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CONSTITUTIONAL

Amendments Proposed

for November 2007 Ballot

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Amending the Constitution

Texas voters have approved 440 amendments to the state Constitution since its adoption in 1876. Sixteen more proposed amendments will be submitted for voter approval at the general election on Tuesday, November 6, 2007.

Joint resolutions

The Legislature proposes constitutional amendments in joint resolutions that originate in either the House or the Senate. For example, Proposition 1 on the November 6, 2007, ballot was proposed by House Joint Resolution (HJR) 103, introduced by Rep. Drew Darby and sponsored in the Senate by Sen. Robert Duncan. 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. For example, HJR 68, adopted in 2003, included a proposition allowing the Veterans' Land Board to use excess assets for veterans' homes and a separate proposition 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, the voters rejected a proposition authorizing \$300 million in general obligation bonds for college student loans at an August 10, 1991, election, then approved an identical proposition at the November 5, 1991, election after the Legislature readopted the proposal and resubmitted it in essentially the same form.

Ballot wording

The ballot wording of a proposition is specified in the joint resolution adopted by the Legislature, which has broad discretion concerning the wording. In rejecting challenges to the ballot language for proposed amendments, the courts generally have ruled that ballot language is sufficient if it describes the proposed amendment with such definiteness and certainty that voters will not be misled. 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. Earlier in 2007, SJR 13 by Averitt was adopted by voters on Saturday, May 12, a uniform election date when many local jurisdictions also held elections. In recent years, most proposals have been submitted at the November general election held in odd-numbered years. However, all joint resolutions proposing constitutional amendments that the 78th Legislature adopted during its 2003 regular session set Saturday, 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 estimated total cost of publication twice in newspapers across the state is \$77,468, according to the Legislative Budget Board.

Enabling legislation

Some constitutional amendments are self-enacting and require no additional legislation to implement their provisions. Other amendments grant discretionary authority to the Legislature to enact legislation in a particular area or within certain guidelines. These amendments require “enabling” legislation to fill in

the details of how the amendment would operate. The Legislature often adopts enabling legislation in advance, making the effective date of the legislation contingent on voter approval of a particular amendment. If voters reject the amendment, the legislation dependent on the constitutional change does not take effect.

Effective date

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

S tate Bonds

Background

General obligation bonds are a means of using the state's credit to borrow money for certain purposes. The state pledges its "full faith and credit" to guarantee that the bond principal and interest will be repaid. Because Art. 3, sec. 49 of the Texas Constitution prohibits most forms of state debt, statewide voter approval is required to authorize the state to issue general obligation bonds.

The state also borrows money by issuing revenue bonds, which generally are repaid with revenue generated from the project or loans financed by the proceeds of the bonds. Because revenue bonds are not a general obligation of the state, and therefore do not carry a "guarantee" of repayment, the state usually must pay a higher interest rate on the money it borrows by issuing these bonds.

Art. 3, sec. 49-j, approved by voters in November 1997, sets a limit on certain state debt. The Legislature may not authorize debt designed to be repaid from general revenue, including general obligation bonds, revenue bonds, and large lease-purchase agreements, if the resulting annual debt service from general revenue would exceed 5 percent of the average amount of general revenue (excluding funds dedicated by the Constitution) over the preceding three fiscal years. The limitation does not include bonds backed by the full faith and credit of the state that are reasonably expected to be paid from other revenue sources and not draw on general revenue, unless repayment from general revenue ultimately is required. Examples of these "self-supporting" bonds include student loan bonds and local water project loan bonds, which are repaid from loan repayments and interest rather than general revenue.

At the end of fiscal 2007, debt service on outstanding debt equaled about 1.33 percent of unrestricted general revenue, according to the Bond Review Board (BRB). The ratio of debt service on outstanding and authorized but unissued debt to unrestricted general revenue was 1.87 percent.

According to the Legislative Budget Board, Texas had a total of \$21.4 billion in outstanding state bonds as of August 31, 2005. Outstanding general obligation bonds totaled \$7 billion. According to BRB, as of fiscal 2007, the total amount of outstanding non-self-supporting debt was approximately \$3 billion. The balance of authorized but unissued non-self-supporting debt was approximately \$763 million.

Bond initiatives on November ballot

Four propositions on the November ballot would authorize the issuance of a total of \$9.25 billion in non-self-supporting general obligation bonds:

- Proposition 4 (\$1 billion in general obligation bonds for state agency construction and repair projects);
- Proposition 12 (\$5 billion in general obligation bonds for highway improvements);
- Proposition 15 (\$3 billion in general obligation bonds to fund cancer research); and
- Proposition 16 (\$250 million in general obligation bonds for water and sewer services to economically distressed areas).

BRB estimates that if all of the non-self-supporting general obligation bond debt on the November ballot were authorized and issued, total state indebtedness still would be within the 5-percent state debt limit.

The November ballot also includes Proposition 2, which would authorize \$500 million in self-supporting general obligation bonds to finance student loans. These bonds would not count against the state debt limit.

P

revious Election Results

Analyses of the nine proposals on the November 8, 2005, ballot appear in House Research Organization Focus Report No. 79-10, *Constitutional Amendments Proposed for November 2005 Ballot*, September 15, 2005. The analysis of the proposal on the May 12, 2007, ballot appears in House Research Organization Focus Report No. 80-5, *Constitutional Amendment Proposed for May 2007 Ballot*, April 19, 2007.

November 8, 2005, Ballot

Proposition 1: Creating the Texas Rail Relocation and Improvement Fund

FOR	1,112,718	53.8%
AGAINST	956,350	46.2%

Proposition 2: Defining marriage as a union of one man and one woman

FOR	1,723,782	76.3%
AGAINST	536,913	23.7%

Proposition 3: Authorizing local economic development programs, loans, and debt

FOR	1,025,173	51.8%
AGAINST	952,998	48.2%

Proposition 4: Allowing bail denial to defendants violating conditions of their release

FOR	1,813,290	84.9%
AGAINST	322,168	15.1%

*Proposition 5: Authorizing the Legislature to exempt commercial loans from interest rate caps

FOR	880,379	43.4%
AGAINST	1,147,628	56.6%

*Failed

Source for election results: Secretary of State's Office

Proposition 6: Increasing the membership of the State Commission on Judicial Conduct

FOR	1,246,127	62.6%
AGAINST	744,585	37.4%

Proposition 7: Allowing line-of-credit advances under a reverse mortgage

FOR	1,201,740	59.7%
AGAINST	809,839	40.3%

Proposition 8: Relinquishing state claim to certain land in Upshur and Smith counties

FOR	1,153,241	61.3%
AGAINST	729,392	38.7%

*Proposition 9: Six-year staggered terms for Regional Mobility Authority board members

FOR	913,358	46.7%
AGAINST	1,043,525	53.3%

May 12, 2007, Ballot

Proposition 1: Proportionate reduction in elderly and disabled school tax freeze amount

FOR	815,596	87.7%
AGAINST	113,983	12.3%

Transferring constitutional facilities funding for Angelo State University

HJR 103 by Darby (Duncan)

Background

Texas Constitution, Art. 7, sec. 17 establishes the Higher Education Fund (HEF), a constitutional fund created as a counterpart to the Permanent University Fund (PUF) for Texas public institutions of higher education outside the University of Texas and Texas A&M University systems. The HEF is supported by general revenue appropriations, and the distribution of the funds is set forth in Education Code, sec. 62.021. The Constitution requires the HEF to be used for capital purposes, including acquiring land, constructing and equipping buildings or other permanent improvements, and repairing and renovating buildings and facilities. Institutions may spend HEF allocations for the stated purposes or for debt service on HEF bonds.

Art. 7, sec. 17(b) specifies the higher education institutions that are eligible to receive funding from the HEF. It lists Angelo State University (ASU) as a component institution of the Texas State University System Administration, which also includes Sam Houston State University, Southwest Texas State University (now Texas State University), and Sul Ross University, including the Uvalde Study Center.

During its 2007 regular session, the 80th Legislature enacted and the governor signed HB 3564 by Darby (Duncan), which transferred Angelo State University from the governance of the Texas State University System and its board of regents to the Texas Tech University System and its board of regents, as of September 1, 2007. The Texas Tech University System also includes Texas Tech University and the Texas Tech University Health Sciences Center.

Digest

Proposition 1 would amend Art. 7, sec. 17(b) to move the HEF listing for ASU from under the Texas State University System to the institutions grouped after Texas Tech University.

The ballot proposal reads: “The constitutional amendment providing for the continuation of the constitutional appropriation for facilities and other capital

items at Angelo State University on a change in the governance of the university.”

Supporters say

Proposition 1 would be the last step in implementing the wishes and desires of the students at Angelo State University, the residents and business community of San Angelo, and the Texas Legislature to realign ASU from the Texas State University System to the Texas Tech University System. Proposition 1 is needed to ensure that ASU’s HEF funding will continue now that ASU’s governance has moved to the Texas Tech system, effective September 1.

Transferring ASU to the Texas Tech system will expand educational opportunities and offer more collaboration with a top-tier university system that shares its regional and philosophical interests. ASU’s input in the Texas Tech System will be more valuable than in the Austin-based Texas State University System, of which ASU’s student enrollment is only 5 percent.

Affiliating ASU with Texas Tech will not mean higher tuition rates. Other factors, including increasing energy costs, faculty salaries, and other factors could lead to tuition increases no matter what system the university belonged to.

Opponents say

Proposition 1 would lock into the Constitution the transfer of ASU from the Texas State University System to the Texas Tech University System. This change would serve neither higher education nor the fiscal interests of this state nor would it promote the best academic interests of ASU students. ASU students have benefited from being part of the Texas State University System, including access to expanded and enhanced facilities and low tuition rates. The Texas Tech System’s cost of doing business per full-time student is about three times higher than the Texas State System’s, which could mean sharply increased tuition for ASU students. ASU has been important to the Texas State University System in fulfilling its “Closing the Gaps” mission of promoting student affordability.

Authorizing general obligation bonds to finance student loans

SJR 57 by Williams (Chisum)



Background

Texas Constitution, Art. 3, sec. 49 prohibits state debt, but voters have amended the article numerous times to authorize debt in the form of general obligation bonds. Repayment of debt from these bonds is guaranteed by the state, and payments are made from the first money coming into the treasury each year.

Texas Constitution, Art. 3, secs. 50b-4 and 50b-5 authorize the Texas Higher Education Coordinating Board (THECB) to issue and sell general obligation bonds to finance student loans. Pursuant to Education Code, ch. 52, THECB administers the Hinson-Hazlewood College Student Loan Program, which was adopted in 1965 and uses general obligation bonds to finance low-interest loans to eligible students seeking an undergraduate, graduate, or professional education at public and private higher education institutions in Texas. The loan program is intended for students with insufficient resources to finance a college education.

The loan program is totally self-supporting and receives no general revenue appropriations. It uses money from student loan repayments, federal interest subsidies, lenders allowance, and depositor interest to offset state borrowing costs and is used to fund the Hinson-Hazlewood Federal Stafford Loan, the Hinson-Hazlewood College Access Loan, and the Hinson-Hazlewood Health Education Loan programs.

Between 1965 and 1998, Texas voters have approved constitutional amendments creating the Texas Opportunity Fund and the Student Loan Auxiliary Fund, which are under the umbrella of the Hinson-Hazlewood College Student Loan Program, and have authorized a total of \$1.4 billion in general obligation bonds to help finance student loans. The last vote, in 1999, authorized \$400 million in bonds, and all but \$175 million of the bond authorization will be exhausted by the spring of 2009. From August 1996 through March 2007, the Hinson-Hazlewood College Student Loan program has made loans totaling more than \$1.7 billion to more than 290,000 students.

The following amounts in general obligation bonds to finance the program have been authorized over the years:

- \$85 million in 1965;
- \$200 million in 1969;
- \$75 million in 1989;
- \$300 million in 1991;
- \$300 million in 1995; and
- \$400 million in 1999.

Education Code, sec. 52.82(d) prohibits THECB from issuing more than \$125 million in bonds per year. The bonds are subject to review and approval of the Bond Review Board.

Digest

Proposition 2 would add Art. 3, sec. 50b-6 to the Constitution, authorizing the Legislature to allow THECB to issue up to \$500 million in general obligation bonds to finance educational loans to college and university students, in addition to those already authorized under Art. 3, secs. 50b-4 and 50b-5.

The new sec. 50b-6A would authorize the Legislature to allow THECB to enter into bond enhancement agreements with respect to any bonds issued under secs. 50b-4, 50b-5, or the newly added sec. 50b-6. Payments due from THECB under the bond enhancement agreements would be treated as payments of the principal and interest on the bonds, and money appropriated for the purpose of paying the principal and interest on the bonds could be used to make payments under the bond enhancement agreements.

The ballot proposal reads: “The constitutional amendment providing for the issuance of \$500 million in general obligation bonds to finance educational loans to students and authorizing bond enhancement agreements with respect to general obligation bonds issued for that purpose.”

Supporters say

Proposition 2 and its enabling legislation, SB 1640 by Williams, would authorize bonds that are needed for THECB to meet the growing demand for student financial assistance and to help meet the workforce needs of an expanding Texas economy. This program has a demonstrated record of success and is self-supporting, depending not on tax dollars but on money from student loan repayments, federal subsidies, and other sources. Using state-issued general obligation bonds as the funding source for the program allows a lower interest rate on the money borrowed to finance the loans. While Hinson-Hazlewood bonds represent state debt, the borrowed funds are repaid by students, not by taxpayers, and the loan interest is recycled to help future students. The bonds do not affect the state's constitutional debt limit for taxpayer-funded bonds, such as those used to finance prison construction, because the Bond Review Board classifies college student loan bonds as self-supporting.

The additional \$500 million in bonds authorized by Proposition 2 would give THECB a total of \$675 million in available bonding authority, which would satisfy loan demands through 2015. Based on current demand for student loans administered by THECB, it is projected that the current authorization will be exhausted by the spring of 2009. This loan program makes higher education more affordable for students by giving them a reliable source of funds, often at more favorable rates than they could obtain otherwise. Access to higher education always has depended on a partnership between students, their families, private donors, and local, state, and federal governmental agencies. As Texas continues to work to mitigate the escalating cost of higher education and the resulting debt of graduating college students, the need for low-interest loans remains a critical aspect of higher education affordability. A more limited bond program would require THECB to request additional bond authority within the next fiscal biennium or request authority to sell revenue bonds, which represent a more expensive form of borrowing by the state.

While college debt may burden graduates early in their careers, statistics clearly link higher educational levels to significantly increased lifetime earnings. It is in the best interest of Texas to provide financial aid to help produce the kind of educated workforce the state needs to attract industry and to ensure that jobs created in Texas go to Texans.

Proposition 2 also would allow the Legislature to authorize THECB to use bond enhancement agreements to increase financial flexibility when issuing bonds. Bond enhancement agreements are contractual financial agreements between the issuing entity and another party that allow the issuer to reduce interest expenses and hedge against other associated risks. The Legislature already allows other bond-issuing agencies to enter into bond enhancement agreements, including the Veterans Land Board, the Texas Department of Transportation, the Water Development Board, the Texas Department of Housing and Community Affairs, and the University of Texas System. THECB should receive the same authority.

Opponents say

Texas should not add to its considerable debt by issuing \$500 million in additional bonds, the largest authorization for this program thus far. Even though the program is self-supporting, it would add to state debt because the bonds are considered an obligation of the state. The state backs the bonds with its credit and would take ultimate responsibility for repayment if revenue generated by loan interest was insufficient to cover debt service costs for the bonds. If an economic downturn or a catastrophic event caused a high rate of default on the student loans, the cost to the state could be considerable. Also, the program competes with private lenders who are at a disadvantage because they must make a profit to stay in business, which is not true of the government.

Notes

SB 1640 by Williams, the enabling legislation for SJR 57, would authorize THECB to administer the student loans financed by the issuance of an additional \$500 million in bonds. This provision would take effect if voters approve Proposition 2.

On the assumption that \$75 million in bonds would be sold per year beginning in fiscal 2010, the Legislative Budget Board estimates that debt service would be \$2.6 million in fiscal 2010, \$9.2 million in fiscal 2011, and \$15.8 million in fiscal 2012.

SB 1641 by Williams, which would have authorized THECB to enter into bond enhancement agreements as would be allowed by SJR 57, passed the Senate, but died in the House.

Annual 10 percent cap on increases in homestead taxable value

HJR 40 by Hochberg (Hegar)



Background

Texas Constitution, Art. 8, sec. 1-a requires that taxation be equal and uniform. Sec. 1-b requires that all taxable property be taxed in proportion to its value.

Art. 8, sec. 1-i, adopted in 1997, creates an exception to secs. 1-a and 1-b, authorizing the Legislature to limit the maximum average annual percentage increase in residence homestead appraisal valuations to 10 percent or more for each year since the most recent tax appraisal. The limitation on appraisal increases takes effect on January 1 of the tax year following the first year in which the property was a residence homestead. It expires on January 1 of the first tax year in which the property is no longer the residence homestead of the owner or the owner's spouse.

Tax Code, sec. 23.23 limits the appraised value of a homestead for any tax year to the lesser of either the property's market value or the sum of:

- the last appraised value;
- 10 percent per year since the last appraisal; and
- the market value of any new improvements.

Tax Code, sec. 25.18 requires each appraisal office to create a plan for conducting periodic appraisals of property in the district at least once every three years. If three years elapse between appraisals, then the maximum increase in appraised value for a residence homestead for ad valorem taxation is 30 percent – 10 percent for each year since the last appraisal.

Digest

Proposition 3 would amend Texas Constitution, Art. 8, sec. 1-i to limit the increase in appraised taxable value of a residence homestead to 10 percent or more since the property's most recent appraisal. The Legislature would be authorized to limit, for one year, the appraised value of a residence homestead to the lesser of:

- the most recent appraised value of the residence homestead; or
- 110 percent, or a greater percentage, of the appraised value of the residence homestead in the preceding tax year.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to provide that the maximum appraised value of a residence homestead for ad valorem taxation is limited to the lesser of the most recent market value of the residence homestead as determined by the appraisal entity or 110 percent, or a greater percentage, of the appraised value of the residence homestead for the preceding tax year."

Supporters say

Proposition 3 would align the language in the Texas Constitution with the intent of the Legislature in 1997 when it approved the 10 percent cap on increases in homestead property appraisal valuations. It would prevent sticker shock by ensuring no taxable value could increase by more than 10 percent, regardless of the time that had elapsed between appraisals. This would avoid the current scenario in which some homeowners whose property is appraised every three years can see a 30 percent increase in their homesteads' taxable value. It would ensure each taxpayer was treated equally and would create a more comprehensible property tax system. According to the Legislative Budget Board (LBB), the fiscal impact on local school districts would be negligible, if any.

Texas voters and the Legislature endorsed the idea of appraisal caps in 1997, setting a 10 percent limit on the increase in average annual homestead appraisal values. It was designed to provide an element of relief to taxpayers whose property taxes were skyrocketing. It also reduced the backdoor method of increasing tax revenue without having to increase tax rates by limiting how much a district could increase a homestead's taxable value. The measure was supposed to be a circuit breaker for taxpayers, who would be able to budget and plan without being hit with an enormous tax increase.

Proposition 3 would provide the full relief intended by tying the 10 percent cap to the residence homestead's last appraisal. It would make the concept behind the current appraisal cap even easier for taxpayers to understand. Many people believe they can be assessed taxes on only a 10 percent increase in taxable value. They do not realize that the 10 percent per year limit is based on the number of years since a property's last appraisal and could in fact be as high as 30 percent for a property with increasing value that was reappraised every three years. The bill would not change the effect of allowing the taxable value to catch up to the market value, so a residence homestead whose taxable value increased 15 percent in one year and 5 percent the following year still would see successive years of 10 percent increases in taxable value, if appraisals occurred annually.

Most districts have moved to either one- or two-year appraisal cycles, so it is unlikely this change would have much impact on local revenue. Larger districts have been conducting annual reappraisals to comply with Government Code, sec. 403.302, which requires that a school district's reported value fall within a 5 percent margin of error above or below the district's taxable value as estimated by the comptroller.

While some districts now appraising property at two- or three-year intervals might opt to reappraise property more frequently, the associated costs of doing so would be disbursed among all the taxing units in a county, and no single entity would bear a significant financial burden. If more counties performed annual appraisals, it would have the further benefit of creating a more accurate appraisal value that, while still lagging a year behind the market, would not reflect values from two to four years ago. Although an annual appraisal could lead to quicker reductions in taxable value in a housing slump, less frequent appraisals create a similar problem when the market recovers and appraised values do not capture tax revenue derived from this growth for several years.

Opponents say

Given the current requirements governing a school district's appraised value, this change is unnecessary because most of the large districts in which appraisal values increase at an annual rate in excess of 10 percent already appraise properties on an annual basis. Proposition 3 could compel

smaller appraisal districts to reappraise property more often, which could expedite reductions in taxable value in a market downturn, potentially leading to an increase in tax rates to replace the lost revenue. According to the LBB, the statewide average number of years between reappraisals is approximately 1.4 years.

Large districts that typically have seen the greatest increases in property values already conduct annual reappraisals. Potential penalties of falling outside the 5 percent margin of error in the comptroller's property value study, such as a reduction of state funding for school districts, provide an incentive to reappraise frequently and more accurately for any area in which property values are rapidly changing. These districts typically see the type of property value growth and increases in taxable value that benefit homeowners the most from appraisal caps.

Smaller districts that decided to reappraise property annually could face financial burdens. In a housing slump, frequent appraisals would create a reduction in value more quickly, resulting in a reduction of the tax base that could necessitate an increase in tax rates for a district unable proportionately to reduce its budget. An appraisal district would have to hire more staff, and associated costs would be borne by school districts, cities, counties, and other taxing units.

To the extent that this proposal would reduce the burden for some taxpayers, it could shift the burden to other taxpayers, such as commercial property owners and those whose residence homesteads were not increasing in value at a rate at which they could take advantage of an appraisal cap.

Other opponents say

Proposition 3 would not go far enough in protecting taxpayers from large increases in their tax bills and should reduce the appraisal cap below the current 10 percent. An annual maximum 10 percent increase in taxable appraised property value still is a significant burden to taxpayers and provides a disincentive to home ownership. Any changes to the current appraisal cap system should include a reduction of annual increases to as low as 3 percent and include a provision allowing local governments and/or voters to set that cap.

Notes

If voters approve Proposition 3, the provisions of HB 438 by Hochberg, enacted by the 80th Legislature during its 2007 regular session, will go into effect, amending the Tax Code to make the necessary statutory changes to implement the constitutional amendment.

4

Proposition

General obligation bonds for state agency construction and repair projects

SJR 65 by Williams (Chisum)

Background

Texas Constitution, Art. 3, sec. 49 prohibits state debt. It generally requires the Legislature to submit for voter approval proposals authorizing general obligation bonds backed by the state's credit, usually by constitutional amendment. Sec. 49-j limits annual state debt payable from general revenue to 5 percent of the annual average amount of nondedicated general revenue for the three preceding fiscal years.

The Texas Public Finance Authority (TPFA) is the state agency responsible for issuing bonds and financing the acquisition or lease of equipment on behalf of other state agencies. TPFA only may issue bonds for the acquisition or construction of a building for a state agency, other than an institution of higher education, if the Legislature has authorized the specific project or the maximum amount of bonded indebtedness that may be incurred by the issuance of the bonds.

In 2001, voters approved Proposition 8 (HJR 97 by Junell), which added Art. 3, sec. 50-f to the Constitution to allow TPFA to issue and sell up to \$850 million in general obligation bonds and to enter into related credit agreements for projects administered by or on behalf of certain state agencies.

Digest

Proposition 4 would add Art. 3, sec. 50-g to the Constitution to allow the Legislature to authorize TPFA to provide for, issue, and sell up to \$1 billion in general obligation bonds and to enter into related credit agreements for the purchase of needed equipment or maintenance, improvement, repair, and construction projects by or on behalf of the following agencies:

- Texas Building and Procurement Commission;
- Parks and Wildlife Department;
- Adjutant General's Department;
- Department of State Health Services;
- Department of Aging and Disability Services;

- Texas School for the Blind and Visually Impaired;
- Texas Youth Commission;
- Texas Historical Commission;
- Texas Department of Criminal Justice (TDCJ);
- Texas School for the Deaf; or
- Department of Public Safety (DPS).

TPFA would prescribe the form, terms, and denomination of the bonds, the interest they would bear, and the installments in which they would be issued. The Legislature could set the maximum net effective interest rate on the bonds. The comptroller would have to create a separate account in the state treasury in which to deposit the bond proceeds.

Until the bonds were repaid, the first money coming into the treasury each fiscal year and not otherwise appropriated by the Constitution would have to be appropriated to pay the principal and interest on bonds that matured or came due during that year. The sinking-fund amounts left over from the previous fiscal year would be used to reduce the amounts appropriated for making these principal and interest payments. Once the bonds were approved by the attorney general, registered by the comptroller, and delivered to purchasers, they would be incontestable general obligations of the state.

The ballot proposal reads: "The constitutional amendment authorizing the issuance of up to \$1 billion in bonds payable from the general revenue of the state for maintenance, improvement, repair, and construction projects and for the purchase of needed equipment."

Supporters say

Proposition 4 would authorize the use of bonds for capital improvements, which would be an appropriate way to stretch state dollars to pay for long-term projects, such as construction and repair. These are crucial maintenance and construction projects that otherwise would not be funded during the current budget cycle. For example, bond proceeds for the Texas Youth Commission (TYC) would help implement reforms to the agency that were enacted by the 80th Legislature, including constructing a new TYC facility

in a major metropolitan area so that youths could be housed closer to their families and needed services. Proposition 4 also would provide funding for essential repairs at state parks across Texas, which include some of the state's most treasured public assets but have suffered from lack of upkeep in recent years. Texas cannot afford to neglect these and other needed facilities, including TDCJ facilities, mental health state hospitals and schools, county courthouse renovation, and DPS regional offices and a new crime lab.

The proposed amendment would allow the Legislature to authorize the issuance of the bonds and to appropriate bond proceeds to pay for these needed projects. This would maintain legislative control and oversight of how and when the agencies spent the proceeds. By not specifically naming projects in Proposition 4, the Legislature would retain flexibility in how to use the funds, as the bond proceeds could be spent on any project at the named agencies. To further ensure that this proposal would not serve as a "blank check" for lawmakers, the general appropriations act already has assigned more than 70 percent of the bond funding to priority projects, pending voter approval (see *Notes*).

The general obligation bonds authorized in 2001 for state building, construction, maintenance, and repair will be exhausted during the upcoming budget period, and the state has many unmet needs for infrastructure construction and repair. General obligation bonds are appropriate for a bond issue of this size. Such bonds are not tied to a specific revenue stream, but rather are backed by the full faith and credit of the state. Because of this distinction, general obligation bonds carry a better interest rate than revenue bonds. General obligation bonds, however, require a statewide vote authorizing their issuance, while revenue bonds do not. Bond issuances below \$100 million tend to be revenue bonds, and larger issuances tend to be general obligation. Since Proposition 4 would authorize \$1 billion in bonds, general obligation bonds, with voter approval, would be more appropriate.

All of the \$1 billion in new bonding authority contained in Proposition 4 need not be allocated at once. It would be prudent to leave some bond authority in reserve for future state infrastructure needs.

The largest portion of the bonding authority in Proposition 4 is reserved for prison construction that soon may be necessary to manage the state's inmate population. The Texas prison system now is operating at full capacity. Even with new beds and the diversion and treatment programs funded by the 80th Legislature, the state likely

will need additional prison capacity in the next five years. Without additional capacity, the state could be forced to implement unacceptable ways of managing the prison population, such as loosening parole criteria to release more inmates or leasing large numbers of beds from Texas counties and elsewhere.

If voters approve Proposition 4, HB 1 by Chisum, the general appropriations act for fiscal 2008-09, would authorize the issuance of \$273.4 million in general obligation bonds to construct three new state prisons. However, the budget stipulates that new prisons could be built only with Legislative Budget Board approval, which means that state leaders would have to give the go-ahead before any construction could begin. This bonding authority would prepare the state to manage its prison population in the future, and TDCJ staffing issues can be addressed if the need arises.

Opponents say

Proposition 4 would give a blank check to the Legislature to issue bonds for new state buildings. Voters would have no say over how the bond proceeds were allocated or spent. Because the proposed amendment is worded as a vote on the entire bond issue, voters would have no clear indication of how the money would be allocated among individual projects. Of the proposed \$1 billion, only \$717 million would be appropriated for current projects during the upcoming budget period, leaving nearly \$300 million on the table for future expenditures decided without any input from voters.

Bonds should not be issued to finance repair and maintenance projects. Repairs are a predictable cost for which agencies can and should budget. The state has failed to keep up with repairs even in prosperous years. Furthermore, unlike construction projects, repairs have too short a useful life to justify incurring long-term debt to finance them.

The state budget approved by the Legislature for fiscal 2008-09 includes funding for three new state prisons, if voters approve Proposition 4. Texas should not embark on any additional prison building. As of August 2007, TDCJ had an operational capacity of 152,736 beds. This capacity, combined with the large increases in resources for numerous prison diversion and treatment programs and TDCJ's ability to contract for beds, will be enough to allow Texas to avoid committing resources to building and operating expensive

new prisons that may not be needed in the future. Building the type of prisons authorized by the proposed amendment would bring with it ongoing annual costs of about \$18.9 million to operate each new facility. Also, it is unclear how any additional prisons could be staffed since TDCJ currently has about 3,600 vacant correctional officer positions.

Notes

The enabling legislation, SB 2033 by Williams, would authorize TPFA to issue the proposed bonds if voters approve Proposition 4.

If Proposition 4 is approved, HB 1 by Chisum, the general appropriations act for fiscal 2008-09, has assigned a total of \$717.3 million in general obligation bond funding for the following projects:

- Texas Department of Criminal Justice – \$233.4 million for three new minimum- to medium-security prison facilities and an additional \$40 million for repair and rehabilitation of facilities;
- Department of Public Safety – \$200 million for new regional offices in Lubbock, McAllen, and Rio Grande City; a new crime lab in Lubbock and crime lab expansions; and an emergency vehicle operations course;
- Parks and Wildlife Department – \$52.1 million, including \$25 million for Battleship Texas renovations and \$27.1 million for state park repairs;
- Texas Historical Commission – \$48 million for county courthouse renovations and historic sites;
- Department of Aging and Disability Services – \$39.7 million for repair and renovation of mental health state schools;
- Texas Building and Procurement Commission – \$32 million for deferred maintenance and asbestos abatement for facilities;
- Department of State Health Services – \$30.6 million for repair and renovation of mental health state hospitals;
- Texas Youth Commission – \$27.9 million for new construction at existing facilities and one new facility in a metro area; and
- Adjutant General’s Department – \$13.5 million for major maintenance projects at 14 Readiness Centers and repairs and maintenance of Camp Mabry facilities.

Debt service for these bonds would total \$56.7 million in fiscal 2008-09.

Allowing a temporary property tax freeze for smaller city redevelopment



SJR 44 by Estes (Hardcastle)

Background

Texas Constitution, Art. 8, sec. 1 requires that all taxation be equal and uniform and that all real and tangible property be taxed in proportion to its value.

The Texas Department of Agriculture (TDA) administers, through an interagency contract with the Office of Rural and Community Affairs (ORCA), the Downtown Revitalization Program and the Main Street Improvements Program. Both programs are aimed at eliminating blight in the downtown areas of smaller cities and share many of the same requirements, except for a prerequisite that any city qualifying for the Main Street Improvements Program must be designated a Main Street city by the Texas Historical Commission.

The Texas Capital Fund (TCF) funds both programs through federal money received through the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) program. Cities eligible for either program generally must have a population under 50,000 and not receive CDBG funds directly from HUD or through a partner county receiving CDBG entitlements. TDA can award up to \$150,000 in matching funds for a city to use to renovate or build sidewalks, lighting, drainage, or other infrastructure improvements.

Digest

Proposition 5 would add Art. 8, sec. 1-o to the Constitution to authorize the Legislature to allow municipalities with fewer than 10,000 inhabitants to hold an election to permit them to enter into agreements with owners of real property to temporarily freeze ad valorem taxes of any property in or adjacent to an area targeted for certain state redevelopment funding.

The amendment would apply only to a municipality receiving funding through the Downtown Revitalization Program or the Main Street Improvements Program

administered by TDA or a successor program run by the agency. The city governing body could call an election by which voters would decide whether to authorize a freeze on tax increases on property in or around the area targeted for redevelopment funding. If the measure were approved, the governing body could enter into an agreement with an eligible property owner to freeze taxes subject to certain terms and conditions.

A law enacted under this amendment would have to provide that an agreement, if authorized by voters, would:

- have to be reached before December 31 of the tax year in which the election was held;
- freeze all increases in ad valorem taxes for a five-year period that would begin January 1 of the following tax year;
- apply to ad valorem taxes imposed by any political subdivision on the property covered by the agreement; and
- expire on the earlier of January 1 of the sixth tax year following the tax year in which the agreement was consummated or January 1 of the first tax year in which the owner who entered into the agreement no longer owned the property.

The stated purpose of the amendment is to aid in the elimination of slum and blighted conditions in less populated communities, to promote rural economic development, and to improve the economy of this state.

The ballot proposal reads: “The constitutional amendment authorizing the legislature to permit the voters of a municipality having a population of less than 10,000 to authorize the governing body of the municipality to enter into an agreement with an owner of real property in or adjacent to an area in the municipality that has been approved for funding under certain programs administered by the Texas Department of Agriculture under which the parties agree that all ad valorem taxes imposed on the owner's property may not be increased for the first five tax years after the tax year in which the agreement is entered into.”

Supporters say

Proposition 5 would provide small communities a way to create incentives for property owners to improve downtown buildings in line with local revitalization efforts. The temporary tax freeze would be tailored only for small municipalities and in a way to reach areas that are unable to use current taxing options to achieve the same effect.

TDA administers two programs – the Main Street Improvements Program and the Downtown Revitalization Program – aimed at improving infrastructure such as roads, sidewalks, and drainage systems in the centers of smaller cities. In 2006, eight communities received Downtown Revitalization funds, and four received Main Street Improvements funds. The goal of these programs is to make participating cities more attractive destinations for tourists visiting or even driving through a community. These programs, however, do not require renovation of privately owned buildings in these areas, and many property owners refuse to do so to avoid increases in property taxes when the appraised values of their properties increase.

Proposition 5 would allow the Legislature to authorize a financial incentive for property owners to improve buildings in downtown areas of small communities by freezing their taxes for five years. If a municipality and its voters approved the freeze, property owners could enter into a contract with the city to receive the freeze in exchange for revitalization work done on their buildings. Tax limitations on the properties would last five years, after which the properties would be taxed as normal. The hope is that during the intervening years revitalization of infrastructure and private property in the downtown area would have been successful enough to draw more tourists and bring in more revenue to all the downtown businesses. In many communities, these buildings are historic attractions, but once they deteriorate or are bulldozed, they are lost forever. This program would help preserve some of the historic structures in rural communities throughout Texas.

Proposition 5 would allow the Legislature to give smaller communities a taxing tool that they could use effectively. Smaller communities cannot use current economic development tools afforded other local taxing units, such as tax increment financing (TIF) or tax abatements. A TIF depends on increased revenue generation, which would not necessarily occur in a smaller community and certainly not to the degree that it would in a larger urban area more suited to using such a program. A tax abatement

also would reduce revenue for a city. The proposed amendment would allow a temporary tax freeze to provide a property owner the relief needed to invest the resulting savings into revitalization efforts while not reducing the city's revenue.

This program would apply only to municipalities with fewer than 10,000 residents and only to property in or adjacent to the downtown area. It would be subject to the decision of the local voters and last for only five years. With such a small number of properties likely to fall under this program, the fiscal impact it would have on even the smallest taxing units would be minor. If a county or school district opposed the tax freeze, that entity could try to convince city voters not to approve it.

Opponents say

This proposed amendment would allow the Legislature and smaller cities to grant property owners in and around downtown areas of small communities a double benefit – the improvements funded by state tax dollars through the Main Street Improvements Program and the Downtown Revitalization Program and a property tax freeze. Property owners who receive the benefit from these tax dollars used to improve infrastructure affecting their property should be required to pay for any resulting increase in the value of their property. A property owner who may have been planning to make renovations anyway still could receive the incentive of a five-year tax freeze, even though it was unnecessary.

To the extent that this proposal would freeze the taxes for these property owners, resulting in a loss of revenue, it would shift the tax burden to other taxpayers. In a smaller community, this effect would be more pronounced because the tax burden is borne by a smaller pool of people. Also, it would allow a city to freeze not only city property taxes, but also the property taxes for the school district, the county, and other local taxing units, which would have no say in whether to allow such a freeze.

Notes

SB 1336 by Estes, which would have amended the Tax Code to make the necessary statutory changes if voters approved Proposition 5, passed the Senate, but died in the House.

Property tax exemption for a personal vehicle used for business activities

HJR 54 by Hilderbran (Williams)



Background

Art. 8, sec. 1(b) of the Texas Constitution requires that real property and tangible personal property be taxed in proportion to its value. Under sec. 1(d), the Legislature may exempt from ad valorem taxation household goods and personal effects that are not used for the production of income. Tax Code, sec. 11.14 exempts tangible personal property not held or used for the production of income.

Digest

Proposition 6 would amend Texas Constitution, Art. 8, sec. 1(d) to authorize the Legislature to exempt from ad valorem taxation one motor vehicle owned by an individual that was used in the individual's occupation or profession and also used for personal activities that did not involve the production of income.

The proposed amendment would take effect on the date of the canvass of votes showing its adoption and would apply beginning with the tax year that began on January 1, 2007. The amendment would authorize the Legislature to apply the exemption to the entire 2007 tax year. A general law applying the tax exemption to the current tax year would not be considered a retroactive law.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to exempt from ad valorem taxation one motor vehicle owned by an individual and used in the course of the owner's occupation or profession and also for personal activities of the owner."

Supporters say

Along with its enabling legislation, HB 1022 by Hilderbran, Proposition 6 would eliminate the requirement that individuals who use personal vehicles for business purposes pay ad valorem taxes on those vehicles. Many independent entrepreneurs use a personal vehicle in the execution of their professional responsibilities, and it is inappropriate that such person's car or truck be taxed.

Because they are unable to receive an exemption for personal use, individuals are taxed on the entire value of the vehicle. The Legislature has not shown a desire to tax property used for personal purposes in the past, and Proposition 6 simply would clarify state law in that regard.

Proposition 6 and HB 1022 would settle questions about the law stemming from a recent attorney general's opinion. In 2005, the 79th Legislature enacted HB 809 by Hilderbran, which specifies that a person does not have to render (i.e., report) for taxation personal motor vehicles that are used for professional purposes. However, in November 2006, the attorney general, in Opinion No. GA-0484, determined that although HB 809 exempted such vehicles from rendition, the legislation did not establish that such personal property is exempt from taxation under Art. 8 of the Constitution. Consequently, many individuals still are required to pay ad valorem taxes on such vehicles. Proposition 6 and HB 1022 would clarify the will of the Legislature that these vehicles should not be taxed.

Proposition 6 would limit the exemption from taxation to one vehicle per person, thus eliminating the chance that one individual could benefit from the exemption of an entire fleet of vehicles used for commercial purposes. The amendment would benefit realtors, farmers, and other small business owners and contractors who operate personal vehicles dually for both personal and commercial purposes.

Opponents say

Vehicles exempted under this proposed amendment should be taxable and treated as any other personal property that generates income. Even though the fiscal impact may be minor, the Legislature traditionally has taxed property associated with the production of income, and Proposition 6 would weaken this longstanding policy.

Other opponents say

The limitation that an individual could exempt only one vehicle used for both personal and professional purposes would be too strict. Many individuals have two or three

vehicles that they use for both purposes. Under Proposition 6, a person who owned more than one personal vehicle used for professional purposes still could be taxed on those additional vehicles.

Notes

In 2007, the 80th Legislature enacted HB 1022 by Hilderbran, which would take effect if Proposition 6 is approved. HB 1022 would grant an exemption from ad valorem taxation for one passenger car or light truck owned and used by an individual for both professional and personal activities.

Under HB 1022, a person claiming the exemption in the 2007 tax year could apply for the exemption by April 1, 2008. The chief appraiser of an appraisal district would have to correct the appraisal roll for the district to reflect an exemption given under the bill as soon as practicable and promptly certify the exemption to the assessor for each taxing unit that imposed ad valorem taxes on a motor vehicle owned by the person. If a person who had been granted an exemption already had paid taxes on an exempt motor vehicle for 2007 before the date the exemption was granted, the collector for the taxing unit would have to refund those taxes within 30 days after the exemption was certified.

Selling property acquired through eminent domain to former owner at original price



HJR 30 by Jackson (Janek)

Background

The Fifth Amendment to the U.S. Constitution prohibits the taking of private property for public use without just compensation, commonly referred to as the “takings clause.” Texas Constitution, Art. 1, sec. 17 prohibits a person’s property from being taken, damaged, or destroyed without consent for public use without adequate compensation.

The authority of government to claim private property for public benefit is called eminent domain. Texas has limited that power through its Constitution and has granted eminent domain authority to numerous other entities, including political subdivisions, special districts, and private concerns such as utilities.

Property Code, ch. 21 establishes procedures for exercising eminent domain authority. Secs. 21.101 through 21.103 provide an opportunity for property owners to repurchase land taken through eminent domain for a public use that was canceled before the 10th anniversary of the date of acquisition. The possessing governmental entity is required to offer to sell the property to the previous owner or the owner’s heirs for the fair market value of the property at the time the public use was canceled. The repurchase provision does not apply to rights of way held by municipalities, counties, or the Texas Department of Transportation.

Texas Constitution, Art. 3, sec. 52 prohibits the Legislature from authorizing any county, city, town or other political subdivision to lend its credit or to grant public money or a thing of value to aid any individual, association, or corporation. With certain exceptions – including sec. 52-a, which authorizes a loan or grant of public money for economic development purposes – the provision has been interpreted broadly to put strict limits on the state’s ability to divert public funds to individuals.

Digest

Proposition 7 would add Art. 3, sec. 52j to the Texas Constitution to authorize governmental entities to sell land taken through eminent domain back to the former owner, the

owner’s heirs, or other successors, at the price the entity paid at the time of acquisition if:

- the public use for which the property was acquired had been canceled;
- no actual progress was made toward the public use during a prescribed period of time; or
- the property was unnecessary for the public use.

The ballot proposal reads: “The constitutional amendment to allow governmental entities to sell property acquired through eminent domain back to the previous owners at the price the entities paid to acquire the property.”

Supporters say

Proposition 7 would allow the Legislature to enact laws that, under certain conditions, would ensure the fair treatment of landowners whose property was taken through eminent domain but not used. These property owners should be able to repurchase property at the price they were paid for it, but current constitutional restrictions prohibit this type of transaction.

Art. 3, sec. 52 of the Constitution restricts the state from authorizing the diversion of public funds to individuals and has been interpreted as prohibiting the resale of property that had been taken through eminent domain back to its original owner at less than fair market value. This type of sale might be considered a transfer of value to an individual, which is prohibited by this provision of the Constitution. Proposition 7 would add to the list of exceptions to Art. 3, sec. 52 a provision allowing land taken through eminent domain but not used for its public use to be resold to the owner for the price paid at the time of acquisition, even if it was less than the current fair market value. The proposed amendment would recognize that these situations are unjust and deserve an exception to the constitutional restrictions on transfers to private individuals.

Proposition 7 would allow the Legislature to remedy situations that occur when land was taken through eminent domain, never used, and the original owner could not afford to repurchase the land because it had appreciated in value

or the original owner was not given the opportunity to buy it back. In such situations, property owners should be able to reclaim their property along with any equity that accrued during the time their property was held by the governmental entity that took the property.

Original property owners whose land was taken but never used deserve not only their land back but any increase in the property's value. This increase in value should not be viewed as "double recovery," but instead as a kind of damage payment for a taking since their property was never put to public use. Property owners did not have the use of their property during the time it was held by the government, and in many cases, the increase in the value of the property is more than the owner could have gained through other investments of the money that the owner was paid for the property.

The proposed amendment would create a disincentive against condemning authorities exercising eminent domain speculatively. A governmental entity would not benefit by selling land for its appreciated market value if the original owner exercised the option to repurchase the property at its original acquisition price. Condemning authorities would be discouraged from using eminent domain to acquire land for which there were no immediate plans.

Proposition 7 is narrowly crafted to apply only to situations in which a governmental entity's public use for property was cancelled, no progress had been made on a project, or the property became unnecessary for the planned public use. The proposed amendment should encourage stewards of taxpayer money to consider the rights of property owners and to exercise eminent domain responsibly so that they do not have to resell property back to owners for the original price. Entities using eminent domain responsibly by taking only land necessary for specific projects that are implemented in a reasonable time would not be affected by this change.

The proposed amendment is permissive and would allow, but not require, governmental entities to sell unused property back to the original owner at the acquisition price. It would allow the Legislature to close a loophole in the law so that repurchases at the original price also could be authorized or required if no progress was made on a project or property was unnecessary for a public use.

Opponents say

Property owners who were fairly compensated when their property was taken through eminent domain should not be allowed "double recovery" by repurchasing property at less than fair market value. The current constitutional restrictions on the Legislature authorizing grants of public money to individuals were designed to protect the taxpayers from governmental entities giving away what belongs to the public, and allowing property owners to reap profit from appreciation in a property's values would violate this principle. The situation contemplated by Proposition 7 does not justify amending this longstanding restriction.

The U.S. Constitution's "takings clause" and the Texas Constitution require property owners to be fairly compensated for property taken through eminent domain. Once this compensation is granted, the owner relinquishes any right to equity and other investments associated with the property the same as with a sale to a private individual. Under current eminent domain requirements, these owners would have been fairly and equitably compensated at the time of the taking, and they are not owed anything else. Allowing an individual to repurchase land at the original acquisition price, regardless of any subsequent appreciation in the value, could result in the very situations that Art. 3, sec. 52 was crafted to prohibit – using the state or other political subdivisions as instruments of financial gain by individuals.

It is important to maintain a balance between the rights of the taxpaying public and those of property owners, and Proposition 7 could upset that balance. Allowing the former property owner to reap profit from appreciation in a property's value would come at the expense of the taxpayers who own the property after a taking. A former owner who repurchased property at the original acquisition price would obtain equity from appreciation of the property without having paid property taxes, maintenance expenses, and other costs normally incurred as part of property ownership. Allowing some landowners to obtain the increase in the value of property by repurchasing it at the price they originally were paid also would be unfair to property owners whose property was used for a public purpose because they would receive only what they were paid originally for the property, not a bonus years after the taking.

Notes

HB 2006 by Woolley, which was vetoed by Gov. Perry for reasons unrelated to HJR 30, included a provision that would have amended the Property Code to require governmental entities to resell most types of property to the original owner or the owner's heirs, successors, or assignees for the acquisition price paid to the owner if a public use for property had been canceled within 10 years of the taking or if the governmental entity failed to begin operation or construction of the project before the 10th anniversary of the taking. This provision was contingent on approval of HJR 30.

HB 217 by Jackson, which died in the House Land and Resource Management Committee, would have amended the Property Code to allow property owners or their heirs,

successors, or assignees to repurchase land taken through eminent domain at the price paid at the time of the taking, subject to approval of HJR 30 or other constitutional authorization. This provision would have applied if:

- a public use was canceled before the 20th anniversary of the date of the taking;
- no actual progress was made during each five years leading up to the 20th anniversary;
- the property became unnecessary for public use before the 20th anniversary of the date of the taking; or
- the property owners, their heirs, or successors had petitioned a court after the 20th anniversary of the taking to require the repurchase, and the court granted the petition.

Revisions to home equity loan provisions

HJR 72 by Solomons (Carona)

Background

In 1997, Texas voters approved Proposition 8 (HJR 31 by Patterson), which amended 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 value of the homestead property minus any outstanding mortgage or loan amounts secured by the property.

In 2003, Texas voters approved Proposition 16 (SJR 42 by Carona) making home equity lines of credit (HELOC) available to Texas home owners. A HELOC allows consumers to access a revolving line of credit up to a maximum of 80 percent of the market value of the home minus the amount of any loans secured. The borrower may make withdrawals of at least \$4,000 as needed, up to the credit limit. The credit limit remains in place as long as the loan is paid down, and the borrower can continue withdrawing from the account as long as the limit is not exceeded.

Digest

Proposition 8 would amend provisions in Texas Constitution, Art. 16, sec. 50 regarding home equity loans. It would specify that the determination of whether homestead property is designated for agricultural use, for which home equity loans are prohibited, would be made as of the date of closing on the loan. The borrower could not use a preprinted check unsolicited by the borrower to obtain an advance under a home equity line of credit.

A home equity line of credit could not be extended if the loan instrument contained blanks relating to substantive terms of the agreement at the time of the borrower's signing. At the time the home equity loan was made, the owner would have to receive a copy of the final loan application and all executed documents signed by the owner at closing.

The borrower could waive the current waiting period and secure a loan against the equity in the borrower's home less than one year after obtaining the same type of loan on the same homestead if the borrower on oath requested an

earlier closing due to a state of emergency declared by the governor or the president of the United States that applied to the area where the homestead was located.

The 12-day waiting period for closing a home equity loan would commence on the later of the date on which the borrower received the required loan notice from the lender or the date on which a "loan" application, rather than a "written" application, was submitted. Unless there was good cause and the lender obtained the borrower's consent, the loan could not close before one business day after the date on which the applicant received a copy of the loan application, if one was not previously provided.

The ballot proposal reads: "The constitutional amendment to clarify certain provisions relating to the making of a home equity loan and use of home equity loan proceeds."

Supporters say

Proposition 8 would make several important clarifications to home equity lending practices and add stronger protections for consumers. Home equity delinquencies are on the rise, and a contributing factor may be predatory lending practices that bind consumers to loans that they cannot afford or for which the terms were changed from those orally stated to the applicant.

The proposed amendment would require that a homeowner receive a copy of the final loan application and all executed documents signed at closing. This would enable the homeowner to ensure that no misinformation was included in the loan application, and the homeowner would have an exact copy of the loan terms to which he or she agreed. Such disclosure is critical since borrowers are held legally responsible for the information they include in a loan application.

In response to the financial ramifications of hurricanes Rita and Katrina, it is evident that homeowners need easier access to the equity in their property in the event of a natural disaster. The amendment would recognize the difficult situation in which homeowners find themselves when

their homesteads lie in an area included in a declaration of emergency and would allow these homeowners to obtain a subsequent home equity loan in less than the one-year waiting period currently required for such loans.

Proposition 8 would clarify the intent of the prohibition against the use of preprinted checks to access a home equity line of credit. Homeowners could use checks to access home equity lines of credit if they used checks that they requested, but homeowners should not receive unwanted solicitations by lenders to use preprinted checks. Because borrowers do not anticipate the receipt of unsolicited checks by mail, a borrower who receives unsolicited preprinted checks unknowingly may allow the checks to remain in the mailbox vulnerable to theft by identity thieves.

Proposition 8 also would clarify that an extension of credit would be valid if a borrower signed a loan agreement in which not all the blanks had been filled in as long as none of the empty blanks pertained to substantive terms of the loan agreement. The intent of current law is to protect the borrower from signing a loan agreement in which there are empty blanks that the lender could later fill in with loan terms that were different than those agreed upon. The strict language has led many lenders to painstakingly ensure that each blank not relevant to the loan agreement is indicated as “not applicable” for fear that a loan agreement could be invalidated if it contained any empty blanks. The proposed amendment would retain the intent of current law to protect the borrower, yet it would remove the administrative burden on the lender to label all nonsubstantive blanks as “not applicable.”

Art. 16, sec. 50 prohibits home equity loan liens on homestead property designated for agricultural use, with a limited exemption for property used primarily for milk production. A recent federal court decision, *Marketic v. U.S. Bank National Association*, 436 F.Supp.2d 842 (N.D. Tex. 2006), invalidated a home equity lien on rural homestead property that was redesignated as agricultural property after the lien was created. This decision has made many lenders reluctant to make home equity loans in rural areas because a borrower subsequently could redesignate use of the property as agricultural and thereby prevent foreclosure. Proposition 8 would clarify that the designation of property for agricultural use would be determined only as of the date of closing on the loan, which would prevent any subsequent redesignation of the property from being used to shelter it from foreclosure if the borrower defaulted on the loan.

Many legitimate companies rely solely on oral applications to conduct their business. Also, many consumers prefer to make oral loan applications as a matter of convenience. While Proposition 8 would not exclude oral applications from lending practices, it would require that the consumer receive a copy of the loan application prior to closing so that the consumer could confirm the accuracy of the information included. Allowing the consumer more time to carefully review the loan application prior to the closing date would provide yet another safeguard against mortgage fraud, predatory lending practices, or an unintentional misstatement of the terms to which the borrower believed he or she had agreed while making the loan application.

The proposed amendment would maintain current protections against rolling unsecured debt into a secured home equity loan. A person’s home is one of the most stable assets he or she possesses, and the equity in a person’s home should not be used lightly. For example, allowing the consumer to pay off other debt with a home equity loan could encourage irresponsible spending on a credit card if a person knew the credit card debt could be paid off with credit secured by the equity in his or her home.

The Third Court of Appeals in Austin, in considering a pending lawsuit, *ACORN, et al. v. Finance Commission of Texas, et al.*, and the Finance Commission are reviewing 70 years of legislative intent on usury laws to make a determination on whether an origination fee or other fees in a home equity loan would be deemed interest or included in the 3-percent fee cap on a home equity loan. Proposition 8 appropriately would leave the issue of what constitutes fees included in the 3-percent cap to be addressed after further judicial review.

Proposition 8 does not need to clarify that a variance in an itemized disclosure of loan fees, points, interest, costs, and charges could be corrected without delaying the loan closing date. Regulating bodies have interpreted the “good cause” justification for modifying a document on the date of closing to include such variances.

Opponents say

In order to prevent predatory lending, Proposition 8 should clarify that for the purpose of calculating the fees associated with a home equity loan, origination and certain other fees should be included. The original intent of establishing the fee cap of 3 percent of the amount of a

home equity loan was to ensure that a borrower was not charged excessively for the loan. As long as the Constitution remains silent, courts will continue to rule in favor of the lending industry, excluding any fee that might be termed interest from the calculation of the 3-percent cap on fees.

Proposition 8 should disallow the use of oral applications as a means to obtain a home equity loan. Oral applications are an easy way for a lender to perpetrate mortgage fraud, because the lender can falsify income and other financial figures so that a borrower who would otherwise not qualify can receive a loan. Only written and electronic applications should be acceptable, because these forms of application allow the borrower to confirm the information that was used as the basis of the loan determination at the time the application was submitted. Receiving a loan application a day before closing gives a lender more flexibility to make mistakes or perpetrate fraud, because consumers would be less likely to correct a mistake if it could delay closing.

The Constitution should not stipulate so strictly the way a borrower can use credit from a home equity loan. Some victims of predatory lending become trapped by high interest rates charged by exotic loan products. Proposition 8 should allow a homeowner to use home equity credit to repay another debt not secured by the homestead.

Proposition 8 also should clarify that a lender could modify previously provided documentation on the date of closing in the event that a homeowner recognized a variance from expected terms in the final itemized disclosure regarding fees, points, interest, costs, and charges. If a borrower requests changes to incorrect terms in the itemized disclosure, the lender often hesitates to close on the same business day the correction is made. Although most borrowers would consent to correcting such errors and closing right away, it is not explicit that a variance constitutes “good cause” to make such a change on the date of closing.

Other opponents say

Proposition 8 explicitly should exclude interest from the calculation of the 3-percent cap on fees charged on the principal of a home equity loan. Usury law is clear that fees, such as an origination fee, are included in the definition of interest. These fees therefore should be excluded from the fee cap. Lending law uniformly should apply existing definitions from usury laws that were created to protect consumers.

Exempting residence homesteads of totally disabled veterans from property taxation



SJR 29 by Carona (Flores)

Background

Texas Constitution, Art. 8, sec. 1 requires that taxation be equal and uniform and that all taxable property be taxed in proportion to its value. Art. 8, sec. 1-b specifies certain exemptions for residence homesteads. Art. 8, sec. 2(b) allows the Legislature to exempt from taxation a certain portion of the value of property owned by a disabled veteran who is classified as at least 10 percent disabled by the federal Veterans Administration (VA) or a successor agency (now the U.S. Department of Veterans Affairs). A veteran with a disability rating of:

- at least 10 percent and not more than 30 percent can be granted a property tax exemption valued up to \$5,000;
- *more than 30 percent but not more than 50 percent* can be granted a property tax exemption valued up to \$7,500;
- *more than 50 percent but not more than 70 percent* can be granted a property tax exemption valued up to \$10,000;
- *more than 70 percent* can be granted a property tax exemption valued up to \$12,000; or
- at least 10 percent and who is 65 or older, a disabled veteran who has lost use of at least one limb, is fully or partially blind, or paraplegic, can be granted a property tax exemption valued up to \$12,000.

The spouse and children of any member of the U.S. military may be granted a taxation exemption for property valued up to \$5,000. A deceased disabled veteran's surviving spouse and children may be granted a taxation exemption equaling the total amount of the exemption to which the veteran was entitled when he or she died.

Digest

Proposition 9 would add Art. 8, sec. 1-b(i) to the Constitution, authorizing the Legislature to exempt from ad valorem taxation all or part of the market value of the residence homestead of veterans certified as having a disability rating of 100 percent – totally disabled – as a result

of military service. The Legislature could add additional requirements for eligibility under this provision.

Proposition 9 also would amend the formula in Art. 8, sec. 2(b) used to categorize veterans' disability ratings to determine their respective property tax exemption. A veteran with a disability rating of:

- at least 10 percent but *less than 30 percent* could be granted a property tax exemption valued up to \$5,000;
- *at least 30 percent but less than 50 percent* could be granted a property tax exemption valued up to \$7,500;
- *at least 50 percent but less than 70 percent* could be granted a property tax exemption valued up to \$10,000; or
- 70 percent *or more* could be granted a property tax exemption valued up to \$12,000.

A temporary provision, which would expire on January 1, 2009, provides that the changes in calculation and application of the exemption for disabled veterans would take effect for the tax year beginning January 1, 2008.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to exempt all or part of the residence homesteads of certain totally disabled veterans from ad valorem taxation and authorizing a change in the manner of determining the amount of the existing exemption from ad valorem taxation to which a disabled veteran is entitled."

Supporters say

Proposition 9 would align the state's disabled veteran property tax exemption with the procedures used by the VA in calculating a veteran's disability rating to ensure the veteran received the exemption to which he or she was entitled. It also would allow veterans classified as totally disabled a full exemption from property taxes on their residence homesteads. Both changes would provide a token of gratitude from the state of Texas to those who have fought to defend our freedom.

The rounding of disability ratings has led to some veterans being denied the full tax exemptions they deserve under the Texas system. The VA calculates disability ratings based primarily on how an impairment affects the earning potential of the veteran. A disability rating of 100 percent means the veteran is completely unemployable due to physical and/or mental impairments, such as the loss of one or more hands or feet or loss of sight. Once a disability rating is calculated, it is rounded to the nearest multiple of 10. Under the current system, if a veteran's disability rating is rounded down to a rating of 10, 30, 50, or 70 percent, that person falls into a lower tier of exemption or does not receive one at all. Rounding has moved some veterans whose initial disability rating would have placed them in one category into a lower one.

This proposed amendment would ensure that veterans did not lose tax exemptions to which they were entitled. The change in categories would increase the exemption for many veterans to the level they deserve. For example, a veteran with a disability rating of 30 percent under current law is entitled to an exemption of \$5,000. Under the proposed amendment, that veteran could claim an exemption of \$7,500.

Under current law, a totally disabled veteran can receive a maximum exemption of \$12,000 from the value of his or her property. Although this helps defray costs, it does not reduce significantly the ever-increasing property tax burden that veterans and all Texans are facing. The ability of totally disabled veterans to earn income is extremely limited, and they deserve a full exemption from property taxes to keep their homes amidst rising appraisal values. The state should take whatever steps are necessary to ensure that those who sacrificed for their country are not forced to sell their property because they cannot afford to pay the taxes.

The revenue loss to local governments from the exemption change would be relatively slight, but the benefit to many disabled veterans, especially those on fixed or limited incomes, could be significant. According to county tax assessor-collectors, a significant number of disabled veterans do not even take advantage of this exemption, but those who need it the most would benefit.

Opponents say

No one disagrees with granting benefits to veterans for their service to our nation, but restructuring a property tax exemption to give more people tax breaks would cost local governments, including school districts, cities, counties, and community college districts, leaving other taxpayers to make up the loss. This reduction in revenue could be exacerbated by an influx of new disabled veterans returning from Iraq and Afghanistan, where comparatively low fatality rates due to medical advances are offset tragically by larger numbers of military personnel who come home with permanent, debilitating injuries. As a result, more veterans likely would qualify for larger exemptions, which would cost local governments and also the state to the extent that state aid would have to offset the reduction in property tax revenue collected by school districts. Additionally, totally disabled veterans do not face an increased tax burden when their property values rise because they are eligible for a property tax freeze under Art. 8, sec. 1- b(d) of the Constitution.

Notes

SJR 29 incorporates HJR 37 by McReynolds, which was approved by the House, but died in the Senate Finance Committee.

SB 666 by Carona, the enabling legislation for the original version of SJR 29, passed the Senate, but died in the House. It would have amended Tax Code, sec. 11.13 to entitle a veteran classified as totally disabled due to military service to a tax exemption of the total appraised value of the veteran's residence homestead, if voters approved SJR 29.

HB 358 by McReynolds, the enabling legislation for HJR 37, passed the House, but died in the Senate Finance Committee. It would have amended Tax Code, sec. 11.22 to make the necessary statutory changes in the calculation of disabled veteran homestead exemptions, if voters approved HJR 37.

Deleting constitutional references to county office of inspector of hides and animals

HJR 69 by Heflin (Seliger)

10
Proposition

Background

Texas Constitution, Art. 16, sec. 64 sets a four-year term for county offices, specifically including the office of inspector of hides and animals, and stipulates that the office holder must serve until a successor is qualified. Sec. 65 stipulates that certain listed county officers serving unexpired terms of more than one year, including inspectors of hides and animals, resign automatically if they run or announce their candidacy for any office of profit or trust under Texas or U.S. law.

Digest

Proposition 10 would remove the office of inspector of hides and animals from Texas Constitution, Art. 16, secs. 64 and 65(a).

The ballot proposal reads: “The constitutional amendment to abolish the constitutional authority for the office of inspector of hides and animals.”

Supporters say

Proposition 10 would remove from the Texas Constitution out-of-date references concerning an office that no longer serves a purpose in Texas. The county office of inspector of hides and animals was established in 1871 to aid in the prevention of cattle theft by thoroughly inspecting the brands on hides and animals shipped out of the county. According to the Texas State Historical Association’s *Handbook of Texas*, the office became elective after the adoption of the Constitution of 1876. The Legislature eventually exempted many counties from electing an inspector, and only about one-third of Texas counties had an inspector of hides and animals by 1945. While the office has few, if any, remaining duties, it still exists, and candidates occasionally seek election to the position.

The 78th Legislature in 2003 enacted SB 1389 by Duncan, which removed from the Agriculture Code almost all the remaining powers and duties of the office of inspector of hides and animals, but the office still is mentioned in

the Texas Constitution. The House Committee on County Affairs Interim Report to the 80th Legislature recommended removing all remaining mention of the office.

In November 1999, Texas voters approved Proposition 3 (HJR 62 by Mowery), which made numerous changes to the Texas Constitution, including deleting references to obsolete offices and provisions. It was merely an oversight that deleting the office of inspector of hides and animals was not included in that clean-up amendment. Proposition 10 simply would delete archaic references to this office from the Texas Constitution. While the Legislature also should delete all of the remaining statutory provisions mentioning the office, Proposition 10 would take care of the constitutional provisions.

Opponents say

While the ballot language for Proposition 10 says that the proposed constitutional amendment would abolish the constitutional authority for the office of inspector of hides and animals, it only would remove certain constitutional references to this obsolete office. To actually abolish the office and prevent candidates from filing for election to this post that has almost no remaining duties, the Legislature also would have to delete all remaining statutory references to the office, which it failed to do during the 2007 regular session.

Notes

HB 1631 by Heflin, which would have abolished the county office of inspector of hides and animals by repealing all remaining statutory references to the office, including Election Code provisions that still allow candidates to file for election to the office, passed the House, but died in the Senate during the 2007 regular session.

Requiring legislators to cast record votes on final passage

HJR 19 by Branch (Carona)

Background

Texas Constitution, Art. 3, sec. 12 requires each house of the Legislature to keep and publish a journal of its proceedings. The yeas and nays of the members on any question must, at the desire of any three members present, be entered in the journal.

Digest

Proposition 11 would amend Art. 3, sec. 12 to require that a vote taken in either house of the Legislature be by record vote if it were on final passage of:

- a bill;
- a resolution proposing or ratifying a constitutional amendment; or
- any other resolution, other than a resolution of a purely ceremonial or honorary nature.

A vote on final passage would mean a vote on:

- third reading;
- second reading, if the applicable house suspended or otherwise dispensed with the requirement for three readings;
- whether to concur in the amendments of the other house; or
- whether to adopt a conference committee report.

Each member's vote would be recorded in the appropriate journal and made available for at least two years on the Internet or future electronic communications technology in a form accessible to the public by referencing the number or subject of the bill or resolution. Either house could pass a rule to provide for exceptions for bills that applied only to one district or political subdivision of the state.

The ballot proposal reads: "The constitutional amendment to require that a record vote be taken by a house of the legislature on final passage of any bill, other than certain local bills, of a resolution proposing or ratifying a

constitutional amendment, or of any other nonceremonial resolution, and to provide for public access on the Internet to those record votes."

Supporters say

Proposition 11 would require legislators to be accountable for their votes. A key tenet of democracy is open government and the voters' ability to hold their elected officials accountable. Texas is one of only 10 states that does not require record votes on final passage of legislation. Although the House Rules currently require final votes to be recorded, the requirement should be written in the Constitution because the rules can be changed each session.

Too many votes have been hidden under the "voice vote" provision, which is a common method of acting on legislation in both chambers. House members have their votes recorded as "aye" unless they state their preference for a "no" vote, so an "aye" vote is merely presumed. Members should be required to affirmatively vote one way or another as a matter of public record.

Proposition 11 appropriately would require record votes on third reading or final passage because the vote on final passage puts the bill into effect. Forty other states require this, and their legislatures have not ground to a halt. On other matters, any House member or any three senators may ask for a record vote and frequently do, so the most important votes already can be recorded. However, if the Constitution inflexibly required record votes on second reading or on every vote on every amendment, it significantly would slow the lawmaking process.

Opponents say

Amending the Constitution to require record votes on final passage would be largely symbolic and is not necessary because both the House and the Senate already require these votes to be recorded. The House Rules require record votes on third reading and final passage, and any member can ask for a record vote on any measure or amendment at any time.

Under the House Rules, passage of a bill or joint resolution without objection is equivalent to a recorded vote because the House Journal reflects the fact that all members voted for the measure and are allowed to register opposition if they choose. The Senate has recorded all votes on final passage since the 79th Legislature in 2005.

Placing the record vote requirement in the Constitution could create a time-consuming logistical burden for future legislatures. Legislators should maintain the flexibility to determine how many of the hundreds of hours members and staff spend in session should be devoted to counting and recording votes, especially when the vote is unanimous anyway. Current procedures adopted by rule in both chambers offer a practical way of informing the public while allowing the Legislature to carry out its business in an efficient manner during the brief biennial sessions.

Requiring record votes could increase partisanship and weaken the ability of lawmakers to work with members of the other party to craft beneficial legislation. Rather than serving as a tool for voters to hold their elected representatives accountable, record vote requirements could give ammunition to zealots in both camps seeking to punish legislators whose voting records strayed from the party line or could be distorted for political purposes.

Other opponents say

Proposition 11 also should require record votes on second reading, which is the most important stage in the legislative process. Votes cast during the second reading of a bill carry significant importance because amendments can

be adopted at this stage with a simple majority, rather than the two-thirds vote required to amend a bill on third reading. As a result, bills rarely are amended on third reading, and most of the substantive debate takes place on second reading. The ability to view record votes on second reading would provide true transparency and allow the public to express their opinions on a bill prior to final passage. As a practical matter, votes on second reading already are posted on the Internet, and Proposition 11 should reflect this practice.

Allowing legislators to adopt rules to except local bills from the third-reading record vote requirement could allow controversial local bills to be overlooked. Although neither house would be required to adopt such a rule and any House member or any three senators may request a record vote at any time under current rules, the proposed amendment might have the perverse effect of requiring record votes on routine measures without shedding light on how members voted on important bills that applied to only one district or political subdivision.

Notes

During the 2007 regular session, a related measure, HB 83 by Branch, which would have required by statute that each house of the Legislature record on final passage votes on all bills, resolutions, and other resolutions that were not purely ceremonial or honorary in nature, died in the House.

Authorizing \$5 billion in general obligation bonds for highway improvements

SJR 64 by Carona (Krusee)

Background

Art. 3, sec. 49 of the Texas Constitution prohibits state debt, but voters have amended the article numerous times to authorize debt in the form of general obligation bonds. Repayment of debt from these bonds is guaranteed by the state, and payments are made from the first money coming into the treasury each year. Art. 3, sec. 49-j limits annual state debt payable from general revenue to 5 percent of the annual average amount of nondedicated general revenue for the three preceding fiscal years.

The Texas Department of Transportation (TxDOT) is funded largely through dedicated accounts and federal funds, with general revenue-related funds accounting for only about 3.7 percent of the agency's total budget. About half of TxDOT's budget consists of funds received from the federal government. TxDOT is financed largely by revenue collected from motor vehicle registration fees and the state's 20-cent per gallon tax on motor fuels, three-quarters of which are deposited into the State Highway Fund (Fund 6) and one-quarter into the Available School Fund.

In 2001, voters approved Proposition 15, amending the Constitution to create the Texas Mobility Fund (TMF). The Legislature dedicated certain driver and licensing fees to back bonds of up to 30 years for transportation projects, including toll roads. This modified the state's longstanding "pay-as-you-go" policy for transportation funding, allowing transportation officials to borrow money to construct new roads instead of waiting to build until funding was appropriated. The Bond Review Board has approved issuance of up to \$4 billion in bonds backed by the TMF, with \$3 billion expected to have been issued by December 2007.

Proposition 15 also granted TxDOT broad authority to spend, grant, or loan money for the acquisition, construction, maintenance, or operation of turnpikes and toll roads and repealed a requirement that any money spent from Fund 6 for toll projects be repaid to the fund from tolls or other turnpike revenue.

In 2003, voters approved Proposition 14, amending the Constitution to authorize the Texas Transportation Commission (TTC) to allow TxDOT to issue Fund 6-backed bonds. The Legislature authorized issuance of up to \$1 billion in Fund 6 bonds annually, totaling \$3 billion. In 2007, the 80th Legislature approved SB 792 by Williams, which, among other provisions, doubled the aggregate limit for issuance of Fund 6 bonds to \$6 billion and increased the annual issuance limit to \$1.5 billion. About \$2.6 billion in Fund 6 bonds is expected to have been issued by September 2007.

Digest

Proposition 12 would add Art. 3, sec. 49-p to allow the Legislature to authorize TTC or its successor to issue state general obligation bonds in a total amount no greater than \$5 billion for highway improvement projects. TTC would prescribe terms, denominations, and installments of the execution of the bonds. A portion of the proceeds from the sale of the bonds and a portion of interest earned on the bonds could be used to pay the costs of administering projects, the cost or expense of issuing the bonds, and all or part of a payment owed under a credit agreement.

The bonds authorized under this section would constitute a general obligation of the state, which would be required to pay the principal and interest on the bonds that matured or became due during the fiscal year, including an amount necessary to make payments under a related credit agreement. Bonds would become incontestable and general obligations under the Constitution once approved by the attorney general, registered by the comptroller, and delivered to the purchasers.

The ballot proposal reads: "The constitutional amendment providing for the issuance of general obligation bonds by the Texas Transportation Commission in an amount not to exceed \$5 billion to provide funding for highway improvement projects."

Supporters say

Proposition 12 would help the state finance badly needed highway infrastructure to meet its transportation and economic development needs. The state has a funding gap between transportation needs and available funding of at least \$77 billion. While toll roads increasingly have been used as an alternative to finance highway construction, the two-year moratorium enacted this year by the Legislature that prevents the state from entering into an agreement with a private firm to build a toll road and receive up-front payments that could be used for other transportation projects shows the limitations of this funding source.

TxDOT has been moving in a new direction since the approval of Proposition 15 in 2001, when the state's "pay-as-you-go" policy was modified to allow transportation officials to borrow money to construct new roads instead of waiting to build until funding was appropriated. The Constitution prohibits state-supported debt from exceeding 5 percent of uncommitted general revenue, and the state debt currently is below 2 percent, leaving considerable capacity available for additional general obligation bonds backed by state general revenue. The bonds authorized by Proposition 12 would not have a significant impact on the state's fiscal standing because Texas still would have a low debt burden compared with other states.

Although the state has dedicated transportation funding sources, bonds supported by general revenue likely would have a lower interest rate because the revenue stream is more consistent than the revenue stream from Fund 6. Additionally, transportation projects provide a statewide benefit to the economy. Other states, as well as local governments, use bonding authority backed by general funds for transportation projects under the rationale that it is appropriate that infrastructure projects built to last for the long term be financed with long-term borrowing through the issuance of general obligation bonds.

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 increase its ability to fund projects through the use of bonding authority. Borrowing against future revenue would speed up highway projects, thus alleviating traffic congestion, enhancing productivity, improving safety, and reducing opportunity costs due to lack of transportation

infrastructure. Improving mobility sooner rather than later would aid economic development and job creation.

Opponents say

Long-term borrowing to pay for state highway improvements through the issuance of state general obligation bonds would require general revenue appropriations the state cannot afford to spend on debt service. Borrowing would increase the state's costs in terms of forgone interest earned on cash balances and interest charges for new borrowing. Texas has a longstanding policy of funding transportation projects solely through dedicated funds and minimizing obligations of general revenue for debt service. Trusting an agency such as TxDOT that has not been forthright with the Legislature or the public regarding its expenditures and budgeting with even more money outside of the traditional appropriations process would be questionable. Under the proposed enabling legislation, which failed to pass, much of the proceeds of these bonds would have been used for loans to local authorities to pay for development of new toll road projects.

Borrowing money for construction increases costs and passes them along to future taxpayers and legislatures. 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. Adding even more debt would increase the amount of general revenue needed for debt financing, which could limit the state's ability to meet other needs.

Transportation projects should be funded through Fund 6, which mainly includes revenue generated from those who use state roads by paying motor fuel taxes and vehicle registration fees, not general revenue. It would not be in the state's best interest to tie up money that could be used to certify the budget or for other urgent state needs, such as education and children's health care, on debt service for bonds to build highways.

Other opponents say

Rather than using strained resources to incur more debt, the state should put more money into Fund 6 by raising motor fuel tax 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.

Notes

SB 1929 by Carona, the enabling legislation for Proposition 12, which would have made the necessary statutory changes in the Government Code to implement SJR 64, died in the Senate. SB 1929 would have established a toll project equity fund to make loans to local, county, or regional authorities for toll or turnpike projects, and the proceeds of general obligation bonds authorized by SJR 64 would have been deposited into the loan fund.

Allowing judges to deny bail in certain cases involving family violence

HJR 6 by Straus (Wentworth)

13
Proposition

Background

A person accused of a crime generally is guaranteed the right to post bail to secure release from jail pending trial. Texas Constitution, Art. 1, sec. 11 states that all prisoners shall be bailable unless accused of a capital offense when proof is evident. However, Texas Constitution, Art. 1, sec. 11a allows courts to deny bail under certain circumstances. Under this provision, a judge has the discretion to deny bail if the defendant is accused of:

- a felony and has been convicted of two prior felonies;
- a felony committed while on bail for a prior felony for which the defendant has been indicted;
- a felony involving the use of a deadly weapon after being convicted of a prior felony; or
- a violent or sexual offense committed while on probation or parole.

Bail may be denied in these circumstances only after a hearing and upon presentation of evidence substantially showing the guilt of the accused. Under Texas Constitution Art. 1, sec. 13, excessive bail cannot be required.

Under Code of Criminal Procedure, art. 17.15, when setting bail a judge considers the nature of the offense and the circumstances under which it was committed, the safety of the victim and the community, and the defendant's ability to make bail. Under Code of Criminal Procedure, art. 17.40, to secure a defendant's attendance at trial, a court may impose any reasonable condition on a bond related to the safety of an alleged victim or the safety of the community. A court may revoke a defendant's bond only if at a hearing it finds by a preponderance of the evidence that the defendant has violated a condition of the bond.

In 2005, voters approved Proposition 4 (SJR 17 by Staples), which authorizes a judge to deny bail to a person accused of a *felony* whose previous bond on that same charge has been revoked for violating a condition of the bond related to the safety of the victim or the community. In other situations, absent one of the factors in Art.1, sec. 11a, a defendant whose bond has been revoked still has a constitutional right to new and reasonable bail.

Family Code, sec. 71.004 defines family violence to mean certain acts or threats against family or household members, certain abusive acts against children in a family or household, and dating violence as defined by Family Code, sec. 71.0021.

Penal Code, sec. 25.07 makes it a criminal offense to violate protective orders. It is an offense to violate protective orders and emergency protective orders by:

- committing an act of family violence or an act related to stalking;
- communicating in certain ways with a protected person or a member of the family or household;
- going near certain places described in the order, including the residence or work of a protected individual or member of the family or household or the child care, residence, or school of a protected child; or
- possessing a firearm.

First and second offenses of violating a protective order are class A misdemeanors (up to one year in jail and/or a maximum fine of \$4,000), and subsequent offenses are third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000). It also is a third-degree felony if the protective order was violated by committing assault or stalking.

Digest

Proposition 13 would expand the circumstances under which judges can deny bail to include two types of situations involving family violence. It also would establish the standard of preponderance of the evidence for deciding whether these persons had violated a condition of release on bond or of a protective order that met the threshold requirements for denial of bail.

Denial of bail in family violence cases for violating earlier bail condition. Proposition 13 would expand Art. 1, sec. 11b to authorize a judge to deny bail to a person who was accused of *any* offense involving family violence, had been released on bail on those charges, and

whose bond had been revoked or forfeited for violating a condition of that bond related to the safety of the victim or the community.

Denial of bail for violating certain court orders. Proposition 13 also would add Art. 1, sec. 11c, authorizing the Legislature to enact laws allowing denial of bail if a judge or magistrate determined at a hearing, by preponderance of the evidence, that the person had violated a protective order. Bail could be denied if a person:

- violated an emergency protective order issued after an arrest for family violence;
- violated an active protective order issued by a court in a family violence case, including a temporary ex parte order that had been served on the person; or
- engaged in conduct that constituted an offense of violating any of these court orders.

The ballot proposal would read: “The constitutional amendment authorizing the denial of bail to a person who violates certain court orders or conditions of release in a felony or family violence case.”

Supporters say

Proposition 13 would give judges discretion to deny bail in narrowly tailored, justifiable circumstances relating to family violence. Victims of family violence, who often are extremely vulnerable, deserve these protections because the violence frequently escalates over time and can turn deadly. The proposed amendment and its enabling legislation, HB 3692 by Straus, would address two shortfalls in current law by allowing judges, in appropriate family violence cases, to keep dangerous defendants off the streets and away from their victims.

Proposition 13 would expand current law to include all misdemeanor family violence offenses among those that can result in the denial of bail to a person accused of violating a condition of release on bond related to the victim or public safety. Current law allows denial of bail only in felony cases that meet these criteria, but not all family violence crimes are felonies. Under the proposed amendment, a judge could revoke bond and keep in custody a person accused of a misdemeanor family violence offense who had been released on bond and subsequently violated a condition of that bond.

The proposed amendment also would address another shortcoming in current law, which does not allow the denial of bail for someone arrested for violating a protective order relating to family violence. Violating a protective order, emergency protective order, or temporary protective order relating to family violence is a crime under Penal Code, sec. 25.07, but since it is only a misdemeanor, it does not fit the current circumstances that allow denial of bail. The authority proposed in Proposition 13 could have been used to prevent a San Antonio murder in which a man killed his ex-wife while released on bond for violating a protective order.

In both situations covered by the proposed amendment, a person has been ordered by a court to refrain from certain actions relating to victims of family violence – such as having contact with a victim – and has violated these restrictions. In the case of violating a bond, the person has been arrested for a crime, brought before a court, and released under bond conditions. In the case of violating protective orders, the person has either been before the court when the protective order or emergency protective order was issued or been served with a temporary, ex parte order that is in effect only until a court considers issuing one of the other orders. In these cases, it would be appropriate to allow courts to protect victims by keeping defendants in custody.

The Texas Constitution long has recognized that there are exceptions to the requirement that bail generally should be made available to criminal defendants. The situations in which bail can be denied have evolved, and it is appropriate for Texas to set limits on bail just as the federal government and many states do. Proposition 13 would be in line with other provisions that allow bail to be denied. It is appropriate to revise state policy to reflect growing concerns about family violence and an interest in protecting victims.

Existing tools do not always work to protect victims of family violence. In many cases, the level of violence is escalating, and some people accused of family violence even have made it known that they intend to hurt their victims when they are released on bail or subject to a protective order. By the time a victim makes a report to law enforcement authorities or seeks a protective order, it often is too late to protect the victim from harm. While judges might attempt to keep such defendants in custody by setting high bail, these defendants routinely are successful in obtaining release or reduced bail amounts through writs of habeas corpus. Setting tighter conditions on bonds or protective orders are largely ineffective in cases where

defendants already have demonstrated a desire to hurt the victim and have shown no regard for the consequences of violating a court order. In one case, even electronic monitoring did not stop a man from violating a protective order and killing his wife.

Proposition 13 would not require judges to deny bail to anyone, but would give them another tool to use when they deemed it necessary. Judges would evaluate the threat a defendant presented to the victim and to the community and deny bail only in appropriate cases. Under the proposed amendment, bail would be denied only in cases in which the victim was in danger, and it would not apply to someone accused of a technical violation of their bond that posed no danger to the victim or the community – for example, a defendant who lost his job while free under a bond that required his employment.

Defendants described by the proposed amendment – like those denied bail currently under the Constitution – would retain all their rights to due process and other protections. For example, the determination to deny bail would have to be made at a hearing in which the defendant could appeal the denial of bond or make a case for another bond. Proposition 13 would establish a uniform, appropriate standard – preponderance of the evidence – for deciding whether to deny bail. It also specifies that in situations involving temporary, ex parte protective orders, which can be issued without a person appearing in court, notice would have been served on the person before bail could be denied.

Judges already routinely make decisions dealing with public safety and the denial of bail. The objection that judges would be biased toward denying bail because they are elected really is an objection to Texas’ system of elected judges, not the specifics of the proposed amendment. Judges would continue to exercise their responsibility to evaluate cases and make individual decisions about bonds.

Proposition 13 should have limited – if any – impact on jail populations. Only a small number of defendants would fit the proposition’s narrow criteria, and not all of them would have to be denied bail.

Opponents say

Proposition 13 would erode the basic tenet that bail should not be denied to criminal defendants except in the most limited circumstances. The purpose of requiring bail is to ensure a defendant’s appearance at a subsequent hearing

or trial, not to punish someone for an alleged offense or to deter hypothetical, future crimes. Giving judges discretion to deny bail in the broad circumstances described by the proposed amendment could violate the longstanding legal principle that bail should not be used as an instrument of oppression and could lead to a further expansion of the circumstances or crimes in which bail can be denied. The problem that this proposed amendment seeks to solve is a very limited one that does not justify amending the Constitution.

Under the language in Proposition 13 and its implementing legislation, HB 3692 by Straus, a judge could deny bail in virtually any misdemeanor family violence case in which the original bond had been revoked or a protective order violated. “Safety of a victim” or “safety of the community” could be interpreted to include almost any circumstance – including technical violations such as failure to keep a job or pay a fee – resulting in the denial of bail in inappropriate cases. The proposed amendment could result in the unfair detainment of persons who were innocent or who were not dangerous.

The proposed amendment also could have unfair consequences relating to legislation enacted by the 80th Legislature – HB 1988 by Martinez – which allows some protective orders to be in effect for life. This could result in someone being denied bail for one mistake after years of following a protective order.

Because judges must stand for reelection, they could feel pressure to deny bail to most or all defendants who fit these circumstances. Judges could use the broad cover provided by Proposition 13 to abdicate their responsibilities to evaluate individual cases, which could result in the loss of due process rights for defendants. Texas jails already are overcrowded, and this problem would increase if judges routinely used the new authority to keep defendants in custody who otherwise would be released.

It is unclear how the standard used in Proposition 13 – determining by a preponderance of the evidence if someone violated a protective order or a condition of bond – would interact with current standards such as whether someone presents a flight risk or a danger.

There are other ways to address the situation contemplated by Proposition 13. Courts can take into account a defendant’s assets and the circumstances of the alleged offense and set higher bail accordingly. Defendants charged with serious or violent crimes often remain in

custody because they cannot make bail. A judge could set different, more restrictive, conditions on a bond or protective order using the concepts of progressive sanctions and supervision strategies to better protect the victim and the community.

Proposition 13 would continue the trend in Texas of creating legislation specific to family violence. While abhorrent, family violence is a subcategory of violence against a person, which is dealt with adequately in other sections of the Penal Code. Crimes should be punished based on the seriousness of the criminal act, not the status of the victim, and the proposed amendment represents a further retreat from this standard.

Notes

HB 3692 by Straus, the enabling legislation for HJR 6, would be effective if Proposition 13 is approved. In addition to the current offense for violating protective orders in family violence cases, the bill would amend Penal Code, sec. 25.07 to make it a crime to violate a condition of bond in a family violence case if the violation related to the safety of the victim or the community. HB 3692 also would expand the offense to include violating temporary, ex parte protective orders.

The bill would implement HJR 6 by authorizing the denial of bail to certain persons who commit a crime under Penal Code, sec. 25.07 by violating a condition of a bond or protective orders in family violence cases.

Bail could be denied to a defendant who violated a condition of bond in a family violence situation if the person's bail for the family violence offense or for violating a protective order or bond had been revoked. A judge or magistrate would have to find, by a preponderance of the evidence, that the person had violated a condition of bond related to the safety of the victim or the community.

Bail also could be denied for violating a protective order under Penal Code, sec. 25.07 if a judge or magistrate determined by a preponderance of the evidence that the person committed the offense. However, a person who violated a condition of bond or protective order under Penal Code 25.07 by going to or near a prohibited place could be denied bail only if a judge or magistrate found by a preponderance of the evidence that the person went to or near the place with the intent to commit, or threaten to commit, family violence or an act related to stalking.

When determining whether to deny bail under the authority of HB 3692, courts would have to consider:

- the order or condition of the bond;
- the nature and circumstances of the offense;
- the relationship between the victim and the accused;
- the criminal history of the accused; and
- any other facts relevant to determining whether the accused posed an imminent threat of family violence.

The bill also would require persons arrested for an offense under Penal Code, sec. 25.07 to be brought before a magistrate within 48 hours for the hearing to deny bail.

Permitting judges reaching mandatory retirement age to finish their terms

HJR 36 by McReynolds (Watson)

14
Proposition

Background

Art. 5, sec. 1-a(1) of the Texas Constitution requires a trial-court judge or appellate court justice to leave the bench when the judge turns 75 or any earlier age, not less than 70, that the Legislature may prescribe as the retirement age. The Legislature has never set such an age, and the Comptroller's Office stops paying a judge's salary on the judge's 75th birthday.

Digest

Proposition 14 would amend Art. 5, sec. 1-a(1) to allow judges who had reached the mandatory age of retirement to finish out their terms. A judge elected to serve or fill the remainder of a six-year term who reached the age of 75 during the first four years of the term would have to vacate the office by December 31 of the fourth year of the term.

The ballot proposal reads: "The constitutional amendment permitting a justice or judge who reaches the mandatory retirement age while in office to serve the remainder of the justice's or judge's current term."

Supporters say

Proposition 14 would honor the intent of Texas voters by allowing judges to serve out their elected terms. A judge's effectiveness and ability to keep abreast of new developments in the law is not a function of age. If voters decide that a judge's experience and abilities merit election or re-election, then a judge who will reach retirement age before the end of that judge's elected term should be allowed to serve out the full term.

Forcing judges to retire mid-term creates disruption in the efficient disposition of cases. Cases must be placed on hold while a temporary judge is selected and may again be delayed if a new elected judge takes over from the appointed replacement. Allowing judges to complete their terms would create an efficient and predictable succession process.

Mandatory retirement is not the only mechanism available to protect the courts from incompetent judges. The State Commission on Judicial Conduct exists to investigate reports of impropriety and incompetence and would remove judges who were unfit to serve.

Proposition 14 would be a good compromise between those who favor mandatory retirement and those who believe that it is arbitrary and unnecessary. The amendment would not eliminate mandatory retirement for judges, but simply would extend the service of these judges until their term ended. Retired judges often serve as visiting judges, so mandatory retirement does not necessarily remove these experienced jurists from the bench.

Opponents say

Current law provides a bright line for judicial retirement. One reason for mandatory retirement is that aging judges can contribute to an increasingly ineffective judiciary and can be difficult to remove because of the protections of incumbency. Proposition 14 would blur this bright line and erode the important policy goal of ensuring a vibrant and able judiciary. Allowing judges to serve out their terms past their 75th birthdays would delay the entrance of new judges who were potentially more in tune with modern trends and developments in the law.

Other opponents say

Proposition 14 would not go far enough. The federal government and many states are abolishing many mandatory retirement requirements altogether. With other protections in place to police professional quality, mandatory retirement increasingly represents an antiquated solution. Instead of allowing judges to finish their terms, Texas simply should allow the voters to decide who is fit to serve and abolish mandatory judicial retirement.

Authorizing general obligation bonds to fund cancer research

HJR 90 by Keffer (Nelson)

Background

The Texas Cancer Council was established by the Texas Legislature in 1985 to reduce the human and economic impact of cancer on Texans. The council developed the Texas Cancer Plan as an approach to cancer prevention and control in Texas.

Digest

Proposition 15 would add sec. 67 to Art. 3 of the Texas Constitution, requiring the Legislature to establish the Cancer Prevention and Research Institute of Texas. The Institute would support researchers in finding the causes of and cures for all types of cancer in humans, provide grants for cancer research and research facilities, and establish the appropriate standards and oversight bodies to ensure the proper use of funds.

The Legislature could authorize the Texas Public Finance Authority (TPFA) to issue up to \$3 billion in general obligation bonds on behalf of the Cancer Prevention and Research Institute. The TPFA would have to consider using a Texas business to issue the bonds and include using a historically underutilized business. Bond issuance could not exceed \$300 million per year.

The bond proceeds would be deposited in separate funds or accounts, as provided by general law, within the state treasury to be used by the institute. Notwithstanding any other provision in the Constitution, the institute, as part of the state government, could use bond proceeds and federal or private grants and gifts to pay for:

- grants for cancer research, for research facilities, and for research opportunities in Texas to develop therapies, protocols, medical pharmaceuticals, or procedures for the cure or substantial mitigation of all types of cancer in humans;
- grants for cancer prevention and control programs in Texas to mitigate the incidence of cancer;
- the purchase of laboratory facilities by or on behalf of a state agency or grant recipient;

- operations of the institute; and
- the costs of issuing the bonds and any related administrative expenses.

Before the Cancer Prevention and Research Institute could make a grant of bond proceeds, the grant recipient would have to dedicate to the research an amount of funds equal to one-half of the grant request.

Bonds approved by the attorney general, registered by the comptroller, and delivered to the purchasers would be incontestable and a general obligation of the state. The state would have to appropriate an amount sufficient to pay the principal of and interest on bonds that matured or became due during each fiscal year.

The ballot proposal reads: “The constitutional amendment requiring the creation of the Cancer Prevention and Research Institute of Texas and authorizing the issuance of up to \$3 billion in bonds payable from the general revenues of the state for research in Texas to find the causes of and cures for cancer.”

Supporters say

Proposition 15 would make Texas a global leader in cancer research and prevention. According to the Texas Cancer Council, cancer is the number two killer of Texans. The Texas Cancer Registry, a branch of the Epidemiology Unit of the Department of State Health Services, estimates that approximately 95,000 Texans will be diagnosed with cancer in 2007 and 37,000 Texans will die of the disease. The estimated direct economic cost of cancer to Texas in 1998 was \$4.9 billion, and estimated indirect costs the same year were \$9.1 billion.

Texas already has the infrastructure in place to support cancer research, but needs more funding and direction to encourage collaboration to leverage the maximum effective use of existing resources. Proposition 15 would accelerate landmark discoveries in cancer research and allow scientists and practitioners to translate these discoveries into practical tools and techniques to treat and prevent cancer.

Grants through the Cancer Prevention and Research Institute would infuse the cancer research and treatment community with up to \$300 million each year. Total research spending could far exceed this level because grant recipients would be required to match dedicated funding equal to half the grant award. This contribution also would help legitimize the research because grant recipients would share the risk of the undertaking. The total investment from both the state and grant recipients not only would enhance cancer research but also would attract private businesses to emerging Texas technology clusters. This would create more jobs in Texas as companies capitalized on local intellectual resources.

Recommendations for the awarding of grants would be directed by the professional expertise of the oversight and research and prevention committees established in the enabling legislation, HB 14 by Keffer. The oversight committee would create standards to balance Texas' economic interest in contracting for intellectual property rights and royalties with the need to provide incentives to grantees to conduct worthwhile research.

There is no need for clarification as to the Legislature's role in appropriating the bond proceeds. Art. 9, sec. 8.09 of HB 1 by Chisum, the general appropriations act for fiscal 2008-09, states that the proceeds from the sale of bonds are appropriated to the state agency to whose account the proceeds are deposited. Given that Proposition 15 explicitly states that the bond proceeds shall be deposited into funds or accounts designated for use by the Cancer Prevention and Research Institute, bond proceeds consequently would be appropriated to the institute. This appropriation, in conjunction with the statement of the permissible uses of institute funds that are outlined in the proposed amendment, would assure that state funds were spent in a way that best met the objectives of the institute.

While Proposition 15 would not require that bonds be utilized, it would provide the option to issue bonds to pay for the institute in years during which the Legislature found it more prudent to issue bonds than to use general revenue directly. Using bond proceeds could diminish the up-front costs of funding the institute yet guarantee that Texas could maintain its commitment to funding cancer research. If the general obligations bonds were utilized, the debt service on the bonds for the Cancer Prevention and Research Institute would be a small price to pay for the ground-breaking

advances in cancer research that could result. Much of the financing cost also would be offset by new jobs generated in Texas, incoming royalties, and the decreased direct and indirect costs of cancer that resulted from breakthrough medical advances discovered and implemented through the Cancer Prevention and Research Institute.

Proposition 15 would help lead to these breakthroughs not because the state government singularly was performing cancer research but rather because it would provide a sustained source of funding to foster a collaborative environment for both public and private entities to advance the field. Given that the availability of other forms of cancer funding is declining, making Texas the epicenter of a collaborative cancer research environment would optimize the use of funds to make unprecedented advances in cancer research. This focused investment has greater potential to facilitate advances than an environment in which diverse bodies compete for independent funding. Texans also would benefit from discoveries made in the course of cancer research that led to the development of treatments for other diseases. For example, much of the early progress in AIDS treatments stemmed from cancer research findings.

Opponents say

While cancer research doubtless is a worthwhile undertaking, medical research should be left in the hands of private organizations. Creative research is neither the role nor the talent of state government. If government funding is to be used for cancer research, it is more appropriate that research funding be addressed at the national level, because Texas taxpayers should not have to foot the bill for research that would benefit the entire country. Given that there are no guarantees that the research resulting from the proposed amendment would lead to a cure for Texans suffering with cancer, this endeavor would compete for state funds with priorities that have a more direct impact on meeting state needs.

The National Cancer Institute spent about \$4.7 billion on cancer research in 2006 alone, and this scale of annual investment – one that comparatively would dwarf the commitment in Proposition 15 – has not led to a cure. Texans should not expect that localized expenditures would fare better. There are countless other pressing needs in this state that represent more appropriate uses of state general

revenue and pose less of a gamble with taxpayer dollars, such as insuring Texas children, enhancing mental health services, and reducing the wait list for community services for the disabled. Expenditures in these and other health and human services programs would have a more predictable and measurable influence on the welfare of Texans.

Other opponents say

The state should demonstrate that cancer research is a priority by funding the institute with general revenue in the state budget process rather than by issuing bonds. Long-term financing costs could exceed \$1.6 billion. Texas should not undertake this much debt during this transitory period of budget surplus. Such action needlessly would obligate legislatures over the next 30 years to repay financing costs in lieu of funding other state priorities such as education, transportation, or health and human services.

If general revenue were used directly rather than borrowed through issuance of bonds, the state could pay fully its commitment to cancer research in only 10 years, which would spare future legislatures from having to grapple with repaying debt. In addition, royalties and other funding generated by the institute could assist in paying for the research on a cash basis. While the amendment would not require that bonds be issued to finance cancer research, the state has demonstrated a pattern over the years, when given the choice, of issuing bonds to finance a project rather than using general revenue directly.

The proposed amendment would afford a stronger assurance that the Legislature could act as the steward of this large sum of taxpayer dollars if it better defined the role of the Legislature in appropriating the bond proceeds. The Legislature should have authority to appropriate these funds as it would appropriate funds for other state agencies.

Notes

HB 14 by Keffer, the enabling legislation for Proposition 15/HJR 90, would reorganize the Cancer Council into the Cancer Prevention and Research Institute of Texas. HB 14 would establish the purpose of the institute, the permissible use of funds by the Institute, and an oversight committee to govern it. A program committee would perform grant review and make award recommendations. Not more than 5 percent of total grant awards could be used for facility construction, and not more than 10 percent could be used for cancer prevention and control programs. The Cancer Prevention and Research general revenue-dedicated account could contain patent, royalty, and license fees received under contract as well as gifts, grants, and funds appropriated by the Legislature. Issuance of general obligation bonds could not exceed \$300 million per year.

Art. 9, sec. 8.09 of the general appropriations act for fiscal 2008-09, HB 1 by Chisum, establishes that the proceeds from the issuance and sale of bonds are appropriated to the state agency to whose account the proceeds are deposited.

Bonds for water and sewer services to economically distressed areas

SJR 20 by Lucio (Chavez)

16
Proposition

Background

In 1989, the 71st Legislature enacted SB 2 by Santiesteban, which established the Economically Distressed Areas Program (EDAP) administered by the Texas Water Development Board (TWDB). EDAP provides financial assistance in the form of grants, loans, or grant/loan combinations to bring water and wastewater services to colonias, primarily along the Texas-Mexico border. The program funds construction, acquisition, and improvements to water supply and wastewater collection and treatment facilities, including all necessary engineering work. Maintenance and operations must be funded by the applicant. All political subdivisions in affected counties are eligible to apply.

Under the program, an economically distressed area is defined as an area where, on June 1, 1989, there was an established residential subdivision that had inadequate water supply or wastewater systems and lacked the financial resources to improve those systems. EDAP projects must be located in economically distressed areas within affected counties. Affected counties are defined as those next to the Mexican border or those with per capita income at least 25 percent below the state average and unemployment levels at least 25 percent above the state average. Thirty-four counties were eligible to participate in the program as of September 2004.

The 79th Legislature in 2005 enacted HB 467 by Bailey, which expanded EDAP to allow other economically distressed areas throughout the state, such as those located in Harris and Fort Bend counties, to receive assistance under the program.

In 1989, Texas voters approved a constitutional amendment that authorized \$500 million in general obligation bonds for water projects statewide. The amendment reserved 20 percent of the bonds, or \$100 million, for colonia projects as authorized by the enabling legislation. In 1991, the 72nd Legislature adopted and voters approved a constitutional amendment (Proposition 12) to increase total bond funds for EDAP to 50 percent of the total bond authorization, or \$250 million.

Digest

Proposition 16 would amend the Texas Constitution to allow TWDB to issue up to \$250 million in general obligation bonds for the EDAP program account within the Texas Water Development Fund II.

The bonds would be subject to Texas Constitution, Art. 3, sec. 49-d-8(e), which provides that if there were not enough money to pay the principal and interest on the general obligation bonds issued, an amount sufficient to pay the principal and interest on the general obligation bonds that matured or became due during that fiscal year or to make bond enhancement payments with respect to those bonds would be appropriated out of the first money coming into the state treasury in each fiscal year not otherwise appropriated by the Constitution. Money not committed could be invested as authorized by law.

The ballot proposal reads: “The constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board in an amount not to exceed \$250 million to provide assistance to economically distressed areas.”

Supporters say

Proposition 16 would authorize the issuance of an additional \$250 million in general obligation bonds to help meet the water and wastewater infrastructure needs of many Texas citizens. Although the EDAP program has been highly successful, a number of Texas communities continue to lack water and wastewater infrastructure. Without additional funding, many residents of unincorporated and economically distressed areas will be forced to continue to live in communities lacking basic infrastructure that most Texans take for granted, threatening their health and safety.

Since its inception, EDAP successfully has administered more than \$500 million in state and federal funds to provide assistance to economically distressed communities, primarily along the Texas-Mexico border. According to TWDB, traditional EDAP communities still require

about \$250 million to meet their water and wastewater infrastructure needs. However, the EDAP program only has \$12 million of the bond authority remaining, and the federal government has cut in half its appropriations to the Border Environment Infrastructure Fund, which also provides funding to meet water and wastewater needs along the border. The state should act now to refinance the EDAP program and ensure that TWDB has the resources necessary to meet the state's critical water and wastewater infrastructure needs.

Investing in necessary infrastructure would be a wise use of state funds. While many of the communities without water and wastewater infrastructure are poor, the introduction of water lines would enable businesses to move into those areas, improving the tax base and providing jobs for residents.

EDAP is now a statewide program that provides essential water and wastewater service to communities across Texas. The program employs safeguards that require any county or city applying to TWDB to enforce model subdivision rules before receiving assistance for a project under EDAP. These rules ensure that platting requirements are in place to prevent the proliferation of new colonias by unscrupulous developers. These standards have been successful in slowing the growth of these developments while extending vital public services to existing communities that are in need.

Although the state has limited general revenue available, ensuring that citizens have access to clean water and adequate sanitation necessary to promote public health should be one of its highest priorities.

Opponents say

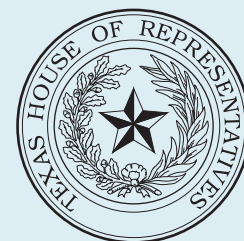
EDAP should not be expanded. Since EDAP was created in 1989, TWDB has received more than \$500 million in state and federal funds to provide assistance under the program, yet the problem has not gone away. In fact, continuing to extend water lines to unincorporated areas could prove counterproductive, since effectively it would encourage people to move into regions that are costly to serve. With so many underfunded priorities, the state cannot afford to authorize more bonds that further would drain the state's general revenue and increase state debt. Texas should search for other ways to address its water and wastewater needs, such as expanding grants and tax credits for low-income housing or providing counties with expanded authority to regulate and develop unincorporated areas.

Notes

HB 1 by Chisum, the general appropriations act for fiscal 2008-09, includes rider 4 under the appropriation for TWDB - Debt Service Payments - Non-Self Supporting General Obligation Water Bonds. This rider would appropriate \$8.5 million to pay the principal and interest on \$87.5 million in general obligation bonds for the EDAP program to be issued in fiscal 2008-09, contingent upon approval of SJR 20 by the voters.

The state general obligation bonds used to finance EDAP are used for both loans and grants. Some of the loans are paid back by the loan recipients, but most EDAP loans are forgiven. For this reason, EDAP bonds are considered non-self-supporting and are counted against the state debt limit. Other state general obligation bonds that are used to raise funds to provide loans to local governments for water projects are repaid by the local governments, not with state general revenue, and therefore are considered to be self-supporting.

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