Proposed Amendment:

The proposed constitutional amendment amends Section 50(f), Article XVI, Texas Constitution, by providing that a home equity loan may be refinanced in a manner that converts the loan into a reverse mortgage.

Background

In 1997 the legislature proposed and the voters approved a constitutional amendment broadening the state's long-standing limitations on the situations in which a person's homestead may be taken for payment of the person's debts. That amendment allowed for two new types of loans that could be secured using a homestead as collateral. One of these is a home equity loan, under which a borrower is advanced money, which may be used for any purpose the borrower wishes, and the lender is allowed to foreclose on the borrower's homestead if the borrower fails to repay the loan. The other type of loan is a reverse mortgage, another loan of money that may be used for any purpose but under which the borrower is generally not required to repay the money or interest on the money until the borrower dies or moves out of the home. Under current law, a reverse mortgage may be made only to a borrower 62 years of age or older. A reverse mortgage allows an older borrower to convert the equity accumulated in the borrower's home into money that may be used for current expenses. Both types of loans have restrictions on how the loans must be made, repaid, and collected, although the restrictions on home equity loans are more extensive than those on reverse mortgages. One of the restrictions, which the proposed constitutional amendment would remove, requires that a home equity loan that is refinanced must be refinanced only with another home equity loan and may not be converted to a reverse mortgage.

Home equity loans became available reasonably soon after the adoption of the 1997 amendment. Because the amendment contained provisions relating to reverse mortgages that did not conform to federal law, however, reverse mortgages did not become available until several years later.

The same change proposed by this constitutional amendment is also being proposed, among other constitutional changes, by Proposition 16 (S.J.R. No. 42), which is being submitted to the voters at this election.

Argument For:

Reverse mortgages are a very popular means for seniors to supplement their income by tapping the equity in their homes. Beginning in 1998, there were several years when home equity loans were available but reverse mortgages were not offered. During this period many persons who would have preferred reverse mortgages obtained home equity loans instead. The proposed amendment would allow those borrowers to convert their existing home equity loans into reverse mortgages.

Argument Against:

Reverse mortgages are not subject to all the extensive safeguards that home equity loans are. Elderly persons, who may tend to be more susceptible to unscrupulous or uncaring lending practices, may be victimized by lenders who would use such practices to convince elderly borrowers under home equity loans to convert those loans to reverse mortgages under terms unfairly favorable to the lender.

Amendment No. 7 (H.J.R. No. 44)

Wording of Ballot Proposition:

The constitutional amendment to permit a six-person jury in a district court misdemeanor trial.

Analysis of Proposed Amendment:

The proposed amendment specifies that a district court petit jury hearing a criminal misdemeanor case must consist of six persons. In a conforming change, the amendment also strikes a provision allowing nine members of a district court 12-member jury to render a verdict in a criminal misdemeanor case.

Background

Section 13, Article V, Texas Constitution, governs the composition of grand and petit juries in district courts, the number of grand jurors necessary to establish a quorum, and the number of petit jurors necessary to render a verdict. A district court petit jury must consist of 12 persons, though in civil cases and in criminal misdemeanor cases, nine members of the jury may render a verdict if the verdict is signed by each member of the jury. In any case, if not more than three members of a jury are disabled from sitting on the jury, the remaining jurors are empowered to render a verdict.

The requirement that juries consist of 12 persons is consistent with common law on the matter. Section 13, Article V, Texas Constitution, has been amended only once since 1876 when a constitutionally required number of jurors was adopted. That amendment (Section 2.09, H.J.R. No. 75, 77th Legislature, Regular Session, 2001) simply amended the text to be gender neutral.

Article 33.01, Code of Criminal Procedure, also provides that a district court jury must consist of 12 members. House Bill No. 830, enacted by the 78th Legislature, Regular Session, 2003, which takes effect only if the proposed constitutional amendment is adopted, conforms Article 33.01, Code of Criminal Procedure, to the substantive change provided in the constitutional amendment.

Arguments For:

1. Six-member county court juries are authorized by Article 33.01, Code of Criminal Procedure, to hear criminal misdemeanor cases, and a majority of misdemeanor cases are tried before those six-member juries. However, in some small or rural counties, 12-member district court juries hear criminal misdemeanor cases. Allowing six-member juries in district court criminal misdemeanor trials would bring uniformity to the law.

2. Reducing the number of jurors in criminal misdemeanor cases would save counties time and money without sacrificing the merits of a jury trial. The duration of criminal misdemeanor trials would be shortened, and jury fees and other court costs would be reduced.

Argument Against:

Allowing six-member district court jury trials in criminal misdemeanor cases would have the effect of reducing the procedural protection of a 12-member jury in misdemeanor official misconduct cases. The legislature intended a 12-member jury trial in those cases involving a public official accused of a crime, like official misconduct, that might lead to the official's removal from office.

Text of H.J.R. No. 44: **HOUSE AUTHOR:** Bryan Hughes et al.
SENATE SPONSOR: Bill Ratliff

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to permit a six-person jury in a district court misdemeanor trial.

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

SECTION 1. Section 13, Article V, Texas Constitution, is amended to read as follows:

Sec. 13. Grand and petit juries in the District Courts shall be composed of twelve persons, except that petit juries in a criminal case below the grade of felony shall be composed of six persons; but nine members of a grand jury shall be a quorum to transact business and present bills. In trials of civil cases[, ~~and in trials of criminal cases below the grade of felony~~] in the District Courts, nine members of the jury, concurring, may render a verdict, but when the verdict shall be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it. When, pending the trial of any case, one or more jurors not exceeding three, may die, or be disabled from sitting, the remainder of the jury shall have the power to render the verdict; provided, that the Legislature may change or modify the rule authorizing less than the whole number of the jury to render a verdict.

SECTION 2. The proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment to permit a six-person jury in a district court misdemeanor trial.”

Amendment No. 8 (H.J.R. No. 62)

Wording of Ballot Proposition:

The constitutional amendment authorizing the legislature to permit a person to take office without an election if the person is the only candidate to qualify in an election for that office.

Analysis of Proposed Amendment:

The proposed amendment adds Section 13, Article XVI, Texas Constitution, to authorize the legislature to provide by general law that a person may take office without an election if that person is the only candidate to qualify in an election to be held for that office.

Background

Numerous provisions of the Texas Constitution require elections to be held to fill certain offices. For example, Section 2, Article IV, Texas Constitution, requires the governor, lieutenant governor, comptroller, land commissioner, and attorney general to be elected by the qualified voters of the state. Also, some provisions establishing district or county offices require a person to be elected to such an office by the qualified voters of the district or county, such as Section 7, Article V, Texas Constitution, which provides for the election of district judges, and Section 20, Article V, Texas Constitution, which provides for the election of the county clerk.

The constitutional requirements that certain offices be filled by election preclude the legislature from providing that such an office may be filled by an unopposed candidate without holding an election for that office, even though the outcome of the election is known in advance in such cases. These election requirements require large counties to print and count ballots that sometimes include dozens of uncontested races. For example, at the November 5, 2002, election, there were 58 unopposed candidates for office in Harris County and 39 unopposed candidates for office in Tarrant County. The proposed amendment would authorize the

legislature to address this issue by enacting general laws to enable unopposed candidates to assume office without an election.

In 2001, the voters approved a similar measure that permits the legislature to dispense with an unnecessary election to fill a legislative vacancy when only one candidate qualifies for the ballot.

House Bill No. 1476, enacted by the 78th Legislature, Regular Session, 2003, contingent on the adoption of House Joint Resolution No. 62, applies only to the general election for state and county officers and authorizes the secretary of state or a county clerk, as appropriate, to declare a candidate elected to an office of the state or county government without an election if the candidate is the only person who has qualified for election and no name is to be placed on the list of write-in candidates. If a candidate is declared elected, an election is not held for that office and the name of the candidate is listed on the ballot separately under the heading “Unopposed Candidate Declared Elected.”

Arguments For:

1. By authorizing the legislature to allow an authority holding an election to avoid the expense of time and money to count votes for unopposed candidates, the proposed amendment promotes efficiency in election administration and would help reduce the cost of elections without interfering with anyone’s right to vote. If a candidate is unopposed, and no other candidate, including a write-in candidate, is eligible for election to that office, the race is decided before the election occurs. Under current law, if there is an unopposed candidate for an office on the ballot, the election for that office becomes a burdensome formality.

2. The proposed amendment would permit the legislature to give election officials greater flexibility in ballot preparation, because the ballot would not have to enable a person to vote for an unopposed candidate. Shorter, simpler ballots will allow the voter to focus on contested races, without having to sort through the unopposed candidates. Shorter ballots will also reduce voter confusion, especially during the implementation of new, electronic voting systems.

Arguments Against:

1. Omitting a candidate from the ballot deprives voters of their right to vote for the candidate of their choice. Those who take the time to vote are exercising their right to endorse the candidates they wish to represent them and validate the candidates' election to public office. The right to vote for a candidate should exist whether or not there is a choice in candidates.

2. The proposed amendment would authorize the legislature to deprive candidates of the opportunity to gain visibility by campaigning and make it more difficult for the voters to know who their elected leaders are or what offices are being filled. The proposed amendment does not require that the names of candidates that take office without an election be listed on the ballot. The formality of an election is an important part of the democratic process that should not be rendered into a mere technicality.

Text of H.J.R. No. 62: **HOUSE AUTHOR:** Vicki Truitt
 SENATE SPONSOR: Jane Nelson

HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to permit a person to take office without an election if the person is the only candidate to qualify in an election for that office.

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

SECTION 1. Article XVI, Texas Constitution, is amended by adding Section 13 to read as follows:

Sec. 13. For an office for which this constitution requires an election, the legislature may provide by general law for a person to take the office without an election if the person is the only candidate to qualify in an election to be held for that office.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing the legislature to permit a person to take office without an election if the person is the only candidate to qualify in an election for that office.”

SECTION 3. Section 2, H.J.R. No. 61, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003 [~~November 4, 2003~~]. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing municipalities to donate surplus fire-fighting equipment or supplies for the benefit of rural volunteer fire departments.”

Amendment No. 9 (H.J.R. No. 68, Section 2)

Wording of Ballot Proposition:

The constitutional amendment relating to the use of income and appreciation of the permanent school fund.

Analysis of Proposed Amendment:

The proposed amendment amends Section 5, Article VII, Texas Constitution, to allow the State Board of Education or the legislature to determine the amount distributed from the permanent school fund to the available school fund from a portion of the “total return,” including capital gains, on all investment assets of the permanent school fund. The amendment places limits on the portion of total return that may be transferred to the available school fund and provides for payment from the permanent school fund of the expenses of managing permanent school fund assets.

Background

The permanent school fund (PSF) was created when the constitution of 1876 was adopted. Originally, the PSF consisted of one-half of the remaining state-owned land and funds representing an earlier permanent endowment fund for public education that had been lost during the Civil War; the initial value of the PSF exceeded \$45 million (which would be more than \$1 trillion in today’s dollars). The available school fund (ASF), which was to provide money for the operation and maintenance of public schools, consisted of the interest from the permanent school fund, up to one-fourth of state general revenue, and the proceeds of a \$1 poll tax levied on persons between 21 and 60 years of age. Proceeds from sale of lands belonging to the PSF were to be deposited in the PSF.

As of August 31, 2002, the PSF had a balance of almost \$17.3 billion. While the PSF does hold interests in real estate, the value of those interests is less than one percent of the fund's balance. Most of the fund is held in stocks and corporate and government bonds.

The State Board of Education is constitutionally required to manage the PSF. The fund is invested in accordance with recommendations of the staff of the Texas Education Agency and private investment management firms under contract with the board.

The ASF now consists of the income earned on PSF assets, such as interest and stock dividends, one-fourth of the proceeds of state occupation taxes, and one-fourth of the proceeds of state motor fuels taxes. The legislature, in its biennial General Appropriations Act, specifies the amount of money the ASF is expected to provide. Investment decisions are in part based on the need to provide the required amount for the ASF.

Money in the ASF is used to provide public school textbooks and a distribution based on a school district's average daily attendance. For the 2002 fiscal year, that distribution was \$197.14 per student. Each school district, regardless of its local property tax base, receives the distribution. For those districts that receive state assistance under the Foundation School Program, the amount of that aid is reduced by the amount of the district's ASF per-student distribution.

The amendment proposed by Section 2, H.J.R. No. 68, would change the composition of the PSF and the ASF by providing that the ASF, rather than consisting in part of the interest and income on PSF assets, would consist of a portion of the "total return" on investment assets of the PSF—in other words, a portion of the market value increases, or capital gains, of stocks and bonds held by the PSF. Current dedication of taxes to the ASF would continue.

Under the proposed amendment, the total amount distributed from the PSF to the ASF would be in accordance with the rate adopted by a vote of two-thirds of the total membership of the State Board of Education, or the rate adopted by the legislature by general law or appropriation if the State Board of Education does not adopt a rate. The rate could not be more than six percent of the average of the market value of the PSF,

excluding real property, on the last day of each of the 16 most recent state fiscal quarters. In addition, over the 10-year period consisting of the current state fiscal year and the nine preceding state fiscal years, the total distributions from the PSF to the ASF could not exceed the total return on all investment assets of the PSF over the same 10-year period.

The amendment contains a temporary provision providing that for the 2004 and 2005 state fiscal years the distribution from the PSF to the ASF must equal 4.5 percent of the average of the market value of the PSF, excluding real property, on the last day of each of the 16 most recent state fiscal quarters ending before January 2003.

Finally, the amendment provides that the costs of managing PSF land and investments would be paid out of the PSF. Under current law, the costs of managing PSF land are paid from amounts appropriated to the General Land Office, and the costs of managing investments are paid from the ASF.

Arguments For:

1. Modern permanent endowment funds similar to the PSF are often subject to a total return spending policy. Texas voters in 1999 approved a total return policy for the permanent university fund, which supports various institutions in the University of Texas and the Texas A&M systems. Because much of the increase in value of a portfolio such as that held by the PSF comes as capital gains, the corpus of the PSF can be protected even if a portion of those gains is distributed to the ASF.

2. Changing to a total return policy for the PSF is expected to yield significant additional net revenue for the benefit of public schools. The Legislative Budget Board estimates the change would produce additional net revenue of over \$230 million in fiscal year 2004 and \$247 million in fiscal year 2005. The additional net revenue is projected to be somewhat less in fiscal year 2006 and beyond.

Arguments Against:

1. Because the PSF is a permanent endowment, a conservative investment strategy would retain all capital gains as part of the PSF. The number of schoolchildren in Texas has grown by an average of 1.6 percent during each of the last five years, and enrollment is expected to continue to grow. The state should avoid any danger that the corpus of the PSF, on an inflation-adjusted, per-student basis, will decline.

2. The stock market has generally declined over the past two years and it is impossible to predict whether the market will see sustained growth in the near future. It is possible that a continued drop in stock prices would lead to lower distributions from the PSF to the ASF, not higher.

3. Even if PSF distributions to the ASF increase, that does not mean most public schools will receive more money. In districts that receive state aid under the Foundation School Program, the increase in ASF payments is matched by a decrease in foundation school fund payments. Because districts receiving state aid will not receive any more money, as ASF payments to wealthy school districts increase, so does the gap between the revenue available to school districts that rely on state aid and the revenue available to the wealthiest districts. This could potentially disturb the equity of the school finance system.

Text of H.J.R. No. 68: HOUSE AUTHOR: Suzanna Gratia Hupp et al.
SENATE SPONSOR: Troy Fraser

HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing the Veterans' Land Board to make certain payments on revenue bonds and to use assets in certain funds to provide for veterans homes and a constitutional amendment relating to the use of income and appreciation of the permanent school fund.

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

SECTION 1. Subsections (r) and (s), Section 49-b, Article III, Texas Constitution, are amended to read as follows:

(r) Receipts of all kinds of the Veterans' Land Fund, the Veterans' Housing Assistance Fund, or the Veterans' Housing Assistance Fund II that the Board determines are not required for the payment of principal of and interest on the general obligation bonds benefiting those funds, including payments by the Board under a bond enhancement agreement with respect to principal of or interest on the bonds, may be used by the Board, to the extent not inconsistent with the proceedings authorizing the bonds to:

(1) make temporary transfers to another of those funds to avoid a temporary cash deficiency in that fund or make a transfer to another of those funds for the purposes of that fund;

(2) pay the principal of and interest on general obligation bonds issued to provide money for another of those funds or make bond enhancement payments with respect to the bonds; or

(3) pay the principal of and interest on revenue bonds of the Board or make bond enhancement payments with respect to the bonds [~~if the bonds are issued to provide funds to purchase lands and sell lands to veterans or make home mortgage loans to veterans~~].

(s) If the Board determines that assets from the Veterans' Land Fund, the Veterans' Housing Assistance Fund, or the Veterans' Housing

Assistance Fund II are not required for the purposes of the fund, the Board may:

- (1) transfer the assets to another of those funds;
- (2) use the assets to secure revenue bonds issued by the Board; ~~or~~
- (3) use the assets to plan and design, operate, maintain, enlarge, or improve veterans cemeteries; or
- (4) use the assets to plan and design, construct, acquire, own, operate, maintain, enlarge, improve, furnish, or equip veterans homes.

SECTION 2. Section 5, Article VII, Texas Constitution, is amended to read as follows:

Sec. 5. (a) The permanent school fund consists of all land appropriated for public schools by this constitution or the other laws of this state, other properties belonging to the permanent school fund, and all revenue derived from the land or other properties. The available school fund consists of the distributions made to it from the total return on all investment assets of ~~[principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be]~~ the permanent school fund, [and all the interest derivable therefrom and] the taxes [herein] authorized by this constitution or general law to be part of [and levied shall be] the available school fund, and appropriations made to the available school fund by the legislature. The total amount distributed from the permanent school fund to the available school fund:

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

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

(B) the legislature by general law or appropriation, if the State Board of Education does not adopt a rate as provided by Paragraph (A) of this subdivision; and

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

(b) The expenses of managing permanent school fund land and investments shall be paid by appropriation from the permanent school fund.

(c) The available school fund shall be applied annually to the support of the public free schools. Except as provided by this section, the legislature may not enact a [no] law [shall ever be enacted] appropriating any part of the permanent school fund or available school fund to any other purpose. The permanent school fund and the available school fund may not [whatever; nor shall the same, or any part thereof ever] be appropriated to or used for the support of any sectarian school. The[; and the] available school fund [herein provided] shall be distributed to the several counties according to their scholastic population and applied in the [such] manner [as may be] provided by law.

(d) [(b)] The legislature by law may provide for using the permanent school fund [and the income from the permanent school fund] to guarantee bonds issued by school districts or by the state for the purpose of making loans to or purchasing the bonds of school districts for the purpose of acquisition, construction, or improvement of instructional facilities including all furnishings thereto. If any payment is required to be made by the permanent school fund as a result of its guarantee of bonds issued by the state, an amount equal to this payment shall be immediately paid by the state from the treasury to the permanent school fund. An amount owed by the state to the permanent school fund under this section shall be a general obligation of the state until paid. The amount of bonds

authorized hereunder shall not exceed \$750 million or a higher amount authorized by a two-thirds record vote of both houses of the legislature. If the proceeds of bonds issued by the state are used to provide a loan to a school district and the district becomes delinquent on the loan payments, the amount of the delinquent payments shall be offset against state aid to which the district is otherwise entitled.

(e) [(e)] The legislature may appropriate part of the available school fund for administration of [~~the permanent school fund or of~~] a bond guarantee program established under this section.

(f) [(f)] Notwithstanding any other provision of this constitution, in managing the assets of the permanent school fund, the State Board of Education may acquire, exchange, sell, supervise, manage, or retain, through procedures and subject to restrictions it establishes and in amounts it considers appropriate, any kind of investment, including investments in the Texas growth fund created by Article XVI, Section 70, of this constitution, that persons of ordinary prudence, discretion, and intelligence, exercising the judgment and care under the circumstances then prevailing, acquire or retain for their own account in the management of their affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(g) Notwithstanding Subsection (a) of this section, the total amount distributed from the permanent school fund to the available school fund for the state fiscal years beginning September 1, 2003, and September 1, 2004, must be an amount equal to 4.5 percent of the average of the market value of the permanent school fund, excluding real property belonging to the fund that is managed, sold, or acquired under Section 4 of this article, on the last day of each of the 16 state fiscal quarters preceding the regular session of the 78th Legislature.

(h) Subsection (g) of this section and this subsection expire December 1, 2006.

SECTION 3. The constitutional amendment proposed by SECTION 1 of this resolution shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for

or against the proposition: “The constitutional amendment authorizing the Veterans’ Land Board to use assets in certain veterans’ land and veterans’ housing assistance funds to provide veterans homes for the aged or infirm and to make principal, interest, and bond enhancement payments on revenue bonds.”

SECTION 4. The constitutional amendment proposed by SECTION 2 of this resolution shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment relating to the use of income and appreciation of the permanent school fund.”

Amendment No. 10 (H.J.R. No. 61)

Wording of Ballot Proposition:

The constitutional amendment authorizing municipalities to donate surplus fire-fighting equipment or supplies for the benefit of rural volunteer fire departments.

Analysis of Proposed Amendment:

The proposed amendment adds Section 52i, Article III, Texas Constitution, to create an additional exception to the general constitutional prohibition against a county, city, town, or other political subdivision of the state granting a thing of value to any individual, association, or corporation.

Background

Sections 51 and 52, Article III, Texas Constitution, are intended to prevent certain abuses of public funds and other public property by prohibiting the state and local governments from giving away funds and items of value to other entities unless a public purpose of the donating government is served. Section 51 applies to the state. Section 52 applies to municipalities and other local governments.

The determination of whether surplus fire-fighting equipment or supplies have any value and whether a municipality's donation of that property for the benefit of rural volunteer fire departments serves a public purpose involves a factual question that raises the possibility that the donation violates Section 52, Article III. To avoid uncertainty about whether a donation of that type is allowed under the constitution, an exception to Section 52, Article III, is needed. H.J.R. No. 61 creates that exception.

Arguments For:

1. Rural areas often do not have the financial resources to purchase necessary fire-fighting equipment or supplies. The proposed amendment

creates a method by which municipal areas may “recycle” unused equipment or supplies for the benefit of rural communities in need.

2. Surplus fire-fighting equipment or supplies normally will have little, if any, value, and the cost incurred in selling the property may exceed the revenue generated by the sale. Consequently, a cost-effective way to dispose of the property is to donate it to the Texas Forest Service or its successor agency to redistribute to rural volunteer fire departments that are not as advanced and that have a recognizable need.

Arguments Against:

1. The proposed amendment allows for the donated equipment or supplies to be distributed to rural volunteer fire departments “based on need.” However, the amendment does not provide any criteria under which a finding of need can be made. Those criteria are necessary to ensure that rural communities that are financially able to pay for equipment or supplies are precluded from being recipients under the donation program.

2. The donating municipality may incur some costs in making the donation, such as the cost of delivering the equipment or supplies and the cost of assessing the condition of the property. The proposed amendment should have contained provisions to require the donating municipality to recover those costs.

Text of H.J.R. No. 61: HOUSE AUTHOR: Jim McReynolds et al.
SENATE SPONSOR: Kenneth L. Armbrister

HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing municipalities to donate surplus fire-fighting equipment or supplies for the benefit of rural volunteer fire departments.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Section 52i to read as follows:

Sec. 52i. (a) A municipality may donate surplus equipment, supplies, or other materials used in fighting fires to the Texas Forest Service or to a successor agency authorized to cooperate in the development of rural fire protection plans.

(b) The Texas Forest Service or the successor agency may, based on need, redistribute to rural volunteer fire departments the equipment, supplies, or materials donated under Subsection (a).

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 2003.* The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing municipalities to donate surplus fire-fighting equipment or supplies for the benefit of rural volunteer fire departments.”

* The election date of H.J.R. No. 61 was changed to September 13, 2003, with the passage of H.J.R. No. 62.

Amendment No. 11 (H.J.R. No. 85)

Wording of Ballot Proposition:

A constitutional amendment to allow the legislature to enact laws authorizing and governing the operation of wineries in this state.

Analysis of Proposed Amendment:

The proposed constitutional amendment would amend Section 20, Article XVI, Texas Constitution, to permit the legislature to authorize wineries to manufacture, sell, and dispense wine in any area of the state, even if the sale of wine in the area has not been authorized by a local option election.

Background

Section 20, Article XVI, Texas Constitution, authorizes the legislature to regulate the manufacture, sale, possession, and transportation of intoxicating liquors; however, that section also requires the legislature to enact laws enabling the qualified voters of a county, justice precinct, or incorporated city or town to decide whether and what types of alcoholic beverages may be sold there. Under Section 20(c), Article XVI, in a political subdivision in which the sale of intoxicating liquors was prohibited by a local option election held under state laws in effect at the time Section 20, Article XVI, took effect, it is illegal to manufacture, sell, barter, or exchange certain intoxicating beverages unless a subsequent local option election is held to legalize the sale of those beverages.

Section 251.14, Alcoholic Beverage Code, prescribes the ballot issues that may be presented to the voters of a county, justice precinct, or incorporated city or town for the purpose of determining whether particular alcoholic beverages may be sold in that political subdivision. The ballot issues include options that would allow on- or off-premises consumption of particular alcoholic beverages or that would allow the beverages to be consumed off-premises only. Chapter 16, Alcoholic Beverage Code, prescribes the activities in which holders of a winery permit may engage.

That chapter currently includes a provision allowing a winery permit to be issued for a premises in a dry area, an area in which the sale of alcoholic beverages is generally prohibited, and provisions that allow only certain wineries in wet or dry areas to sell wine for consumption on the winery premises.

The proposed amendment would allow the legislature to enact laws that would permit a winery in this state, regardless of whether the winery is located in an area in which the sale of wine has been authorized by a local option election, to manufacture wine, sell wine to the ultimate consumer for consumption on or off the winery premises, buy wine from or sell wine to any other person authorized under general law to purchase and sell wine in this state, and dispense wine without charge for tasting purposes for consumption on the winery premises or that would otherwise promote the wine industry in this state. The amendment would also allow the legislature to direct the Alcoholic Beverage Commission or a successor agency to set policies for all wineries in the state.

House Bill 2593, which is enabling legislation that takes effect only if the proposed amendment is approved, amends Chapter 16, Alcoholic Beverage Code, to allow all wineries in the state to sell wine to ultimate consumers for consumption on or off winery premises and allow a winery in an area in which the sale of wine has not been authorized by a local option election to engage in any activity in which other wineries may engage, except that such a winery may only sell or dispense wine that is manufactured in this state and is at least 75 percent by volume fermented juice of grapes or other fruit grown in this state.

Arguments For:

1. The proposed amendment would permit potentially large growth in the state's agricultural base in a new area that could replace past agricultural practices that are no longer viable by expanding the areas in which wineries may operate to include dry areas, many of which are located in areas of the state where the climate and soil conditions are well-suited for grape growing and wine production. The enabling

legislation ensures that state agriculture would benefit from the sale of wine in dry areas by requiring that wine sold or dispensed by wineries in those areas be made primarily from fruit grown in this state. The proposed amendment and enabling legislation provide a very narrow exemption to the requirement that alcoholic beverage sales be authorized by a local option election, allowing dry areas to maintain local control of most alcoholic beverage sales and eliminating the need for the expense of holding an election to permit the sale of alcohol by a narrow class of permit holders.

2. The proposed amendment and enabling legislation would bring greater uniformity to laws governing the operation of wineries in this state. Currently, grape cultivation and wine manufacturing occur in some dry areas of the state and some of those wineries are permitted by statute to host wine-tasting events and sell wine on the premises. The amendment and legislation would allow wineries in all areas of the state the same privileges, except that wineries in dry areas would be restricted to selling and dispensing wines made primarily from fruit grown in this state.

Arguments Against:

1. The proposed amendment would override the preference of many local communities to prohibit the sale of alcoholic beverages within their boundaries. A community that wants to authorize only the sale of wine by a winery may already do so under Chapter 251, Alcoholic Beverage Code.

2. Current law does not prohibit the expansion of the wine industry in areas in which the manufacture and sale of wine is already legal.

Text of H.J.R. No. 85: **HOUSE AUTHOR:** Mark S. Homer
 SENATE SPONSOR: Craig Estes

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to allow the legislature to authorize and govern the operation of wineries in this state.

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

SECTION 1. Section 20, Article XVI, Texas Constitution, is amended by adding Subsection (d) to read as follows:

(d) The legislature may enact laws and direct the Alcoholic Beverage Commission or its successor to set policies for all wineries in this state, regardless of whether the winery is located in an area in which the sale of wine has or has not been authorized by local option election, for the manufacturing of wine, including the on-premises selling of wine to the ultimate consumer for consumption on or off the winery premises, the buying of wine from or the selling of wine to any other person authorized under general law to purchase and sell wine in this state, and the dispensing of wine without charge, for tasting purposes, for consumption on the winery premises, and for any purpose to promote the wine industry in this state.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: "A constitutional amendment to allow the legislature to enact laws authorizing and governing the operation of wineries in this state."

Amendment No. 12 (H.J.R. No. 3)

Wording of Ballot Proposition:

The constitutional amendment concerning civil lawsuits against doctors and health care providers, and other actions, authorizing the legislature to determine limitations on non-economic damages.

Analysis of Proposed Amendment:

The proposed amendment would add a new Section 66 to Article III, Texas Constitution, that authorizes the legislature by statute to determine the limit of liability for all damages and losses, however characterized, other than economic damages, in health care liability claims and other claims.

New Section 66 to Article III, Texas Constitution, is best analyzed in two parts.

The first part of new Section 66 to Article III, Texas Constitution, authorizes the legislature by statute to determine liability limits for a provider of medical or health care with respect to treatment, lack of treatment, or other claimed departure from an accepted standard of medical or health care or safety, however characterized, that is or is claimed to be a cause of, or that contributes or is claimed to contribute to, disease, injury, or death of a person. “Economic damages” are defined to mean compensatory damages for any pecuniary loss or damage. “Economic damages” do not include any loss or damage, however characterized, for past, present, and future physical pain and suffering, mental anguish and suffering, loss of consortium, loss of companionship and society, disfigurement, or physical impairment. The authority of the legislature by statute to determine liability limits applies without regard to whether the claim or cause of action arises under or is derived from common law, a statute, or other law, including any claim or cause of action based or sounding in tort, contract, or any other theory or any combination of theories of liability. The claim or cause of action includes a medical or health care liability claim as defined by the legislature. This first part

authorizes the legislature to determine liability limits by a law enacted by the 78th Legislature, Regular Session, 2003, and by all subsequent regular or special sessions of the legislature.

The second part of new Section 66 to Article III, Texas Constitution, authorizes the legislature by statute to determine the limit of liability for all damages and losses, however characterized, other than economic damages, for claims or causes of action other than medical or health care liability claims. This authorization applies without regard to whether the claim or cause of action arises under or is derived from common law, a statute, or other law, including any claim or cause of action based or sounding in tort, contract, or any other theory or any combination of theories of liability. This second part authorizes the legislature by statute to determine liability limits for claims and causes of action that are not medical or health care liability claims only after January 1, 2005, and only by at least a three-fifths vote of all the members elected to each house. The statute adopted by the legislature must include language that cites new Section 66 as its authority.

Finally, H.J.R. No. 3 provides that if the voters reject the proposed amendment, a court could not consider any aspect of the vote for any purpose, in any manner, or to any extent.

Background

In 1977, the legislature passed the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes, repealed by House Bill No. 4, 78th Legislature, Regular Session, 2003) to provide procedures relating to health care liability claims or causes of actions against physicians or health care providers for treatment, lack of treatment, or other claimed departure from accepted standards of medical care or health care or safety that results in injury to or death of the patient. The act contained a \$500,000 liability limit (Sections 11.02 and 11.03) on all damages to a patient successfully bringing a health care liability claim. The limit did not include medical expenses.

In 1988, the Texas Supreme Court held that the \$500,000 liability limit violated Section 13, Article I, Texas Constitution, known as the

“open courts provision.” Lucas v. United States, 757 S.W.2d 687 (Tex. 1988). The open courts provision provides that “[a]ll courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.” In finding the statutory liability limit on medical malpractice damages was unconstitutional, the supreme court used the standard it had formulated in its 1983 decision, Sax v. Votteler, 648 S.W.2d 661, 666 (Tex. 1983), holding that when a common-law cause of action is statutorily restricted, the restriction may not be “unreasonable or arbitrary when balanced against the purpose and basis of the statute.” Applying this balancing test to the \$500,000 liability limit, the supreme court held that the legislature did not provide Lucas, the plaintiff, with an adequate substitute to obtain redress for his injuries. 757 S.W.2d at 690. The supreme court found that the liability limit was unconstitutional only in relation to common-law causes of actions; the limit remained in place for wrongful death cases, which are statutorily created causes of action.

If passed by the voters, H.J.R. No. 3 would effectively overrule the decisions of the Texas Supreme Court that require that limits on recovery in health care liability claims be subjected to the test of whether they are “unreasonable or arbitrary when balanced against the purpose and basis of the statute”; instead, the legislature would be authorized to enact liability limits. Beginning with the regular session of the 78th Legislature, which began January 13, 2003, and ended June 2, 2003, and in all subsequent regular and special sessions, the legislature would be authorized to enact liability limits on health care liability claims. Additionally, beginning January 1, 2005, the legislature would be authorized to enact liability limits for all damages and losses, however characterized, other than economic damages, in a claim or cause of action other than a health care liability claim, if adopted by at least a three-fifths vote of all the members elected to each house.

During the regular session of the 78th Legislature, the legislature enacted House Bill No. 4, which made wide-ranging changes to procedures and remedies in civil actions. Section 10.01 of House Bill No. 4 contains new limits on the recovery of noneconomic damages in health care liability

claims that would be validated if the constitutional amendment proposed by H.J.R. No. 3 is passed by the voters.

For cases filed on or after September 1, 2003, the liability limits on the recovery of noneconomic damages by each claimant in House Bill No. 4 are:

(1) \$250,000 for a health care liability claim where final judgment is rendered against a physician or health care provider other than a health care institution;

(2) \$250,000 for a health care liability claim where final judgment is rendered against a single health care institution; and

(3) \$500,000 for a health care liability claim where final judgment is rendered against more than one health care institution, although the liability of any one health care institution is limited to \$250,000.

House Bill No. 4 also contains alternative limits on noneconomic damages in the event that the limits described above are to any extent invalidated by a method other than through legislative means. The alternative limits are the same limits described above but also require that, for the limits to be effective, physicians or health care providers must provide evidence of certain levels of financial responsibility for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year.

Finally, Section 10.06 of House Bill No. 4 provides that, except as provided by Section 84.007, Civil Practice and Remedies Code, in any civil action brought against a hospital or hospital system, or its employees, officers, directors, or volunteers, for damages based on an act or omission by the hospital or hospital system, or its employees, officers, directors, or volunteers, the liability of the hospital or hospital system is limited to money damages in a maximum amount of \$500,000 for any act or omission resulting in death, damage, or injury to a patient if the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for the patient signs a written statement that acknowledges that the hospital is providing care that is not administered for or in expectation of compensation and that the liability limit is in exchange for

receiving the health care services. The liability limit applies even if the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement or the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement.

The adoption of H.J.R. No. 3 by the voters ensures that the liability limits enacted by House Bill No. 4 are constitutional. If H.J.R. No. 3 is not adopted by the voters, the limits provisions and the alternative limits provisions enacted by House Bill No. 4 are subject to constitutional review by Texas courts.

Arguments For:

1. The legislature, in Section 10.11, House Bill No. 4, Acts of the 78th Legislature, Regular Session, 2003, found a serious public problem in the availability and affordability of adequate medical professional liability insurance that created a medical malpractice insurance crisis in Texas. It further found that this crisis has had a material adverse effect on the delivery of medical and health care in Texas, including significant reductions of availability of medical and health care services to the people of Texas and a likelihood of further reductions in the future.

The proposed constitutional amendment is both balanced and limited in its manner of addressing the crisis identified by the legislature. It does not authorize the legislature to limit in any way the direct economic costs that may arise from a claim against a health care provider, such as medical bills, hospital costs, or prescription drug costs. It does not authorize the legislature to limit in any way more indirect economic costs, such as lost wages. The proposed constitutional amendment only authorizes the legislature to limit noneconomic damages, such as pain and suffering, which is the element of a lawsuit that is the least predictable and the most subjective. Under House Bill No. 4, a claimant in a health care liability claim could recover as much as \$750,000 for noneconomic damages. The right of a person under the Texas Constitution to obtain full redress for negligence that injures him is not unduly affected by allowing the legislature to impose such a limit on noneconomic damages.

2. The initial liability limits on the recovery of noneconomic damages in health care liability claims in the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes, repealed by House Bill No. 4, 78th Legislature, Regular Session, 2003) were enacted by the legislature in 1977. It was not until 1988—eleven years later—that the Texas Supreme Court found those limits unconstitutional for common-law causes of action in Lucas v. United States, 757 S.W.2d 687 (Tex. 1988). The long lag between enactment by the legislature of a limit on noneconomic damages and a definitive determination of constitutionality by the Texas Supreme Court is inherent in the judicial system and severely reduces both the effectiveness and predictability of any future liability limits enacted by the legislature. Physicians, health care providers, hospitals and other health care institutions, and insurance companies cannot rely on liability limits in statutes that may be overturned years after enactment. To promote predictability and stability in the civil justice system for doctors, health care providers, hospitals, and other health care institutions, it is necessary to give the legislature clear constitutional authority to enact limits on noneconomic damages.

3. To effectively respond to future crises in areas other than health care, the proposed constitutional amendment authorizes the legislature to adopt, beginning January 1, 2005, limits on noneconomic damages for lawsuits other than health care liability claims. This authority will not only allow the legislature to respond to future crises but also allow the legislature to adopt liability limits that may avoid crises in those areas altogether. As a recognition of the seriousness of limits on noneconomic damages in lawsuits and as a further check and balance to legislative power, the proposed constitutional amendment provides that in suits other than health care liability claims, the legislature may only limit noneconomic damages by at least a three-fifths vote of all the members elected to each house, instead of a simple majority.

Arguments Against:

1. Section 13, Article I, Texas Constitution, known as the “open courts provision” provides that “[a]ll courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.” This is a fundamental right, contained in the Bill of Rights in the Texas Constitution, and is properly protected by the courts. Even in the midst of a medical malpractice insurance crisis in Texas, as found by the legislature in Section 10.11, House Bill No. 4, Acts of the 78th Legislature, Regular Session, 2003, it is the judiciary and not the legislature that is the proper forum to determine the extent to which a fundamental right may be reasonably restricted. The test established by the Texas Supreme Court in Sax v. Votteler, 648 S.W.2d 661, 666 (Tex. 1983) is reasonable, appropriate, and fully adequate: whether any limit on noneconomic damages adopted by the legislature is “unreasonable or arbitrary when balanced against the purpose and basis of the statute.” Under House Bill No. 4, a claimant in a health care liability claim could recover as much as \$750,000 for noneconomic damages. Although that amount may be adequate and just for many cases, it will not be adequate and just for all. The courts should decide whether, in any particular case, a liability limit imposed by the legislature allows full redress for the harm done.

2. Although a lengthy lag between enactment by the legislature of a limit on noneconomic damages and a definitive determination of constitutionality by the Texas Supreme Court may be, to a certain extent, inherent in the judicial system, it need not take nearly as long as it has in the past. Section 3-b, Article V, Texas Constitution, authorizes the legislature to provide for a direct appeal to the supreme court of the finding by a trial court that a statute is unconstitutional. Section 23.01, House Bill No. 4, Acts of the 78th Legislature, Regular Session, 2003, provides for just such an accelerated appeal of any trial court decision finding the limit on noneconomic damages enacted by House Bill No. 4 to be unconstitutional.

3. Even if the medical malpractice insurance crisis in Texas justifies the legislature to enact limits on noneconomic damages in health care

liability claims, no similar crisis has been identified by the legislature to justify it to enact limits on noneconomic damages for areas other than health care. Absent an identifiable and critical need, the courts are the appropriate guardian of the fundamental right that they be open to the people to fully redress wrongs. The requirement that, in suits other than health care liability claims, the legislature may only limit noneconomic damages by at least a three-fifths vote of all the members elected to each house, instead of a simple majority, is not a sufficient replacement for the traditional protection of this fundamental right by the judiciary.

Text of H.J.R. No. 3:

HOUSE AUTHOR: Joe Nixon et al.

SENATE SPONSOR: Jane Nelson

HOUSE JOINT RESOLUTION

proposing a constitutional amendment concerning civil lawsuits against doctors and health care providers, and other actions, authorizing the legislature to determine limitations on non-economic damages.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Section 66 to read as follows:

Sec. 66. (a) In this section “economic damages” means compensatory damages for any pecuniary loss or damage. The term does not include any loss or damage, however characterized, for past, present, and future physical pain and suffering, mental anguish and suffering, loss of consortium, loss of companionship and society, disfigurement, or physical impairment.

(b) Notwithstanding any other provision of this constitution, the legislature by statute may determine the limit of liability for all damages and losses, however characterized, other than economic damages, of a provider of medical or health care with respect to treatment, lack of treatment, or other claimed departure from an accepted standard of medical or health care or safety, however characterized, that is or is claimed to be a cause of, or that contributes or is claimed to contribute to, disease, injury, or death of a person. This subsection applies without regard to whether the claim or cause of action arises under or is derived from common law, a statute, or other law, including any claim or cause of action based on or sounding in tort, contract, or any other theory or any combination of theories of liability. The claim or cause of action includes a medical or health care liability claim as defined by the legislature.

(c) Notwithstanding any other provision of this constitution, after January 1, 2005, the legislature by statute may determine the limit of liability for all damages and losses, however characterized, other than

economic damages, in a claim or cause of action not covered by Subsection (b) of this section. This subsection applies without regard to whether the claim or cause of action arises under or is derived from common law, a statute, or other law, including any claim or cause of action based or sounding in tort, contract, or any other theory or any combination of theories of liability.

(d) Except as provided by Subsection (c) of this section, this section applies to a law enacted by the 78th Legislature, Regular Session, 2003, and to all subsequent regular or special sessions of the legislature.

(e) A legislative exercise of authority under Subsection (c) of this section requires a three-fifths vote of all the members elected to each house and must include language citing this section.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment concerning civil lawsuits against doctors and health care providers, and other actions, authorizing the legislature to determine limitations on non-economic damages.”

SECTION 3. If a majority of the voters vote against this proposed constitutional amendment, a court may not consider any aspect of the vote for any purpose, in any manner, or to any extent.

Amendment No. 13 (H.J.R. No. 16)

Wording of Ballot Proposition:

The constitutional amendment to permit counties, cities and towns, and junior college districts to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses.

Analysis of Proposed Amendment:

The proposed amendment amends Section 1-b, Article VIII, Texas Constitution, by adding Subsection (h) to authorize the governing body of a county, a municipality, or a junior college district to prohibit increases in the amount of county, municipal, or junior college district ad valorem taxes that may be imposed on the residence homestead of a person who is disabled or who is 65 years of age or older. The proposed amendment would provide a means by which disabled and elderly persons can be provided the same beneficial tax treatment in connection with their county, municipal, or junior college district property taxes that elderly persons currently enjoy in connection with their public school district property taxes.

Background

Section 1, Article VIII, Texas Constitution, provides that all real property and tangible personal property, unless exempt as required or permitted by the constitution, shall be taxed according to its value. Any exception to this rule that is not granted or authorized by the Texas Constitution is void. Neither the legislature nor a local government that imposes ad valorem taxes may limit the amount of ad valorem taxes a property owner is required to pay without constitutional authority.

Subsection (d), Section 1-b, Article VIII, Texas Constitution, provides that if a person receives the 65-or-older residence homestead exemption from ad valorem taxation on the person's residence homestead, the dollar amount of school district ad valorem taxes the elderly person is required to pay in future years may not be increased for as long as it remains the

residence homestead of the elderly person or of the person's surviving spouse if the spouse is at least 55 years old. Subsection (d) also authorizes the transfer of this limitation on school district taxes, frequently referred to as the "tax freeze," if the elderly person subsequently qualifies a different residence homestead for the 65-or-older residence homestead exemption.

House Joint Resolution No. 16, if adopted, will add Subsection (h) to Section 1-b, Article VIII, Texas Constitution. Subsection (h) will authorize the commissioners court of a county, the governing body of a municipality, or the governing body of a junior college district to provide that if a disabled person or a person 65 years old or older receives a residence homestead exemption from ad valorem taxation on the person's residence homestead, the dollar amount of ad valorem taxes the disabled or elderly person is required to pay on the person's residence homestead in future years to that county, municipality, or junior college district may not be increased for as long as it remains the residence homestead of the disabled or elderly person or of the person's surviving spouse who is at least 55 years old. The proposed amendment also creates a process by which the voters of a county, municipality, or junior college district, by petition, may require a local option election to be called on the issue of adopting the limitation on the residence homestead taxes imposed on the disabled and elderly of the county, municipality, or junior college district. The proposed amendment provides that a limitation on taxes adopted for a county, municipality, or junior college district may not afterwards be repealed or rescinded.

While the proposed amendment does not define "disabled person," the amendment refers to a disabled person who receives a residence homestead exemption under Section 1-b, Article VIII. The residence homestead exemptions for the disabled authorized under Subsections (b) and (c), Section 1-b, are limited to persons who are disabled for purposes of federal social security. Accordingly, the limitation on county, municipal, or junior college district taxes on the residence homestead of a disabled person that the amendment would authorize appears to be intended to apply only to those disabled for social security purposes.

The proposed amendment also authorizes the legislature to permit a person who receives a tax limitation adopted under the amendment to transfer the limitation to another residence homestead within the same county, municipality, or junior college district.

House Bill No. 136, enacted by the 78th Legislature, Regular Session, 2003, is the implementing legislation for the limitation on county, municipal, or junior college district property taxes authorized by the constitutional amendment proposed by H.J.R. No. 16. The bill is contingent on the approval of the constitutional amendment by the voters and, if the amendment is approved, takes effect January 1, 2004. House Bill No. 136 adds a new Section 11.261 to the Tax Code. Section 11.261, Tax Code, provides for the implementation and administration of the freeze on county, municipal, or junior college district property taxes for disabled and elderly persons. As authorized by the proposed constitutional amendment, Section 11.261, Tax Code, also provides that, if a property owner whose county, municipal, or school district taxes are frozen acquires a different residence homestead in the same county, municipality, or school district, the tax freeze may be transferred to that home. In addition, H.B. No. 136 makes conforming amendments to other sections of the Tax Code that are necessary for the implementation and administration of the limitation on county, municipal, or junior college district taxes on the residence homesteads of disabled and elderly property owners and their surviving spouses.

Arguments For:

1. Due to inflation, rising property values, or increases in tax rates, taxes imposed by counties, municipalities, and junior college districts have consistently increased over time. Tax increases are particularly hard on persons on fixed incomes, such as many elderly or disabled persons, who may have to sell their homes in the face of ever-rising local property taxes. The amendment would allow local officials or voters to protect homeowners who are disabled or 65 years of age or older from increases in county, municipal, or junior college district property taxes, allowing those persons to remain in their homes.

2. The amendment provides a local option method by which a county, a municipality, or a junior college district may limit tax increases on the residence homesteads of the disabled or elderly. The amendment does not require a county, municipality, or junior college district to establish a property tax freeze, nor does the amendment relieve disabled and elderly homeowners from all of the taxes they must pay to their county, municipality, or junior college district. In those jurisdictions that do create a property tax freeze, disabled persons and elderly persons will still have to pay a fair share of the taxes on their property. The amount of tax revenue that will be lost to any county, municipality, or junior college district in future years will be minimal and can be made up from other sources of revenue without significantly increasing the tax burdens of other taxpayers.

Arguments Against:

1. Limiting the amount of county, municipal, or junior college district taxes on the residence homesteads of the disabled or the elderly does not affect the total tax burden of the county, municipality, or junior college district. A limitation on county, municipal, or junior college district tax increases will only shift the tax burden among taxpayers. If the market value of a home owned by a disabled person or an elderly person increases or if county, municipal, or junior college district tax rates are increased, the disabled or elderly person may owe substantially less in taxes than other persons who own property with the same market value that is taxed by the county, municipality, or junior college district. By limiting increases in the taxes owed by a disabled or elderly person on the person's home, the amendment unfairly shifts a portion of the tax burden to other homeowners and to owners of other types of property, primarily business property, who are not entitled to any limitation on their county, municipal, or junior college district taxes.

2. Regardless of the amount of tax revenue that will be lost by a county, municipality, or junior college district if the proposed amendment is adopted, that county, municipality, or junior college district will be forced to consider imposing higher taxes on other property owners if the

county, municipality, or junior college district is to provide the same level of services it currently provides. In these difficult economic times, many counties, municipalities, or junior college districts will not be able to make up for the loss in revenue merely by increasing their tax rates. If a county, municipality, or junior college district is unable to sufficiently increase its tax rate in future years, it will have to cut back on the amount or the level of services it provides to its residents. Because the amendment provides that a limitation on taxes that is adopted may not be rescinded or repealed, a county, municipality, or junior college district will be prevented from ever again asking its disabled or elderly residents to pay their fair share of the costs incurred by the county, municipality, or junior college district in providing those services.

Text of H.J.R. No. 16: **HOUSE AUTHOR:** Fred Brown et al.
 SENATE SPONSOR: Jane Nelson

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to authorize a county, a city or town, or a junior college district to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses.

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

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

(h) The governing body of a county, a city or town, or a junior college district by official action may provide that if a person who is disabled or is sixty-five (65) years of age or older receives a residence homestead exemption prescribed or authorized by this section, the total amount of ad valorem taxes imposed on that homestead by the county, the city or town, or the junior college district may not be increased while it remains the residence homestead of that person or that person's spouse who is disabled or sixty-five (65) years of age or older and receives a residence homestead exemption on the homestead. As an alternative, on receipt of a petition signed by five percent (5%) of the registered voters of the county, the city or town, or the junior college district, the governing body of the county, the city or town, or the junior college district shall call an election to determine by majority vote whether to establish a tax limitation provided by this subsection. If a county, a city or town, or a junior college district establishes a tax limitation provided by this subsection and a disabled person or a person sixty-five (65) years of age or older dies in a year in which the person received a residence homestead exemption, the total amount of ad valorem taxes imposed on the homestead by the county, the city or town, or the junior college district may not be increased while it remains the residence homestead of that person's surviving spouse if the spouse is fifty-five (55) years of age or older at the time of the person's death, subject to any exceptions provided by general law. The legislature, by general law, may provide for the transfer

of all or a proportionate amount of a tax limitation provided by this subsection for a person who qualifies for the limitation and establishes a different residence homestead within the same county, within the same city or town, or within the same junior college district. A county, a city or town, or a junior college district that establishes a tax limitation under this subsection must comply with a law providing for the transfer of the limitation, even if the legislature enacts the law subsequent to the county's, the city's or town's, or the junior college district's establishment of the limitation. Taxes otherwise limited by a county, a city or town, or a junior college district under this subsection may be increased to the extent the value of the homestead is increased by improvements other than repairs and other than improvements made to comply with governmental requirements and except as may be consistent with the transfer of a tax limitation under a law authorized by this subsection. The governing body of a county, a city or town, or a junior college district may not repeal or rescind a tax limitation established under this subsection.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on September 13, 2003. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to permit counties, cities and towns, and junior college districts to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses."

Amendment No. 14 (H.J.R. No. 28)

Wording of Ballot Proposition:

The constitutional amendment providing for authorization of the issuing of notes or the borrowing of money on a short-term basis by a state transportation agency for transportation-related projects, and the issuance of bonds and other public securities secured by the state highway fund.

Analysis of Proposed Amendment:

The proposed constitutional amendment would provide for the Texas Department of Transportation to issue notes or obtain loans with terms of two years or less to carry out any of the department's functions. The amendment would also provide for the Texas Transportation Commission to issue longer term bonds or other public securities to fund highway improvement projects. The bonds or other public securities would be payable from the money in the state highway fund.

Background

Texas has historically financed its roads only with available money and has not borrowed for road building purposes. This has worked fine until recently. In the last several years, the state's population has grown rapidly, and with this population growth the amount of traffic on state roads has greatly increased. Many of the new residents have settled in suburbs surrounding major urban areas of the state, causing massive commuter traffic and delays. The need to build more roads in urban areas and concern for environmental issues have resulted in projects of larger size and complexity than before. Waiting for money for highway improvement projects to accumulate before carrying out those projects has caused the state to fall further behind in providing and maintaining an adequate road system.

In 2001 the voters approved the creation of the Texas mobility fund to provide a source of money to secure bonds that would be issued to

finance road construction. However, the legislature at that time did not provide a source of money to fill the fund, and state highway financing essentially has remained on a “pay-as-you-go” basis. Money for roads comes mostly from federal highway money delivered to the state and money collected by the state from vehicle registration fees and taxes on motor fuels and lubricants. The money is deposited to the credit of the state highway fund and dedicated by law to use for providing and maintaining roadways and enforcing traffic laws.

The proposed amendment is designed to speed up completion of transportation projects in two ways. First, it allows short-term borrowing by the Texas Department of Transportation to cover revenue shortfalls. A project may be under way or ready to begin, yet the money that will finance the project may not have been collected. Borrowing money for a short time to cover the period when the normal financing sources are not yet available would allow the project to go forward immediately. The short-term debts would then be paid as soon as the revenue is available. A debt under this provision could not have a term of more than two years.

Second, the proposed amendment authorizes the Texas Transportation Commission to incur debt by issuing longer term bonds or other public securities. The proceeds of the bonds must be used to finance highway improvement projects, and are secured by money in the state highway fund. The proposed amendment adds the payment of costs related to the bonds to the purposes for which money in the state highway fund is dedicated. The purpose of this authorization is also to allow transportation projects to begin and be completed earlier than would be possible if the commission were required to wait until the money for the projects was actually available.

Arguments For:

1. The state’s population and the amount of traffic on state roads has grown enormously lately. New roads are needed sooner rather than later. Allowing the state to borrow money for these purposes, rather than waiting for the money to accumulate, will allow those problems to be

addressed earlier. The state already borrows money for many purposes, and the building of roads is another appropriate reason for this practice.

2. Short-term borrowing is an important tool to allow the state to more efficiently administer its function of providing for transportation in this state. A project that is ready to begin or already under way should not be delayed while the state waits for anticipated revenue to show up.

Arguments Against:

1. Borrowing does not create new money for road construction, it only delays the time when payment is due. The amounts to pay off the debt will still have to be collected eventually. The state could actually increase the amount of road construction accomplished by finding additional sources of revenue for this purpose, such as increased vehicle registration fees or motor fuel taxes.

2. By borrowing money the state will incur extra expenses, such as interest and the expenses related to issuing bonds or notes. These expenses may be paid from money in the state highway fund, resulting in less money actually available to spend directly on transportation projects.

Text of H.J.R. No. 28: **HOUSE AUTHOR:** Joe Pickett et al.
SENATE SPONSOR: Eddie Lucio, Jr.

HOUSE JOINT RESOLUTION

proposing a constitutional amendment providing for authorization of the borrowing of money on a short-term basis by a state transportation agency for transportation-related projects, and the issuance of bonds and other public securities secured by the state highway fund.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Sections 49-m and 49-n to read as follows:

Sec. 49-m. (a) The legislature, by law, may authorize the Texas Transportation Commission or its successor to authorize the Texas Department of Transportation or its successor to issue notes or borrow money from any source to carry out the functions of the department.

(b) Notes issued or a loan obtained under this section may not have a term of more than two years. The legislature may appropriate money dedicated by Sections 7-a and 7-b, Article VIII, of this constitution for the purpose of paying a debt created by the notes or loan.

Sec. 49-n. (a) To fund highway improvement projects, the legislature may authorize the Texas Transportation Commission or its successor to issue bonds and other public securities and enter into bond enhancement agreements that are payable from revenue deposited to the credit of the state highway fund.

(b) In each fiscal year in which amounts become due under the bonds, other public securities, or agreements authorized by this section, there is appropriated from the revenue deposited to the credit of the state highway fund in that fiscal year an amount that is sufficient to pay:

(1) the principal of and interest on the bonds or other public securities that mature or become due during the fiscal year; and

(2) any cost related to the bonds and other public securities, including payments under bond enhancement agreements, that becomes due during that fiscal year.

(c) Any dedication or appropriation of revenue to the credit of the state highway fund may not be modified so as to impair any outstanding bonds or other public securities secured by a pledge of that revenue unless provisions have been made for a full discharge of those securities.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment providing for authorization of the issuing of notes or the borrowing of money on a short-term basis by a state transportation agency for transportation-related projects, and the issuance of bonds and other public securities secured by the state highway fund.”

Amendment No. 15 (H.J.R. No. 54)

Wording of Ballot Proposition:

The constitutional amendment providing that certain benefits under certain local public retirement systems may not be reduced or impaired.

Analysis of Proposed Amendment:

The proposed amendment amends Article XVI, Texas Constitution, by adding Section 66 to provide that any change made to certain benefits provided by certain retirement systems cannot reduce benefits that a person was entitled to receive before the date of the change. The proposed amendment places the responsibility for ensuring that those benefits are not reduced on both the retirement system and the governmental entities that finance the system.

The amendment applies to public retirement systems of political subdivisions, such as cities and counties, that provide benefits for their employees. Under the amendment, any reduction in the retirement or death benefits that the retirement systems provide cannot be applied retroactively to benefits that a person has accrued or is entitled to receive before the date the reduction takes effect.

The application of the amendment is limited in several ways. For example, it specifically exempts the retirement system that provides benefits for San Antonio firefighters and police officers, and it does not apply to any statewide retirement system. An opt-out provision is also included under which voters may choose to exempt a political subdivision from the application of the amendment at local elections to be held next year.

In addition, the amendment applies only to service or disability retirement benefits and death benefits. Health and life insurance benefits are not within the scope of the amendment. Further, it does not apply to disability benefits that a person has previously received, but may no longer receive because the person no longer qualifies as disabled under the terms of the retirement system.

Background

Section 67(c), Article XVI, Texas Constitution, requires the legislature to permit cities and counties to establish retirement systems for their officers and employees. Section 67(f) of Article XVI requires the boards of trustees of those local systems to adopt sound actuarial assumptions for the systems and to hold system assets only for the purpose of administering the system and providing benefits. The constitution does not, however, provide a guarantee that benefits accrued in those systems will not be reduced.

The retirement benefits that Dallas police officers had been receiving under the city's pension program were reduced during the Great Depression as the legislature sought to help the city manage its diminishing pension fund by decreasing the monthly pension that retirees were receiving. In *City of Dallas v. Trammell*, 101 S.W.2d 1009 (Tex. 1937), retired police officers sued the city, arguing that they had a right to receive a pension amount calculated under the formula that existed when they retired. The Texas Supreme Court, however, said the city could change that formula to lower the pension amount. The court reasoned that the officers had no vested constitutional right to receive a specific pension amount. Instead, their pensions were subject to the constitutional right of the legislature to reduce payments or even abolish the system altogether.

As local pension funds have again become less stable under worsening economic conditions, public employee groups have lobbied state legislatures to amend their state constitutions to guarantee some level of retirement benefits. Many states have done so, amending state constitutions in a variety of ways in an attempt to limit the ability of retirement systems to reduce benefits.

Arguments For:

1. In exchange for their years of work in public service, often at a lower salary than their counterparts in the private sector, local government employees should receive retirement benefits that are protected. This protection will enable these employees to better plan for retirement,

knowing that the benefits they have earned are guaranteed. The federal government, under the Employee Retirement Income Security Act of 1974, guarantees payment of certain benefits from private retirement plans through a federally chartered guaranty corporation. Other states have made similar efforts to protect public retirement benefits; Texas should follow suit.

2. The amendment would permit local public retirement systems to make changes in the provision of certain benefits as long as the changes apply prospectively. Thus, the amendment would also give those retirement systems the flexibility the systems need to adjust retirement benefits if necessary to respond to changing economic times, while still protecting the benefits that local government employees have already earned.

3. The amendment would give voters the flexibility to exempt a political subdivision, such as a city or county, from the application of the amendment at local elections to be held next year. Approval of the amendment statewide would therefore give voters in each affected community the option of determining whether the protections of the amendment are appropriate for the public retirement systems of the city or county in which they live.

Arguments Against:

1. A constitutional guarantee against any reduction in benefits provided by local public retirement systems is not fiscally prudent. The constitution requires these systems to use sound actuarial assumptions in administering their pension funds, and such assumptions may require adjustments in benefit levels during economic downturns. Providing a constitutional guarantee of certain benefit levels and placing the burden of that guarantee on both local public retirement systems and local government employers could force local governments to raise taxes, cut necessary services, or both, to maintain benefit levels. A more sound approach would be to permit local public retirement systems to keep the flexibility they have had for decades to determine the level of benefit protection that their pension funds can sustain.

2. Although the amendment would protect the retirement benefits earned by employees of local governments, the amendment does not extend that protection to other public employees such as teachers and state employees. It is unfair to provide a constitutional protection of retirement benefits for some public employees but not for others.

3. Although the amendment would give voters the option of exempting a political subdivision, such as a city or county, from the application of the amendment, this opt-out provision is available to voters on only one date: a local election to be held in May 2004. Local public retirement systems and local government employers may not seek the exemption because they are currently able to finance the protections provided by the amendment. In subsequent years, however, if a retirement system and a local government become unable to sustain retirement benefits at protected levels, voters would no longer be able to exempt their city or county from the amendment's application. Instead, to fulfill the amendment's requirements, voters could face tax increases, cuts in public services, or a combination of both.

Text of H.J.R. No. 54:

HOUSE AUTHOR: Phil King et al.

SENATE SPONSOR: Kim Brimer

HOUSE JOINT RESOLUTION

proposing a constitutional amendment providing that certain benefits in certain public retirement systems may not be reduced or impaired.

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

SECTION 1. Article XVI, Texas Constitution, is amended by adding Section 66 to read as follows:

Sec. 66. PROTECTED BENEFITS UNDER CERTAIN PUBLIC RETIREMENT SYSTEMS. (a) This section applies only to a public retirement system that is not a statewide system and that provides service and disability retirement benefits and death benefits to public officers and employees.

(b) This section does not apply to a public retirement system that provides service and disability retirement benefits and death benefits to firefighters and police officers employed by the City of San Antonio.

(c) This section does not apply to benefits that are:

(1) health benefits;

(2) life insurance benefits; or

(3) disability benefits that a retirement system determines are no longer payable under the terms of the retirement system as those terms existed on the date the retirement system began paying the disability benefits.

(d) On or after the effective date of this section, a change in service or disability retirement benefits or death benefits of a retirement system may not reduce or otherwise impair benefits accrued by a person if the person:

(1) could have terminated employment or has terminated employment before the effective date of the change; and

(2) would have been eligible for those benefits, without accumulating additional service under the retirement system, on any date on or after the effective date of the change had the change not occurred.

(e) Benefits granted to a retiree or other annuitant before the effective date of this section and in effect on that date may not be reduced or otherwise impaired.

(f) The political subdivision or subdivisions and the retirement system that finance benefits under the retirement system are jointly responsible for ensuring that benefits under this section are not reduced or otherwise impaired.

(g) This section does not create a liability or an obligation to a retirement system for a member of the retirement system other than the payment by active members of a required contribution or a future required contribution to the retirement system.

(h) A retirement system described by Subsection (a) and the political subdivision or subdivisions that finance benefits under the retirement system are exempt from the application of this section if:

(1) the political subdivision or subdivisions hold an election on the date in May 2004 that political subdivisions may use for the election of their officers;

(2) the majority of the voters of a political subdivision voting at the election favor exempting the political subdivision and the retirement system from the application of this section; and

(3) the exemption is the only issue relating to the funding and benefits of the retirement system that is presented to the voters at the election.

SECTION 2. This constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to allow for voting for or against the proposition: “The constitutional amendment providing that certain benefits under certain local public retirement systems may not be reduced or impaired.”

Amendment No. 16 (S.J.R. No. 42)

Wording of Ballot Proposition:

The constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.

Analysis of Proposed Amendment:

The proposed constitutional amendment amends Section 50, Article XVI, Texas Constitution, by providing that a home equity loan may be in the form of a line of credit, allowing a lender of a home equity loan who fails to comply with the lender's obligations under the loan to cure the failure and avoid forfeiting the principal of and interest on the loan, providing for interpretation by a state agency of the constitutional provisions relating to loans secured by a homestead, adding mortgage brokers to the list of persons eligible to make home equity loans, allowing payments on a home equity loan to be more often than monthly, requiring lenders to provide to a borrower before closing of a home equity loan an itemized estimate of amounts that the borrower will be required to pay at the closing, and allowing a home equity loan to be refinanced by a reverse mortgage.

Background

From the time that Texas was a republic, the situations in which a person's homestead may be taken for payment of the person's debts has been restricted by law. For most of that time the restrictions allowed forced sale of a homestead only for the payment of debts related to taxes or to the purchase or improvement of the homestead. This meant that a homestead owner could use the owner's homestead as collateral only for those limited types of debts. In 1997 the voters approved a constitutional amendment authorizing a home equity loan and a reverse mortgage, under which a homestead could be used as collateral for any type of debt,

subject to numerous restrictions on the manner in which the loan is made, repaid, and collected.

One of those restrictions provides that a home equity loan may not be in the form of a line of credit. This means that the money borrowed must be delivered to the borrower in a lump sum and must be repaid in regular monthly payments. Many borrowers, however, desire the flexibility to receive advances on a home equity loan only when various needs for the money arise rather than paying interest on a larger lump-sum loan. The proposed constitutional amendment allows a home equity loan to be in the form of an open-end line of credit account under which the borrower requests advances from time to time when needed. Each advance must be at least \$4,000, and may not be obtained by use of a credit card, debit card, preprinted solicitation check, or similar device. The amount of advances outstanding at any one time may not exceed 50 percent of the fair market value of the homestead. No fees may be charged in connection with an advance.

The purpose for the numerous restrictions imposed on home equity loans was to address the fear of the legislature and voters that some borrowers, either through inexperience in dealing with credit or because of unscrupulous lenders, would lose their homes. Because of the severity of the consequences of default by the borrower, a similarly severe penalty is imposed on lenders of home equity loans who fail to uphold the lender's obligations under the loan. That penalty is the loss of all principal and interest on the loan. The proposed constitutional amendment allows the lender or holder to avoid this penalty by curing the failure in the specific manner provided by the constitution, so that the lender comes into compliance with the law.

The existing constitutional provisions authorizing home equity loans and reverse mortgages are long and complex. Since their original adoption, questions have arisen as to how some of the provisions are to be interpreted. No state entity is given the authority to administratively answer those questions. The proposed constitutional amendment allows the legislature by statute to delegate to one or more state agencies the power to interpret various provisions of the constitution relating to loans

secured by a homestead. An act or omission of a person is not considered to violate the applicable constitutional provision if the act or omission conforms to an interpretation of the provision that is in effect at the time of the act or omission. To implement the authority granted by the proposed constitutional amendment, the legislature has enacted a statute, contingent on the approval by the voters of the proposed constitutional amendment, that would delegate the interpretation authority to the Credit Union Commission as to credit unions and to the Finance Commission of Texas as to all other lenders. (S.B. No. 1067, Acts of the 78th Legislature, Regular Session, 2003.)

Another restriction originally placed on home equity loans is a limitation on the types of lenders eligible to make the loans. The proposed constitutional amendment adds regulated mortgage brokers to the list of eligible lenders.

Under current law, borrowers under home equity loans are required to repay the loan in regular monthly payments. To provide more flexibility, the proposed constitutional amendment would allow the borrower and lender to agree to a payment schedule with payments due not more often than every 14 days or less often than monthly.

The proposed constitutional amendment adds one additional restriction not included when home equity loans were originally authorized. At least one day before the loan is closed, the lender will be required to provide the borrower an itemized good faith estimate of the fees, points, interest, costs, and charges that the borrower will be required to pay at closing.

Finally, to preserve the protections applicable to a home equity loan when the loan is refinanced, current law requires the resulting refinanced loan to also be a home equity loan. This has prevented many older borrowers from converting their existing home equity loans into reverse mortgages. A reverse mortgage is a credit agreement under which a lender provides money to a borrower in exchange for a lien on the borrower's home and the borrower is generally not required to repay the money or interest on the money until the borrower dies or moves out of the home. A reverse mortgage allows a borrower 62 years of age or older

to convert the equity accumulated in the borrower's home into money that may be used for current expenses. The proposed constitutional amendment would allow such a borrower who has an existing home equity loan to refinance the loan so that the resulting loan is a reverse mortgage. This same change is also being proposed by Proposition 6 (H.J.R. No. 23), which is being submitted to the voters at this election.

Arguments For:

1. Home equity loans in the form of a line of credit are popular in other states, and borrowers in Texas also would like to have this flexible option. Allowing borrowers to access their homestead equity periodically in the amount needed rather than in a lump sum will save the borrowers the money that would otherwise be paid as interest on money borrowed before it is needed or on higher interest rate loans not secured by the homestead. The law contains numerous safeguards to prevent unwise borrowing.

2. Several years have passed since home equity loans were authorized in Texas, yet many lenders are still reluctant to offer the loans. This is because of the steep penalty for making an error in the loan process — loss of the entire principal of and interest on the loan — and because of the uncertainty of interpretation of some of the existing constitutional provisions. The proposed amendment would ease those fears by allowing the lenders to correct errors to bring the loans into compliance with the law, and by providing for administrative interpretations to give the meaning of the law more certainty.

3. Reverse mortgages are a very popular means for seniors to supplement their income by tapping the equity in their homes. Beginning in 1998, there were several years when home equity loans were available but reverse mortgages were not being offered. During this period many persons who would have preferred reverse mortgages obtained home equity loans instead. The proposed amendment would allow these borrowers to convert their existing home equity loans into reverse mortgages.

Arguments Against:

1. Any loan secured by a person's home has the risk that the person will lose the home if unable to make the payments. Lines of credit make it easier to borrow money through loans secured by homes and consequently will cause more persons to lose their homes. The readily available money may make persons more susceptible to high pressure sales techniques or frivolous impulses to make unwise purchases.

2. The steep penalties for lenders who err exist because of the steep penalty for borrowers who err — loss of the borrower's home. The safeguards provided by the law are important to protect borrowers, and lenders should not be allowed to take them lightly, knowing that they can simply cure any problems if they are caught. Similarly, the constitutional provisions governing homestead mortgage lending have been submitted to and approved by the voters. An administrative agency should not be given the potential opportunity to void or alter what the voters have approved.

3. Reverse mortgages are not subject to all the extensive safeguards to which home equity loans are subject. Elderly persons, who may tend to be more susceptible to unscrupulous or uncaring lending practices, may be victimized by lenders who would use such practices to convince elderly borrowers under home equity loans to convert those loans to reverse mortgages under terms unfairly favorable to the lender.

Text of S.J.R. No. 42:

SENATE AUTHOR: John Carona

HOUSE SPONSOR: Burt Solomons

SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.

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

SECTION 1. Subsection (a), Section 50, Article XVI, Texas Constitution, is amended to read as follows:

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

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

(2) the taxes due thereon;

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

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

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

(A) the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead,

given in the same manner as is required in making a sale and conveyance of the homestead;

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

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

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

(6) an extension of credit that:

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

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

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

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

(E) does not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit;

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

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

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

(I) is not secured by homestead property designated for agricultural use as provided by statutes governing property tax, unless such homestead property is used primarily for the production of milk;

(J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead;

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

(L) is scheduled to be repaid:

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

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

(M) is closed not before:

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

(ii) one business day after the date that the owner of the homestead receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing; and

(iii) the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property, except a refinance described by Paragraph (Q)(x)(f) of this subdivision;

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

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

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

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

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

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

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

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

(vi) a person regulated by this state as a mortgage broker; and

(Q) is made on the condition that:

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

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

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

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

(v) the lender, at the time the extension of credit is made, provide the owner of the homestead a copy of all documents signed by the owner related to the extension of credit;

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

(vii) within a reasonable time after termination and full payment of the extension of credit, the lender cancel and return the promissory note to the owner of the homestead and give the owner, in

recordable form, a release of the lien securing the extension of credit or a copy of an endorsement and assignment of the lien to a lender that is refinancing the extension of credit;

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

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

(x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date ~~[within a reasonable time after]~~ the lender or holder is notified by the borrower of the lender's failure to comply by:

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

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

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

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

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

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

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

(7) a reverse mortgage; or

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

SECTION 2. Subsection (f), Section 50, Article XVI, Texas Constitution, is amended to read as follows:

(f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of this section.

SECTION 3. Subsection (g), Section 50, Article XVI, Texas Constitution, is amended to read as follows:

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

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

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

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

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

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

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

“(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3 PERCENT OF THE LOAN AMOUNT;

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

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

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

“(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PRIMARILY FOR THE PRODUCTION OF MILK;

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

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

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

“(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY

NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

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

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

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

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

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

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

“(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS LEFT TO BE FILLED IN;

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

“(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS YOU SIGN AT CLOSING;

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

“(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN

OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;

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

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

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

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

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

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

“(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD, SOLICITATION CHECK, OR SIMILAR DEVICE TO OBTAIN ADVANCES UNDER THE LINE OF CREDIT;

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

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

“(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT AT ANY TIME EXCEEDS 50 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED, YOU MAY NOT

CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT UNTIL THE BALANCE IS LESS THAN 50 PERCENT OF THE FAIR MARKET VALUE; AND

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

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

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

SECTION 4. Section 50, Article XVI, Texas Constitution, is amended by adding Subsections (t) and (u) to read as follows:

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

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

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

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

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

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

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

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

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

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

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

(u) The legislature may by statute delegate one or more state agencies the power to interpret Subsections (a)(5)-(a)(7), (e)-(p), and (t), of this section. An act or omission does not violate a provision included in those subsections if the act or omission conforms to an interpretation of the provision that is:

(1) in effect at the time of the act or omission; and

(2) made by a state agency to which the power of interpretation is delegated as provided by this subsection or by an appellate court of this state or the United States.

SECTION 5. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.”

Amendment No. 17 (H.J.R. No. 21)

Wording of Ballot Proposition:

The constitutional amendment to prohibit an increase in the total amount of school district ad valorem taxes that may be imposed on the residence homestead of a disabled person.

Analysis of Proposed Amendment:

The proposed amendment amends Subsection (d), Section 1-b, Article VIII, Texas Constitution, which prohibits increases in the amount of school district ad valorem taxes that may be imposed on the residence homestead of a person who is 65 years of age or older. The proposed amendment would grant disabled persons much the same beneficial tax treatment that elderly persons are currently granted.

Background

Section 1, Article VIII, Texas Constitution, provides that all real property and tangible personal property, unless exempt as required or permitted by the constitution, shall be taxed according to its value. Any exception to this rule that is not granted or authorized by the Texas Constitution is void. Neither the legislature nor a local government that imposes ad valorem taxes may limit the amount of ad valorem taxes a property owner is required to pay without constitutional authority.

Subsection (d), Section 1-b, Article VIII, Texas Constitution, provides that if an elderly person receives the 65-or-older residence homestead exemption from school district ad valorem taxes on the person's residence homestead, the dollar amount of school district ad valorem taxes the elderly person is required to pay in any future year may not be increased for as long as it remains the residence homestead of the elderly person. Subsection (d) also provides for the transfer of the limitation on school district taxes if the elderly person subsequently qualifies a different residence homestead for the 65-or-older residence homestead exemption.

In addition to an exemption for persons 65 years old or older, Subsection (c), Section 1-b, Article VIII, also authorizes an exemption of up to \$10,000 on the residence homestead of a person who is disabled for purposes of federal social security. House Joint Resolution No. 21, if adopted, will amend Subsection (d), Section 1-b, Article VIII, Texas Constitution, to also provide that if a person receives the disabled residence homestead exemption from school district ad valorem taxes on the person's residence homestead, the dollar amount of school district ad valorem taxes the disabled person is required to pay on the person's residence homestead in future years may not be increased for as long as it remains the residence homestead of the disabled person. The amendment would also permit the legislature to transfer the limitation to a subsequent homestead of a disabled person in the same manner as the limitation on school district taxes on the residence homestead of an elderly person.

House Bill No. 217, enacted by the 78th Legislature, Regular Session, 2003, implements the limitation provided by the constitutional amendment proposed by H.J.R. No. 21. The relevant sections of the bill are contingent on the approval of H.J.R. No. 21 and, if that amendment is approved, take effect January 1, 2004. H.B. No. 217 amends Section 11.26, Tax Code, to conform to the limitation on school district ad valorem taxes provided by H.J.R. No. 21. H.B. No. 217 also makes conforming amendments to other sections of the Tax Code that are necessary for the implementation and administration of the limitation on school district taxes on the residence homesteads of disabled property owners.

Arguments For:

1. Due to inflation, rising property values, or increases in tax rates, school district taxes have consistently increased over time. Tax increases are particularly hard on persons on fixed incomes, such as many elderly or disabled persons, who may have to sell their homes in the face of ever-rising school taxes. Elderly persons are already protected from school tax increases on their homes. The amendment would similarly protect homeowners who are disabled for social security purposes from increases in school district property taxes, allowing them to remain in their homes.

2. The amendment prevents only increases in the amount of school district taxes on the residence homesteads of the disabled. The amendment does not relieve disabled homeowners from all of the taxes they must pay to their school district. Disabled persons will still have to pay a fair share of the school district taxes on their property. The amount of tax revenue that will be lost to any particular school district in future years will be minimal and can be made up from other sources of revenue without significantly increasing the tax burdens of other taxpayers.

Arguments Against:

1. Limiting the amount of school district taxes on the residence homesteads of the disabled does not affect the total tax burden of the school district. A limitation on tax increases will only shift the tax burden among taxpayers. If the market value of a home owned by a disabled person increases or if school district tax rates are increased, the disabled person may owe substantially less in taxes than other persons who own property with the same market value that is taxed by the school district. By limiting increases in the taxes owed by a disabled person on the person's home, the amendment unfairly shifts a portion of the tax burden to other homeowners and to owners of other types of property, primarily business property, who are not entitled to any limitation on their school district taxes.

2. Regardless of the amount of tax revenue that will be lost by one school district if the proposed amendment is adopted, because there are more than 1,000 school districts in this state, the total amount lost by all school districts will be significant. In addition, not every school district will be able to increase its tax collections to make up for the lost property tax revenue in future years. Those school districts will likely look to the state government to make up for their lost property tax revenue at a time when the economy is weak and state funds that are available for education need to be conserved.

Text of H.J.R. No. 21: **HOUSE AUTHOR:** Peggy Hamric et al.
 SENATE SPONSOR: Letitia Van de Putte

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to prohibit an increase in the total amount of school district ad valorem taxes that may be imposed on the residence homestead of a disabled person.

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

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

(d) Except as otherwise provided by this subsection, if a person receives a ~~the~~ residence homestead exemption prescribed by Subsection (c) of this section for homesteads of persons who are sixty-five (65) years of age or older or who are disabled, the total amount of ad valorem taxes imposed on that homestead for general elementary and secondary public school purposes may not be increased while it remains the residence homestead of that person or that person's spouse who receives the exemption. If a person sixty-five (65) years of age or older dies in a year in which the person received the exemption, the total amount of ad valorem taxes imposed on the homestead for general elementary and secondary public school purposes may not be increased while it remains the residence homestead of that person's surviving spouse if the spouse is fifty-five (55) years of age or older at the time of the person's death, subject to any exceptions provided by general law. The legislature, by general law, may provide for the transfer of all or a proportionate amount of a limitation provided by this subsection for a person who qualifies for the limitation and establishes a different residence homestead. However, taxes otherwise limited by this subsection may be increased to the extent the value of the homestead is increased by improvements other than repairs or improvements made to comply with governmental requirements and except as may be consistent with the transfer of a limitation under this subsection. For a residence homestead subject to the limitation provided by this subsection in the 1996 tax year or an earlier tax year, the

legislature shall provide for a reduction in the amount of the limitation for the 1997 tax year and subsequent tax years in an amount equal to \$10,000 multiplied by the 1997 tax rate for general elementary and secondary public school purposes applicable to the residence homestead.

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

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by H.J.R. No. 21, 78th Legislature, Regular Session, 2003, and expires January 2, 2004.

(b) The amendment to Section 1-b(d), Article VIII, of this constitution takes effect beginning with the tax year that begins January 1, 2004.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to prohibit an increase in the total amount of school district ad valorem taxes that may be imposed on the residence homestead of a disabled person."

Amendment No. 18 (H.J.R. No. 59)

Wording of Ballot Proposition:

The constitutional amendment authorizing the legislature to permit a person to assume an office of a political subdivision without an election if the person is the only candidate to qualify in an election for that office.

Analysis of Proposed Amendment:

The proposed amendment adds Section 13A, Article XVI, Texas Constitution, to authorize the legislature to provide by general law that a person may assume an office of a political subdivision without an election if that person is the only candidate to qualify in an election for that office.

Background

The Texas Constitution requires elections to be held to fill certain offices of political subdivisions. For example, Section 11(b), Article XI, Texas Constitution, provides that a home-rule municipality that provides that its officers serve terms exceeding two years “must elect all of the members of its governing body by majority vote.” Section 18(b), Article V, Texas Constitution, requires a county commissioner to be elected by the qualified voters of the commissioners precinct. Some provisions establishing county offices require a person to be elected to that office by the qualified voters of the county. For example, Section 20, Article V, Texas Constitution, provides for the election of the county clerk, and Section 44(a), Article XVI, Texas Constitution, requires the legislature to provide for the election of the county treasurer and county surveyor by the qualified voters of the county.

Under current statute, a political subdivision other than a county may cancel the election to be held to elect the members of its governing body if each candidate whose name is to appear on the ballot is unopposed, a vote for a write-in candidate may not be counted, and no proposition is to appear on the ballot. See Section 2.051, Election Code. In such an

election, there is nothing for the voters to decide, and the entire election is a mere formality. However, in the situation in which there is even one opposed candidate or proposition on the ballot, the constitutional provisions previously described require an election to be held for some municipal and most county offices, even if only one candidate qualifies for the ballot.

The proposed amendment would give the legislature the authority to enact general laws to enable a person to assume an office of a political subdivision for which the Texas Constitution otherwise requires an election without holding the actual election if no other person qualifies as a candidate for election to that office. House Bill No. 1344, enacted by the 78th Legislature, Regular Session, 2003, and contingent on the adoption of House Joint Resolution No. 59, would amend the Election Code to authorize the governing body of the political subdivision for which a candidate seeks office to declare the candidate elected to that office without an election if the candidate is the only person who has qualified for election, write-in votes may be counted in the election only for names appearing on a list of write-in candidates, and no name is to be placed on the list of write-in candidates. If a candidate is declared elected in this manner, the office is not listed on the ballot and an election is not held for that office. The new provision, Section 2.056, Election Code, would replace current Section 2.051 and would apply to all political subdivisions.

Arguments For:

1. By authorizing the legislature to allow political subdivisions to avoid the expense of time and money to list unopposed candidates on the ballot and count votes for unopposed candidates, the proposed amendment promotes efficiency in election administration and would help reduce the cost of elections.

2. The proposed amendment would permit the legislature to give election officials greater flexibility in ballot preparation because the ballot would not have to enable a person to vote for an unopposed candidate. Simpler, shorter ballots will allow the voter to focus on contested races,

without having to sort through the unopposed candidates, and will generally reduce voter confusion.

3. The proposed amendment would not interfere with anyone's right to vote. If a candidate is unopposed, and no other candidate, including a write-in candidate, is eligible for election to that office, the race is decided. Under current law, if there is an unopposed candidate for an office on the ballot, the election for that office becomes a burdensome formality. The proposed amendment would eliminate the need to hold these unnecessary elections.

Arguments Against:

1. Omitting a candidate from the ballot deprives voters of their right to vote for the candidate of their choice. Those who take the time to vote are exercising their right to endorse the candidate they wish to represent them and validate the candidate's election to public office. The right to vote for a candidate should exist regardless of the number of candidates.

2. The proposed amendment would authorize the legislature to deprive candidates of the opportunity to gain visibility by campaigning and make it more difficult for the voters to know who their elected leaders are or what offices are being filled.

3. The proposed amendment is unnecessary because Amendment No. 8 (proposed by House Joint Resolution No. 62), to be submitted to the voters at the same time as this proposed amendment, would more broadly authorize the legislature to provide by general law that a person may assume any office, including an office of a political subdivision, without an election if that person is the only candidate to qualify in an election for that office. If Amendment No. 8 is approved by the voters, this proposed amendment is unnecessary and duplicative, and will add confusion to the Texas Constitution.

Text of H.J.R. No. 59: **HOUSE AUTHOR:** Carlos Uresti
 SENATE SPONSOR: Letitia Van de Putte

HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to permit a person to assume an office of a political subdivision without an election if the person is the only candidate to qualify in an election for that office.

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

SECTION 1. Article XVI, Texas Constitution, is amended by adding Section 13A to read as follows:

Sec. 13A. For an office of a political subdivision for which this constitution requires an election, the legislature may provide by general law for a person to assume the office without an election if the person is the only candidate to qualify in an election to be held for that office.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing the legislature to permit a person to assume an office of a political subdivision without an election if the person is the only candidate to qualify in an election for that office.”

Amendment No. 19 (S.J.R. No. 45)

Wording of Ballot Proposition:

The constitutional amendment to repeal the authority of the legislature to provide for the creation of rural fire prevention districts.

Analysis of Proposed Amendment:

The proposed amendment would repeal Section 48-d, Article III, Texas Constitution. That section authorizes the legislature to create rural fire prevention districts supported by a tax on property located in the district.

Background

Section 48-d was added to Article III, Texas Constitution, in 1949. It authorizes the legislature to provide for the creation of rural fire prevention districts supported by a tax on property in the district at a rate of no more than three cents for each \$100 of valuation. Section 48-d was amended in 1997 to permit a rural fire prevention district located wholly or partly in Harris County to be supported by a property tax of no more than five cents per \$100 of valuation. Before a district may impose the property tax, the voters living in the district must approve the tax.

The legislature probably has the authority to create fire prevention districts in rural areas without specific authorization by the constitution. Thus, the importance of Section 48-d does not stem from the authority it provides to create those districts, but rather from the authority it provides to impose a property tax at the three- and five-cent rates.

In 1987, a related type of district was authorized when voters approved the addition of Section 48-e to Article III of the state constitution, permitting the legislature to provide for emergency services districts. In addition to rural fire prevention services, these districts may provide other emergency services such as medical and ambulance services. Section 48-e authorizes the commissioners court of a county participating in the district to impose a tax of not more than 10 cents for every \$100 of

valuation of property located in the district to fund those services. Districts also have statutory authority to impose a limited sales and use tax to support the provision of services.

According to the Office of Rural Community Affairs, in June 2003, Texas had 127 rural fire prevention districts and 91 emergency services districts. Under Senate Bill No. 1021, enacted by the 78th Legislature, Regular Session, 2003, each of those rural fire prevention districts is converted to an emergency services district on September 1, 2003, and the statute providing for rural fire prevention districts is repealed. Senate Bill No. 1021 takes effect regardless of whether voters adopt S.J.R. No. 45.

Arguments For:

1. Rural fire prevention districts have been struggling to provide services under the decades-old three-cent cap on property taxes imposed under the state constitution. In contrast, the constitutional cap on property tax rates in emergency services districts is 10 cents. An emergency services district also has statutory authority to impose a limited sales and use tax, and may use its tax revenue not only for fire prevention services in rural areas, but also for related emergency services. Thus, emergency services districts have greater financial flexibility to meet the changing needs of rural communities for fire prevention and other emergency services. The amendment would repeal the less flexible and outdated constitutional provision allowing for rural fire prevention districts.

2. Since all rural fire prevention districts are converted to emergency services districts on September 1, 2003, under Senate Bill No. 1021, and since that bill also repeals the statute providing for rural fire prevention districts, the amendment would clean up the state constitution by removing a provision that the legislature has determined is no longer useful.

Arguments Against:

1. There is no compelling reason to amend the state constitution to repeal the legislature's authority to create rural fire prevention districts. Senate Bill No. 1021 converts existing rural fire prevention districts into

emergency services districts, but it is not contingent on passage of the amendment. Because there is no need for the repeal provided by the amendment, the more prudent action would be to maintain the constitutional provision in its current form.

2. The state constitution explicitly provides two options for fire prevention services in rural areas: rural fire prevention districts supported by a property tax at a rate of not more than three cents for each \$100 of valuation, and emergency services districts supported by a property tax at a rate of not more than 10 cents for each \$100 of valuation. The constitution should maintain the flexibility it currently offers to rural communities to provide fire prevention services under the lower rate cap. The amendment would remove the option of keeping property tax rates low and would force rural areas to support these types of districts with a tax subject to a higher cap.

Text of S.J.R. No. 45: **SENATE AUTHOR:** Frank L. Madla
HOUSE SPONSOR: Glenn Lewis

SENATE JOINT RESOLUTION

proposing a constitutional amendment to repeal the authority of the legislature to provide for the creation of rural fire prevention districts.

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

SECTION 1. Section 48-d, Article III, Texas Constitution, is repealed.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003, only if the 78th Legislature, at its regular session, enacts a bill relating to the conversion of all rural fire prevention districts to emergency services districts and that bill becomes law. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment to repeal the authority of the legislature to provide for the creation of rural fire prevention districts.” If such a bill does not become law, this proposed constitutional amendment has no effect.

Amendment No. 20 (S.J.R. No. 55)

Wording of Ballot Proposition:

The constitutional amendment authorizing the issuance of general obligation bonds or notes not to exceed \$250 million payable from the general revenues of the state to provide loans to defense-related communities, that will be repaid by the defense-related community, for economic development projects, including projects that enhance the military value of military installations.

Analysis of Proposed Amendment:

The proposed amendment would add Section 49-n to Article III of the Texas Constitution and permit the legislature to authorize one or more state agencies to issue general obligation bonds or notes in an aggregate amount not to exceed \$250 million to provide loans to defense-related communities for economic development projects that benefit the defense-related community, including projects that enhance the military value of military installations located in the state. The proposed amendment would authorize the bond proceeds to be deposited in the Texas military value revolving loan account in the state treasury.

Background

Section 49, Article III, Texas Constitution, prohibits generally the creation of state debt. The issuance of general obligation bonds by the state, in any amount, creates state debt, so it is necessary to seek voter approval to issue the bonds, either by submitting an amendment to the Texas Constitution that authorizes the bonds or by following a procedure prescribed by Section 49, Article III, Texas Constitution. The voters have previously approved constitutional amendments authorizing the issuance of general obligation bonds for purposes such as purchasing land for resale to veterans, making home mortgage loans to veterans, various water development projects, building correctional facilities, and issuing student loans.

If the voters approve the constitutional amendment proposed by Senate Joint Resolution No. 55, the \$250 million in general obligation bonds will not automatically be issued. Under Senate Joint Resolution No. 55 and its enabling legislation, Senate Bill No. 652, the bonds will be issued only to finance loans of financial assistance to defense communities for projects that will enhance the military value of a military facility located in or near the defense community and that are approved by the Texas Military Preparedness Commission. The commission may make a loan only if there is no existing program to finance the project. Before the commission may approve a loan, the commission must:

(1) analyze the creditworthiness of the defense community to determine the defense community's ability to repay the loan; and

(2) evaluate the feasibility of the project to be financed to ensure that the defense community has pledged a source of revenue or taxes sufficient to repay the loan for the project.

Under the proposed amendment and the enabling legislation, the commission shall administer the loans to ensure full repayment of the general obligation bonds issued to finance the project. Under the enabling legislation, the bonds would be issued by the Texas Public Finance Authority, which is an existing state agency governed by a board appointed by the governor with the advice and consent of the senate.

Arguments For:

1. The Texas military value revolving loan account would assist local communities in financing projects that would enhance the military value of military installations located in or near the community. Enhancing the military value of Texas military installations is important because the United States Department of Defense will undergo another round of base realignment and closure in 2005. The military installations located in this state and defense-related businesses are vital to the state's economy. The United States Department of Defense is Texas' largest employer, employing 228,790 persons in the year 2000. The \$20.9 billion in military expenditures made in fiscal year 2000 had a total economic impact of approximately \$49.3 billion on the state. Improving the military

value of Texas military installations will increase the likelihood that Texas military installations will not be closed during the base realignment and closure process.

2. Local communities could borrow money from the Texas military value revolving loan account at a lower rate than the community could borrow money from other sources. Without the resulting cost savings, a local community might not be able to afford to complete projects necessary to prevent a military installation from being closed during the base realignment and closure process.

3. The financial risk to the state is minimized because the state is responsible for payment on the bonds only if the defense community fails to repay the bonds.

Arguments Against:

1. The Department of Defense desires to close expensive, unnecessary defense bases. It does not make sense to spend state money to keep bases that are not needed to defend the nation. Furthermore, the expenditures will not guarantee that the federal government will decide to keep the bases open.

2. At a time when the state is facing increasing needs for services in all areas and state revenues are being strained to meet all of these needs, the approval of an additional amount of bonds for financing projects that increase the military value of federal military installations does not appear to be practical or necessary because the local communities may complete the projects without state assistance.

3. The issuance of general obligation bonds will increase debt of the state that will have to be repaid when the bonds come due.

Text of S.J.R. No. 55:

SENATE AUTHOR: Eliot Shapleigh

HOUSE SPONSOR: Frank J. Corte, Jr.

SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing the issuance of general obligation bonds or notes to provide loans to defense-related communities for economic development projects, including projects that enhance military value of military installations.

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

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

Sec. 49-n. (a) The legislature by general law may authorize one or more state agencies to issue general obligation bonds or notes of the State of Texas in an aggregate amount not to exceed \$250 million and enter into related credit agreements. The proceeds from the sale of the bonds and notes shall be deposited in the Texas military value revolving loan account in the state treasury or its successor account to be used by one or more state agencies designated by the legislature by general law without further appropriation to provide loans for economic development projects that benefit defense-related communities, as defined by the legislature by general law, including projects that enhance the military value of military installations located in the state.

(b) The expenses incurred in connection with the issuance of the bonds and notes and the costs of administering the Texas military value revolving loan account may be paid from money in the account. Money in the Texas military value revolving loan account may be used to pay all or part of any payment owed under a credit agreement related to the bonds or notes.

(c) A defense-related community receiving a loan from the Texas military value revolving loan account may use money from the account to capitalize interest on the loan.

(d) An agency providing a loan from the Texas military value revolving loan account to a defense-related community may require the defense-related community to pay any pro rata cost of issuing the general obligation bonds and notes.

(e) Bonds and notes authorized under this section are a general obligation of the state. While any of the bonds or notes or interest on the bonds or notes is outstanding and unpaid, there is appropriated out of the first money coming into the treasury in each fiscal year, not otherwise appropriated by this constitution, the amount sufficient to pay the principal of and interest on the bonds or notes that mature or become due during the fiscal year, including an amount sufficient to make payments under a related credit agreement, less any amounts in the interest and sinking accounts at the close of the preceding fiscal year that are pledged to payment of the bonds or notes or interest.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing the issuance of general obligation bonds or notes not to exceed \$250 million payable from the general revenues of the state to provide loans to defense-related communities, that will be repaid by the defense-related community, for economic development projects, including projects that enhance the military value of military installations.”

Amendment No. 21 (S.J.R. No. 19)

Wording of Ballot Proposition:

The constitutional amendment to permit a current or retired faculty member of a public college or university to receive compensation for service on the governing body of a water district.

Analysis of Proposed Amendment:

The proposed amendment amends Section 40(b), Article XVI, Texas Constitution, to permit a faculty member or retired faculty member of a public institution of higher education who also serves as a member of the governing body of a water district created under Section 59, Article XVI, or Section 52, Article III, Texas Constitution, to receive a salary for that service.

Background

Section 40, Article XVI, Texas Constitution, contains various rules governing dual office-holding by state and local officials. Subsection (a) of Section 40 prohibits a person from holding more than one “civil office of emolument,” meaning a public office for which compensation is provided by law. Subsection (b) of Section 40 clarifies that the dual office prohibition in Subsection (a) does not prohibit a state employee or other public employee who is not a state officer and who receives compensation from state funds, such as a school district employee, from serving on the governing body of a school district, city, town, or other local governmental district. Subsection (b) prohibits such a state or other public employee who does serve on a local governing body from receiving a salary for that service.

In 1999, the voters rejected a proposed constitutional amendment that would have removed the prohibition in Subsection (b) against state and other state-compensated employees receiving a salary for serving on local governing bodies. However, in 2001, the voters did approve a constitutional amendment that permits schoolteachers, retired

schoolteachers, and retired school administrators to receive compensation for serving on local governing bodies.

Under Subsection (b) of Section 40 as it currently exists, a faculty member of a public institution of higher education is prohibited from receiving a salary for serving on a local governing body if any part of the faculty member's compensation is derived from state funds. The constitutional amendment proposed by Senate Joint Resolution No. 19 would add an additional exception to Subsection (b) permitting such a faculty member to receive a salary for serving on the governing body of a water district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution. Those sections authorize the creation of special districts for certain purposes. Many of those districts are referred to or are generally considered to be water districts, although the proposed amendment to Section 40, Article XVI, does not specifically define the term "water district" for that purpose.

Under current Subsection (b) of Section 40, it is not clear that a retired state or state-compensated employee is prohibited from receiving a salary for serving on a local governing body, because the person is no longer an active public employee and the person's retirement benefits are not necessarily considered to be "compensation." However, just as the 2001 amendment to Subsection (b) provided that retired schoolteachers and retired school administrators may receive a salary for serving on local governing bodies, the constitutional amendment proposed by Senate Joint Resolution No. 19 would affirm that a retired public college or university faculty member may receive a salary for serving on the governing body of a water district.

Arguments For:

1. The proposed amendment would eliminate an antiquated and unnecessary restriction on additional public service by public college and university faculty members. The law currently does not prohibit that service, but discourages it by prohibiting a salary for it. There is no such salary prohibition applicable to other persons holding full-time jobs, such as federal or private-sector employees. Approval of the amendment

would eliminate this unfair discrimination against public employees who are faculty members.

2. Approval of the amendment would encourage valuable public service by faculty members and greatly increase the pool of qualified persons able to serve on the governing bodies of the state's hundreds of water districts. Service on a water district board may be technical and time-consuming, and denying compensation to faculty members who are willing to sacrifice their spare time to serve on those boards is counterproductive.

3. The proposed amendment is properly limited to very narrow circumstances. Public college and university faculty members, unlike most other state employees, have more flexible hours and can more easily schedule outside duties in conjunction with their primary jobs. In addition, the exception applies only to water districts, which have limited functions. The exception does not extend to service by a faculty member on a city council, which would more likely interfere with the faculty member's teaching duties.

Arguments Against:

1. The existing constitutional prohibition against a state employee receiving a salary for serving on the governing body of a political subdivision is intended to ensure that the state employee is committed first and foremost to his or her public employment, and that additional service in the employee's spare time remains voluntary and does not conflict with the employee's job. If service on the governing body of a water district is a salaried position, the duties of that position are probably substantial enough to potentially interfere with the duties of the faculty member. The proposed amendment would encourage faculty members to double dip by juggling two jobs, potentially reducing their commitment to their faculty responsibilities.

2. While faculty members of public colleges and universities are undoubtedly able to provide valuable service to local governments because of their valuable skills, knowledge, and experience, other state employees, such as engineers, accountants, social workers, managers, and attorneys,

are also well qualified to provide such service in their spare time and frequently do so without additional compensation. There is no reason to single out faculty members for the special treatment that would become available under the proposed amendment.

3. The inclusion of retired faculty members in the proposed amendment implies that other retired state employees are not entitled to receive a salary for serving on a local governing body. If that construction of Section 40(b), Article XVI, Texas Constitution, is adopted by the courts, the proposed amendment will actually discourage public service on local governing bodies by thousands of well-qualified state retirees.

Text of S.J.R. No. 19:

SENATE AUTHOR: Tommy Williams

HOUSE SPONSOR: Rob Eissler

SENATE JOINT RESOLUTION

proposing a constitutional amendment to permit a current or retired faculty member of a public college or university to receive compensation for service on the governing body of a water district.

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

SECTION 1. Subsection (b), Section 40, Article XVI, Texas Constitution, is amended to read as follows:

(b) State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts. Such State employees or other individuals may not receive a salary for serving as members of such governing bodies, except that:

(1) a schoolteacher, retired schoolteacher, or retired school administrator may receive compensation for serving as a member of a governing body of a school district, city, town, or local governmental district, including a water district created under Section 59, Article XVI, or Section 52, Article III; and

(2) a faculty member or retired faculty member of a public institution of higher education may receive compensation for serving as a member of a governing body of a water district created under Section 59 of this article or under Section 52, Article III, of this constitution.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment to permit a current or retired faculty member of a public college or university to receive compensation for service on the governing body of a water district.”

Amendment No. 22 (H.J.R. No. 84)

Wording of Ballot Proposition:

The constitutional amendment authorizing the appointment of a temporary replacement officer to fill a vacancy created when a public officer enters active duty in the United States armed forces.

Analysis of Proposed Amendment:

The proposed amendment would add Section 72 to Article XVI of the Texas Constitution to:

(1) allow an elected or appointed officer of the state or of any political subdivision who enters active duty in the armed forces of the United States as a result of being called to duty, drafted, or activated, to retain the person's office while serving in the military; and

(2) allow a temporary acting officer to be appointed to perform all the duties of the office.

Under the proposed amendment, for an officer other than a member of the legislature, the authority who has the power to appoint a person to fill a vacancy in the office would appoint the temporary acting officer. If a vacancy in the office would normally be filled by a special election, the governor would appoint the temporary acting officer for a state or district office and the governing body of a political subdivision such as a city or county would appoint the temporary acting officer for an office of that political subdivision.

For an officer who is a member of the legislature, the amendment authorizes the member of the legislature to appoint a temporary acting representative or senator, subject to approval of the selection by a majority vote of the appropriate house of the legislature.

Background

Current law is not clear regarding whether an elected or appointed officer of the state or of a political subdivision who enters active duty in

the armed forces of the United States as a result of being called to duty, drafted, or activated vacates the office held. If under current law the officer vacates the office, the appropriate authority would appoint a replacement officer or hold a special election to fill the vacancy, and the vacating officer would not be entitled to resume serving in the office on returning from active military duty. If under current law the officer does not vacate the office, then the officer would be unable to fully attend to the duties of the office and would probably be unable to vote as a member of a multimember governmental body until the officer returns from active military duty.

Arguments For:

1. The amendment is necessary to clarify that an elected or appointed officer of the state or a political subdivision does not vacate the person's office when the officer is called to active military duty.

2. Allowing the appointment of a temporary acting officer would allow for the needs of constituents to continue being served during the officer's temporary leave of absence. Appointing a temporary officer would assist smaller governing bodies. If one member of a three-member commission is called into active military duty, the vacancy on the commission could create a bottleneck for some issues before the commission because it might be impossible to obtain a majority vote.

3. State law provides that an employee of the state or of a local governmental entity who leaves employment to enter active military service is entitled to reemployment with the state or local governmental entity after the employee completes active military service. Officers of the state or a political subdivision should receive the same benefit after taking a temporary leave of absence to defend the state or nation as a member of the military. Allowing the officer to return to office after completing active military service will encourage public officers who are part of the national guard or reserves to maintain their involvement in the national guard or reserves.

Arguments Against:

1. Allowing the governor or the governing body of a political subdivision to appoint a temporary replacement for an elected officer deprives the citizens of this state of the right to select the individuals who will represent them.

2. Allowing an officer of the state or of a political subdivision to return to office after the individual completes temporary active duty in the military creates inefficiency in the operation of the office because there is no definite length of time the officer may be away on active duty. Without having a definite term of office, fewer qualified individuals will agree to serve as a temporary replacement officer.

Text of H.J.R. No. 84: **HOUSE AUTHOR:** Carlos Uresti et al.
 SENATE SPONSOR: Letitia Van de Putte

HOUSE JOINT RESOLUTION

proposing a constitutional amendment providing for the filling of a temporary vacancy in a public office created by the activation for military service of a public officer.

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

SECTION 1. Article XVI, Texas Constitution, is amended by adding Section 72 to read as follows:

Sec. 72. (a) An elected or appointed officer of the state or of any political subdivision who enters active duty in the armed forces of the United States as a result of being called to duty, drafted, or activated does not vacate the office held, but the appropriate authority may appoint a replacement to serve as temporary acting officer as provided by this section if the elected or appointed officer will be on active duty for longer than 30 days.

(b) For an officer other than a member of the legislature, the authority who has the power to appoint a person to fill a vacancy in that office may appoint a temporary acting officer. If a vacancy would normally be filled by special election, the governor may appoint the temporary acting officer for a state or district office, and the governing body of a political subdivision may appoint the temporary acting officer for an office of that political subdivision.

(c) For an officer who is a member of the legislature, the member of the legislature shall select a person to serve as the temporary acting representative or senator, subject to approval of the selection by a majority vote of the appropriate house of the legislature. The temporary acting representative or senator must be:

(1) a member of the same political party as the member being temporarily replaced; and

(2) qualified for office under Section 6, Article III, of this constitution for a senator, or Section 7, Article III, of this constitution for a representative.

(d) The officer who is temporarily replaced under this section may recommend to the appropriate appointing authority the name of a person to temporarily fill the office.

(e) The appropriate authority shall appoint the temporary acting officer to begin service on the date specified in writing by the officer being temporarily replaced as the date the officer will enter active military service.

(f) A temporary acting officer has all the powers, privileges, and duties of the office and is entitled to the same compensation, payable in the same manner and from the same source, as the officer who is temporarily replaced.

(g) A temporary acting officer appointed under this section shall perform the duties of office for the shorter period of:

(1) the term of the active military service of the officer who is temporarily replaced; or

(2) the term of office of the officer who is temporarily replaced.

(h) In this section, “armed forces of the United States” means the United States Army, the United States Navy, the United States Air Force, the United States Marine Corps, the United States Coast Guard, any reserve or auxiliary component of any of those services, or the National Guard.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing the appointment of a temporary replacement officer to fill a vacancy created when a public officer enters active duty in the United States armed forces.”

