The State of Texas
House of Representatives

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Veronica Gonzales
STATE REPRESENTATIVE
DISTRICT 41

January 4, 2010

FILE # ML-46653-11
I.D. # 46653

RQ-0939-GA

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711

Re: Request for Attorney General Opinion

Dear Attorney General Abbott:

Mr. David A. Díaz of McAllen, a constituent of ours and publisher of *www.EdinburgPolitics.com*, has asked me to submit this request for an Attorney General Opinion regarding the impact of a landmark change involving the Federal Americans with Disabilities Act.

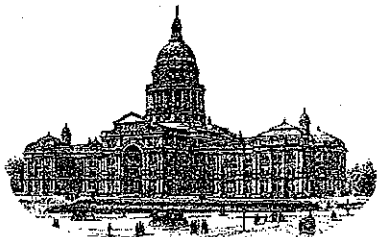
The ADA Amendments Act of 2008, which went into effect on January 1, 2009, has expanded the definition of a disability to include conditions such as diabetes, cancer, multiple sclerosis, epilepsy, and other illnesses that can be controlled by medications and other treatments, according to federal lawmakers and published reports of the ADA Amendments Act of 2008.

Given this expansion of the definition of a disability, Mr. Díaz wants to know whether this means that Texas homeowners who suffer from these serious illnesses are now eligible to qualify for property tax freezes and other tax exemptions on their primary homestead.

As you are aware, property tax freezes in Texas are not tax exemptions; property taxes are still paid, but the freezes prevent those taxes, under most circumstances for qualified homeowners, from ever increasing.

For the large number of Texas homeowners who struggle financially with the medical costs to deal with these major illnesses, your decision would have a major and far-reaching effect. My House District, in particular, would be especially affected due to the high rate of Diabetes in the Rio Grande Valley and among the Hispanic population.

Conversely, the interpretation of this law could result in a significant fiscal challenge to the State which the Legislature would inevitably have to address during this time in which we are facing such a large deficit.



Existing property tax freezes are the result of two state constitutional amendments which were overwhelmingly approved by Texas voters in 2003.

Specifically, Proposition 13 (HJR 16 by F. Brown, et al./Nelson) added Art. 8, sec. 1-b(h), allows the governing bodies of counties, cities, towns, and junior college districts to freeze the amount of property taxes that can be imposed on residential homesteads owned by the elderly or disabled. Property taxes could not increase as long as the residences were maintained as homesteads by owners or their spouses who were disabled or at least 65 years old.

Also, Proposition 17 (HJR 21 by Hamric, et al./Van de Putte) amended Art. 8, sec. 1-b(d) to allow disabled homeowners to qualify for the school property tax freeze on residential homesteads.

For your information and analysis, I am attaching the support documents provided to me by Mr. Díaz, including:

• LEGISLATIVE ANALYSES
House Research Organization Focus Report on Proposition 13 and Proposition 17 from 2003;

• PRESS RELEASE:
Sen. Harkin, Sen. Hatch Measure Fulfilling Promise Of Americans With Disabilities Act Passes Senate Unanimously (September 11, 2008); and

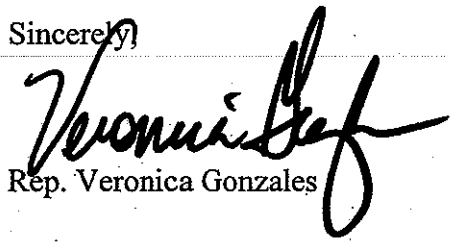
• NEWS STORY:
Congress Passes Bill With Protections for Disabled / *New York Times* (September 18, 2008).

Mr. Díaz has also informed me that he has solicited and received counsel on this issue with several other legislators, including Congressman Henry Cuellar, D-Laredo/McAllen, Sen. Juan "Chuy" Hinojosa, D-McAllen, Sen. Eddie Lucio, Jr., D-Brownsville, Rep. Senfronia Thompson, D-Houston, Rep. Ismael "Kino" Flores, D-Palmview, and Rep.-Elect Sergio Muñoz, Jr., D-Mission.

As a matter of protocol, however, he has asked me as his state representative and as chair of a standing legislative committee, which authorizes me to forward this issue to you to submit this request for an Attorney General Opinion.

Therefore, I am respectfully requesting you to provide the legal interpretation of existing state law to determine whether or not the expansion of the definition of a disability under the ADA Amendments Act of 2008 also means that more Texas homeowners now qualify for property tax freezes on their principal homesteads and for any other property tax exemptions, as allowed by existing state laws. If there is any additional information I can provide you regarding this request, please do not hesitate to contact me.

Sincerely,



Rep. Veronica Gonzales

Attachments

Thursday, September 11, 2008

Use the following key words to access story, which includes video, on the Internet:

Harkin, Hatch Measure Fulfilling Promise Of Americans With ...

.....

Harkin, Hatch Measure Fulfilling Promise Of Americans With Disabilities Act Passes Senate Unanimously

Legislation responds to Supreme Court decisions that narrowed the definition of disability

Senators Tom Harkin (D-IA) and Orrin Hatch (R-UT) today announced that the Senate had approved by unanimous consent a bill that would clarify the law's intent and ensure that all Americans with disabilities are protected from discrimination. The bill will need to be acted upon by the House of Representatives before being sent to the President's desk.

The Senate bill is similar to bipartisan legislation introduced in the House by Majority Leader Steny Hoyer and Congressman Jim Sensenbrenner that passed by a 402-17 margin this summer.

Considered to be one of the landmark civil rights laws of the 20th century, the ADA was designed to protect any individual who is discriminated against on the basis of disability. The law was passed with overwhelming bipartisan support and was signed into law by President George H.W. Bush.

Since the ADA became law, a series of court decisions have narrowed the category of who qualifies as an "individual with a disability," contrary to Congressional intent. By raising the threshold for an impairment to qualify as a disability, these court decisions have deprived individuals of the discrimination protections Congress intended to provide.

The ADA Amendments Act would remedy this problem and restore workplace protections to every American with a disability. The bill leaves the ADA's familiar disability definition intact, but takes several specific steps to direct courts toward a more generous meaning and application of the definition. The legislation would make it easier for people with disabilities to be covered by the ADA because it effectively expands the definition of disability to include many more major life activities, as well as a new category of major bodily functions.

"With today's vote, we have restored the promise of the ADA which was signed into law 18 years ago," said Harkin, the chief author of the original ADA. "The protections afforded under this historic law have been eroded and the result is that people with serious conditions like epilepsy or diabetes could be forced to choose between treating their conditions and forfeiting their protections under the law. That is not what Congress intended when we passed the law, and this bill is the right fix."

"This is a historic day," said Hatch. "This bill continues our ongoing effort to expand opportunities for individuals with disabilities to participate in the American Dream. Passage of the ADA Amendments Act ensures that the Americans with Disabilities Act will continue to help change lives. I'm proud to have worked with my good friend Tom Harkin in crafting this monumental bill that enjoys such strong bipartisan support."

The ADA Amendments Act enjoys strong support by advocacy groups, including most national disability organizations, 23 major veterans organizations, the U.S. Chamber of Commerce, the National Association of Manufacturers, the Society for Human Resource Management, and the Human Resources Policy Association.

The New York Times
nytimes.com

September 18, 2008

Congress Passes Bill With Protections for Disabled

By ROBERT PEAR

WASHINGTON — Congress gave final approval on Wednesday to a major civil rights bill, expanding protections for people with disabilities and overturning several recent Supreme Court decisions.

The voice vote in the House, following Senate passage by unanimous consent last week, clears the bill for President Bush.

The White House said Mr. Bush would sign the bill, just as his father signed the original Americans With Disabilities Act in 1990.

The bill expands the definition of disability and makes it easier for workers to prove discrimination. It explicitly rejects the strict standards used by the Supreme Court to determine who is disabled.

The bill declares that the court went wrong by "eliminating protection for many individuals whom Congress intended to protect" under the 1990 law.

"The Supreme Court misconstrued our intent," said Representative Steny H. Hoyer of Maryland, the House Democratic leader. "Our intent was to be inclusive."

In an effort to clarify the intent of Congress, the bill says, "The definition of disability in this act shall be construed in favor of broad coverage."

Representative F. James Sensenbrenner Jr. of Wisconsin, the principal Republican sponsor in the House, said, "Courts

HOUSE
RESEARCH
ORGANIZATION

focus report

Texas House of Representatives

July 28, 2003

CONSTITUTIONAL

Amendments Proposed
for September 2003 Ballot

Amending the Constitution

Texas voters have approved 410 amendments to the state Constitution since its adoption in 1876. Twenty-two more amendments will be proposed at the general election on Saturday, September 13, 2003.

Joint resolutions

The Legislature proposes constitutional amendments in joint resolutions that originate in either the House or the Senate. For example, Proposition 12 on the September 2003 ballot was proposed by House Joint Resolution (HJR) 3, introduced by Rep. Joe Nixon and sponsored in the Senate by Sen. Jane Nelson. Art. 17, sec. 1 of the Constitution requires that a joint resolution be adopted by at least a two-thirds vote of the membership of each house of the Legislature (100 votes in the House of Representatives, 21 votes in the Senate) to be presented to voters. The governor cannot veto a joint resolution. Amendments may be proposed in either regular or special sessions.

A joint resolution includes the text of the proposed constitutional amendment and specifies an election date. A joint resolution may include more than one proposed amendment, such as HJR 68, which includes Proposition 1, allowing the Veterans' Land Board to use excess assets for veterans' homes, and Proposition 9, adopting a total-return investment strategy for the Permanent School Fund. The secretary of state conducts a random drawing to assign each proposition a ballot number if more than one proposition is being considered.

If voters reject an amendment proposal, the Legislature may resubmit it. For example, a proposition authorizing $300 million in general obligation bonds for college student loans was rejected at an August 10, 1991, election, then was approved November 5, 1991, after being readopted by the Legislature and resubmitted in essentially the same form. Proposition 3 on the November 2, 1999, ballot, eliminating duplicative and obsolete provisions of the Constitution, also repealed requirements for disclosing Texas Growth Fund investments in South Africa or Namibia, which had the same intent as proposals rejected by the voters in 1995 and 1997.

Ballot wording

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

Election date

The Legislature may call an election for voter consideration of proposed constitutional amendments on any date, as long as election authorities have enough time to provide notice to the voters and print the ballots. In recent years, most proposals have been submitted at the November general elections held in odd-numbered years. However, all joint resolutions proposing constitutional amendments that the 78th Legislature adopted during its regular session set September 13, 2003, as the election date.

Publication

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

The secretary of state prepares the explanatory statement, which must be approved by the attorney general, and arranges for the required newspaper publication. The average estimated total cost of publication twice in newspapers across the state is $85,275, according to the Legislative Budget Board.

Enabling legislation

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

Effective date

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

Previous Election Results

Analyses of the 19 proposals on the November 2001 ballot appear in House Research Organization Report No. 77-12, *Constitutional Amendments Proposed for November 2001 Ballot*, August 13, 2001. The November 2002 ballot proposal was analyzed in a separate Focus Report dated August 23, 2002. *(Source: Secretary of State's Office.)*

Proposition 1: Relinquishing state interest in land in Bastrop County

FOR	596,765	74.4%
AGAINST	205,499	25.6%

Proposition 2: Bonds for access roads to border colonias

FOR	507,357	61.4%
AGAINST	318,447	38.6%

Proposition 3: Ad valorem tax exemption for raw cocoa and green coffee held in Harris County

FOR	411,339	51.5%
AGAINST	386,931	48.5%

Proposition 4: Increasing term of fire fighters' pension commissioner

FOR	583,552	72.1%
AGAINST	226,350	27.9%

Proposition 5: Allowing cities to donate used firefighting equipment to foreign countries

FOR	595,707	71.4%
AGAINST	239,139	28.6%

Proposition 6: Requiring governor to call special legislative session to appoint presidential electors when outcome is in doubt

FOR	507,716	62.2%
AGAINST	308,643	37.8%

Proposition 7: $500 million in bonds for veterans' housing loans and cemeteries

FOR	611,943	74.7%
AGAINST	207,484	25.3%

Proposition 8: General obligation bonds for state agency construction and repair projects

FOR	509,148	62.5%
AGAINST	305,265	37.5%

Proposition 9: Canceling special election if legislative candidate is unopposed

FOR	557,707	67.6%
AGAINST	267,724	32.4%

Proposition 10: Ad valorem tax exemption for goods in transit

FOR	499,514	63.0%
AGAINST	293,764	37.0%

Proposition 11: Allowing school teachers to receive pay for serving on local government boards

FOR	547,588	66.5%
AGAINST	275,575	33.5%

Proposition 12: Eliminating duplicative and obsolete provisions from the Constitution

FOR	619,945	76.6%
AGAINST	189,541	23.4%

Proposition 13: Allowing school districts to donate old schoolhouses for historic preservation

FOR	658,463	80.4%
AGAINST	160,048	19.6%

Proposition 14: Ad valorem tax exemption for travel trailers

FOR	408,481	51.9%
AGAINST	378,557	48.1%

Proposition 15: Creating a highway bond fund and allowing state spending on toll roads

FOR	543,759	67.7%
AGAINST	259,188	32.3%

Proposition 16: Shortening waiting period for home improvement liens, allowing homestead liens for manufactured homes

FOR	453,021	58.7%
AGAINST	318,517	41.3%

Proposition 17: Settling land-title disputes between the state and private landowners

FOR	512,163	64.3%
AGAINST	284,918	35.7%

Proposition 18: Consolidating and standardizing court fees

FOR	647,439	81.1%
AGAINST	151,213	18.9%

Proposition 19: Additional $2 billion in general obligation bonds for water projects

FOR	506,077	63.8%
AGAINST	287,339	36.2%

(On November 2002 ballot:)

Proposition 1: Allowing counties to declare constable offices dormant

FOR	2,431,757	79.2%
AGAINST	639,414	20.8%

Allowing Veterans' Land Board to use excess assets for veterans' homes

(HJR 68 by Hupp, et al./Fraser)

1 Proposition

Texas Constitution, Art. 3, sec. 49-b establishes the Veterans' Land Board (VLB) and the Veterans' Land Fund, Veterans' Housing Assistance Fund, and Veterans' Housing Assistance Fund II. The Veterans' Land Program, established in 1949, uses bond funding to buy land and resell it to eligible veterans under a 30-year contract of sale and purchase. The Veterans' Housing Assistance Program, established in 1983, helps eligible Texas veterans buy new or existing homes by providing low-interest loans up to $150,000. The Veterans' Financial Assistance Program, established in 1993, provides financial assistance to veterans for the purchase of land and for home mortgage loans. All three programs are administered by the VLB through the General Land Office, as authorized under Natural Resources Code, chapters 161, 162, and 164. The bond debt is repaid with revenue, such as loan repayments with interest, from the programs that the bonds support.

The VLB operates four veterans' homes throughout the state with skilled nursing facilities that provide long-term care for veterans and some qualified dependents. Sixty-five percent of the costs of veterans' home construction is paid for by a federal grant program through the U.S. Department of Veterans Affairs (USDVA). The state pays its 35 percent with VLB bond revenue. Day-to-day operation of the homes is subsidized partially by a federal USDVA per diem per veteran or qualified dependent. The nursing home resident pays the balance based on financial status and amount of military service.

In November 2001, Texas voters approved Proposition 7 (HJR 82 by Counts, et al./Truan), amending the Constitution to allow the VLB to use excess receipts and assets from the Veterans' Land and Veterans' Housing Assistance funds for veterans' cemeteries.

Digest

Proposition 1 would amend Art. 3, sec. 49-b to allow the VLB to use excess assets from the Veterans' Land and Veterans' Housing Assistance funds to plan, design, build, acquire, own, operate, maintain, enlarge, improve, furnish, or equip veterans' homes. It also would delete a provision that limits the VLB to using excess fund receipts to pay principal and interest or to make bond enhancement payments on revenue bonds issued only in connection with the Veterans' Land and Veterans' Housing Assistance funds.

The ballot proposal would read: "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. "

Supporters say

Proposition 1 would enable the VLB to use excess receipts and assets from the Veterans' Land and Veterans' Housing Assistance funds to support veterans' homes. It would give the VLB an alternate option for financing the state's share of building new veterans'

homes. Because new revenue bonds no longer would have to be issued each time a new veterans' nursing home was built, the state would save nearly $1.4 million per home in costs related to bond issuances for initial construction. Eliminating debt-service payments potentially would enable the VLB to reduce room rates, saving veterans money and allowing veterans' homes to reach breakeven occupancy rates sooner. This flexibility also would allow the VLB to exercise more fiscal prudence by covering some of its short-term expenses with cash on hand rather than by issuing new bonds.

This proposal would build on the foundation laid by voters in 2001 by further opening excess receipts and assets for use on veterans' homes. Veterans who now are paying back their land and home loans to the VLB are the same people who, in the future, could be living in veterans' homes or buried in a veterans' cemetery. Excess money in the veterans' land and housing assistance programs was paid by veterans and thus should be available to assist all VLB programs. The programs for veterans and their beneficiaries are so interconnected that using excesses in one program to support another simply would further their common goal: to reward veterans for their service and sacrifice.

Giving the VLB the ability to pay off revenue bonds with excess assets would result in a higher credit rating on bonds, thus leading to lower interest rates. In the current market environment, the VLB could obtain an interest rate approximately 250 basis points lower on a high-rated bond than on a non-rated bond issue, which would result in approximately $2.5 million in present-value savings. Better credit ratings would provide greater security for investors who buy noncollateralized revenue bonds such as those issued for the veterans' home program.

Opponents say

It would be inappropriate for the VLB to support veterans' homes by using receipts from veterans who are repaying money they borrowed to buy land or to buy or remodel a home. While some borrowers may benefit from VLB's other programs in the future, some never will interact with the VLB again after repaying their loans. These veterans should not have to subsidize programs from which they may never benefit. Money that was dedicated to veterans' land and housing assistance programs should continue to go to those programs, rather than being siphoned off for another purpose.

Notes

HB 1749 by Hupp, the enabling legislation for HJR 68 should voters approve Proposition 1, would amend the Natural Resources Code to allow for a pledge of and lien on excess receipts in the Veterans' Land Fund or the Veterans' Housing Assistance Fund to be used as security for the payment of debt service on revenue bonds in connection with other revenue bond programs administered by the VLB.

Two-year redemption period for mineral interests sold at tax sale

(HJR 51 by Flores/Staples)

2 Proposition

Texas Constitution, Art. 8, sec. 13 establishes a right of redemption for former owners of land and other property sold at a tax sale. Within two years of the date the purchaser's deed is filed, the former owner of a residence homestead or of land designated for agricultural use that was sold for unpaid taxes may redeem the property by buying it back. Former owners of other types of real property have six months to exercise their right of redemption.

Under Art. 8, sec. 13 and Tax Code, sec. 34.21, if a former owner of a residence homestead or agricultural property exercises the redemption right within one year, the former owner must pay the purchaser the amount of money paid for the property, a tax deed recording fee, the amount paid by the purchaser in taxes, penalties, interest, and costs on the property, plus 25 percent of the aggregate total. If the right is exercised in the second year, the former owner must pay 50 percent in addition to the purchase price plus the costs. Former owners of property that has a six-month redemption period must pay the purchase price and costs, plus 25 percent of the total.

Digest

Proposition 2 would amend Art. 8, sec. 13 to grant former owners of mineral interests sold for unpaid taxes a two-year redemption period, subject to the same purchase requirements as apply to a former owner of a residence homestead or of agricultural property.

The ballot language reads: "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."

Supporters say

By increasing to two years the right-of-redemption period for former owners of mineral interests sold at tax sales, Proposition 2 would help to protect property owners who might not know that their royalty interests in oil and gas had become delinquent and been sold. Unlike most property records collected and maintained at taxpayer expense in county courthouses, records regarding mineral interests are kept by private entities, such as oil companies. Generally, these companies provide mineral interest records to tax appraisal districts as a courtesy, but often these records contain preliminary or inaccurate data lacking contact information for royalty owners. No statewide standards direct appraisal districts how to assimilate such data into their tax rolls. Owners usually find out about tax forfeitures months later when their royalty payments are withheld, and the six-month limitation often bars them from reclaiming their rightful property.

The inequity in the treatment of these former owners stems from a 1993 constitutional amendment (SJR 19 by Ellis) limiting the two-year redemption period to residence homesteads and agricultural property. Before the amendment, the two-year redemption period applied to all types of property and tended to discourage purchase and rehabilitation of low-value real estate and houses because investors were reluctant to make substantial

improvements if they faced the risk of the property being reclaimed. The 1993 amendment reduced the redemption period to six months to allow an investor to begin improving a property sooner without risk of losing the property to its former owner, thereby fostering redevelopment of vacant and underused land within urban areas. Mineral interests were included in the provision inadvertently.

A two-year redemption period is not likely to discourage purchasers of mineral interests at tax sales. Mineral interests, unlike rental houses, can be transferred easily and require no subsequent investment to generate cash flow, so lengthening the redemption period should have little or no impact on purchasers seeking to buy such interests at a tax sale. A buyer could begin earning royalties immediately after purchase, regardless of the redemption period. Moreover, the higher premium of 50 percent that former owners of mineral interests would have to pay to redeem their interest during the second year of the redemption period actually could encourage purchasers of such interests at tax sales.

Simply informing royalty owners of their tax status would not necessarily solve their problem. Fractional ownership of mineral interests is common in Texas, and an oil or gas reserve below a single well often may have a hundred or more owners. With more than two million royalty owner accounts, it would be difficult, if not impossible, to locate all owners, many of whom could be unaware that they had inherited a mineral interest. Royalty owners' groups and others have explored many options for remedying the inequity in the treatment of former owners of mineral interests, but all require amending the Constitution.

Opponents say

Extending from six months to two years the redemption period for former owners of mineral interests could discourage purchasers from buying such interests at tax sales. Waiting two years for a former mineral-interest owner to turn up and buy back the interest, even at a premium, might not be worth the effort for many potential buyers. This could make it more difficult for school districts, cities, counties, and other political subdivisions to sell property seized for nonpayment of taxes, and reducing the number of potential purchasers could hold down the sales price.

Proposition 2 would amend the Constitution to carve out a special exception to the six-month right of redemption for former owners of mineral interests. The Constitution should not be used to shield certain property owners from penalties for nonpayment of taxes. Instead, the Legislature should establish a better system for informing royalty owners of their status on the tax rolls. Such a system would help royalty owners avoid foreclosure of their interests in the first place, saving them the expense and trouble of buying back their interests at a premium.

Notes

The enabling bill, HB 1125 by Flores, which would apply the same Tax Code procedures for redemption of mineral interests sold at a tax sale as for residence homesteads and agricultural land, would take effect January 1, 2004, if voters approve Proposition 2.

Tax exemption for property owned by religious organization for expansion

(HJR 55 by Zedler/Janek)

3 Proposition

Texas Constitution, Art. 8, sec. 2(a) allows the Legislature to grant tax exemptions for places of religious worship owned by churches or strictly religious societies, including up to one acre of non-income-producing property owned and used exclusively for parsonages (ministers' dwellings).

Tax Code, sec. 11.20 exempts from taxation real estate owned by qualified religious organizations, including places of worship; non-income-producing parsonages up to one acre housing full-time clergy; for up to five years, land and incomplete improvements under active construction or preparation to be used regularly for worship; and tangible personal property reasonably necessary for worship and residential use. To qualify for an exemption, a religious organization must engage primarily in religious worship or promote individual spiritual development; operate in a way that does not result in accrual of profit or realization of private gain; and use the organization's assets for religious functions. Tax-exempt property may be used occasionally for secular purposes if any derived income is spent exclusively on maintaining and developing the property as a place of worship.

Tax Code, sec. 11.21 defines a school eligible for a property-tax exemption as a nonprofit organization operating mainly to engage in educational functions; maintaining a regular faculty, curriculum, and student body in attendance at its physical location; and using its assets to perform educational functions.

Digest

Proposition 3 would amend Art. 8, sec. 2(a) to authorize the Legislature to grant tax exemptions to churches or strictly religious societies owning actual places of worship for two additional types of property: non-income-producing land owned for the purpose of expanding a place of worship or for construction of a new place of worship, and property owned and leased for use as a school for educational purposes. The Legislature could limit eligibility for and impose sanctions related to the exemption for property intended for expansion or construction. Eligible schools would have to meet the qualifications outlined in Tax Code, sec. 11.21.

The ballot proposal reads: "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."

Supporters say

Proposition 3 would encourage churches and religious groups to acquire property for anticipated growth without fear of increasing their tax burden. The amendment would close a loophole that allows local government entities to tax non-revenue-generating church property.

3 Proposition

Because of the rapid growth in many Texas communities, churches are preparing for the future by buying land for expansion. This can save them money and can encourage residential development, because home buyers appreciate knowing that churches, schools, and other similar facilities will be located nearby. However, current law punishes such farsightedness. Tax Code, sec. 11.20 exempts from taxes any church property under active construction or other physical preparation, but after five years, the exemptions expire and the property may be taxed until the church uses it for regular religious worship. Taxing entities in several counties are doing so, forcing some congregations to sell parcels of land to pay taxes they did not expect to owe on property they bought for religious purposes.

Proposition 3 would allow the Legislature to address this problem directly through the enabling legislation. HB 1278 by Zedler, et al., would create an exemption for this type of church property with specific time limits, depending on its contiguity with existing places of worship. Church officials would have to state in writing their intent to use undeveloped land, and the exemption could not be extended indefinitely. Sanctions including five years' worth of back taxes would be imposed on exempt property that was sold or transferred, with some exceptions. These safeguards would limit any adverse impact on local tax bases, discourage churches from opening a new loophole, and protect taxpayers against abuse of the new exemption.

During difficult economic times, churches may not be able to afford the types of preparatory work required to qualify for the existing exemption for incomplete improvements or active construction. Also, five years may not be enough time to obtain the money needed to complete construction. Extending the deadline for development of contiguous land to six years, as HB 1278 would do, is a reasonable compromise. The deadline for developing noncontiguous land would be three years. Both time frames would help churches retain their exemptions during unforeseen delays. The fiscal impact on local governments would be minimal.

Many churches and religious organizations have a keen interest in and sense of duty about enhancing education. State law, however, only exempts property used for qualified educational purposes by its owners. Proposition 3 would eliminate the distinction for property-tax exemption purposes between owner-operators of nonprofit schools and landlords who lease to operators. Granting churches such exemptions would give them a financial incentive to use their property for education.

Opponents say

Proposition 3 would violate a fundamental principle of state tax policy: the basis for private property taxation is use, not ownership.

Churches and religious organizations receive tax exemptions on property they own and use for worship, religious instruction, and housing clergy. They also are eligible for five-year exemptions on property actively being developed for such purposes. Regardless of the worthiness of their intentions or their nonprofit status, they are not entitled to an exemption for property they have acquired that remains unused. Doing so would create a new class of taxpayers differentiated by religious practice and predicated on prospective action.

Allowing churches to hold tax-exempt contiguous property for up to six years without developing it could invite churches to engage in land speculation. Written statements of intent to develop such property, however sincere, would not be binding and might not be enforceable. Allowing churches to transfer exempt property to other religious organizations without sanctions, as proposed by HB 1278, could result in removing property from local tax rolls for many years without the property's being used for any tax-exempt purpose.

Proposition 3 also raises an equity issue. Although churches pay some taxes, they are absolved of what otherwise would be their greatest liability — ad valorem taxes on real estate. Removing large tracts of land from the tax rolls for church members' benefit would require other taxpayers to make up the difference through higher tax payments.

The proposed exemption for churches that lease their property to schools would be unfair to other property owners. Rather than removing a distinction, it would create one in favor of religious organizations that rent to schools. Church-run schools already are tax-exempt; churches that do not use their property themselves for religious or educational purposes should not receive additional tax breaks, even if their tenants are schools. In the name of promoting education, Proposition 3 would penalize public schools by reducing the amount of revenue available to them.

Other opponents say

If the state is serious about promoting alternative means of education, all property owners, not only churches and religious organizations, who lease to schools should receive the tax exemption that Proposition 3 would authorize.

Notes

If voters approve Proposition 3, HB 1278 would take effect January 1, 2004. The bill would exempt from taxation non-income-producing land owned by religious organizations that is intended to be used to expand existing places of worship or build new places of worship. Written statements from authorized officers would suffice to establish organizations' intent. Exemptions would be limited to six years for contiguous land and three years for noncontiguous land. Sale or transfer of land so exempted would incur additional taxes equal to those that would have been imposed for each of the preceding five years, plus interest. Tax liens would attach to the land to secure payment of taxes, interest, and penalties owed all taxing entities. The sanctions would not apply to right-of-way sales, condemnations, and transfers to the state, its political subdivisions, or religious organizations that received other tax exemptions for the property. HB 1278 also would exempt real estate owned by religious organizations and leased for statutorily qualified (nonprofit) school operations.

4 Proposition

Allowing municipal utility districts to develop parks and recreational facilities

(SJR 30 by Lindsay/Callegari)

Texas Constitution, Art. 16, sec. 59(a) states that conservation and development of Texas' natural resources are public rights and duties and that the Legislature must pass laws appropriate for this purpose. Sec. 59(b) allows the creation of conservation and reclamation districts as governmental agencies with power to incur debts as necessary. Water Code, ch. 54 authorizes the creation of a municipal utility district (MUD) under Art. 16, sec. 59. A district may include the area in all or part of any county or counties, including all or part of any cities and other public agencies.

Since the 1970s, the Legislature has enacted several laws that would authorize a MUD to provide parks and recreational facilities. The most recent of these was SB 1444 by Brown, enacted by the 77th Legislature in 2001.

A 1980 appeals court decision, *Harris County Water Control and Improvement District No. 110 v. Texas Water Rights Commission*, 593 S.W.2d 852 (Tex. Civ. App.-Austin), upheld a district court ruling that (1) the statute authorizing districts to "provide parks and recreational facilities" did not authorize the district to provide the facilities in question, and (2) the mere fact that the Constitution did not prohibit the district from providing the park and recreational facilities did not establish the district's authority to do so.

Digest

Proposition 4 would amend Texas Constitution, Art. 16, sec. 59 to include the development of parks and recreational facilities among the public rights and duties for which the Legislature must pass appropriate laws related to conserving and developing natural resources.

The Legislature could authorize certain MUDs to issue bonds for development and maintenance of parks and recreational facilities, if approved by a majority of voters in a district election. MUDs in Bastrop, Bexar, Brazoria, Fort Bend, Galveston, Harris, Montgomery, Travis, Waller, or Williamson Counties, or partly in one of those counties, would be included, along with the Tarrant Regional Water District. The Legislature also could authorize the MUDs to levy and collect taxes to pay interest and to create a sinking fund for payment of the bonds and for maintenance of and improvements to such facilities. The indebtedness would be a lien on the property assessed for payment of the bonds.

The amendment would specify that it expands the Legislature's authority with respect to certain conservation and reclamation districts and does not limit the Legislature's pre-existing authority with respect to conservation and reclamation districts and parks and recreational facilities.

The ballot proposal reads: "The constitutional amendment relating to the provision of parks and recreational facilities by certain conservation and reclamation districts."

Supporters say

Proposition 4 would establish the development of parks and recreational facilities as a constitutionally authorized power of water districts, including MUDs. Unlike almost every other type of political subdivision, MUDs have no explicit constitutional authority to use tax dollars to develop parks and recreational projects. MUDs may build parks and recreational facilities only with surplus funds from water and sewer revenues. The proposed amendment would allow MUDs to issue revenue bonds, if local voters approved, for the purpose of creating parks, rather than relying on surplus revenues alone.

Almost all MUDs are in unincorporated areas. More than 80 percent, or 500 MUDs, are in unincorporated areas in and around Houston. Proposition 4 would address the compelling need for park development in these areas without granting broader authority to other districts throughout the state.

While most people think of the state, counties, and cities as developing public parks and recreational facilities, these entities often cannot meet needs at the neighborhood level. Counties have established large parks, but they often fall short in offering local soccer and Little League fields. The proposed amendment would help address this need before open lands are gone.

Many housing developments also have recreational needs that MUDs could fill. Besides individual homeowners' associations, MUDs would be their only common link for a park or other facility, such as a hike-and-bike trail.

Concerns about giving MUDs this authority because low voter turnout in bond elections could mean only a few voters could decide bond sales for the entire district are misplaced. In fact, people interested in acquiring parks in these districts could become involved actively in the elections and could have a large impact. SB 624 by Lindsay, the enabling legislation that would become effective upon adoption of Proposition 4, would require notice of a bond election that would have to contain the proposition and an estimate of its costs to ensure that voters are informed.

While this amendment would clarify beyond question the Legislature's authority to allow certain MUDs to issue bonds for parks and recreational facilities, granting such explicit authorization should not presume that the Legislature has lacked general authority to allow MUDs to finance such facilities. The legislative intent provision is meant to ensure that courts do not construe adoption of this amendment as any admission that the Legislature lacked authority previously to allow MUDs to finance parks and recreational facilities.

Opponents say

MUDs run water and sewer systems, collect taxes, sell tax bonds, and build infrastructures. Many MUDs are too involved in kingdom-building already, and the last thing the Legislature should do is authorize them to build parks and recreational facilities. The state, counties, and cities have mechanisms in place to set up such facilities, and they should be adequate to meet public recreational needs without granting the same authority to MUDs.

4 Proposition

Voter turnout in MUD elections traditionally has been very low — often as low as 1 percent. Proposition 4 could enable a tiny fraction of a voter pool to commit the other 99 percent to paying for revenue bonds for parks.

Other opponents say

Although the proposed amendment would apply to nine counties, citizens across Texas should benefit from this constitutional change. Voter approval of Proposition 4 would fill a need to acquire open spaces for small parks and recreational facilities while opportunities remain, and communities statewide should be able to take advantage of it.

Notes

SB 624 by Lindsay, contingent on approval of Proposition 4, would amend the Water Code to allow a MUD in or adjacent to a county with a population of more than 3.3 million (Harris) to issue bonds for development and maintenance of recreational facilities if authorized by a majority of voters in a district election. It would set the maximum tax rate for recreational facilities at 10 cents per $100 of assessed valuation of taxable property and would limit the amount of outstanding principal on bonds to 1 percent of the value of taxable property in the district at the time of the issuance, or an amount greater than the cost of the project, whichever was smaller.

A MUD could not issue bonds supported by ad valorem taxes to pay for developing and maintaining recreational facilities unless the bonds were authorized by majority vote of the district's qualified voters in an election. The board could issue bonds payable solely from revenues by resolution or order, without an election. A district could not issue bonds supported by ad valorem taxes to pay for developing and maintaining a swimming pool or golf course.

Not later than the 10th day before a bond election to authorize a recreational facility, the board would have to file for public review a park plan covering the land, improvements, facilities, and equipment to be bought or built and their estimated costs. The required park plan would include maps, plats, drawings, and data fully showing and explaining the plan. The plan would not be part of the voter proposition and would not create a contract with the voters. The notice of a bond election would have to include the proposition to be voted on and an estimate of its costs.

Revising the property-tax exemption for travel trailers

(SJR 25 by Staples, Lucio/Chisum)

5 Proposition

Texas Constitution, Art. 8, sec. 1(j) allows the Legislature to authorize taxing units other than school districts to exempt from ad valorem taxation non-income-producing travel trailers registered in Texas, regardless of whether the trailers are real or personal property. Tax Code, sec. 11.142 authorizes taxing units other than school districts to exempt such travel trailers and defines the trailers eligible for exemptions.

Voters added sec. 1(j) in November 2001 by approving Proposition 14 (HJR 44 by Flores). Earlier that year, the 77th Legislature had enacted the enabling legislation (HB 2076 by Flores), which added Tax Code, sec. 11.142. Previously, the attorney general had issued two opinions on taxation of travel trailers. In December 1999, the attorney general determined that travel trailers affixed to real property are taxable as personal property (Opinion JC-0150). In September 2000, the attorney general held that the Tax Code does not preclude taxation of travel trailers as real property improvements if they have been affixed to someone else's land (Opinion JC-0282).

Art. 8, sec. 1(d)(2) of the Constitution allows the Legislature to exempt tangible personal property (generally, most property other than real estate) from taxation, except for structures that are personal property used or occupied as residential dwellings and except for income-producing property. Political subdivisions, however, may tax tangible personal property exempt under a law adopted under Art. 8, sec. 1(d)(2), unless the Legislature has exempted the property under another law (sec. 1(e)).

Digest

Proposition 5 would repeal Art. 8, sec. 1(j), which allows the Legislature to authorize taxing units, except school districts, to exempt non-incoming-producing, Texas-registered travel trailers from ad valorem taxation. This change would take effect January 1, 2004. The amendment also would revise Art. 8, sec. (d)(2), which defines residential structures that do not qualify for tax exemption. To lose their tax-exempt status, these structures would have to be substantially affixed to real estate. This change also would take effect January 1, 2004, but would apply to 2002 and subsequent tax years.

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

Supporters say

Proposition 5, coupled with its enabling legislation, SB 510 by Staples, would undo a problem caused inadvertently by Proposition 14 (HJR 44), approved by voters in 2001, and its enabling legislation, HB 2076. Both the 77th Legislature and Texas voters intended to provide tax relief for owners of travel trailers not designed as permanent dwellings (Tax Code, sec. 11.142). However, the wording of the additions to the Constitution and Tax

Proposition 5

Code presumes that travel trailers are taxable and effectively prohibits school districts from exempting travel trailers from property taxes. As a result, some school districts that previously had exempted travel trailers from taxation determined that they no longer had authority to do so. Proposition 5 would clarify that all local taxing units may exempt travel trailers from taxation as long as they are not residential dwellings substantially affixed to real estate. Local governments still could act to tax travel trailers under Art. 8, sec. 1(e).

Proposition 5 would help eliminate confusion about whether local taxing units may exempt travel trailers from taxation. In March 2002, Gov. Rick Perry and sponsors of the 2001 legislation wrote chief appraisers advising them to consult legal counsel about whether they should refrain from implementing unintentional changes that some believed would have required school districts to tax travel trailers. No consensus emerged on how to apply the law, and a few taxing units that previously had not assessed travel trailers for property tax purposes began doing so — the opposite of what the Legislature intended. Additional clarification is needed to resolve these questions.

Fairer treatment of travel trailer owners would help promote tourism in Texas and would encourage more people to visit the state for extended periods. Travel trailer owners are a tight-knit community; they notify each other quickly about public policies affecting their interests. Currently, appraisal districts can assess values for taxation only on travel trailers registered in Texas. As a result, owners may register their travel trailers in other states, depriving the state of registration fee revenue while diminishing local tax bases. Travel trailer users also may buy their trailers outside the state, reducing sales to Texas dealerships as well as state sales-tax revenue.

Proposition 5 would address another apparent inequity arising from the fact that owners of larger recreational vehicles, which cost substantially more than travel trailers, are exempt from local property taxes, whereas travel trailers are subject to these taxes. Exempting only trailers that are not affixed to land and, therefore, still mobile would rectify this disparity in tax treatment. It also would allow taxation of so-called "park models" and any other trailer that essentially has been converted into a permanent residence, if local governments so choose. This would be only fair to owners of mobile homes, which are not exempt from property taxes.

Taking this approach would clarify the distinction between travel trailers that are mobile and those that cannot be moved easily. "Winter Texans" routinely attach roofs, "Texas sun rooms," spas, or other fixtures to their travel trailers. Disallowing the exemption for trailers that are "substantially affixed to real estate" would address the issues now being litigated without recreating the situation that existed prior to the changes made in 2001.

Making the constitutional and statutory changes retroactive to 2002 would allow travel trailer owners who were taxed under current law to seek refunds or adjustments, either locally or through an attorney general's opinion. An existing statute giving appraisal districts discretion to make corrections in property owners' favor should suffice for refund purposes. Retroactivity also would allow appraisal districts and taxing entities to seek back taxes from owners of affixed trailers. Proposition 5 would help bring much-needed certainty to the process affecting this issue, which is creating problems only in a few counties.

Opponents say

Returning the Constitution to its pre-2001 status would do little to clarify travel trailers' tax status but would exacerbate the confusion that has existed for the past several years. Since adoption of the amendment and the addition of the travel-trailer statute in 2001, appraisal districts and taxing units have received different legal advice about taxing travel trailers, and some school districts have interpreted the change as requiring them to impose a tax. The letter from Gov. Perry and the sponsors of HB 2076 about refraining from implementing the 2001 changes only added to the confusion.

Neither Proposition 5 nor its enabling legislation would stipulate whether entities who collected the tax must issue refunds, offer credits on future taxes, or keep the money. Tax appraisers still would have to determine subjectively whether an individual travel trailer could be moved or was being used as a permanent residential dwelling. Travel trailers may be occupied indefinitely and can have frame structures attached. If the owners live in them, the trailers should be taxed as real property, like manufactured homes. Second homes are not inherently tax-exempt simply because they are mobile.

The experience of the Polk County Appraisal District raises constitutional questions about equal treatment of taxpayers within a county that received legal advice on the need to appraise the value of travel trailers. Based on the changes made in 2001, six school districts and one city in Polk County levied nearly $750,000 in property taxes on travel trailers. As of March 2003, these taxing units had received roughly $562,000 in payment for more than 2,100 personal property accounts, while nearly 1,000 accounts remained delinquent. Local officials have received no guidance on how to resolve the issue regarding taxpayers who paid the tax and those who are delinquent. Proposition 5, even applied retroactively to the 2002 tax year, would not resolve these questions.

Also, the retroactive element of the amendment's temporary provision is unclear and potentially problematic. The proposed changes to sec. 1(d) and the pertinent statute requiring taxation of travel trailers affixed to real estate and used or occupied as residences would take effect January 1, 2004, but would apply retroactively to 2002 and subsequent tax years. The repeal of Art. 8, sec. 1(j), which allows travel trailers to be exempted by taxing entities other than school districts, has no retroactive provision. Therefore, it appears that, for purposes of resolving tax disputes for 2002 and 2003, only part of the amendment would apply. If so, travel trailer owners who paid property taxes to school districts could have difficulty obtaining refunds.

Despite long-standing claims that property taxes inhibit tourism, "winter Texans" keep returning. Clearly, they choose their seasonal homes not on the basis of taxation but because of other factors, such as the overall low cost of living, aesthetics of the landscape, and proximity to the Gulf of Mexico. Consequently, leaving the Constitution and the Tax Code alone would have minimal economic impact on the state or local communities.

5 Proposition

Other opponents say

A better approach that would enhance local tax options would be to remove the constitutional and statutory exception for school districts, allowing them to exempt travel trailers from property taxation if they chose.

Notes

SB 510, the enabling legislation, would repeal Tax Code, sec. 11.142, and would redefine taxable travel trailers as residential dwellings "substantially affixed to real estate." It would apply to taxes imposed for tax year 2002 and thereafter.

Allowing use of reverse mortgage to refinance a home equity loan

(HJR 23 by Hochberg, Solomons/Carona)

6 Proposition

In 1997, Texas voters approved Proposition 8 (HJR 31 by Patterson), amending Texas Constitution, Art. 16, sec. 50 to allow homeowners to obtain loans and other extensions of credit based on the equity of their residence homesteads. Equity is the difference between a home's market value and what is owed on the home.

Most home equity loans are paid to the borrower in a lump sum, and loan repayments begin immediately. These sometimes are called closed-end loans because they extend for a specified time and require repayments in equal monthly amounts. Interest rates usually are fixed on these loans. If a homeowner fails to make a monthly installment, the lender may foreclose. Under Art. 16, sec. 50(f), a home equity loan may be refinanced only with another home equity loan.

Reverse mortgages, a type of home equity loan, are fundamentally different from other such loans. Only homeowners who are or whose spouses are at least 62 years old may obtain reverse mortgages. The borrower receives periodic loan advances based on the equity in the homestead, but repayments do not begin until the homeowner no longer occupies the property or transfers it to another owner. At that time, the home often is sold, and the proceeds are used to pay off the loan. Any money remaining after the reverse mortgage is paid goes to the borrowers or their heirs. If the home is transferred to heirs, the loan balance is due at the time of transfer. If the loan balance exceeds the value of the home, the estate or heirs are responsible only for the value of the home. The Federal Housing Administration insures the lender for any additional amounts.

Digest

Proposition 6 would amend Art. 16, sec. 50(f) to authorize the use of a reverse mortgage loan to refinance a home equity loan.

The ballot proposal reads: "The constitutional amendment permitting refinancing of a home equity loan with a reverse mortgage."

Supporters say

Proposition 6 would enable consumers to refinance home equity loans with reverse mortgages, a practice that the Constitution prohibits only as an unintended consequence of previous amendments. Between 1997 and 2001, many homeowners who took out home equity loans would have preferred to use reverse mortgages, but that option was not available until inconsistencies in the law and conflicts with federal loan-purchase and mortgage insurance requirements were cleared up. Now that reverse mortgages are available, some of these homeowners would like to refinance their home equity loans as reverse mortgages, but the Constitution does not state clearly that regular home equity loans can be refinanced with reverse mortgages, leaving these borrowers with only the option of refinancing a regular home equity loan with another regular home equity loan.

6 Proposition

Proposition 6 would address this oversight by clearly authorizing the refinancing of home equity loans with reverse mortgages.

Current provisions place no restrictions on how homeowners may use the proceeds from a reverse mortgage, except that they cannot refinance a home equity loan. They can pay off credit-card debt or other loans, but not home equity loans. No justification exists for this distinction, and Proposition 6 would end it.

Proposition 6 would give borrowers more freedom to use their home equity as they chose and could result in borrowers obtaining loans more appropriate to their situation. Adding this refinancing option would benefit senior homeowners in particular. Volatile financial markets have caused the investment income of many retirees to shrink, making it difficult for them to continue monthly payments on home equity loans. Paying off a home equity loan with a reverse mortgage would decrease their monthly financial obligations and would enable them to receive monthly income from the lender. Reverse mortgages require as many consumer protections as do home equity loans, if not more, so this policy change would not make consumers more vulnerable. The amendment would not require the use of reverse mortgages to finance home equity loans but would give consumers the choice to do so.

Opponents say

Reverse mortgage fees often are high in relation to their benefit, and the equity received can work out to less cash than a borrower would have received by cashing out his or her equity with a regular home equity loan. To the extent that Proposition 6 would increase the issuance of reverse mortgages, more Texans might be getting less for their equity. This could be especially harmful for senior citizens who might be convinced by unscrupulous lenders to refinance regular home equity loans with reverse mortgages.

Notes

Proposition 16, also on the September 13 ballot, also includes the substance of Proposition 6, allowing refinancing of home equity loans with reverse mortgages.

Requiring six-person juries in district court misdemeanor trials

(HJR 44 by Hughes/Ratliff)

7 Proposition

Texas Constitution, Art. 5, sec. 13 requires grand and petit (trial) juries in district courts to be composed of 12 people. Code of Criminal Procedure (CCP), art. 33.01, requires a jury in district court to consist of 12 qualified jurors. In county courts and inferior courts, the jury must consist of six qualified jurors.

CCP, art. 4.07 gives county courts original jurisdiction over all misdemeanors of which the exclusive original jurisdiction is not given to justice courts, and over misdemeanors in which the fine to be imposed exceeds $500. Because only Class A and Class B misdemeanors carry potential fines of more than $500, most Class A and Class B misdemeanor cases are tried in either statutory or constitutional county courts.

A constitutional county judge presides over the county commissioners court, the governing body for the county, and, in smaller counties, also may try cases in county court. Most larger counties have statutory county courts, also known as county courts-at-law, to try county court cases. There is no requirement that judges of constitutional county courts be attorneys, but judges of statutory courts must be licensed attorneys.

Under CCP, art. 4.05, district courts have jurisdiction to try all felonies, misdemeanor cases involving official misconduct, and misdemeanor cases transferred from a county court because the judge was not a licensed attorney. CCP, art. 4.17 allows a misdemeanor case to be transferred to a district court if the defendant has pleaded not guilty, if the case is a Class A or Class B misdemeanor, and if the judge of the county court is not a licensed attorney. Judges of county courts have the authority to transfer a case to a district court that has jurisdiction in the county or to a county court-at-law in which the judge is an attorney. The transfer can be made upon a motion by the prosecutor, defense, or judge.

Digest

Proposition 7 would amend the Constitution to require that petit juries in criminal misdemeanor cases heard in district court be composed of six people. It would delete language allowing nine members of a 12-person jury to render a verdict in misdemeanor cases heard in district court.

The ballot proposal reads: "The constitutional amendment to permit a six-person jury in a district court misdemeanor trial."

Supporters say

Proposition 7 would bring uniformity to trials for Class A and Class B misdemeanors and would increase judicial efficiency by requiring six-member juries to hear all misdemeanor cases, regardless of whether they were tried in district or county court. The number of jurors deciding a case should be determined by whether the case is a misdemeanor or felony, not by the court in which it is tried.

7 Proposition

The vast majority of Class A and Class B misdemeanor cases are tried in county courts that are required to use six-person juries. However, some cases — mostly in small and rural counties where the county court judges are not attorneys — are heard by district courts that require 12-person juries. This results in the anomaly of 12-person juries hearing misdemeanor cases that would be decided by six-person juries if the cases were tried in county courts. This needlessly makes these misdemeanor trials more expensive and burdensome for counties and jurors and results in misdemeanor cases being treated differently throughout the state, depending on what type of court the case is tried.

Using six-person juries for these misdemeanor trials in district court would reduce costs for counties. Jurors often receive meals in addition to their jury fees, and these costs could be cut in half by reducing juries from 12 to six people. Also, the number of jurors called for voir dire examination before the trial can be reduced when the jury is composed of six rather than 12 people. Proposition 7 also would make it easier for counties to impanel juries for misdemeanor cases. Requiring 12-person juries for misdemeanor cases can exhaust or strain a county's jury pool, making it more difficult to seat 12-person juries in felony trials.

Eliminating 12-person juries for all district court misdemeanor trials also would result in treating misdemeanor cases of official misconduct like all other misdemeanors. If Proposition 7 is approved, these cases would continue to be tried in district court as required by CCP, art. 4.05, but with a six-person instead of a 12-person jury. There is no logical or compelling reason to treat these few cases differently from other misdemeanors. Proposition 7 would not affect most misdemeanor trials in the state because most of these cases already are heard in lower courts rather than district courts.

Opponents say

Proposition 7 could have the unintended consequence of allowing a six-person jury in misdemeanor cases of official misconduct. The Legislature gave district courts original jurisdiction over those cases for reasons that included ensuring the added procedural protection of a 12-person jury for a defendant charged with official misconduct. Public officials convicted of such crimes face the serious consequence of being removed from office and should have the additional protections of a larger jury.

Notes

If voters approve Proposition 7, the enabling legislation, HB 830 by Hughes and Pena, will take effect January 1, 2004. It would amend CCP, art. 33.01 to require six-person juries in misdemeanor trials in district courts.

Canceling election for any office if candidate is unopposed

(HJR 62 by Truitt/Nelson)

8 Proposition

When candidates are unopposed for election, Election Code, ch. 2 allows political subdivisions, other than counties, that require write-in candidates to declare their formal candidacy in order to count any votes cast for these candidates to cancel an election and declare the unopposed candidate the winner if there are no declared write-in candidates, no opposed candidates, and no propositions on the ballot. These provisions do not apply to elections for statewide, district, or county offices.

In November 2001, Texas voters approved Proposition 9 (HJR 47 by Madden, et al./ Shapiro), which authorized the filling of a vacancy in the Legislature without an election if a candidate is running unopposed in a special election to fill the vacancy, no propositions are on the ballot, and there are no declared write-in candidates.

Digest

Proposition 8 would add Art. 16, sec. 13 to the Constitution, authorizing the Legislature to allow a person to take office without an election if the person was the only candidate to qualify in an election to be held for that office.

The ballot proposal reads: "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."

Supporters say

Proposition 8 and its enabling legislation, HB 1476 by Truitt, would promote efficiency in election administration. November general election ballots can be very long, especially in larger counties. By allowing unopposed candidates to be declared elected, this amendment would give election officials greater flexibility in preparing ballots, which could save on ballot printing costs, thereby reducing the cost of elections. The proposal would apply to statewide, district, and county offices a procedure that has worked well at the local level.

Proposition 8 would allow the certifying authority for an election to declare unopposed candidates elected. Their names and offices would remain on the ballot for voters to see that these candidates were unopposed and declared elected, but no votes would be cast for them and no votes would have to be counted. This change would not interfere with anyone's voting rights, because if a candidate is unopposed, the race essentially is decided. Listing unopposed candidates on the ballot would make it clear to voters which candidates had been declared elected to represent them — especially important after redistricting, when district boundaries are subject to change. It also would be good for the candidates, because listing their names on the ballot would improve name identification with voters and enable officials to continue to spread their message to the community.

Proposition 8

Since the Texas Constitution establishes which offices require an election, any proposal to cancel an election for statewide, district, or county offices requires a constitutional amendment as well as an amendment to the Election Code.

Opponents say

Canceling an election would deprive voters of their right to vote for candidates of their choice. It also would deprive candidates of the opportunity to gain visibility by campaigning for the votes of their constituents and would hinder voters' ability to become familiar with their elected officials and their positions. This would be especially true for state representative and senators, who represent large segments of the population. It could cause confusion for some voters who might not understand why they were not allowed to vote for certain candidates.

Even if voter turnout is low and there is only one candidate on the ballot for an office, people who take the time to vote are exercising their right to endorse the candidates they wish to represent them and to validate their election to public office.

Notes

The enabling legislation, HB 1476 by Truitt, which would apply only to general elections, would authorize the secretary of state (for a statewide or district office) or a county clerk (for a county or precinct office) to declare a candidate elected without an election if the candidate is unopposed and there are no declared write-in candidates. The candidate's name would be listed on the ballot as elected to the office, but no votes would be cast for that office or candidate. The names and offices of candidates declared to be elected would be listed separately after the contested races under the heading "Unopposed Candidates Declared Elected." They would be grouped according to their political party affiliation or status as independents in the same general order prescribed for the ballot. The secretary of state could prescribe any additional procedures necessary to accommodate any voting system or ballot style and to facilitate the efficient and cost-effective implementation of the change.

A similar proposal, Proposition 18 (HJR 59), also on the September 13 ballot, would allow an unopposed candidate for an office in a political subdivision to assume office without an election. Under the enabling legislation, which the governor vetoed, the unopposed candidate's name would not have been listed on the ballot.

Adopting a total-return investment strategy for the Permanent School Fund

(HJR 68 by Hupp, et al./Fraser)

9 Proposition

Stocks, bonds, oil and gas royalties, and other income from state-owned lands comprise the $16.6 billion Permanent School Fund (PSF), a perpetual endowment for the public schools that generates interest and dividend income of about $765 million annually. The Available School Fund (ASF) contains earnings from the PSF, one-fourth of collections from motor-fuels taxes, and one-fourth of collections from state occupation taxes (Education Code, sec. 43.001).

After PSF administrative costs are paid, a portion of the ASF goes to the State Textbook Fund. The remainder is distributed to schools through the Foundation School Program according to the number of students. The per-capita distribution varies from year to year. The ASF distributed $197 per student to school districts in the 2001-02 school year and an estimated $212 per student in 2002-03.

Texas Constitution, Art. 7, sec. 5 requires that the PSF distribute only interest and dividend income to the ASF. The State Board of Education (SBOE) manages the PSF according to trust law principles, which require capital gains to be reinvested in the corpus of the fund.

Digest

Proposition 9 would amend Art. 7, sec. 5 to redefine the ASF as consisting of distributions from the total return on all investment assets of the PSF. The amendment would authorize the SBOE to adopt a capital-gains distribution rate by a two-thirds vote before each regular session of the Legislature. Failing SBOE's adoption of a rate, the Legislature would adopt a rate in statute or by appropriation. During fiscal 2004-05, the rate would be capped at 4.5 percent of the average quarterly market value of the PSF for the previous four years; each year thereafter, the rate would be capped at 6 percent. For any 10-year period, the distribution could not exceed the total return on all investment assets of the PSF over the same 10-year period. The expenses of managing PSF land and investments would be paid by appropriation from the PSF.

The ballot proposal reads: "The constitutional amendment relating to the use of income and appreciation of the permanent school fund."

Supporters say

Proposition 9 would allow the PSF to distribute a portion of capital gains to the ASF in addition to interest and dividend income. This change not only would help the state weather the current budget crisis by making available to the ASF an estimated $536 million in capital gains for the coming biennium, but also would increase ASF payments on a recurring basis by an amount estimated at between $125 million and $130 million per year.

Because PSF investments are managed for income (interest and dividends) rather than for total return (income plus capital gains), distributions to the ASF from the PSF rose by only

3 percent from 1990 to 2000. One reason for this slow growth is that under current spending rules, the primary way to increase income for the fund is to transfer assets from stocks to bonds. However, between 1990 and 2000, realized capital gains on the PSF — the gains recorded when assets were sold — increased by more than 800 percent, while unrealized capital gains — the growth in value of assets held compared to their purchase value — increased by 221 percent. Even counting stock market losses since 1999, the fund has more than doubled in value since 1990, with a significant increase in both realized and unrealized capital gains.

If PSF spending remains limited to interest and dividend distributions, the PSF may be unable to maintain the purchasing power of its distributions while increasing the market value of PSF assets. These two objectives conflict, because investments that generate high interest and dividend income do not tend to increase in principal value over time.

Precedent exists for redirecting capital gains from a state-managed investment fund. In November 1999, Texas voters approved Proposition 17 by a margin of 61 to 39 percent, authorizing the University of Texas System board of regents to reallocate up to 7 percent of Permanent University Fund (PUF) investment assets for distribution to eligible institutions through the Available University Fund. During the past biennium, this change increased the yield from the PUF, benefitting Texas colleges and universities by more than $100 million.

Because the proposed amendment would provide for calculating capital gains withdrawals on the basis of a four-year average quarterly return on the fund rather than on the most recent year's return, and because withdrawals would be capped at 6 percent, the corpus of the fund would be protected from sudden fluctuations in the stock market. Also, the amendment would build protections into the Constitution so that asset allocations would be determined not by the state's income demands but by what is the most prudent investment to preserve the purchasing power of the PSF for up to 10 years into the future.

Opponents say

PSF investments have lost nearly $6 billion in value since August 1999, when the fund hit an all-time high of $22.5 billion. The stock market has experienced four consecutive down years, a phenomenon that has not occurred since 1929 to 1933, and there is no sign of a market rebound any time soon. SBOE members long have opposed changing to a total-return investment strategy on the grounds that such a move ultimately could jeopardize the soundness of the fund. In years of poor market performance such as experienced recently, diverting capital gains could eat into the corpus of the fund, jeopardizing its long-term growth potential and possibly forcing school districts to raise property taxes.

The PSF was created to benefit school children and is a primary source of funding for school textbook purchases. The state cannot count on reaping capital gains in the current market environment. Drawing off capital gains would be a short-term strategy that would not protect the corpus of the fund to cover long-term enrollment growth in Texas public schools.

Proposition 9 could create an equity imbalance in the school finance system. Property-poor districts that receive state aid under the Foundation School Program do not receive ASF payments on top of state aid. Instead, their ASF payments are offset by a matching decrease in Foundation School Fund payments. Only property-wealthy districts receive ASF payments on top of other state aid, so even if PSF distributions to the ASF increased, it would not necessarily mean more money for all districts. Therefore, as ASF payments increased, so would the gap between revenue available to property-wealthy and property-poor districts.

Notes

SB 206 by Ellis, the enabling legislation, would redefine the composition of the PSF and the ASF to reflect a change to total-return management of the PSF, contingent upon voter approval of Proposition 9. On January 2, 2004, the comptroller would have to transfer from the PSF to the ASF an amount equal to five-twelfths of the annual distribution for fiscal 2004. Thereafter, on the first working day of each month, the comptroller would have to transfer an amount equal to one-twelfth of the annual distribution from the PSF to the ASF for that fiscal year. The General Land Office would have to ensure that no loss to the PSF would occur as the result of trading any PSF land. All income received from certain state-owned natural resources would have to be credited to the PSF, rather than to the ASF.

10 Proposition

Allowing cities to donate used equipment to rural volunteer fire departments

(HJR 61 by McReynolds/Armbrister)

Texas Constitution, Art. 3, sec. 52 prohibits the Legislature from authorizing any county, city, town, or other political subdivision to lend its credit or grant public money or anything of value to any individual or corporation, with specific exceptions such as for certain economic development and improvement purposes.

Government Code, sec. 791.011 authorizes a local government to contract with another local government in Texas or a neighboring state to perform governmental functions or services, including firefighting services.

In 1997, the 75th Legislature enacted HB 680 by Turner, authorizing the director of the Texas A&M System board of regents to sell, lend, or make available used or obsolete firefighting equipment to the Texas Forest Service (TFS) for its use or for distribution to volunteer fire departments.

In 2001, Texas voters approved Proposition 5 (SJR 32 by West), amending the Constitution to allow a municipality to donate outdated or surplus firefighting equipment, supplies, or other materials to an underdeveloped country, such as Mexico.

Digest

Proposition 10 would amend the Constitution by adding Art. 3, sec. 52i, authorizing a municipality to donate surplus equipment, supplies, or other materials used in fighting fires to the TFS or a successor agency authorized to cooperate in the development of rural fire protection plans. The TFS, in turn, could redistribute these materials to rural volunteer fire departments based on need.

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

Supporters say

Proposition 10 would clarify and legitimize the practice of municipal fire departments donating surplus firefighting equipment and supplies to rural volunteer departments. Since enactment of HB 680 in 1997, municipal fire departments have provided volunteer departments with excess equipment through the TFS' "Helping Hands" program. This amendment would allow such fire departments to donate their equipment with full confidence that they were acting in harmony with the constitutional prohibition against using public funds for private purposes. The exception created by this amendment would be very narrow and specific for justified purposes.

Proposition 10 would facilitate crucial aid to volunteer fire departments operating with minimal funds. Because urban fire departments typically replace their equipment often, a

municipal department's discarded fire truck or other equipment could be of great value to a rural volunteer department.

The amendment would empower an experienced state agency to collect, evaluate, and distribute donated equipment with maximum efficiency. TFS distributes equipment only after certifying that the equipment is of usable quality, and Proposition 10 would continue to prevent volunteer fire departments from receiving ineffective or dangerous used equipment.

This proposal would not affect the continued donation of surplus equipment to Mexico that voters authorized in 2001. Volunteer fire departments in Texas often have higher standards for equipment than fire departments in Mexico, so there would be little concern regarding potential conflicts between these two initiatives. Proposition 10 would allow a municipality to choose whether to donate excess equipment to a rural volunteer fire department or to an underdeveloped country. Thus, Texas cities on the border still could donate their excess equipment to Mexico if such an action was deemed in the municipality's best interest.

Opponents say

The purpose of Art. 3, sec. 52 is to protect taxpayers by requiring compensation for any transfer of public property, and Proposition 10 would undermine this safeguard. Because Texas taxpayers have paid for firefighting equipment, they should retain part of their investment should the asset leave their municipality. Municipalities should not be allowed to donate equipment outright but should be allowed to sell it at a reduced cost to volunteer departments. Current law allows cities and towns to sell the equipment but does not provide for reduced-cost sales. Such sales of equipment to volunteer fire departments would provide support to these organizations while allowing communities to recoup part of their firefighting investment.

Proposition 11

Allowing wineries to sell wine for consumption on or off premises

(HJR 85 by Homer/Estes)

Texas Constitution, Art. 16, sec. 20 authorizes the Legislature to regulate the manufacture, sale, possession, and transportation of intoxicating liquors. The Legislature must enact laws enabling the voters of a county, justice of the peace precinct, or incorporated town or city to decide whether alcoholic beverages can be sold within subdivision boundaries and what types of alcoholic beverages may be sold there. Alcoholic Beverage Code, sec. 251.01 allows voters in a county, justice precinct, or incorporated city or town to allow or prohibit the sale of alcoholic beverages of some or all types within their boundaries.

Digest

Proposition 11 would add Art. 16, sec. 20(d), authorizing the Legislature to set policies for the manufacture of wine for all wineries in the state, whether located in a "dry" area or not. The Legislature also could direct the Texas Alcoholic Beverage Commission (TABC) or its successor to establish policies governing wineries. Such policies could include:

- on-premises retail sale of wine for consumption on or off the premises;
- purchase of wine from, or sale of wine to, an authorized wine retailer;
- dispensing of free wine for tasting purposes, on-premises consumption; and
- any other purpose promoting the state's wine industry.

The ballot language reads: "A constitutional amendment to allow the legislature to enact laws authorizing and governing the operation of wineries in this state."

Supporters say

Proposition 11 would update the Constitution to reflect changes in laws governing wineries operating in dry areas. As required by the Constitution, current law allows communities to prohibit the sale of alcoholic beverages, including wine, through local-option elections. In addition, however, TABC may issue a permit to a winery in a dry area, and a winery even may sell wine in a dry area under certain conditions. About 20 to 25 wineries, or about half of the wineries in Texas, operate in dry counties or other areas that prohibit alcoholic beverage sales. Although no legal challenges have been brought yet, the laws allowing these wineries to operate could be found unconstitutional, putting Texas' wine industry in serious jeopardy. Amending the Constitution through Proposition 11 would eliminate this threat and would encourage investment in new wineries in dry areas.

Dry areas could enjoy the economic benefits of wineries — including tourism dollars, new investment, and additional tax revenue — while still prohibiting other wine or alcoholic beverage sales. To be nearer to the vineyards that supply their grapes, many wineries are located in rural and agricultural areas. Rural areas hit hard by drought or declining oil and gas production could benefit greatly from the economic activity associated with wineries. However, many of these areas maintain traditional values and do not wish to hold local-option elections to "go wet" because of the risk of liquor stores, bars, or other

establishments cropping up. Proposition 11 would allow a dry area to benefit from the presence of a winery without having to permit other alcoholic beverage sales.

The amendment would allow the Legislature to enact new laws encouraging the growth of the wine industry statewide without the need for future amendments or many local-option elections. The confusing patchwork of state and local laws governing wineries in wet or dry areas, in addition to the legal jeopardy of wineries in dry areas, has hindered the growth of Texas wineries. For example, 20 years ago, Texas and Washington state each contained about 12 wineries and 2,500 acres of planted grapes. Through laws intended to encourage wine production, Washington now cultivates some 29,000 acres under the ownership of more than 200 wineries, with an economic impact of $2.5 billion. By contrast, Texas still cultivates only about 2,500 acres, with an economic impact of only $133 million.

Proposition 11 also would allow state law to treat wineries equally, regardless of whether they were in dry or wet areas. For example, current law does not allow a winery in a dry area to obtain a permit to sell wine directly to a retail establishment such as a restaurant or liquor store, whereas a winery in a wet area can obtain such a permit. Although a winery in a dry area may sell wine to a wholesaler, many Texas wineries do not produce enough wine to interest wholesalers. Thus, wineries operating in dry areas are at a disadvantage compared to those in wet areas. The amendment would help remedy that discrepancy.

Opponents say

Proposition 11 would usurp local decision-making power about alcohol and would override the preferences of many local communities. In deference to local cultural and religious values, the Constitution intentionally puts authority in local hands regarding the availability of alcohol in a community. Amending the Constitution would remove this right and would allow the operation of establishments that served alcohol in areas where previously none had existed. More than 50 Texas counties and various other precincts or municipalities choose to prohibit the sale of alcoholic beverages. Proposition 11 improperly would ignore these communities' wishes by allowing the Legislature to grant broad authority to wineries to sell wine without regard to their locations, possibly resulting in conflicts between wineries and local communities.

A constitutional amendment is unnecessary to legitimize wineries operating in dry areas. Alcoholic Beverage Code, sec. 251.14 specifically authorizes a dry area to hold a local-option election to allow "the legal sale of wine on the premises of a holder of a winery permit." An affirmative vote would allow a local winery to operate without fear of its winery permit being found unconstitutional. By giving voters this option, current law already allows a community to permit a winery to sell wine without authorizing other alcoholic beverage sales. Moreover, HB 1199 by Krusee et al., enacted during the 78th Legislature's regular session, reforms local-option elections on alcohol sales, making it easier to hold such elections.

Amending the Constitution also is unnecessary to encourage growth of the wine industry. Current law does not prohibit the expansion of wineries in Texas. A winery that wants to sell wine or allow its consumption on-premises can locate in a "wet" area or can transport its wine elsewhere to sell.

12 Proposition

Capping noneconomic damages in medical and other liability cases

(HJR 3 by Nixon/Nelson)

V.T.C.S., art. 4590i, the Medical Liability and Insurance Improvement Act, enacted by the 65th Legislature in 1977, limits the award of noneconomic damages in medical liability cases. Noneconomic damages generally cover pain and suffering and similar losses, as opposed to economic damages such as compensation for lost wages or medical bills. The cap is indexed to the Consumer Price Index and has increased from $500,000 at the time of enactment to about $1.3 million today.

Although the cap on noneconomic damages in medical malpractice claims was intended to apply to all malpractice cases, the Texas Supreme Court has ruled the cap unconstitutional except in cases of wrongful death. In *Lucas v. U.S.*, 757 S.W.2d 687 (1988), the high court found that limiting recovery for people injured by medical negligence for the purpose of reducing malpractice premium rates was unconstitutional as violating Texas Constitution, Art. 1, sec. 13, the Open Courts Doctrine, which guarantees meaningful access to courts.

Digest

Proposition 12 would add sec. 66 to Art. 3 of the Texas Constitution, authorizing the Legislature to set limits on damages, except economic damages. It would apply to limitations on damages in medical liability cases enacted during the 2003 regular session of the 78th Legislature or in subsequent sessions. It also would apply to limitations on noneconomic damages in all other types of cases after January 1, 2005, subject to approval by a three-fifths vote of the members elected to each house. The amendment would define "economic damages" as compensatory damages for any pecuniary loss or damage. Such damages would not include any loss or damage, however characterized, for past, present, and future physical pain and suffering, loss of consortium, loss of companionship and society, disfigurement, or physical impairment.

The Legislature's authority to limit noneconomic damages would apply regardless of whether the claim or cause of action arose or was derived from common law, a statute, or other law, including tort, contract, or any other liability theory or combination of theories. The claim or cause of action would include a medical or health-care liability claim, as defined by the Legislature, based on a medical or health-care provider's treatment, lack of treatment, or other claimed departure from an accepted standard of medical or health care or safety that caused or contributed to a person's actual or claimed disease, injury, or death.

The ballot proposal reads: "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."

Supporters say

Texas faces a crisis in medical malpractice insurance caused by increases in the size of damage awards. Facing large increases in the cost of their malpractice insurance,

physicians in some areas of the state have limited their practices, retired early, or left the state, jeopardizing Texans' access to health care. A key solution to this crisis is a cap of $250,000 per claimant, per case on noneconomic damages, enacted by the 78th Legislature in HB 4 by Nixon. HB 4 also includes an overall cap on noneconomic damages of $500,000 for all institutions in a single case. The 65th Legislature faced a similar medical malpractice crisis when it enacted the initial cap on damages in 1977, but this measure was thwarted by the Supreme Court's decision that caps were unconstitutional in most cases. Texas voters, not the courts, should decide whether their elected lawmakers can enact reasonable and necessary solutions to persistent problems with the liability system.

In California, medical malpractice rates fell most significantly after the damage caps in the state's Medical Injury Compensation Reform Act (MICRA) were declared constitutionally sound. California's Proposition 103, enacting insurance reform, was limited in scope. It was MICRA, the comprehensive reform package, that led to long-term lower rates in California. Voter approval of HJR 3 would ensure that Texas lawmakers' remedy takes effect.

Unlimited noneconomic damages turn the justice system into a "lottery." Juries often are sympathetic to plaintiffs and award them much more than a settlement would provide because that is what the jurors would want for themselves. Given that economic damages, which compensate for medical costs and lost earnings, would not be capped, a limit on noneconomic damages would ensure that plaintiffs received the compensation they deserved.

Unlimited noneconomic damages also undermine the state's health-care system. Lawyers pursue medical malpractice cases in hopes of reaping large sums of money in emotional cases with jurors who may not understand the impact of multimillion-dollar awards on the entire health-care system. Noneconomic damages such as pain and suffering and disfigurement can be difficult to quantify precisely, unlike economic damages such as medical costs and lost earnings. When premiums rise too high, doctors stop practicing, thereby threatening access to medical care for all Texans. Capping noneconomic damages at reasonable limits would encourage insurers to do business in Texas by ensuring that they would not incur massive losses because of large damage awards. As more insurers joined the market, competition would reduce premiums.

Texas voters should be able to decide this issue quickly so that the cap on noneconomic damages can take effect without delay. Factors other than soaring noneconomic damage awards have had minimal impact on causing higher medical malpractice premiums. The decline in the stock market is not to blame, nor did excessive competition in the 1990s artificially hold down premiums relative to the current high rates, as evidenced by the dwindling number of insurers in Texas. Only comprehensive medical liability reform, with reasonable caps on noneconomic damages, will end this crisis, which is forcing too many doctors to drop their practices. If approved by Texas voters, HJR 3 would ensure that courts would not overturn the Legislature's attempts to resolve the medical malpractice crisis. Even if the current Supreme Court found a damage cap constitutional, a future court could overturn it.

Allowing limits on noneconomic damages for actions other than those involving medical or health-care liability claims would allow future legislatures to enact solutions to other

an arbitrary value on that person's life. Only juries are able to make those types of value distinctions on a case-by-case basis — the Legislature should not.

Texans should feel no pressure to vote on this issue now. In California, it was not the constitutional approval of caps but Proposition 103 that lowered rates, through insurance reform and a rate rebate. The Legislature should focus on other tools it has to lower medical malpractice insurance rates, such as improvements in the regulation of physicians and insurance reform, rather than grant the Legislature broad authority to limit damage awards in all cases, no matter how justifiable and legitimate those awards may be.

Even if damage caps were justified in medical malpractice cases, there is no similar justification for a broad authorization for limits on damage awards in all other types of cases. Like HB 4, HJR 3 represents an attempt to "piggyback" onto medical malpractice limitations broader, less justifiable liability restrictions in other types of cases.

Requiring a vote by three-fifths of each house to enact future caps for nonmedical liability cases would not protect Texans' interests any better than the current system. Although the Legislature already has the authority to enact caps with a majority vote, the courts oversee the use of that authority, and the Constitution protects the right of access to the courts. The current system of checks and balances works well, but HJR 3 would allow an "end run" around the judiciary.

The language in the proposed amendment could be interpreted as allowing the Legislature to cap all damages that are not economic, including punitive damages. While current law already caps punitive damages at four times the total damages awarded (Civil Practice and Remedies Code, sec. 41.007), a more restrictive cap could be subject to a constitutional challenge. Granting future legislatures blanket authority to cap all damages except economic damages would remove those decisions from judicial oversight. The Supreme Court already has held that lowering insurers' exposure to risk is not a sufficient trade-off for limiting access to the courts. Decisions about limiting rights should be open for review by future courts.

Notes

HB 4 by Nixon, effective September 1, 2003, establishes a cap of $250,000 per claimant, per case on noneconomic damages in medical malpractice cases involving health-care professionals and a total cap of $500,000 in medical malpractice cases involving all facilities in a single case. It also establishes alternative caps that would require health-care providers to carry certain levels of malpractice insurance in exchange for cap protection. The alternative caps would take effect if the primary cap were invalidated by a court, assuming voters reject Proposition 12.

HJR 3 also contains a provision stating that if voters reject the proposed amendment, a court may not consider any aspect of the vote for any purpose, in any manner, or to any extent. The Legislature intended this directive to apply regardless of whether voters approve Proposition 12.

problems with the liability system. Limits on damages should be enacted in response to special situations — those that threaten Texans' health, well-being, or other security — such as the current medical malpractice crisis. Requiring a three-fifths vote to enact such limits on damages would ensure that a clear consensus existed that special circumstances warranted such limits.

HJR 3 would address only compensatory damages, not punitive damages. Economic damages would be damages for any pecuniary damage or loss, such as lost wages or medical bills; all other compensatory damages would be noneconomic damages. In *Horizon v. Auld*, 34 S.W.3d 887 (2000), concerning medical malpractice and limits on damages, the Texas Supreme Court held that the cap on noneconomic damages in Insurance Code, art. 4590i does not include punitive damages. While HB 4 recently changed the law to include punitive damages under this cap, it did so explicitly, which demonstrates the Legislature's intent that punitive damages otherwise would not be included. In other cases, the Legislature already had placed caps on punitive damages, so including punitive damages under the noneconomic damages cap would not be necessary in any event.

Opponents say

Texans should not give the Legislature free rein to restrict their constitutionally protected access to relief in court when they suffer losses and seek to establish liability for damages. No one can predict what other types of caps the Legislature would enact in the future if given the broad, open-ended authority in this amendment. Some caps might be justifiable, while others might not; the courts are the appropriate forum to decide these issues.

The damage caps authorized by this constitutional amendment would neither lower medical malpractice premiums nor improve patient access to care. The increase in premiums is not due to higher jury awards, which have not increased as rapidly as premiums. Increases in medical malpractice insurance rates can be attributed to other factors, including premiums driven artificially low in the 1990s by competition, recent stock market performance, very low interest rates, and an increasingly litigious society that drives up claims and defense costs. None of these factors would improve through a cap on damages, nor would a cap affect whether doctors stay in practice, yet those harmed would lose an important legal right to redress.

A cap on noneconomic damages would limit unfairly a patient's right to redress. Economic damages account only for medical bills and wages, not intangible losses, such as becoming homebound, being unable to care for one's children, suffering caused by major disfigurement, and other horrible results of medical malpractice. Economic damages alone do not make a patient whole.

Any cap on damages places an arbitrary value on human life, one that would diminish the value of the lives of homemakers, children, the elderly, and the disabled, who might not have earnings that can be compensated by economic damages but still suffer severe loss. Proposition 12 would equate a person's life to the amount of money earned, which clearly would discriminate against people whose value exceeds their income. Even in the case of a wealthy person with high earnings potential, a cap on noneconomic damages would place

13 Proposition

Freezing elderly and disabled homeowners' property taxes

(HJR 16 by F. Brown, et al./Nelson)

Texas Constitution, Art. 8, sec. 1-b, and Tax Code, sec. 11.13, exempt portions of the market value of residential homesteads from ad valorem taxation by school districts and other local taxing entities. For school tax purposes, a homeowner who is at least 65 years old or disabled is entitled to a $10,000 exemption in addition to the constitutionally mandated $15,000 exemption for all residence homesteads. Taxing units may grant additional exemptions of at least $3,000 to elderly and disabled homeowners.

Under Art. 8, sec. 1-b(d) and Tax Code, sec. 11.26, the amount of school property taxes imposed on the homesteads of owners 65 or older may not increase above the amount levied in the first year the owners qualified for the 65-and-over exemption until they or their surviving spouses cease to use their property as a homestead, unless the value of the homestead is increased by improvements. The tax freeze is transferable to a different homestead but is calculated so as to maintain the same tax percentage as the original limit.

Digest

Proposition 13 would add Art. 8, sec. 1-b(h), allowing the governing bodies of counties, cities, towns, and junior college districts to freeze the amount of property taxes that could be imposed on residential homesteads owned by the elderly or disabled. Property taxes could not increase as long as the residences were maintained as homesteads by owners or their spouses who were disabled or at least 65 years old. Alternatively, upon receipt of a petition signed by at least 5 percent of the political subdivision's registered voters, a local governing body would have to call an election to determine by majority vote whether to freeze taxes for elderly and disabled homeowners.

The amendment would allow the transfer of the property tax freeze upon the death of a disabled or 65-or-older homeowner to a surviving spouse who was 55 or older when the owner died, as long as the spouse claimed the property as a residential homestead. The Legislature by law could allow the transfer of all or a proportionate percentage of the tax limitation if homeowners established different residential homesteads within the same political subdivisions. A taxing entity could increase taxes on such homesteads to the extent that homeowners made improvements, other than governmentally required repairs or improvements, that increased the property's value.

A local governing body could not repeal or rescind a tax freeze established under the amendment and would have to comply with any law authorizing transfer of tax limitations, even if the Legislature enacted such a law after the taxing entity adopted the limitations.

The ballot proposal reads: "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."

Supporters say

Rising property taxes are an especially heavy burden on elderly and disabled homeowners, the vast majority of whom live on fixed incomes. Proposition 13 and its enabling legislation, HB 136 by F. Brown, et al., are modeled on existing limitations on school property taxes provided by the Constitution and the Tax Code. The amendment would allow taxing units other than school districts to offer property-tax breaks for older homeowners and would expand the tax freeze to include the disabled, who currently receive no such freeze (see Proposition 17). Senior and disabled homeowners still would have to pay their share of property taxes to support local government services, but they should not be victims of escalating property valuations in high-growth areas. Knowing what their taxes would be in the future would allow these homeowners to budget for that expense within their limited incomes.

Proposition 13 would be permissive. Local governing officials would not have to impose the limitations if their taxing entities could not afford to forgo the revenue. County commissioners, city council members, and junior college district trustees regularly encounter constituents in their communities, so they can be expected to respond to the public's needs and concerns. The amendment would respect the principle of local control, recognizing that local government officials can be entrusted with important fiscal decisions.

Authorizing a petition drive and election to decide the issue would allow citizens to initiate a more democratic process for adopting property-tax limitations. Local officials may be reluctant to lose a portion of their tax revenues, however small, by exercising the option of implementing a tax freeze for the elderly and the disabled. The referendum and election procedure would allow local voters to decide whether they would be willing to forego some revenue for local government in order to provide this tax relief.

A tax freeze, even if only for elderly and disabled homeowners, would force local officials to reexamine their budget priorities. Local governments should reduce expenditures wherever possible and should not rely on property-tax increases generated by higher appraised values that require no overt action. City and county governments have other revenue sources available, such as sales taxes, utility charges, and other fees that senior and disabled citizens pay.

Opponents say

Limiting school property taxes might be justified, because older homeowners typically have no school-aged children using public schools. However, senior citizens extensively use many city and county programs, such as libraries and recreation centers; they drive on city streets and county roads, and they benefit from a wide range of other locally provided services. Other homeowners, such as young couples and single parents, also struggle with high property taxes, but they receive no special exemptions, nor have they had as much time to increase their earning capacity or savings. Property-tax breaks should be based on the ability to pay, rather than on assumptions about certain classes of homeowners associated with arbitrary criteria. Although it may be less true of the disabled, income and wealth do not diminish automatically with age or physical condition.

If voters approved Proposition 13, although the tax freeze nominally would be a matter of local option, the political pressure on local elected officials to freeze property taxes for older and disabled homeowners would be substantial and virtually impossible to ignore. Senior citizens typically are politically active and aware. They and possibly the disabled would have the time and resources to mount successful petition drives to force property-tax freeze elections if local officials did not adopt the limitations. Prohibiting local governments from rescinding or repealing tax freezes would be unfair to the majority of taxpayers, who in many cases would have to pay more taxes to make up for lost revenue.

Proposition 13 could have a significant negative impact on local governments' budgets, especially in areas with high concentrations of older homeowners. The impact would burgeon as "baby boomers" aged and became eligible for the freeze. According to the most recent fiscal note for HJR 16, cities could forgo more than $10.8 million in property tax revenue in fiscal 2005 and up to $12.9 million in fiscal 2008. Counties could collect $6.2 million less in fiscal 2005 and almost $7.4 million less in fiscal 2008. Unlike school districts, cities and counties receive no state reimbursement for such losses. The state's 50 junior college districts, which encompass virtually the entire state, also would lose revenue. Unlike state colleges and universities, they receive state aid only for instruction and instructional administration, not for maintenance and operations.

Singling out one class of taxpayers for favored status unfairly shifts more of the burden onto the rest of the tax base, which would not be entitled to any tax freeze. This would include business property owners, who should not be asked to pay more taxes during an economic downturn.

Other opponents say

Homeowners also must pay property taxes to various special-purpose districts other than those that operate junior colleges. The tax freeze should be afforded to taxpayers in those districts as well on a local-option or petition-election basis.

Local officials should have the option of phasing in the tax freeze gradually to lessen the impact on tax bases and budgets. Upon full implementation, the tax limitations should be subject to sunset review so that the Legislature could evaluate their impact and respond accordingly, based on the state's fiscal condition and local governments' needs at that time.

Notes

If voters approve Proposition 13, its enabling legislation, HB 136 by F. Brown, et al., would take effect January 1, 2004. The bill delineates how a local government would administer a tax freeze on residential homesteads of elderly or disabled homeowners. Tax officials would have to continue appraising the fair market values of these homesteads and calculating taxes based on those appraised values, but a local government could not increase annual taxes imposed on such homesteads above the amounts imposed during the first year the homeowners qualified for the exemptions under the Tax Code. Homeowners could qualify for the limitations for the entire tax year if they turned 65 or became disabled and qualified for those exemptions during that year. Local governments could increase

taxes on homesteads based on increased values due to improvements. Tax freezes then would apply to the higher tax amounts until more improvements were made, if any. A tax freeze would expire on January 1 of a tax year in which the property no longer was used as a residence homestead or if the property owner did not qualify for the disability or 65-and-over exemption.

Proposition 17 (HJR 21), also on the September 13 ballot, would extend to the disabled the existing school-district tax freeze for the elderly and their spouses who qualify.

14 Proposition

Allowing borrowing by the Texas Transportation Commission

(HJR 28 by Pickett, et al./Lucio)

Texas Constitution, Art. 3, sec. 49 prohibits state debt, with certain exceptions. It generally requires the Legislature to submit for voter approval proposals that would authorize general obligation bonds backed by the state's full faith and credit or revenue bonds backed by a constitutionally dedicated source.

Art. 8, secs. 7-a and 7-b dedicate to the State Highway Fund (also called Fund 6) three-fourths of net revenue from state motor-fuels taxes, plus revenue from federal motor-fuels taxes, state motor-vehicle registration fees, and sales taxes on lubricants. Fund monies may be spent only to acquire right-of-way, to build, maintain, and police public roadways, and to enforce traffic and safety laws. In fiscal 2002, Fund 6 received $5.9 billion from all sources.

The governor appoints the Texas Transportation Commission (TTC) as the policymaking body of the Texas Department of Transportation (TxDOT), which administers Fund 6.

Digest

Proposition 14 would add Art. 3, sec. 49-m, allowing the Legislature to authorize TTC to allow TxDOT to issue notes or borrow money from any source for up to two years to carry out its functions. The Legislature could repay the debts incurred by appropriating dedicated money from Fund 6. The amendment also would add sec. 49-n, allowing the Legislature to authorize TTC to issue revenue bonds and other public securities and to make bond enhancement agreements (forms of insurance) to pay for highway improvement projects. The Constitution would appropriate Fund 6 money annually to TTC to cover bond debt and related costs that become due each year. No Fund 6 dedications or appropriations could be changed so as to interfere with bond repayment unless arrangements had been made to retire the debt.

The ballot proposal reads: "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."

Supporters say

Proposition 14 would help TxDOT deal with short-term cash-flow problems while also allowing TxDOT to leverage part of the highway fund to reduce its project backlog. The vicissitudes of federal highway funding reimbursements and the seasonal nature of road building have contributed to TxDOT's cash-flow problems — revenue inflow and spending outgo do not always match. Outstanding contracts totaling up to $7 billion and unpredictable weather make it difficult to forecast cash flows and to avoid periodic shortfalls that can cause temporary suspension of many new projects. Texas motorists and business interests cannot afford unnecessary road work stoppages.

Proposition 14 and one of its two enabling bills, HB 471 by Pickett, et al., would allow TxDOT to issue revenue-based notes or to borrow from public or private sources to meet short-term needs created by its unique cash-flow dynamics. Giving TxDOT the flexibility to obtain short-term loans from private capital markets would inject competition into the process, saving the state significant capital costs. The state's debt load would not increase because the state's full faith and credit would not be pledged, and repayment would have to be appropriated from dedicated revenue in Fund 6. These restrictions, plus the two-year time limit, would provide proper safeguards for taxpayers' money. Voter rejection of the amendment, however, would restrict TxDOT to using cash management notes that would have to be repaid in the biennium they were issued, allowing less flexibility.

This borrowing authority would function much like a line of credit. It would be based on revenue that TxDOT needed at a particular time and might not have on hand but would have in the near future. Short-term borrowing would not generate new revenue or fund additional projects. Unlike bonds, it would be a cash management tool, not a funding mechanism. This cushion would enable TxDOT to manage its cash position more actively and would reduce concerns about spending beyond daily cash balances.

Short-term borrowing also should improve project readiness and speed of delivery. Cost savings from starting projects earlier and completing them sooner include lower prices due to the reduced impact of construction inflation, with the added benefit of interest earned on those savings. The result would be a net financial gain to TxDOT, according to the comptroller, and an economic boon to the state.

TxDOT realizes that it needs to improve its cash forecasting methods. It also has taken steps to reduce interest paid on late payments, noting that its total costs to date are less than 1 percent of the amount TxDOT spent on highway contracting.

Proposition 14 and its other enabling bill, HB 3588 by Krusee, et al., would create a new mechanism for stretching state highway funding dollars to build badly needed highways sooner. Texas' traditional "pay-as-you-go" approach to highway finance no longer is viable. The state began weaning itself away from that approach in 2001, when voters amended the Constitution to create the Texas Mobility Fund (TMF) (Art. 3, sec. 49-k). Rapid population growth has led to more vehicle-miles traveled, greater traffic congestion, clogged border crossings, deficient rural roads, and many unsafe bridges. Demand has outstripped capacity while spending has lagged. Texas never will catch up with demand if it does not avail itself of new financing mechanisms, such as using the bonding authority that Proposition 14 would authorize.

Highways are the only major capital projects for which the state does not borrow money by issuing bonds. That policy no longer is defensible in the face of spiraling needs, lost economic opportunities, and reduced quality of life. Cities and counties routinely finance street and road projects with bonds. There is no good reason why the state should not avail itself of this financing tool as well, subject to appropriate constraints.

The TMF was intended to allow the state to supplement Fund 6 spending by issuing bonds against state revenue without jeopardizing federal highway funds. Unfortunately, as the state's transportation problems have worsened, the economic downturn and resulting fiscal problems have precluded activating the TMF. Rather than prolong this delay, which

is exacerbated by TxDOT's cash-flow problems, the state should extend the same bonding authority to Fund 6.

With interest rates at historic lows and the state's credit ratings relatively high, debt costs should break even with, if not fall below, construction inflation. Borrowing against future revenue would speed up highway projects, thus alleviating traffic congestion, enhancing productivity, improving safety, and reducing opportunity costs (forgone economic and social gains) due to lack of transportation infrastructure. Improving mobility sooner rather than later would aid economic development and job creation. Two successive annual bond issues of $1 billion each could create more than 41,000 new jobs per year, according to the comptroller, including about 17,600 supply jobs, 7,000 construction jobs, more than 3,500 permanent jobs, and almost 13,000 jobs resulting from spending of construction payroll dollars.

Debt financing is appropriate for fixed assets such as highways. To date, 28 states have issued highway revenue bonds. Because better transportation infrastructure produces benefits for future generations of taxpayers, they should share the costs as well.

Highway revenue bonds would be based on both state and federal revenue. This would make them more flexible than grant anticipation notes (also known as grant anticipation revenue vehicles or GARVEE bonds), which are restricted to future federal funding. Also, unlike general obligation bonds, revenue bonds repaid from Fund 6 would not be subject to the constitutional debt limit. Temporary bonded indebtedness is preferable to permanent tax or fee increases, most of which would affect lower-income Texans disproportionately. Bonds represent one of the best solutions available in view of the state's current fiscal challenges.

The aggregate and annual limits on bond amounts in HB 3588 would safeguard Fund 6 against excessive debt that might interfere with other spending priorities, yet would leave TTC enough discretion and flexibility for bonding to have a significant impact on highway funding. Highway construction contractors maintain that they have resources sufficient to handle an additional $1 billion worth of work per year. Issuing that amount of debt would cost TxDOT about $100 million a year in interest and other costs. Spending more than $1 billion a year could overload the industry and negate the benefits of acceleration.

State and federal motor-fuels tax (MFT) revenue, the mainstay of Fund 6, is a very stable source. Net collections have declined only four times since 1972, according to the comptroller, making bond default or a bailout very unlikely.

Opponents say

With the state in dire fiscal straits, this is the wrong time to increase debt, even if it is backed by dedicated revenue. Short-term borrowing would require appropriations the state cannot afford to spend on interest, however low the rates. Borrowing would increase TxDOT's costs in terms of forgone interest earned on cash balances and interest charges for new borrowing. Whether TxDOT actually could speed up projects and realize any savings is uncertain at best.

No other state agency in Texas engages in short-term borrowing to pay for its daily operations. While the Comptroller's Office issues tax and revenue anticipation notes, it does so not to cover its own expenses but to pay other agencies' bills and to fulfill state obligations on time.

Although TxDOT is a $10 billion-per-biennium agency with a constitutionally dedicated revenue source, it cannot manage its budget effectively. According to the state auditor's March 2003 report, TxDOT needs to improve the accuracy of its cash management methodology to maximize available funds. The Fund 6 audit discovered that, between September 1999 and September 2002, TxDOT's three-month forecast of lowest daily balances was off by an average of 258 percent. A recent news report citing the comptroller identified TxDOT as having paid more interest on late payments to vendors than any other state agency — more than $900,000 since April 2000, when a state law requiring interest on late payments took effect. This kind of performance should not be rewarded with short-term borrowing authority or credit.

Despite recent legislative decisions to the contrary, it is not a good idea to go into debt to pay for highways. Borrowing money for construction increases costs and passes them along to future taxpayers and legislatures. State-bonded highways and bond-financed toll roads are about to proliferate thanks to initial capitalization of the TMF, "toll equity," and enhancement of regional mobility authorities, all of which will compound the state's overall indebtedness. Texas should continue to pay for the amount of highway construction it can afford, rather than encumber scant resources and drive up the cost of already expensive projects.

Proposition 14 could expose the state to greater financial risk at a time of fiscal austerity. The limits on the bond amounts that TxDOT could issue would be statutory, not constitutional, and, as such, subject to change by the Legislature without voter approval. Allocating one-fifth of Fund 6 to pay for debt financing could overcommit TxDOT and limit its ability to meet unforeseen needs. Never before has TxDOT pledged revenue directly from Fund 6, which depends heavily on consumption-based state and federal MFTs. A severe spike in gasoline prices or a major disruption in oil supplies could curtail driving and diminish consumption, which would reduce MFT revenue. A significant decline might require a general revenue bailout to allow the state both to make payments on the bonds and to meet other commitments from Fund 6.

Highway bond ratings are based on individual projects, however, not on the state's overall credit ratings. Interest rates conceivably could be higher for some projects than others, reducing any savings to the state.

Other opponents say

Fund 6 already is spread too thin, and bonding would generate no new revenue. Revenue deposited into Fund 6 also is spent on the Department of Public Safety and, to a lesser extent, other state agencies. Rather than using strained resources to incur more debt, the state should put more money into Fund 6 by raising MFT rates, vehicle registration fees, or both, or by dedicating other revenue streams to Fund 6, such as motor-vehicle sales taxes or vehicle inspection fees.

Texas already has a state highway bond fund, the TMF. Rather than siphon money from Fund 6, the Legislature should follow through on its commitment to voters and find an adequate revenue source or funding for the TMF.

Texas' transportation crisis level demands a massive and immediate cash infusion. There should be no limits on bond amounts. The 10 percent rule of thumb dictates having $10 available for debt service for every $100 of debt issued. Conservatively, Fund 6 could be leveraged to issue $36 billion in highway bonds, based on the 6:1 ratio often applied to TMF bonding. TTC, with input from the governor and the Legislature, should be given more discretion to set TxDOT's spending priorities.

The state would assume less risk, yet still benefit from a reliable revenue source, by issuing GARVEE bonds against its federal highway fund allocations.

Notes

If voters approve Proposition 14, provisions of HB 471 by Pickett, et al., would take effect authorizing TTC to borrow money by any form of loan, including notes, from any source to pay for TxDOT's programs. Loan terms could not exceed two years, and loan amounts — new and outstanding combined — could not exceed the average monthly revenue deposits made into Fund 6 for the previous 12 months. Loans would not be considered general obligations and could be paid only by appropriations, including from Fund 6. HB 471 also authorizes TTC to issue highway tax and revenue anticipation notes (HTRANs) for temporary cash management purposes, regardless of whether voters approve Proposition 14. HTRANs would not be considered a debt of the state and could be used only to make up a temporary shortfall in Fund 6 cash flow. TTC would have to pay them off in the same biennium in which they were issued.

Also contingent on voter approval of Proposition 14 is a portion of HB 3588 by Krusee, et al., that would authorize TTC to issue up to $3 billion in Fund 6 revenue bonds and other public securities for state highway improvement projects. Annual issuances could not exceed $1 billion, terms could not exceed 20 years, and related annual expenditures could not exceed 10 percent of the preceding year's Fund 6 deposits. At least $600 million would have to be spent on safety and accident reduction. No proceeds could be spent on projects associated with the proposed Trans-Texas Corridor project.

Guaranteeing benefits earned in local public retirement systems

(SJR 54 by King, et al./Brimer)

15
Proposition

Texas Constitution, Art. 16, sec. 67 sets forth legislative authority over state and local employee retirement systems. The Legislature may enact general laws establishing systems and programs of retirement and related disability and death benefits for public employees and officers. System assets are held in trust for members' benefit and may not be diverted.

The Texas County and District Retirement System (TCDRS), established in 1967, operates as a nonprofit public trust fund providing pension, disability, and death benefits for participating county and district employees. All counties are eligible to participate in the statewide system, as are certain other political subdivisions; however, incorporated cities, towns, school districts, and junior college districts are excluded from the plan. According to the Pension Review Board, many counties, appraisal districts, and water districts do not participate in the statewide TCDRS but operate local pension plans instead.

The Teacher Retirement System (TRS), established in 1937, is a pension trust fund providing retirement, disability, and death and survivor benefits for Texas public school employees. TRS serves more than 1 million active and retired members. A few public school districts provide local pension plans for their employees.

A 1937 Texas Supreme Court ruling, *City of Dallas, et al. v. Trammell*, 101 S.W. 2d 1009, reversed the rulings of lower courts that had found in favor of a retired police officer who had more than 20 years of service with the City of Dallas and whose pension was reduced almost by half. The Supreme Court ruled that a pensioner's right is subordinate to the right of the Legislature to diminish accrued benefits or even to abolish a pension system.

Digest

Proposition 15 would prohibit reducing or impairing any future benefits paid by certain local public retirement systems after a person was vested in the system. The amendment would apply to public retirement systems that are not statewide and that provide service and disability retirement benefits and death benefits to public officers and employees. It would not apply to the public retirement system for firefighters and police officers employed by the City of San Antonio, nor would it apply to health, life insurance, or expired disability benefits.

The political subdivision and the local retirement system would be jointly responsible for ensuring that benefits were not reduced or impaired, and active members would not be liable beyond their current or future required contributions to the system.

The local retirement system and the political subdivision would have a one-time opportunity to avoid the requirement through a local election in May 2004, if the majority of voters in the subdivision favored the exemption. The exemption could be the only issue relating to the funding and benefits of the retirement system presented to voters at the May 2004 election.

15 Proposition

The ballot proposal reads: "The constitutional amendment providing that certain benefits under certain local public retirement systems may not be reduced or impaired."

Supporters say

Proposition 15 would give local governmental employees — particularly firefighters and police officers — the security of knowing that retirement, disability, and death benefits they had earned could not be reduced and would be available to them or their beneficiaries. No state law guarantees that retired employees of local public pension plans will receive the benefits they have earned, and a prevailing Texas Supreme Court opinion allows public employees' pension benefits to be reduced. The only reliable way to guarantee public employee pension benefits is to amend the Constitution to establish that earned benefits may not be modified, reduced, or eliminated.

Many Texas public employees lack Social Security coverage. If their public pension benefits were reduced or eliminated, these retirees could be left with little or no income. This would be especially egregious if benefits were eliminated for public employees who became disabled, or even died, in the line of service, and it would create particular hardship for disabled beneficiaries or their survivors. Many public employees dedicate their careers to public service at a much lower salary than their peers in the private sector. At the very least, they should be able to count on their retirement benefits.

Since 1974, the federal Employee Retirement Income Security Act has protected private-sector employees from benefit losses through a guaranty fund, but no corresponding protection exists for public employees. Currently, 41 states extend guaranteed retirement, disability, or death benefits to their employees. Texas should join these other states in affording local public employees the security of benefits they deserve.

Occasionally, pension benefit systems face sound actuarial reasons for reducing benefits, but these situations almost always are dealt with prospectively and thus do not affect benefits that retirees, beneficiaries, or other annuitants already have earned. Because most pension plans smooth the actuarial value of losses over five years, the financial situation of many municipal plans is much less dire than it appears with a market-basis analysis. Proposition 15 would leave pension plans with cost-control options, such as reducing the benefits multiplier or increasing active member contributions, and would encourage local governmental entities to be more responsible in funding and administering pension plans. This proposition would lead to no more intergenerational inequity than does the current Social Security system, under which millions of young workers pay into the system to support current retirees, with no guarantee of a fixed future benefit from their investment in the system.

Proposition 15 would allow a local government or political subdivision to opt out of its coverage in the May 2004 election, if local voters approved. This proposition would affect 130 municipal retirement systems, as well as local retirement systems for dozens of counties, county appraisal and water districts, and a few local school districts, all of which are governed by different local ordinances and trustee rules. The City of San Antonio system for firefighters and police officers opted out because it has a local provision that makes the city solely responsible for paying any future shortfalls in the plan. Thus, San

Antonio employees in that system did not wish to be subject to a state law that would give local governments the option of requiring active members to pay more. The local-option election would give the hundreds of local plans affected by this amendment eight months to review the local consequences of Proposition 15 and put an opt-out on the local ballot if for some reason it was not advantageous for that locality.

Opponents say

Proposition 15 could have a negative impact on the actuarial soundness of municipal pension funds, many of which already are on shaky ground because of stock market losses. According to the Legislative Budget Board, a market-basis analysis of 13 major metropolitan plans showed that at the end of 2002, not one plan had a funding ratio (assets divided by liabilities, times 100) higher than 80, which is the industry standard for a reasonably well-funded plan. Most had ratios in the 60s, and two had ratios in the low 50s. Unless municipal pension plans see investment returns of 8 to 8.5 percent over the next several years, additional losses are likely. Even at an 8 percent return, the only way to keep municipal plans actuarially sound will be to increase contributions significantly or to reduce benefits. Since the proposed amendment would not allow benefit cuts for vested employees, local governments likely would have to raise taxes, cut essential services, or increase active member contributions to maintain pension benefits, depending on the law that governs the individual plans.

Because the amendment would protect all vested employees from having their benefits reduced or impaired, municipal pension plans and local governments no longer could make even minor adjustments to plan design or retirement eligibility. Most private-sector plans define "accrued benefit" very narrowly, but Proposition 15 would not define this term, thus opening up the law for broad interpretation. The scope of the amendment's protective language could result in negative unintended consequences. For example, barring a plan from impairing benefits could be interpreted to mean that automatic cost-of-living adjustments never could be reduced or suspended, even in years when there was no increase in the cost of living.

Proposition 15 could create serious issues of intergenerational equity, making early retirement a thing of the past. Vested benefits represent roughly 95 percent of the actuarial accrued liability for the 12 major urban systems in Texas affected by this proposition. One way to control retiree costs is to raise the eligibility age for retirement. As pension plan costs increase, pressure grows to increase eligibility requirements or reduce benefits for the younger, nonvested generation. Because cities cannot change retirement eligibility for vested employees, cost increases in the pension plan could force cities to reduce or eliminate retirees' health benefits. Most retiree health plans have seen double-digit growth in the costs of medical care and pharmaceuticals and have initiated cost-sharing measures among the retiree population. While this amendment would not protect against reduced health benefits, it could influence local governments to find ways to avoid paying benefits for employees. This could place an unfair burden on younger generations of public employees relative to their older counterparts, thus discouraging career employment in the public sector.

16 Proposition

Authorizing home equity lines of credit

(SJR 42 by Carona/Solomons)

In 1997, Texas voters approved Proposition 8 (HJR 31 by Patterson), amending Texas Constitution, Art. 16, sec. 50 to allow homeowners to obtain loans and other extensions of credit based on the equity of their residence homesteads. Equity is the difference between a home's market value and what is owed on the home.

Most home equity loans are paid to the borrower in a lump sum, and loan repayments begin immediately. These sometimes are called closed-end loans because they extend for a specified time and require repayments in equal monthly amounts. Interest rates usually are fixed on these loans. If a homeowner fails to make a monthly installment, the lender may foreclose. Under Art. 16, sec. 50(f), a home equity loan may be refinanced only with another home equity loan.

Reverse mortgages, a type of home equity loan, are fundamentally different from other such loans. Only homeowners who are or whose spouses are at least 62 years old may obtain reverse mortgages. The borrower receives periodic loan advances based on the equity in the homestead, but repayments do not begin until the homeowner no longer occupies the property or transfers it to another owner. At that time, the home often is sold, and the proceeds are used to pay off the loan. Any money remaining after the reverse mortgage is paid goes to the borrowers or their heirs. If the home is transferred to heirs, the loan balance is due at the time of transfer. If the loan balance exceeds the value of the home, the estate or heirs are responsible only for the value of the home. The Federal Housing Administration insures the lender for any additional amounts.

With another type of home equity loan, called a line of credit, which is not authorized in Texas, a revolving account allows borrowing up to a set amount from time to time at the borrower's discretion. These loans usually have a variable interest rate.

Digest

Proposition 16 would amend Art. 16, sec. 50 to allow lenders to issue home equity lines of credit to homeowners, not to exceed 50 percent of the homestead's fair market value, or 80 percent when added to total indebtedness secured by the home.

A borrower could debit the account from time to time, request advances, repay debt, and reborrow money. No single advance could be less than $4,000, and the borrower could not use a credit card, debit card, check, or similar device to obtain an advance. The amendment would allow repayment in regular, equal periodic installments not more often than every 14 days and not less often than monthly, beginning no later than two months after the credit was issued.

A lender could collect fees on the line of credit only at the time it was established and could not charge or collect fees in connection with a debit or advance. A lender could not amend the extension of credit unilaterally.

The written notice that a lender must give a borrower 12 days before closing on a home equity loan would be amended to describe the borrower's rights regarding home equity lines of credit. A lender would have to provide a translated copy of the notice if discussions about a home equity loan were conducted primarily in a language other than English.

Other issues. Proposition 16 would amend the Constitution to allow refinancing of a home equity loan with a reverse mortgage loan. It also would establish ways for lenders to meet the current requirement that they remedy failure to comply with the requirements for home equity loans "within a reasonable time" or forfeit all principal and interest. Lenders would have 60 days from the date they were notified by borrowers of failure to comply with requirements and could cure their failure to comply by:

- refunding overcharged amounts;
- sending written notice of the failure to comply and acknowledgment of the lien's proper scope;
- adjusting borrowers' accounts to ensure that they were not overcharged;
- delivering required documents or gathering missing signatures;
- abating the interest and other obligations if a prior lien prohibited by the home equity provisions was in effect; or
- crediting the borrower $1,000 and offering the borrower the right to refinance at no cost on the same terms with any modifications necessary to correct the noncompliance or on different terms agreed upon by the borrower and lender.

A lender would forfeit all principal and interest on a home equity loan if the loan was made by someone who was not authorized to do so under the Constitution or if the lien was not created with the written consent of each owner and each owner's spouse, unless each owner and spouse subsequently consented.

Proposition 16 also would allow mortgage brokers to make home equity loans; allow all home equity loans to be paid in substantially equal periodic installments not more often than every 14 days and not less often than monthly, instead of only allowing them to be paid monthly; and authorize the Legislature to enact laws delegating to one or more state agencies the power to interpret certain subsections of Art. 16, sec. 50.

The ballot proposal reads: "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."

Supporters say

Proposition 16 would increase the availability and flexibility of home equity lending in Texas, driving down the cost of borrowing for many Texans. Currently, Texans may apply only for lump-sum home equity loans, forcing them to borrow the entire amount of a home equity loan even if they do not need all of the money immediately. Proposition 16 would address this problem by authorizing home equity lines of credit, which are more flexible and capable of being tailored to individual needs. Home equity lines of credit would give Texas homeowners the freedom to borrow against their homes as they saw fit.

Currently, to use the equity they have built up in their homes, Texans either must seek lump-sum equity loans, which may be more than they need, or high-interest, unsecured loans that do not offer an income-tax break. Obtaining smaller loans over time as the money was needed would save Texas homeowners thousands of dollars in interest over the life of a loan. For example, under current law, a homeowner wishing to use a home equity loan to finance a child's college education would have to borrow the lump sum, even though the money for tuition payments would be needed only every semester. With a home equity line of credit, the homeowner could borrow — and pay interest on — smaller amounts as needed each semester.

Since interest on loans secured by a home is tax-deductible and also is lower than the interest on other loans, home equity lines of credit could supplant almost $13 billion in higher-cost, non-tax-deductible loans such as credit cards and auto loans. That could save Texas consumers an estimated $741 million annually in interest charges and federal income taxes. These savings would have a ripple impact on the Texas economy, freeing capital for other uses without expanding homeowners' overall debt burden.

Proposition 16 contains safeguards to protect consumers and ensure that home equity lines of credit would not be abused. The amendment would prevent borrowers from casually requesting advances from their home equity lines of credit by setting the minimum advance at $4,000. This minimum would be sufficient to signal to borrowers that they should draw on home equity lines of credit only for truly significant purchases, and it would discourage Texans from financing smaller consumption expenditures with their home equity.

Home equity lines of credit would be subject to all procedural safeguards that govern home equity loans and that ensure that borrowers are treated fairly and understand their responsibilities. Borrowers receive written notices outlining home equity requirements. Home equity loans can be made only by licensed financial institutions, not by other lending-type establishments such as pawnshops or check-cashing businesses. Home equity lines of credit would be subject to the required 12-day mandatory "cooling off" period after a lender receives a loan application and the three-day window after a loan is made within which the borrower has the right to rescind a loan. Very few, if any, other loans have such substantial protection. At some point, government must trust that consumers are capable of recognizing a bad deal within the 15 days they have to cancel a home equity loan and walk away from it. Proposition 16 would alter none of these safeguards.

Texas is more stringent than any other state in terms of home equity consumer protections. Additional regulation would impede the availability and price of home equity lending. One reason why interest rates are higher in Texas than in other states is that the Constitution places so many restrictions on home equity lending. Additional delays, repetitive notices, and state laws that duplicate federal laws slow the process and create unnecessary burdens. Excessive safeguards for consumers ultimately constrain borrowers by reducing the availability of loans and driving up interest rates.

Fears of borrowers losing their homes as a result of defaulting on home equity lines of credit are unfounded. Home equity loan defaults are rare, perhaps because borrowers go to great lengths to make payments, even in an economic downturn, since the loans are secured by their homes. Nationwide delinquency rates for home equity lines of credit are about 0.6 percent, while the delinquency rate for all mortgages was about 3.1 percent, and the

delinquency rate for closed-end home equity loans was 1.3 percent. Allowing the borrower to take out a smaller loan with lower interest rates and a lower monthly payment actually would reduce the likelihood of delinquency or foreclosure on home equity lines of credit, relative to traditional home equity loans.

Proposition 16 would cap the amount of debt that could be borrowed against a homestead to ensure that homeowners would retain some ownership in their homes, have a cushion in case the value of the home fell, and have an incentive not to default on the loan. The home equity line of credit and all other debt against a property could not exceed 80 percent of the property's market value, and the line of credit could not exceed 50 percent of the home's market value. This cap would make home equity lines of credit safer for consumers than traditional home equity loans, because disreputable lenders who simply wanted to make money quickly would have a harder time doing so on the lower-dollar loans capped at 50 percent, rather than 80 percent, of a home's market value.

Other issues. Proposition 16 would enable consumers to refinance home equity loans with reverse mortgages, a practice that the Constitution prohibits only as an unintended consequence of previous amendments. Between 1997 and 2001, many homeowners who took out home equity loans would have preferred to use reverse mortgages, but that option was not available until inconsistencies in the law and conflicts with federal loan-purchase and mortgage insurance requirements were cleared up. Now that reverse mortgages are available, some of these homeowners would like to refinance their home equity loans as reverse mortgages, but the Constitution does not state clearly that regular home equity loans can be refinanced with reverse mortgages, leaving these borrowers with only the option of refinancing a regular home equity loan with another regular home equity loan. Proposition 16 would address this oversight by clearly authorizing the refinancing of home equity loans with reverse mortgages.

Current provisions place no restrictions on how homeowners may use the proceeds from a reverse mortgage, except that they cannot refinance a home equity loan. They can pay off credit-card debt or other loans, but not home equity loans. No justification exists for this distinction, and Proposition 16 would end it.

Proposition 16 would give borrowers more freedom to use their home equity as they chose and could result in borrowers obtaining loans more appropriate to their situation. Adding this refinancing option would benefit senior homeowners in particular. Volatile financial markets have caused many retirees' investment income to shrink, making it difficult for them to continue monthly payments on home equity loans. Paying off a home equity loan with a reverse mortgage would decrease their monthly financial obligations and would enable them to receive monthly income from the lender. Reverse mortgages require as many consumer protections as do home equity loans, if not more, so this change would not make consumers more vulnerable. The amendment would not require the use of reverse mortgages to finance home equity loans but would give consumers the choice to do so.

Proposition 16 also would list specific ways that lenders could remedy certain failures to comply with constitutional requirements so that lenders, borrowers, and courts would be aware of the allowable courses of action. Currently, the Constitution says that lenders forfeit all principal and interest on home equity loans if they fail to comply with their obligations within a reasonable time after they are notified by borrowers of their failure to

comply, and courts have ruled that this means that lenders should be allowed to cure failures to comply. However, because the Constitution does not spell how these failures should be remedied, lenders could be curing their failures to comply in different ways. Proposition 16 would solve this problem by spelling out in the Constitution what is necessary for lenders to cure their failures to comply, ensuring uniform enforcement of the home equity requirements throughout the state.

Proposition 16 would allow payments on all home equity loans to be made in 14-day increments to help save consumers on interest payments and to give them more flexibility to manage their monthly income and expenses. The total monthly amounts paid by borrowers would not increase, but by paying more often, borrowers would save on interest charges.

The amendment would allow mortgage bankers to make home equity loans so that these professionals, with whom some Texans prefer to deal, could offer borrowers the full range of financing options. Loans made by mortgage bankers would be subject to all the rules and regulations governing home equity loans, such as having to be closed only at the office of the lender, an attorney, or a title company.

Proposition 16 would authorize two state agencies to interpret home equity laws so that minor issues could be resolved without making the Constitution more unwieldy than necessary. Under legislation that was enacted contingent on voter approval of the amendment, the extensive provisions relating to home equity loans would remain in the Constitution, but the Finance Commission and the Credit Union Commission could issue interpretative rulings on minor details such as forms or practices. Interpretative rulings would be subject to the Administrative Procedure Act, ensuring that there would be public notification and hearings and that decisions would be subject to judicial review.

Opponents say

When voters approved home equity lending in 1997, a specific decision was made to prohibit lines of credit, and this decision should not be reversed now. Concerns that allowing home equity lines of credit would erode the protections on homesteads are as valid today as they were then, and the need to protect the homestead has not diminished, especially since many Texans still face personal economic pressure.

Authorizing home equity lines of credit could lead to Texans taking on additional debt, backed by their homes, to finance routine consumption spending. Homeowners might use this money more freely since it could be borrowed in small amounts periodically. Other, more appropriate avenues exist for consumers to finance needs such as college costs, automobile purchases, and medical expenses. Additional home equity loans could place an economic burden on Texans and put their homes in potential jeopardy.

Home equity lines of credit often are used to refinance higher-interest debt such as credit cards or personal loans, resulting in the conversion of nonsecured debt to secured debt, which could result in the loss of a borrower's home, something that consumers may not understand. The current economic downturn has resulted in a higher foreclosure rate, forcing people out of their homes for defaulting on debt unrelated to the homestead itself.

For high-equity homes, lenders often look only at the equity, not at the borrower's ability to repay. This is particularly a problem for the elderly, who tend to be cash-poor but house-rich. Lenders may lend large amounts based on the equity in a home, even though the borrower's fixed income is insufficient to repay the loan. Government should work to protect homeowners' investments rather than make it easier for them to lose their homes.

The best stimulant for an economy is home ownership and increasing home equity. Establishing the ability to finance consumer spending with a home equity line of credit might create a short-term burst of economic activity, but a decline would follow when borrowers realized the extent of their debt burden. Texans should be increasing their savings, not inflating their debt burden. All home equity lending transactions convert an asset into a debt, a practice that should be restricted by any government that desires to protect the fruits of its citizens' hard work.

Texas needs to regulate traditional home equity loans more effectively before opening the door to home equity lines of credit. Hearings around the state have confirmed that borrowers do not understand consistently that their homes can be foreclosed if they default on a home equity loan. In some parts of the state, particularly those with the nation's highest rates of subprime lending, consumers are making uninformed decisions because they are not receiving information in their primary language or in a format they understand. Other problems include consumers being charged in their home equity loans for products they never received; lenders circumventing the 3 percent cap on fees by charging fees, such as discount fees and origination fees, that they do not categorize as fees; excessively high late fees; and good-faith estimates differing substantially from the actual loan costs. Home equity loans should not be expanded to include lines of credit until these problems are solved, perhaps through additional consumer protections such as itemized disclosure of charges, easily comprehensible consumer information, and expansion of fees subject to the 3 percent cap.

Other issues. Reverse mortgage fees often are high in relation to their benefit, and the equity received can work out to less cash than a borrower would have received by cashing out his or her equity with a regular home equity loan. To the extent that Proposition 16 would increase the issuance of reverse mortgages, more Texans might be getting less for their equity. This could be especially harmful for senior citizens who might be convinced by unscrupulous lenders to refinance regular home equity loans with reverse mortgages.

The current provision under which lenders face stiff penalties — loss of principal and interest — for failing to comply with the home equity laws and failing to cure their failure within a reasonable time should not be amended so that lenders could face lesser penalties. Current constitutional provisions give consumers important protection and allow for more flexibility than Proposition 16, because courts can rule on a case-by-case basis on disputes over whether these provisions have been violated.

When home equity lending initially was approved, a specific decision was made to offer consumers protection by allowing, in general, only lenders, and not mortgage bankers, to make these loans. This decision should not be reversed.

Because of the importance of the consumer protections in the Constitution, state agencies should not be given authority to interpret these provisions. Changes in home equity lending

policies should continue to be placed only in the Constitution, where they are visible to all and can be changed only with voter approval.

Other opponents say

The Constitution should not be amended to expand the details of home equity lending regulation. Such details should be placed in the statutes rather than require voter approval for every change.

Proposition 16 should not include a debt-to-value ratio. Homeowners should be able to tap all of their equity, not only an arbitrary portion.

Notes

SB 1067 by Carona, enacted by the 78th Legislature during its regular session, is contingent on voter approval of Proposition 16. The bill would authorize the Finance Commission and the Credit Union Commission to issue interpretations of certain sections of the Constitution governing home equity loans.

Proposition 16 includes the substance of Proposition 6 by Hochberg, also on the September 13 ballot, which would allow refinancing of home-equity loans with reverse mortgages.

Freezing school taxes on residential homesteads owned by the disabled

(HJR 21 by Hamric, et al./Van de Putte)

Proposition 17

Texas Constitution, Art. 8, sec. 1-b, and Tax Code, sec. 11.13, exempt portions of the taxable market value of residential homesteads from school district property taxation. The Constitution mandates a $15,000 exemption, and school districts, like other taxing entities, may grant an additional exemption of $5,000 or up to 20 percent of market value, whichever is greater. The statute grants an additional $10,000 exemption for homeowners who are disabled or at least 65 years old. School districts may grant additional exemptions of at least $3,000 to disabled and 65-and-older homeowners.

Under Art. 8, sec. 1-b(d) and Tax Code, sec. 11.26, the amount of school property taxes imposed on the homesteads of owners 65 or older may not increase above the amount levied in the first year the owners qualified for the 65-and-over exemption until they or their surviving spouses cease to use their property as a homestead, unless the value of the homestead is increased by improvements. The tax freeze is transferable to a different homestead but is calculated so as to maintain the same tax percentage as the original limit.

Digest

Proposition 17 would amend Art. 8, sec. 1-b(d) to allow disabled homeowners to qualify for the school property tax freeze on residential homesteads, effective January 1, 2004.

The ballot proposal reads: "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."

Supporters say

Proposition 17 would make disabled homeowners eligible for the same freeze on school property taxes that is available to seniors. Correcting this disparity is only fair. The principle of equity dictates that if the Tax Code benefits two similarly situated classes of homeowners, it should do so equally and uniformly.

Disability, not unlike aging, reduces income and increases expenses. To be eligible for the existing partial exemption for disability, a homeowner must be totally disabled as defined by federal law. Such people generally are on fixed incomes, making them among the least able to pay taxes, much less cope with rising tax rates and property values. Knowing what their taxes would be in the future would allow them to budget for that expense within their limited incomes. Approval of Proposition 17 and implementation of its enabling legislation, HB 217 by Hamric, et al., would help stabilize the economic condition of disabled Texans. Doing so would increase their chances of staying in their homes, helping them, their families, and the taxing entities they support.

This policy change would affect relatively few taxpayers. Nationally, fewer than 5 percent of homeowners are disabled, and the market value of their homes typically is less than that

of homes owned by senior or other taxpayers. According to the fiscal note for HJR 21, the probable revenue loss to school districts upon full implementation in 2005 would be about $2.7 million, which the state would reimburse in 2006 through the Foundation School Fund. Compared to the tens of billions spent on public education in Texas each year, the projected loss of general revenue would be minuscule fiscally, but worthwhile socially.

Opponents say

Given the state's current fiscal situation, Texas school districts cannot afford even a small loss of funding. Tax limitations that begin with small price tags can cost more and more over time as the state's population ages. Also, though the overall cost might be relatively small, the impact on individual school districts, and their ability to respond, could vary greatly. Financially strapped school districts would bear the brunt of the amendment's costs, especially fast-growing districts that have based their bonded indebtedness on the current property tax base. Singling out one class of taxpayers for favored treatment, regardless of their ability to pay, shifts more of the burden onto the rest of the tax base, including business property owners, who should not be asked to pay more taxes during an economic downturn.

Other opponents say

The tax freeze should be phased in to lessen its impact on school districts and the state budget. Upon full implementation, it should be subject to sunset review so the Legislature could evaluate its impact and respond accordingly, based on the state's fiscal condition and school districts' needs at that time.

Notes

If voters approve Proposition 17, HB 217 would take effect on January 1, 2004. The bill would prohibit school districts from increasing taxes on residential homesteads of disabled owners above the amounts imposed in the first year they qualified for the disability exemption, unless the owner increased the homestead's value through improvements. The freeze would apply as of January 1, 2003, for homeowners who qualified for the disability exemption before that date. Subsequent homesteads would be eligible for the freeze only if owners qualified their former homesteads for the disability exemption for 2003 or subsequent tax years. HB 217 also would exclude the value of the tax freeze from the calculation of taxable value for purposes of the comptroller's annual school district property value study, which determines how much state aid school districts receive.

Canceling election for unopposed candidates in political subdivisions

(HJR 59 by Uresti/Van de Putte)

Proposition 18

When candidates are unopposed for election, Election Code, ch. 2 allows political subdivisions, other than counties, that require write-in candidates to declare their formal candidacy in order that any votes cast for them may be counted to cancel an election and declare the unopposed candidates elected if there are no declared write-in candidates, no opposed candidates, and no propositions on the ballot.

Digest

Proposition 18 would add Art. 16, sec. 13A to the Constitution, authorizing the Legislature to allow a person to assume an office of any political subdivision without an election if the person was the only candidate to qualify in an election held for that office.

The ballot proposal reads: "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 for an election for that office."

Supporters say

By allowing all political subdivisions to forego the time and expense of holding an election when a candidate is unopposed, Proposition 18 would promote efficiency in election administration and would help reduce the cost of elections. It also would give election officials greater flexibility in preparing ballots.

Current law allows the cancellation of a general or special election in which candidates are unopposed, unless measures are to be voted on the ballot. However, when some candidates are unopposed and others are not, the names of the uncontested candidates must appear on the election ballot. Reducing the number of races on a ballot would reduce the costs of ballot printing, which is especially important in larger counties. While some large counties have converted or may be in the process of converting to electronic voting systems, Proposition 18 would affect them too. Depending on the number of races programmed, the number of screens from which voters would select candidates could be reduced.

Actual voting time is an important factor — the longer the ballot, the longer it takes to vote. For example, in the November 2002 elections, Bexar County presented 78 contests to voters, one-third of which were unopposed. The ballot was so long that it required a second page. The cost of the ballot, including other items such as programming and testing, printing, storage, security, transportation, and tabulation, came to about $152,000. Removing the necessity to list unopposed candidates on the ballot would have a positive impact on county finances.

The proposed change would not interfere with anyone's right to vote. If a candidate is unopposed, the race essentially is decided. Under current law, if there is an unopposed candidate on the ballot, the election becomes a costly formality.

Proposition 18

Since the Texas Constitution establishes which offices, including county offices, require an election, any proposal to cancel an election requires a constitutional amendment as well as a change in the Election Code.

Although Gov. Perry vetoed the enabling legislation for this proposed amendment, amending the Constitution still would authorize a future legislature to implement this proposal.

Opponents say

Every session, the Legislature proposes and enacts laws that allow certain unopposed candidates to be declared elected without an election. However, in most cases, their names and offices still are placed on the election ballot so that voters can know who has been declared elected to represent them. Proposition 18 would limit voters' knowledge of who their elected officials were, and voters need all the information they can get. Name identification helps elected officials spread their message to the community and helps voters become familiar with the officials and their positions.

Even if voter turnout is low and there is only one candidate on the ballot for an office, people who take the time to vote are exercising their right to endorse the candidates they wish to represent them and to validate their election to public office.

Other opponents say

Proposition 18 is moot because Gov. Rick Perry vetoed HB 1344 by Uresti, the enabling legislation, on the grounds that it would eliminate from the ballot the names of unopposed candidates and would prevent voters from seeing who was elected without a vote. This amendment would have no effect even if approved by the voters.

Notes

HB 1344, vetoed by Gov. Perry, would have authorized the certifying authority in a general or special election to declare a candidate elected to an office of a political subdivision, including a county, if the candidate was the only person qualified to appear on the ballot for the office and if there were no declared write-in candidates for the office. If such a declaration were made, the election for that office would not have been held, and the office or candidate would not have been listed on the ballot.

A similar proposal, Proposition 8 (HJR 62), also on the September 13 ballot, would allow an unopposed candidate for any state, district, or county office to assume office without an election. Under the enabling legislation, the unopposed candidate's name and office still would appear on the ballot in a separate section with the heading "Unopposed Candidates Declared Elected."

Abolishing authority to create rural fire prevention districts

(SJR 45 by Madla/Lewis)

Proposition 19

Texas Constitution, Art. 3, sec. 48-d, adopted in 1949, authorizes the Legislature to establish rural fire prevention districts (RFPDs) and to allow local voters to approve taxes at rates of up to 3 cents per $100 of taxable property value to support these districts. The Legislature may authorize a tax of up to 5 cents per $100 in RFPDs located wholly or partly in Harris County.

Art. 3, sec. 48-e, adopted in 1987, allows creation of emergency services districts (ESDs) to provide emergency medical, ambulance, rural fire prevention and control, and other services. Local voters may approve property taxes of up to 10 cents per $100 to support ESD operations. In addition, Health and Safety Code, sec. 775.0751 and sec. 775.0752 allow an ESD to call an election to impose a sales and use tax of between one-half percent and 2 percent. ESDs also may assess reasonable fees for ambulance and emergency medical services.

According to 2002 data from the Comptroller's Office, Texas has 130 RFPDs in 53 counties and 91 ESDs in 38 counties. The 73rd Legislature in 1993 authorized RFPDs to convert to ESDs with voter approval.

Digest

Proposition 19 would repeal Art. 3, sec. 48-d of the Constitution, which authorizes the Legislature to create rural fire prevention districts.

The ballot proposal reads: "The constitutional amendment to repeal the authority of the legislature to provide for the creation of rural fire prevention districts."

Supporters say

Proposition 19 would repeal a provision in the Constitution that was made obsolete by enactment of SB 1021 by Madla during the 78th Legislature's regular session. SB 1021, effective September 1, 2003, converts all of Texas' remaining RFPDs into ESDs, implementing a recommendation by the Senate Intergovernmental Relations Committee in its October 2002 report. The report noted that many RFPDs already have converted voluntarily to ESDs, and it recommended converting all remaining RFPDs. Proposition 19 simply would eliminate the option of creating more RFPDs, which SB 1021 renders unnecessary.

The amendment would not betray the intent of Art. 3, sec. 48-d, which is to allow rural communities to protect themselves from fire dangers, since these communities still could establish ESDs with much greater flexibility and broader authority. Many RFPDs are struggling to provide services under the 3-cent property tax cap, especially after the terrorist attacks of September 11, 2001, heightened awareness of public safety risks and increased fire and emergency services needs. ESDs, by contrast, have greater latitude in

setting tax rates and can provide a wider array of services to communities, including firefighting services.

Many rural areas seeking to establish for the first time districts to provide fire and emergency services are choosing to create ESDs because of the funding and other limitations of RFPDs. In fact, the Office of Rural and Community Affairs no longer advises creation of RFPDs because of the better alternative provided by an ESD. When voters approved creation of RFPDs in 1949, a 3-cent cap was a realistic limitation on district funding. Since then, however, the expenses of providing fire and emergency medical care in rural areas have outstripped the tax cap imposed in the 1940s. As the Legislature's enactment of SB 1021 indicates, RFPDs have outlived their usefulness, and Proposition 19 would update the Constitution to reflect this.

Opponents say

SB 1021's conversion of all existing RFPDs to ESDs does not require the repeal of Art. 3, sec. 48-d, and there is no compelling reason to preclude a community in the future from adopting the lower tax rate of a RFPD. This lower-tax option for providing fire prevention services in rural areas should not be eliminated. Residents in remote and sparsely populated areas may not wish to pay higher tax rates for services that are only marginally better than those provided by their former RFPDs. Preserving Art. 3, sec. 48-d would allow the Legislature to respond to such concerns by reauthorizing RFPDs in the future.

Authorizing general obligation bonds for military enhancement projects

(SJR 55 by Shapleigh/Corte)

20 Proposition

In 2005, the U.S. Department of Defense's (DOD) Base Realignment and Closure (BRAC) process will reassess U.S. military installations and infrastructures to ensure that they best support U.S. military forces to counter the threats faced by the United States from 2005 to 2025. DOD has estimated that up to 25 percent of existing military installations could be closed in this round of BRAC because of excess military infrastructure capacity. Initial BRAC data collection and analysis began in January 2002, and the list of base closures will be finalized in November 2005.

Digest

Proposition 20 would add Art. 3, sec. 49-n to the Constitution, allowing the Legislature to authorize one or more state agencies to issue up to $250 million in general obligation bonds or notes or to enter into related credit agreements. Proceeds from sale of the bonds or notes would be deposited in the Texas military value revolving loan account to be used by a state agency to provide loans for economic development projects that benefit defense communities, including projects that enhance the military value of military installations.

A defense-related community that received a loan could use money from the account to capitalize interest on the loan. Expenses associated with issuing the bonds or notes and administering the account could be paid from money in the account, and the account could be used for any payment owed under a credit agreement related to the bonds or notes. An agency providing a loan from the account could require the defense-related community receiving the loan to pay pro-rata costs associated with issuing the bond or note.

While any bonds and notes or interest on them was outstanding, Art. 3, sec. 49-n would appropriate out of the first money coming into the treasury each fiscal year, and not otherwise appropriated by the Constitution, an amount sufficient to pay the principal of and interest on the bonds or notes that matured or became due during the fiscal year.

The ballot proposal reads: "The constitutional amendment authorizing the issuance of general obligation bonds 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."

Supporters say

Proposition 20 would provide funding to help defense communities survive the upcoming round of BRAC. The 2005 closures and realignments are expected to be the largest in several years. DOD plans to reduce its military infrastructure and use the savings to develop a more modern and mobile fighting force. The Pentagon has promised that every base will be evaluated for closure. With its large number of military installations and jobs, Texas is vulnerable to significant economic and job losses. Texas' 18 major military

installations collectively employ nearly 230,000 people, and the military's economic impact in Texas is estimated at $44 billion annually.

In response to BRAC, the 78th Legislature enacted SB 652 by Shapleigh to demonstrate the state's commitment to hosting military installations and new national defense strategies. Among other measures, the act requires the Military Preparedness Commission (formerly the Strategic Military Planning Commission) to operate a variety of assistance programs for defense-related communities. Proposition 20 would provide seed money for the centerpiece of the act, the Texas military value revolving loan account.

Proposition 20 would allow the state to fund the account with up to $250 million in bond proceeds. Money in the account would be lent to defense communities to invest in enhancing their military value, as defined according to BRAC guidelines. Congress has directed that military value be a primary factor in the criteria for recommended closures or realignment. By enhancing military value, Texas could reduce the likelihood of base closures in 2005.

Texas' competitor states for military investment, such as California, Florida, Georgia, and Mississippi, already have begun state-funded programs to assist communities with military installations. For example, Florida provides grants to help local communities retain military installations potentially affected by BRAC. However, Texas' program is designed to be self-supporting — loan repayments would be used to pay debt service on the bonds, thereby preserving state general revenue.

Although BRAC commonly is perceived as a threat to military bases, BRAC also can create opportunities for a community to maintain, expand, or gain new military investment though base realignment. For example, communities in South Texas gained 40 percent in payroll from the 1993 and 1995 BRAC processes. As DOD shifts its emphasis from infrastructure to new weapons systems and better training, Texas could benefit from the new investment. Proposition 20 would put money in place to help communities address deficiencies in their military infrastructure or make needed improvements so that bases could accommodate the new missions granted by DOD. Doing so would give communities a better chance of benefitting from, rather than being hurt by, this BRAC round.

Some have expressed concern that bonds authorized by Proposition 20 would fund loans to bases that later might be closed. However, because a community that borrowed money would have to repay the loan regardless of whether its base was closed or not, communities would have the incentive to use loans for projects that would add value locally even if the base were closed. Desalination and port facilities, for example, could be used for civilian industrial purposes as well as for military purposes. The Military Preparedness Commission would analyze all proposed projects and review loan applications, approving projects that still would be valuable to a community in the event of a base closure.

Opponents say

Proposition 20 would provide broad authority for bonds to pay for loans for projects that would enhance the military value of military facilities. However, more often than not, BRAC has resulted in closure, not growth, of military facilities. In previous BRAC rounds,

Texas lost 14 military facilities and many thousands of jobs, and the upcoming BRAC round could result in even more closures. Moreover, defense communities that had taken out loans would remain susceptible to future BRAC rounds. With a 25-year loan repayment period, a community could be forced to continue paying for an investment in military value long after its military facility was closed in a future BRAC round — for example, in 2010 or 2015.

Though communities might have the incentive to seek loans for projects with both civilian and military value so that the project would be valuable even if the base were closed, the loan approval process established by SB 652 does not require consideration of the civilian value of a proposed project. Thus, the bonds authorized by this amendment might not be suitable for the state's general obligation support.

Notes

SB 652, effective May 28, 2003, establishes the Texas military value revolving loan account and authorizes the Military Preparedness Commission to lend money from the account to defense communities for military enhancement projects. The commission must evaluate a project's feasibility to ensure that the defense community has pledged a source of revenue or taxes sufficient to repay the loan. The loan agreement must include the loan repayment requirements. The commission must administer the loans to ensure full repayment of the bonds issued to finance the project. A project financed by such a loan must be completed within five years of the date the loan is awarded.

21 Proposition

Allowing college professors to be paid for serving on water district boards

(SJR 19 by Williams/Eissler)

Under Texas Constitution, Art. 16, sec. 40(b), state employees and others, such as retirees, who receive all or part of their compensation, directly or indirectly, from state funds may serve as members of the governing bodies of school districts, cities, towns, or other local government districts, but may not receive a salary for doing so. The attorney general has interpreted this provision as prohibiting any compensation other than reimbursement of actual expenses (Letter Opinion No. LO-011, February 8, 1998).

In November 2001, Texas voters approved Proposition 11 (HJR 85 by Bosse), amending Art. 16, sec. 40(b) to allow a school teacher, retired school teacher, or retired school administrator to receive compensation for serving on a governing body of a school district, city, town, or local governmental district, including a water district created under the Constitution. In November 1999, however, voters rejected Proposition 5 (SJR 26 by Ratliff), which would have allowed all state employees to be paid for serving on local government boards.

Digest

Proposition 21 would amend Art. 16, sec. 40(b) to allow an active or retired faculty member of a public higher education institution to receive pay for serving on the governing body of a water district.

The ballot proposal would read: "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."

Supporters say

Proposition 21 would remove an antiquated constitutional prohibition that makes it difficult for current or retired faculty members of public colleges and universities to serve on the governing boards of water districts. Currently, those who wish to serve must give up any salary or other compensation normally provided for hours of public service on the boards, other than reimbursement for actual expenses. Proposition 21 would solve this problem by specifically authorizing active or retired higher education faculty members to be paid for serving on water district boards.

Proposition 21 would increase the pool of qualified candidates for water district boards and would encourage more faculty members to serve their local communities. It can be difficult for boards to find members with the necessary expertise and skills and the willingness to serve the public. Faculty members often fit this description, and some have specific expertise in water issues. However, some faculty members may be unable or unwilling to commit their time and energy to the boards if they cannot be compensated.

There is no reason to prohibit faculty members from receiving two public paychecks for doing two entirely different jobs. Serving as a faculty member and serving on a water district board are distinct jobs that can be complementary, just as serving in a private-sector job and on a government board can be complementary. In many cases, professors already serve voluntarily on local governing boards or in other public service positions. There is no reason to believe that they would not work as hard at their colleges or universities once they could be paid for serving on a water district board. State and local policies can address any potential conflicts of interest and would prevent faculty members from voting on or influencing discussions on any matter in which they had an interest.

Proposition 21 would ensure that active and retired college faculty members received the same treatment as active and retired school teachers and administrators. No good reason exists for treating these two groups differently, especially in making a narrow exception only for water districts.

Opponents say

Good reasons exist for the constitutional prohibition against paying a person with tax dollars for holding two public positions. When taxpayers pay a person's salary, they expect and should have that person's total commitment to the job. When a person accepts two offices, at some point those two offices will come into conflict as to the amount of time required to do each job well.

Small local governing boards may not always require a full-time effort, but even those offices require a significant investment of time. Retaining the prohibition against paying faculty members — particularly those who are still active — for such service would ensure that only those with enough time to volunteer to serve the community could serve on local boards.

Currently, the Constitution does not prohibit faculty members from serving on water boards, only from being paid for doing so. Faculty members who want to serve their communities and put their knowledge and skills to use may do so. Other people with expertise in water issues are available and willing to serve on water boards.

Other opponents say

The Constitution should be amended to eliminate restrictions on all state employees and retirees who wish to hold a public office, whether as a member of a city council or of the Legislature. A state employee holds a job the same as someone in the private sector, so state employees should be paid the same as other officeholders.

If the Constitution is to be amended to create an exception for active and retired college and university faculty to be paid for serving on water district boards, the exception should apply to all boards — there is no reason to single out water district boards.

22 Proposition

Filling temporary vacancies caused by military service of public officers

(HJR 84 by Uresti, et al./Van de Putte)

Texas Constitution, Art. 3, sec. 13 requires the governor to call an election to fill a vacancy in either house of the Legislature. Art. 4, sec. 12 stipulates that all vacancies in state or district offices, except for members of the Legislature, are to be filled by appointment of the governor unless otherwise provided by law.

Digest

Proposition 22 would add Art. 16, sec. 72, stipulating that elected or appointed officers of the state or any political subdivision who entered active duty in the U.S. armed forces because they were called to duty, drafted, or activated, would not have to vacate their offices. The appropriate authority could appoint a replacement to serve as temporary acting officer if the elected or appointed officer would be on active duty for longer than 30 days.

A member of the Legislature called to duty in the armed forces would have to select a temporary acting senator or representative who was a member of the same political party as the member being temporarily replaced and who met the qualifications for senator or representative as set forth in Art. 3, secs. 6 and 7 of the Constitution. The selection would be subject to approval by a majority vote of the appropriate house of the Legislature.

For an officer who was not a legislator, the authority empowered to fill the vacancy could appoint a temporary acting officer. If the vacancy normally would be filled by special election, the governor could appoint a temporary acting officer for a state or district office, and the governing body of a political subdivision could appoint the temporary acting officer for its local office.

The officer being temporarily replaced could recommend the name of a replacement. The appropriate authority would have to appoint the temporary officer to begin serving on the date specified in writing by the officeholder being replaced as the date the officeholder would enter active military service.

A temporary officer would have all powers, privileges, and duties of the office and would be entitled to the same compensation as the officeholder being temporarily replaced. The temporary officer would have to perform all duties of the office for the duration of the officeholder's active service or the term of office, whichever period was shorter.

The ballot language reads: "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."

Supporters say

Proposition 22 would clear up ambiguity in current law as to whether an officeholder's active military service constitutes a formal vacancy in office. This amendment is necessary

because a clear process does not exist in current law to deal with these temporary vacancies. Proposition 22 would settle this issue by stipulating that a call to active military duty would not create a vacancy for an elected or appointed office of the state or a political subdivision. Constituents' needs could continue to be served without the necessity of an election during an officeholder's temporary absence by establishing a procedure for appointment of a short-term replacement. The amendment also would provide for the officeholder to make the transition back into public office once he or she had completed military service.

Members of the Legislature traditionally have been well represented in the armed forces during wartime. Untold numbers of other state and local officers also serve or have served in the armed forces, and some could be called to active duty at any time. Public officials who are members of the military have sworn to serve the constituents they represent in office and to defend the American people in time of war. Proposition 22 would establish a process to allow them to honor both obligations.

The procedures established by Proposition 22 would be especially helpful to smaller governing bodies, such as the three-member Public Utility Commission (PUC). One of the commissioners is a member of the armed forces. A vacancy on the PUC for a lengthy time could create a bottleneck for some issues before the commission, because it might be impossible to obtain a majority vote.

Opponents say

Texas Constitution, Art. 3, secs. 3 and 4 require that state senators and representatives be elected by qualified voters. Proposition 22 would establish a precedent whereby someone could serve as a legislator without having been elected. Even though the position might be temporary, this amendment would go against the basic principle of elected representation. Legislators should continue to be elected by the voters they serve.

It is not clear that vacancies created by the departure of active military personnel who are also state or local officials has been a problem in the past. During World War II, 18 legislators were on active duty, yet the remaining House and Senate members were able to attend to the state's business during their absence. Legislators have missed extended periods of time in office for other reasons, including illness, and there has been no move to replace them. An official may be absent without vacating his or her office.

Other opponents say

It is unrealistic to expect the Constitution to anticipate a contingency for every possible situation that might arise. Rather than amend sections of an out-of-date document each legislative session and ask voters to approve piecemeal constitutional changes every few years to deal with anticipated special situations, it would make more sense to overhaul the document. The Constitution needs to be a leaner, more responsive document that would serve Texas as a blueprint for government in the 21st century.

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