

Analyses of Proposed Constitutional Amendments

November 3, 2009, Election



Texas Legislative Council

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of the
Texas Legislative Council

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Introduction

General Information

In the 2009 Regular Session, the 81st Texas Legislature passed eight joint resolutions proposing 11 amendments to the state constitution, and these proposed amendments will be offered for approval on the November 3, 2009, election ballot.

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

From its adoption in 1876 through November 2007, the legislature has proposed 635 amendments to the state constitution, and 632 have gone before Texas voters. Of the amendments on the ballot, 456 have been approved by the electorate and 176 have been defeated. The other three amendments never made it to the ballot for reasons that are historically obscure. See the online publication *Amendments to the Texas Constitution Since 1876* for more information.

The *Analyses of Proposed Constitutional Amendments* contains, for each proposed amendment that will appear on the November 3, 2009, ballot, the ballot language, an analysis, and the text of the joint resolution proposing the amendment. The analysis includes background information and a summary of comments made about each proposed constitutional amendment by supporters and by opponents.

Proposed Amendments

Amendment No. 1 (H.J.R. 132)

Wording of Ballot Proposition

The constitutional amendment authorizing the financing, including through tax increment financing, of the acquisition by municipalities and counties of buffer areas or open spaces adjacent to a military installation for the prevention of encroachment or for the construction of roadways, utilities, or other infrastructure to protect or promote the mission of the military installation.

Analysis of Proposed Amendment

The proposed amendment would add Section 52k to Article III, Texas Constitution, to allow the legislature by general law to authorize a municipality or county to issue bonds or notes to finance the acquisition of buffer areas or open spaces adjacent to a military installation for the prevention of encroachment or for the construction of roadways, utilities, or other infrastructure to protect or promote the mission of the military installation. The amendment would allow a municipality or county to pledge increases in property tax revenues imposed in the area by the municipality, county, or other political subdivisions for repayment of the bonds or notes.

Background

The proposed amendment provides a specific authorization for the legislature by general law to authorize a municipality or county to issue bonds or notes to finance the acquisition of buffer areas or open spaces adjacent to a military installation for the prevention of encroachment or for the construction of infrastructure and to pledge increases in property taxes to repay the bonds. The required legislative provision to authorize the issuance of notes or bonds, including tax increment bonds, however, was not finally passed by the 81st Legislature. If the constitutional amendment is adopted by voters, the notes or bonds cannot be issued until enabling legislation is passed in a subsequent legislative session.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. Military installations must be protected from encroaching development that could restrict training and operational missions and ultimately cause a military installation to close. Acquiring buffer areas or open spaces adjacent to a military installation to prevent encroachment also would facilitate the construction of infrastructure to protect or promote the mission of the military installation. Ensuring the viability of military installations is a worthy investment in the economic stability and security of many local communities and the state.

Comments by Opponents. Authorizing municipalities and counties to issue bonds to build infrastructure to protect or promote the mission of a military installation and to pledge increases in property taxes to repay those bonds could result in a higher tax burden on already distressed property owners.

Text of H.J.R. 132:

HOUSE JOINT RESOLUTION

proposing a constitutional amendment relating to the financing, including through tax increment financing, of the acquisition by municipalities and counties of buffer areas or open spaces adjacent to a military installation for certain purposes.

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

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

Sec. 52k. The legislature by general law may authorize a municipality or county to issue bonds or notes to finance the acquisition of buffer areas or open spaces adjacent to a military installation for the prevention of encroachment or for the construction of roadways, utilities, or other infrastructure to protect or promote the mission of the military installation. The municipality or county may pledge increases in ad valorem tax revenues imposed in the area by the municipality, county, or other political subdivisions for repayment of the bonds or notes.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 3, 2009. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing the financing, including through tax increment financing, of the acquisition by municipalities and counties of buffer areas or open spaces adjacent to a military installation for the prevention of encroachment or for the construction of roadways, utilities, or other infrastructure to protect or promote the mission of the military installation.”

House Author: Frank J. Corte, Jr.
Senate Sponsor: Jeff Wentworth

Amendment No. 2 (H.J.R. 36, Article 1)

Wording of Ballot Proposition

The constitutional amendment authorizing the legislature to provide for the ad valorem taxation of a residence homestead solely on the basis of the property's value as a residence homestead.

Analysis of Proposed Amendment

Section 1, Article VIII, Texas Constitution, requires taxation to be equal and uniform and provides that all real and tangible personal property in the state, unless exempt as constitutionally required or permitted, is to be taxed in proportion to its value. The proposed amendment would authorize the legislature, by general law, to provide for the taxation of a residence homestead solely on the basis of its value as a residence homestead, regardless of whether residential use by the owner is considered to be the highest and best use of the property.

Background

In April 2008, the Speaker of the Texas House of Representatives appointed a Select Committee on Property Tax Relief and Appraisal Reform, which was assigned to examine various aspects of the state's property tax system. The select committee conducted hearings across the state, traveling to Austin, McAllen, Arlington, San Antonio, Beaumont, Lubbock, Houston, and El Paso. The committee noted in its December 2008 report that a generally accepted standard when conducting appraisals, toward the determination of the fair market value of a property, is to consider the property's "highest and best use." Among real estate professionals, highest and best use is that use which is legally permissible, physically possible, financially feasible, and maximally profitable.

Testimony before the committee described instances in which the appraisal values of residence homesteads increased by 200 to 400 percent in a single year when arrived at by application of the highest and best use standard. According to subsequent testimony before the legislature during the consideration of House Joint Resolution 36 proposing the constitutional

amendment, the valuation of the lot on which a residence sits can in some cases be affected by surrounding commercial development that drives land values up. Areas of the state subject to zoning restrictions are somewhat protected from this phenomenon. Other areas without zoning are more susceptible.

Under the proposed amendment, the legislature would be empowered to provide for valuation of a residence homestead solely on the basis of its value as a homestead, eliminating the influence of consideration of the highest and best use. House Bill 3613, Acts of the 81st Legislature, Regular Session, 2009, amends Section 23.01, Tax Code, to require the determination of the market value of a residence homestead solely on that basis, regardless of the highest and best use. That legislation takes effect only if Texas voters approve the constitutional amendment.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. The legislative restriction on valuation allowed by the proposed amendment is not a radical departure from existing property tax practices, but rather resembles restrictions that already apply to agricultural and open-space land. Texas protects those types of properties from large appraisal increases resulting from consideration of the highest and best use. It does not similarly protect residence homesteads.

The proposed amendment and its enabling legislation, House Bill 3613, Acts of the 81st Legislature, Regular Session, 2009, which is contingent on voter approval of the proposed amendment, would extend such protection, particularly for homeowners whose neighborhoods are in transition from residential uses to commercial development. The amendment and legislation would apply only to residence homesteads and not to second homes or investment properties. The proposed change in law is narrowly tailored to address the problem identified by the Select Committee on Property Tax Relief and Appraisal Reform.

Comments by Opponents. Allowing a residence homestead to be valued based solely on its residential use, rather than on the highest and best use, could reduce aggregate values of taxable property and thus reduce local government tax revenue. Moreover, when a school district's per-student taxable property value (commonly referred to as "wealth per student") is reduced, the state must provide additional funding to the district under the Foundation School Program's equalization formulas. Funding at the state level is already tight without increasing this Foundation School Program obligation.

Text of H.J.R. 36:

HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to provide for the ad valorem taxation of a residence homestead solely on the basis of the property's value as a residence homestead; authorizing the legislature to authorize a single board of equalization for two or more adjoining appraisal entities that elect to provide for consolidated equalizations; and authorizing the legislature to provide for the administration and enforcement of uniform standards and procedures for appraisal of property for ad valorem tax purposes.

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

ARTICLE 1. APPRAISAL OF RESIDENCE HOMESTEADS

SECTION 1.01. Section 1, Article VIII, Texas Constitution, is amended by adding Subsection (j) to read as follows:

(j) The Legislature by general law may provide for the taxation of real property that is the residence homestead of the property owner solely on the basis of the property's value as a residence homestead, regardless of whether the residential use of the property by the owner is considered to be the highest and best use of the property.

SECTION 1.02. The constitutional amendment proposed by this article shall be submitted to the voters at an election to be held November 3, 2009. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing the legislature to provide for the ad valorem taxation of a residence homestead solely on the basis of the property's value as a residence homestead."

ARTICLE 2. CONSOLIDATED BOARDS OF EQUALIZATION

SECTION 2.01. Section 18(c), Article VIII, Texas Constitution, is amended to read as follows:

(c) The Legislature, by general law, shall provide for a single board of equalization for each appraisal entity consisting of qualified persons residing within the territory appraised by that entity. The Legislature, by general law, may authorize a single board of equalization for two or

more adjoining appraisal entities that elect to provide for consolidated equalizations. Members of a ~~the~~ board of equalization may not be elected officials of a ~~the~~ county or of the governing body of a taxing unit.

SECTION 2.02. The constitutional amendment proposed by this article shall be submitted to the voters at an election to be held November 3, 2009. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing the legislature to authorize a single board of equalization for two or more adjoining appraisal entities that elect to provide for consolidated equalizations.”

ARTICLE 3. UNIFORM APPRAISAL STANDARDS AND PROCEDURES

SECTION 3.01. Section 23(b), Article VIII, Texas Constitution, is amended to read as follows:

(b) Administrative and judicial enforcement of uniform standards and procedures for appraisal of property for ad valorem tax purposes shall be ~~[,as]~~ prescribed by general law ~~[,shall originate in the county where the tax is imposed, except that the legislature may provide by general law for political subdivisions with boundaries extending outside the county].~~

SECTION 3.02. The constitutional amendment proposed by this article shall be submitted to the voters at an election to be held November 3, 2009. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment providing for uniform standards and procedures for the appraisal of property for ad valorem tax purposes.”

House Author: John Otto et al.

Senate Sponsor: Tommy Williams et al.

Amendment No. 3 (H.J.R. 36, Article 3)

Wording of Ballot Proposition

The constitutional amendment providing for uniform standards and procedures for the appraisal of property for ad valorem tax purposes.

Analysis of Proposed Amendment

Section 23(b), Article VIII, Texas Constitution, requires that administrative and judicial enforcement of uniform standards and procedures for the appraisal of property for property tax purposes, as prescribed by general law, originate in the county where the tax is imposed. An exception is that the legislature may provide by general law for political subdivisions with boundaries extending outside the county. The proposed amendment would remove that requirement, as well as the exception. It would instead give the legislature full discretion to prescribe the manner of the enforcement of uniform appraisal standards and procedures.

Background

In summer 1978, the governor called a special session of the legislature to address constitutional and statutory means of limiting taxation and spending. Among the results was House Joint Resolution 1, Acts of the 65th Legislature, 2nd Called Session, 1978, proposing a set of constitutional amendments relating to property taxes. They were placed before Texas voters as a single ballot proposition, which won approval. Section 23, Article VIII, Texas Constitution, derives from that special session and constitutional amendment election and has not been modified since.

Since 1982, the property tax in Texas has been solely a local property tax. The appraisal review board for an appraisal district is the forum for administrative enforcement of uniform appraisal standards and procedures at the county level for the appraisal district. The district court, through an appeal of an appraisal review board order, is the forum for judicial enforcement of those standards and procedures. Venue for district court review is, with certain exceptions, in the county in which the appraisal review board that issued the order is located.

While the property tax system is primarily administered on the local level, the state retains an interest in property tax appraisal professionalism and competence. Under Chapter 1151, Occupations Code, the Texas Department of Licensing and Regulation is responsible for registering appraisers and other property tax personnel, and the Texas Commission of Licensing and Regulation is responsible for establishing standards of professional practice, conduct, education, and ethics for those personnel. The comptroller of public accounts, under Chapter 5, Tax Code, has powers and responsibilities relating to the training of property tax appraisers and appraisal review board members.

The state also has an interest in the consistent determination of property tax appraised values from one locality to the next, through the application of uniform appraisal practices, because the state allocates funding to public schools based on the per-student aggregate taxable property value in each school district. For that purpose, taxable values need to be determined in the same manner from appraisal district to appraisal district, as nearly as possible, to prevent inconsistencies from biasing comparative school funding. Section 403.302, Government Code, requires the comptroller periodically to conduct a study involving sampling and other techniques to determine the taxable value of all property and of each category of taxable property in each school district. Under the Education Code, the comptroller's findings are applied toward various formulas related to state educational funding.

The proposed constitutional amendment originated with a recommendation of the Senate Finance Subcommittee on Property Appraisal and Revenue Caps, which issued an interim study report in January 2009 proposing that the legislature consider amending Section 23, Article VIII, Texas Constitution, to give the state more authority over appraisal districts. The proposed amendment, in Section 23(b), would allow the legislature to strengthen state oversight of appraisal district practices and procedures. How exactly that might occur is presently indeterminate because the legislature did not enact enabling legislation to implement state enforcement authorized by the amendment. Rather, if the amendment is approved by the voters, the issue of state enforcement

would be left to a future legislative session. The proposed amendment would not affect the Section 23(a) provision prohibiting statewide appraisal of real property for ad valorem taxation.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. Property tax appraisal practices and procedures vary widely across the state. A property located in one county is sometimes appraised differently than a similar property located elsewhere in the state. There currently is no legal basis for direct oversight of appraisal districts by the state. Although the Texas Department of Licensing and Regulation and the comptroller of public accounts have related powers and responsibilities, neither can directly require an appraisal district to follow state law or apply a standard appraisal method.

Comments by Opponents. Reviews of the January 2009 report and record of the Senate Finance Subcommittee on Property Appraisal and Revenue Caps, the legislative history of House Joint Resolution 36, and other sources did not identify any opposition to the proposed amendment.

See page 14 for the text of H.J.R. 36.

Amendment No. 4 (H.J.R. 14, Article 2)

Wording of Ballot Proposition

The constitutional amendment establishing the national research university fund to enable emerging research universities in this state to achieve national prominence as major research universities and transferring the balance of the higher education fund to the national research university fund.

Analysis of Proposed Amendment

The proposed amendment would amend Article VII, Texas Constitution, by adding Section 20 to create the national research university fund, consisting of money transferred or deposited to the credit of the fund and any interest or other return on the investment of fund assets, for the purpose of providing a dedicated, independent, and equitable source of funding to enable emerging state research universities in Texas to achieve national prominence as major research universities. A state university receiving a distribution from the fund would be allowed to use that money only to support and maintain educational and general activities promoting increased research capacity at the university.

The proposed amendment would allow the legislature to dedicate state revenue, such as that revenue presently allocated to the dormant permanent higher education fund (HEF), to the national research university fund's credit and to appropriate, in each state fiscal biennium, all or a portion of the total return on all investment assets of the fund to carry out the purposes for which the fund is established. The portion of the total return available for appropriation would be the amount determined by the legislature, or by an agency designated by statute, as necessary to provide as nearly as practicable a stable and predictable stream of annual distributions to eligible state universities and to maintain over time the purchasing power of the fund investment assets. The amount appropriated from the fund in any fiscal year would be capped at seven percent of the investment assets' average net fair market value, as determined by law.

The proposed amendment would require the legislature to provide for the fund's administration and to allocate, or provide for the allocation of, the appropriated amounts to eligible state universities on a biennial basis and would require the allocation to be based on an equitable formula established by the legislature or an agency designated by statute and reviewed and adjusted as necessary at the end of each state fiscal biennium.

The proposed amendment would require the legislature to establish eligibility criteria for a state university to share in the distributions from the fund and would provide that a university that becomes eligible remains eligible to receive additional distributions in subsequent state fiscal bienniums. The University of Texas at Austin and Texas A&M University would not be eligible to receive money from the fund.

The amendment also would repeal Section 17(i), Article VII, Texas Constitution, which authorized the creation of a dedicated endowment, the permanent HEF, which was intended to build a corpus of funds to support state universities eligible for annual general revenue appropriations under Section 17 in acquiring land, constructing and equipping buildings or other permanent improvements, performing major repair or rehabilitation of buildings or other permanent improvements, and acquiring capital equipment, library books, and library materials. The provision to be repealed requires the legislature to provide for the permanent HEF's administration, prescribes the manner in which the permanent fund is to be invested, requires the investment income to be credited to the permanent HEF until the fund totals \$2 billion, and prohibits any expenditure of the permanent HEF's principal. Once the permanent HEF reaches \$2 billion, Section 17(i) requires 10 percent of the interest, dividends, and other income accruing from the previous fiscal year's investments of the permanent HEF to be deposited and become part of its principal, and out of the remainder of the annual investment income an annual sum sufficient to pay the debt service on certain bonds and notes issued under Section 17 would be appropriated and the balance would be allocated, distributed, and expended as provided for the appropriations. When the permanent HEF reaches \$2 billion, the distributions from the fund would replace the annual

appropriations of general revenue currently made under Section 17(a), Article VII, to certain universities for capital expenditures. The repeal of Section 17(i) would not affect the annual distribution of general revenue appropriations to eligible universities under Section 17(a).

A temporary provision applicable to the proposed amendment would provide for the amendment to take effect January 1, 2010, and would require any amount in or payable to the credit of the permanent HEF to be transferred on that date to the credit of the national research university fund. This temporary provision would expire January 1, 2011.

Background

The Texas Constitution of 1876 established the permanent university fund (PUF) through the appropriation of land grants previously given to The University of Texas at Austin plus one million acres. Today, the PUF is a public endowment supporting most component institutions of The University of Texas System and The Texas A&M University System through distributions from a separate account, the available university fund (AUF), which consists of the surface assets and investment proceeds from the PUF. In November 1984, voters approved the addition of Section 17, Article VII, Texas Constitution, appropriating state revenue to state universities and other institutions of higher education not eligible for distributions from the AUF. This general revenue appropriation, often referred to as the higher education fund, may be used by eligible institutions for substantially the same purposes as AUF distributions, including land acquisition, building construction, repair, and rehabilitation, capital equipment and library material purchases, and debt service on bonds. From 1986 through 1995, \$100 million in HEF funds was appropriated annually. The legislature increased the annual HEF appropriation to \$175 million beginning in 1996 and to \$262.5 million beginning in 2008.

In 1996, under the authority of Section 17(i), Article VII, Texas Constitution, the legislature also created a dedicated endowment, the permanent HEF, to build a corpus for the benefit of the non-PUF universities, and from 1996 to 2001 the legislature appropriated \$50 million each year

to the permanent HEF. This effort to establish a dedicated funding source is separate from the annual HEF appropriation.

Section 17(i) requires the permanent HEF to be invested in the same manner as the PUF, requires that investment returns of the permanent HEF be credited back to the fund until the fund balance reaches \$2 billion, and prohibits expenditure of the permanent HEF's corpus. After the permanent HEF balance reaches \$2 billion, the annual general revenue appropriations made to eligible institutions under Section 17(a) will end. Ten percent of investment income will be returned to the permanent HEF and the remainder of permanent HEF investment income will then be appropriated to HEF-eligible institutions. Beginning in fiscal year 2002, the \$50 million appropriated to the permanent HEF was reduced by the amount of interest earned on the endowment, and a corresponding amount was transferred to the Texas Excellence Fund for the benefit of HEF-eligible institutions. No appropriations to the permanent HEF were made for the fiscal 2004-2005 or 2006-2007 biennium. The estimated current balance of the permanent HEF is between \$450 million and \$475 million.

House Bill 51, Acts of the 81st Legislature, Regular Session, 2009, serves in part as implementing legislation for the proposed constitutional amendment creating the national research university fund. Section 13 of House Bill 51 enacts Subchapter G, Chapter 62, Education Code, to provide for the administration and investment of the proposed fund, to establish criteria for determining which universities will be eligible for distributions from the fund, and to prescribe details for the distribution and use of money from the fund. Sections 14 and 16 of House Bill 51 will take effect only if the proposed constitutional amendment is approved by the voters. Section 16 would repeal statutory provisions providing for depositing state revenue into and administering the permanent HEF, since that fund would be abolished if the amendment is approved. Section 14 would eliminate certain related deposits of revenue to the existing research development fund if the national research university fund is established. In addition, Section 21 of House Bill 51 provides that money may not be distributed from the national research university fund before the state fiscal biennium that begins September 1, 2011.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. Texas lags behind other major states in the number of nationally recognized research universities, with only two public research universities of national prominence—The University of Texas at Austin and Texas A&M University. Texas must continue strengthening these existing universities, and it also must focus resources on establishing additional nationally prominent research universities. The proposed amendment and its enabling legislation, House Bill 51, Acts of the 81st Legislature, Regular Session, 2009, would in effect repurpose the permanent HEF and spur emerging state research universities in Texas in their efforts to achieve nationally recognized research status.

With far more qualified applicants than it can admit to its two public, nationally recognized, tier-one universities, Texas is losing thousands of its high school graduates to doctorate-granting universities in other states each year. Creating additional national research universities in Texas would better position the state to achieve its vision of a globally competitive workforce by providing greater educational opportunities within the state for its best and brightest students.

The University of Texas at Austin and Texas A&M University have prominence and tier-one status in large part because of the long-term, sustained funding they have received from the permanent university fund. The amendment proposed by this resolution would make an excellent use of dormant permanent HEF funds, provide an established source of guaranteed funding for emerging research universities, put those universities on the pathway to tier-one status, and allow those universities to attract and retain top talent while generating important research in the state.

Comments by Opponents. The amendment's goals are laudable, but at a time of limited state resources, Texas should focus more of those resources, including the higher education fund, on those universities that are the closest to attaining tier-one status. Given the urgency of developing more nationally competitive research universities, it would make more sense to target fewer universities that are further along the path to national status.

Text of H.J.R. 14:

HOUSE JOINT RESOLUTION

proposing constitutional amendments limiting the public taking of private property, establishing the national research university fund to fund emerging research universities, and eliminating the higher education fund.

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

ARTICLE 1.

SECTION 1.01. Section 17, Article I, Texas Constitution, is amended to read as follows:

Sec. 17. (a) No person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person, and only if the taking, damage, or destruction is for:

(1) the ownership, use, and enjoyment of the property, notwithstanding an incidental use, by:

(A) the State, a political subdivision of the State, or the public at large; or

(B) an entity granted the power of eminent domain under law; or

(2) the elimination of urban blight on a particular parcel of property.

(b) In this section, "public use" does not include the taking of property under Subsection (a) of this section for transfer to a private entity for the primary purpose of economic development or enhancement of tax revenues.

(c) On or after January 1, 2010, the legislature may enact a general, local, or special law granting the power of eminent domain to an entity only on a two-thirds vote of all the members elected to each house.

(d) When a person's property is taken under Subsection (a) of this section [~~; and, when taken~~], except for the use of the State, [~~such~~] compensation as described by Subsection (a) shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities[~~;~~] shall be made; but all privileges and franchises granted by the Legislature, or created under its authority, shall be subject to the control thereof.

SECTION 1.02. The constitutional amendment proposed in this article shall be submitted to the voters at an election to be held November 3, 2009. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to prohibit the taking, damaging, or destroying of private property for public use unless the action is for the ownership, use, and enjoyment of the property by the State, a political subdivision of the State, the public at large, or entities granted the power of eminent domain under law or for the elimination of urban blight on a particular parcel of property, but not for certain economic development or enhancement of tax revenue purposes, and to limit the legislature's authority to grant the power of eminent domain to an entity."

ARTICLE 2.

SECTION 2.01. Article VII, Texas Constitution, is amended by adding Section 20 to read as follows:

Sec. 20. (a) There is established the national research university fund for the purpose of providing a dedicated, independent, and equitable source of funding to enable emerging research universities in this state to achieve national prominence as major research universities.

(b) The fund consists of money transferred or deposited to the credit of the fund and any interest or other return on the investment assets of the fund. The legislature may dedicate state revenue to the credit of the fund.

(c) The legislature shall provide for administration of the fund, which shall be invested in the manner and according to the standards provided for investment of the permanent university fund. The expenses of managing the investments of the fund shall be paid from the fund.

(d) In each state fiscal biennium, the legislature may appropriate as provided by Subsection (f) of this section all or a portion of the total return on all investment assets of the fund to carry out the purposes for which the fund is established.

(e) The legislature biennially shall allocate the amounts appropriated under this section, or shall provide for a biennial allocation of those amounts, to eligible state universities to carry out the purposes of the fund. The money shall be allocated based on an equitable formula established by the legislature or an agency designated by the legislature. The legislature shall review and as appropriate adjust, or provide for a review and adjustment, of the allocation formula at the end of each state fiscal biennium.

(f) The portion of the total return on investment assets of the fund that is available for appropriation in a state fiscal biennium under this section is the portion determined by the legislature, or an agency designated by the legislature, as necessary to provide as nearly as practicable a stable and predictable stream of annual distributions to eligible state universities and to maintain over time the purchasing power of fund investment assets. If the purchasing power of fund investment assets for any rolling 10-year period is not preserved, the distributions may not be increased until the purchasing power of the fund investment assets is restored. The amount appropriated from the fund in any fiscal year may not exceed an amount equal to seven percent of the average net fair market value of the investment assets of the fund, as determined by law. Until the fund has been invested for a period of time sufficient to determine the purchasing power over a 10-year period, the legislature may provide by law for means of preserving the purchasing power of the fund.

(g) The legislature shall establish criteria by which a state university may become eligible to receive a portion of the distributions from the fund. A state university that becomes eligible to receive a portion of the distributions from the fund in a state fiscal biennium remains eligible to receive additional distributions from the fund in any subsequent state fiscal biennium. The University of Texas at Austin and Texas A&M University are not eligible to receive money from the fund.

(h) An eligible state university may use distributions from the fund only for the support and maintenance of educational and general activities that promote increased research capacity at the university.

SECTION 2.02. Subsection (i), Section 17, Article VII, Texas Constitution, is repealed.

SECTION 2.03. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 81st Legislature, Regular Session, 2009, establishing the national research university fund to enable emerging research universities in this state to achieve national prominence as major research universities and transferring the balance of the higher education fund to the national research university fund.

(b) The amendment to add Section 20 to Article VII of this constitution and to repeal Section 17(i), Article VII, of this constitution takes effect January 1, 2010.

(c) On January 1, 2010, any amount in or payable to the credit of the higher education fund established by Section 17(i), Article VII, Texas Constitution, shall be transferred to the credit of the national research university fund.

(d) This temporary provision expires January 1, 2011.

SECTION 2.04. The constitutional amendment proposed by this Article shall be submitted to the voters at an election to be held November 3, 2009. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment establishing the national research university fund to enable emerging research universities in this state to achieve national prominence as major research universities and transferring the balance of the higher education fund to the national research university fund.”

House Author: Frank J. Corte, Jr.
Senate Sponsor: Robert Duncan

Amendment No. 5 (H.J.R. 36, Article 2)

Wording of Ballot Proposition

The constitutional amendment authorizing the legislature to authorize a single board of equalization for two or more adjoining appraisal entities that elect to provide for consolidated equalizations.

Analysis of Proposed Amendment

Section 18(b), Article VIII, Texas Constitution, requires the legislature to provide by law for a single appraisal within each county of all property subject to property taxation by the various taxing units located in that county. That subsection permits the legislature to authorize appraisals outside a county when political subdivisions are situated in more than one county or when two or more counties elect to consolidate appraisal services. Section 18(c), Article VIII, requires the legislature to provide for a single board of equalization for each appraisal entity consisting of qualified residents of the territory appraised by the appraisal entity. The proposed amendment would allow the legislature by general law to authorize a single board of equalization for two or more adjoining appraisal entities that elect to provide for consolidated equalizations.

Background

Under current law, an appraisal district conducts property tax appraisals for all taxing units in its jurisdiction. Although Section 18(b), Article VIII, Texas Constitution, permits the legislature to authorize appraisals outside a county when political subdivisions are situated in more than one county, the legislature has chosen not to exercise that authority. Under Section 6.01, Tax Code, an appraisal district is established in each county and is responsible for appraising property in the district for property tax purposes of each taxing unit that imposes property taxes in the district. Under Section 6.02, Tax Code, the appraisal district's boundaries are the same as the county's boundaries. As a result, in general, property in each county is appraised by an appraisal district the territory of which is limited to that county.

Section 18(c), Article VIII, Texas Constitution, requires the legislature to provide for a single board of equalization, referred to in the Tax Code as an appraisal review board, for each appraisal entity consisting of qualified residents of the territory appraised by that entity. Section 6.41(a), Tax Code, requires an appraisal review board for each appraisal district. Because there is one appraisal district for each county, with the same boundaries as the county, there is also one appraisal review board for each county.

An appraisal review board conducts a review with respect to a property if the appraisal, as determined by the appraisal district, is protested. Appraisal review board decisions may be appealed to the courts or to arbitration. The appraisal district, and the appraisal review board that reviews the district's appraisals, are separate and distinct entities—splitting the administrative function of appraisal and the quasi-judicial function of review.

Section 18(b), Article VIII, Texas Constitution, also permits the legislature to authorize appraisals outside a county when two or more counties elect to consolidate appraisal services. Section 6.02(b), Tax Code, allows the boards of directors of two or more adjoining appraisal districts to consolidate their appraisal operations by means of an interlocal contract. Currently, the boards of directors of two pairs of adjoining appraisal districts have chosen to do so. However, while the appraisals of property are consolidated, each appraisal district retains its own appraisal review board.

The proposed constitutional amendment would allow two or more adjoining appraisal districts, if they so opt, to consolidate appraisal review board functions. Adjoining appraisal districts would have that authority regardless of whether they have consolidated their appraisal functions. House Bill 3611, Acts of the 81st Legislature, Regular Session, 2009, enacting Sections 6.41(g) and (h), Tax Code, is the enabling law to allow consolidation of appraisal review boards by adjoining appraisal districts through an interlocal contract. House Bill 3611 takes effect only if the proposed constitutional amendment is adopted by Texas voters.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. Participation on an appraisal review board requires both the willingness to serve and the expertise to serve. The ability to consolidate appraisal review boards would benefit rural counties that have a relatively small pool of qualified persons from which to draw and have difficulty finding qualified appraisal review board members. The proposed amendment is permissive. Combining appraisal review boards would be allowed but not required, empowering appraisal districts to pursue whatever course on appraisal review board composition best fits local needs.

Comments by Opponents. The proposed amendment should go further to address consolidation issues. Wherever consolidation of property tax systems might prove beneficial to rural counties, it would be beneficial generally for all operations, both appraisal and review, enabling efficiencies and reducing not only appraisal review board recruitment requirements but also appraisal district staff requirements. If the legislature and Texas voters want to encourage consolidation, they should encourage both appraisal district consolidation and appraisal review board consolidation in tandem.

See page 14 for the text of H.J.R. 36.

Amendment No. 6 (H.J.R. 116)

Wording of Ballot Proposition

The constitutional amendment authorizing the Veterans' Land Board to issue general obligation bonds in amounts equal to or less than amounts previously authorized.

Analysis of Proposed Amendment

Section 49-b(w), Article III, Texas Constitution, currently authorizes the Veterans' Land Board (VLB) to provide for, issue, and sell general obligation bonds of the state to provide home mortgage loans to Texas veterans, provides a cap of \$500 million on the principal amount of such bonds that may be outstanding at any one time, and requires bond proceeds to be deposited in or used to benefit and augment the Veterans' Housing Assistance Fund II and to be administered and invested as provided by law. This bonding authority is in addition to the bonding authority generally conferred on the VLB by Section 49-b(c) for the purpose of creating the Veterans' Land Fund, the Veterans' Housing Assistance Fund, and the Veterans' Housing Assistance Fund II.

The proposed amendment would amend Section 49-b(w) to authorize the VLB to provide for, issue, and sell general obligation bonds of the state for the purpose of selling land to Texas veterans or providing them home or land mortgage loans. The proposed amendment would remove the \$500 million cap on the principal amount of bonds outstanding at any one time and instead require that the principal amount of outstanding VLB bonds provided, issued, or sold for those purposes at all times be equal to or less than the aggregate principal amount of state general obligation bonds previously authorized for those purposes by prior constitutional amendments. The proposed amendment also would prohibit bonds and other obligations issued or executed under this constitutional provision from being included in the computation required in determining the limit on state debt based on the amount of annual debt service payable from the general revenue fund. The proposed amendment would require bond proceeds to be deposited in or used to benefit and augment the Veterans'

Land Fund and the Veterans' Housing Assistance Fund, in addition to the Veterans' Housing Assistance Fund II, as determined appropriate by the VLB.

Background

In 1946, Texas voters approved a constitutional amendment that added Section 49-b, Article III, Texas Constitution, establishing the Veterans' Land Board (VLB) and authorizing the legislature to provide for the VLB's issuance of \$25 million in bonds to create a fund for the board's use in purchasing land for resale to Texas veterans of World War II. The 51st Texas Legislature passed an enabling act in 1949 providing for the selection of a chairman, whose duties included signing contracts of sale and purchase and approving or disapproving oil and gas leases executed by veteran purchasers covering land to which the board held title. Although the program was intended to last several years, the board received enough applications by January 1952 to use all available funds authorized under the initial program. Funds provided through the statute's revolving investment feature were the only funds available until the program was expanded in November 1951 by the passage of another constitutional amendment that authorized the sale of additional bonds in the amount of \$75 million. The first money from the sale of part of those bonds became available in February 1952. By that time, more than 4,000 loans had been closed from funds made available under the original program, and more than 5,000 applications were on hand for loans from the new bond fund.

Subsequent amendments to Section 49-b increased the VLB's bonding authority, incrementally raising the limit on the principal amount that the board could issue from \$25 million in 1946 to \$950 million by 1981, and authorized the issue of additional bonds not only for the Veterans' Land Program (VLP) but also for a Veterans' Housing Assistance Program (VHAP), which was created in 1983 to make mortgage loans in a manner similar to that of conventional lending institutions. In 2001, Texas voters approved a constitutional amendment that added Section 49-b(w), which provided the VLB with additional bonding authority specifically for VHAP and set a \$5 million cap on bonds that could be outstanding at any one time under that subsection.

The VLB currently has approximately \$80 million of unused general obligation bonding authority, which can be used by either the VHAP or the VLP. The remaining authority is anticipated to last only through the end of 2009; after 2009, the VLB will need new bonding authority to continue issuing qualified veterans mortgage bonds to fund loans in the VHAP and, if necessary, to issue new bonds in the VLP. Under the current provisions, the VLB would be required to pursue new bonding authority in the amount of \$1 billion from the legislature and the voters every four years.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the constitutional amendment.

Comments by Supporters. The proposed amendment would provide the secure and sufficient bonding authority needed by the Veterans' Land Board (VLB) to continue the Veterans' Housing Assistance Program and Veterans' Land Program. Federal tax law prohibits the board from issuing more than \$250 million in qualified veterans mortgage bonds per year, and the board expects its current remaining authorization (approximately \$80 million of unused general obligation bonding authority) to last through the end of 2009. From that point forward the board will need new bonding authority to continue issuing qualified veterans mortgage bonds for housing assistance and to issue new bonds for the land program. Under the current constitutional provision, the board must return to the legislature and to the voters every four years to secure the needed bonding authority. The proposed amendment would allow the board to avoid having to seek new bonding authority every four years; instead, the amendment would allow the board to issue new bonds in place of those already issued and then retired or redeemed, as long as the amount of outstanding bonds does not exceed the total amount of bonds authorized by the legislature and the voters in previous constitutional amendments. Voters have never declined to approve such measures in any previous election and, to date, have approved \$4 billion in these types of bonds, about \$2 billion of which has already been issued and later retired or redeemed.

Comments by Opponents. No comments opposing the amendment were made during the house and senate committee hearings or during discussion of the amendment in the house and senate chambers. A review of other sources also revealed no apparent opposition to the amendment.

Text of H.J.R. 116:

HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing the Veterans' Land Board to issue general obligation bonds in amounts equal to or less than amounts previously authorized.

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

SECTION 1. Section 49-b(w), Article III, Texas Constitution, is amended to read as follows:

(w) The Veterans' Land Board may provide for, issue, and sell general obligation bonds of the state for the purpose of selling land to veterans of the state or providing home or land mortgage loans to veterans of the state in a principal amount of outstanding bonds that must at all times be equal to or less than the aggregate principal amount of state general obligation bonds previously authorized for those purposes by prior constitutional amendments. Bonds and other obligations issued or executed under the authority of this subsection may not be included in the computation required by Section 49-j of this article. [In addition to the general obligation bonds authorized to be issued and to be sold by the Veterans' Land Board by previous constitutional amendments, the Veterans' Land Board may provide for, issue, and sell general obligation bonds of the state to provide home mortgage loans to veterans of the state. The principal amount of outstanding bonds authorized by this subsection may not at any one time exceed \$500 million.] The bond proceeds shall be deposited in or used to benefit and augment the Veterans' Land Fund, the Veterans' Housing Assistance Fund, or the Veterans' Housing Assistance Fund II, as determined appropriate by the Veterans' Land Board, and shall be administered and invested as provided by law. Payments of principal and interest on the bonds, including payments made under a bond enhancement agreement with respect to principal of or interest on the bonds, shall be made from the sources and in the manner provided by this section for general obligation bonds issued for the benefit of the applicable fund [Veterans' Housing Assistance Fund II].

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 3, 2009. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing the Veterans’ Land Board to issue general obligation bonds in amounts equal to or less than amounts previously authorized.”

House Author: Frank J. Corte, Jr.
Senate Sponsor: Leticia Van de Putte

Amendment No. 7 (H.J.R. 127)

Wording of Ballot Proposition

The constitutional amendment to allow an officer or enlisted member of the Texas State Guard or other state militia or military force to hold other civil offices.

Analysis of Proposed Amendment

The proposed amendment would amend Section 40(a), Article XVI, Texas Constitution, to exempt officers and enlisted members of the Texas State Guard and any other active militia or military force organized under Texas law from the prohibition against holding or exercising more than one civil office of emolument at the same time. The amendment would provide that nothing in the Texas Constitution is to be construed to prohibit an officer or enlisted member of the Texas State Guard and any other active militia or military force organized under Texas law, in addition to certain other officers or enlisted members, from holding at the same time any other office or position of honor, trust, or profit, under Texas or the United States, or from voting at any election in Texas when otherwise qualified.

Background

Section 40(a), Article XVI, Texas Constitution, prohibits a person from holding or exercising at the same time more than one civil office of emolument, except certain offices listed below. An office of emolument is an office for which the person who holds the office receives compensation. The offices of emolument that are exceptions to the prohibition against dual office holding established under this section are:

- justice of the peace;
- county commissioner;
- notary public;
- postmaster;
- officer of the National Guard, the National Guard Reserve, or the Officers Reserve Corps of the United States;

- enlisted member of the National Guard, the National Guard Reserve, or the Organized Reserves of the United States;
- retired officer of the United States Army, Air Force, Navy, Marine Corps, or Coast Guard;
- retired warrant officer and retired enlisted member of the United States Army, Air Force, Navy, Marine Corps, or Coast Guard; and
- officer or director of a soil and water conservation district.

When the exceptions listed above were added in 1876, 1926, 1932, and 1972, the Texas State Guard, created in 1941, was not in existence or was overlooked. The proposed amendment would add an exception for officers and enlisted members of the Texas State Guard and other active militia or military forces organized under Texas law to the prohibition against dual office holding established under Section 40(a), Article XVI, Texas Constitution.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. Current exceptions to the dual office holding prohibition allow a civil official to also hold office in most branches of the military, including the National Guard. The Texas State Guard and other Texas military forces were not in existence or were overlooked when these exceptions were added. The amendment is needed to allow a civil official to become active in the Texas State Guard or other state militia or military force and to allow state military personnel to hold another civil office.

Comments by Opponents. No comments opposing the amendment were made during the house and senate committee hearings or during discussion of the amendment in the house and senate chambers. A review of other sources also revealed no apparent opposition to the amendment.

Text of H.J.R. 127:

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to allow an officer or enlisted member of the Texas State Guard or other state militia or military force to hold other civil offices.

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

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

(a) No person shall hold or exercise at the same time, more than one civil office of emolument, except that of Justice of the Peace, County Commissioner, Notary Public and Postmaster, Officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States and enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, and retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and officers and enlisted members of the Texas State Guard and any other active militia or military force organized under state law, and the officers and directors of soil and water conservation districts, unless otherwise specially provided herein. Provided, that nothing in this Constitution shall be construed to prohibit an officer or enlisted man of the National Guard, ~~[and]~~ the National Guard Reserve, the Texas State Guard, and any other active militia or military force organized under state law, or an officer in the Officers Reserve Corps of the United States, or an enlisted man in the Organized Reserves of the United States, or retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and officers of the State soil and water conservation districts, from holding at the same time any other office or position of honor, trust or profit, under this State or the United States, or from voting at any election, general, special or primary in this State when otherwise qualified.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 3, 2009. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment to allow an officer or enlisted member of the Texas State Guard or other state militia or military force to hold other civil offices.”

House Author: Phil King et al.
Senate Sponsor: John Carona

Amendment No. 8 (H.J.R. 7)

Wording of Ballot Proposition

The constitutional amendment authorizing the state to contribute money, property, and other resources for the establishment, maintenance, and operation of veterans hospitals in this state.

Analysis of Proposed Amendment

The proposed amendment would add Section 73, Article XVI, Texas Constitution, to authorize the state to contribute money, property, and other resources to establish, maintain, and operate veterans hospitals.

Background

With 1.7 million veterans living in the state, Texas ranks third in the nation in the number of veterans among its residents. In federal fiscal year 2007, veterans health care facilities in the state recorded more than 47,000 inpatient visits and more than 4.3 million outpatient visits.

Texas currently has nine inpatient veterans hospitals located in Houston, Temple, Waco, Bonham, Dallas, Kerrville, San Antonio, Amarillo, and Big Spring, but the rising cost of traveling to these facilities can impede or delay necessary health care for some veterans.

The 81st Legislature passed H.B. 2217 to address the fact that traveling to the nearest inpatient Veterans Administration hospital for veterans living in the Rio Grande Valley region of the state requires a lengthy trip to San Antonio. H.B. 2217, which took effect June 19, 2009, added Section 434.019, Government Code, which requires the Texas Veterans Commission and the Department of State Health Services to work with the United States Department of Veterans Affairs to establish a veterans hospital in the Rio Grande Valley region. The bill also authorized the state to contribute money, property, and other resources to establish, maintain, and operate the veterans hospital.

It is not clear whether Section 51, Article III, Texas Constitution, would prohibit the state from making contributions of money, property, or other resources authorized by Section 434.019, Government Code. Section 51,

Article III, Texas Constitution, prohibits the state from making a grant of public money to an individual, association of individuals, or municipal or other corporation except for grants of aid in case of public calamity.

House Joint Resolution 7 would clearly authorize the state to make the contributions authorized by Section 434.019, Government Code, as well as contributions for the establishment, maintenance, and operation of a veterans hospital anywhere else in the state.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. The state currently lacks authority to contribute to a veterans hospital. The amendment would encourage the United States Department of Veterans Affairs to partner with the state and with local communities to establish additional such facilities. The state has previously approved constitutional amendments for veterans homes such as the Alfredo Gonzales Texas State Veterans Home and veterans cemeteries such as the Rio Grande Valley State Veterans Cemetery, and the amendment would give Texans an opportunity to express their desire with respect to improving access to medical care for Texas veterans.

Comments by Opponents. While there has been no specific opposition to authorizing the state to contribute to the establishment, maintenance, and operation of veterans hospitals, some observers have questioned whether a constitutional amendment is the correct mechanism for achieving the desired result.

Text of H.J.R. 7:

HOUSE JOINT RESOLUTION

proposing a constitutional amendment authorizing the state to contribute money, property, and other resources for the establishment, maintenance, and operation of veterans hospitals in this state.

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

SECTION 1. Article XVI, Texas Constitution, is amended by adding Section 73 to read as follows:

Sec. 73. The state may contribute money, property, and other resources for the establishment, maintenance, and operation of veterans hospitals in this state.

SECTION 2. The constitutional amendment proposed by this resolution shall be submitted to the voters at an election to be held November 3, 2009. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing the state to contribute money, property, and other resources for the establishment, maintenance, and operation of veterans hospitals in this state.”

House Author: Kino Flores
Senate Sponsor: Juan Hinojosa

Amendment No. 9 (H.J.R. 102)

Wording of Ballot Proposition

The constitutional amendment to protect the right of the public, individually and collectively, to access and use the public beaches bordering the seaward shore of the Gulf of Mexico.

Analysis of Proposed Amendment

The proposed amendment would add Section 33, Article I, Texas Constitution, to establish that the public has an unrestricted right to access and use a public beach. “Public beach” would mean a state-owned beach bordering on the seaward shore of the Gulf of Mexico, extending from mean low tide to the landward boundary of state-owned submerged land, and any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired a right of use or easement by prescription or dedication or has established and retained a right by virtue of continuous right in the public under Texas common law. The proposed amendment also would establish that the right to unrestricted access and use is dedicated as a permanent easement in favor of the public and would authorize the legislature to enact laws to protect that right and to protect the public beach easement from interference and encroachments. In addition, the proposed amendment would establish that its provisions do not create a private right of enforcement.

Background

The Texas open beaches act was enacted in 1959 and was codified in 1977 in Chapter 61, Natural Resources Code. Section 61.011 of that code establishes as state public policy that “the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, or if the public has acquired a right of use or easement to or over an area by prescription, dedication, or has retained a right by virtue of continuous right in the public, the public shall have the free and

unrestricted right of ingress and egress to the larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.” The vegetation line can migrate because of erosion, storms, or the construction of seawalls and other man-made barriers. As that line shifts, structures built on private land subsequently may become located on the public beach easement, where they are subject to removal or relocation by order of the commissioner of the Texas General Land Office, who is charged with enforcing the open beaches act to prevent encroachments against public access to beaches.

In recent years, hurricanes and their associated storm surges have dramatically altered the tidal and vegetation lines on many Texas Gulf Coast properties, leaving some houses and other structures standing on land that, although privately owned, is considered public beach under the open beaches act. Several lawsuits have challenged that act, particularly after Hurricanes Rita (2005) and Ike (2008) eroded the beach along the Gulf of Mexico in Galveston County and pushed the vegetation line farther inland.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. For 50 years, the Texas open beaches act has served as one of the strongest coastal access laws in the nation. The proposed amendment would strengthen that law by clarifying its intent to protect the public’s right to free and unrestricted access to public beaches and by placing the law in the Texas Constitution, thus protecting it from future tampering. Property owners who build or purchase homes on Texas beaches do so with full knowledge of the risks to their property because provisions in earnest money contracts, deeds, and title policies state that storms and rising sea levels may cause the line of vegetation to shift, thus causing the property to be located on a public beach. The open beaches act recognizes a “rolling” beachfront easement and authorizes the state to enforce the easement as natural changes occur in its location. Several

recent lawsuits have challenged that law, and the proposed amendment would reduce such litigation by clarifying the law's intent to keep public beaches public. The proposed amendment would not hinder the legislature's ability to address issues relating to future natural events.

Comments by Opponents. Many homes along the Texas Gulf Coast stood for generations on private land until Hurricane Ike's winds and storm surge moved the line of vegetation, leaving the homes on the public beach. Under the current Texas open beaches act, the state is authorized to require private property owners whose houses now stand on a public beach because of erosion and storm damage to remove the structures from that land. The proposed amendment would entrench that law in the Texas Constitution, providing the state with excessive authority to restrict property owners' rights to enjoy their property and compounding the problem for those owners by making the law more difficult to change in the future.

Text of H.J.R. 102:

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to protect the right of the public to access and use public beaches.

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

SECTION 1. Article I, Texas Constitution, is amended by adding Section 33 to read as follows:

Sec. 33. (a) In this section, “public beach” means a state-owned beach bordering on the seaward shore of the Gulf of Mexico, extending from mean low tide to the landward boundary of state-owned submerged land, and any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired a right of use or easement to or over the area by prescription or dedication or has established and retained a right by virtue of continuous right in the public under Texas common law.

(b) The public, individually and collectively, has an unrestricted right to use and a right of ingress to and egress from a public beach. The right granted by this subsection is dedicated as a permanent easement in favor of the public.

(c) The legislature may enact laws to protect the right of the public to access and use a public beach and to protect the public beach easement from interference and encroachments.

(d) This section does not create a private right of enforcement.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 3, 2009. The ballot shall be printed to provide for voting for or against the proposition: “The constitutional amendment to protect the right of the public, individually and collectively, to access and use the public beaches bordering the seaward shore of the Gulf of Mexico.”

House Author: Richard Raymond et al.
Senate Sponsor: Juan Hinojosa

Amendment No. 10 (H.J.R. 85)

Wording of Ballot Proposition

The constitutional amendment to provide that elected members of the governing boards of emergency services districts may serve terms not to exceed four years.

Analysis of Proposed Amendment

Section 30, Article XVI, Texas Constitution, limits the term of office for all state offices to two years unless otherwise specifically indicated by the constitution. The proposed amendment would amend Section 30(c), Article XVI, Texas Constitution, to authorize the legislature to provide that members of the governing board of an emergency services district may serve terms not to exceed four years.

Background

The legislature is authorized by Section 48-e, Article III, Texas Constitution, to create emergency services districts to provide emergency medical services, emergency ambulance services, rural fire prevention and control services, or other emergency services. An emergency services district is a political subdivision of the state and is governed by a board of commissioners. Under Section 30, Article XVI, Texas Constitution, the term of office for an officer of the state, including a district commissioner, is limited to two years. The constitution includes specific exceptions to that two-year limitation for railroad commissioners and members of the governing boards of conservation and reclamation districts, hospital districts, and certain other types of special districts.

House Joint Resolution 85 proposes to amend Section 30(c), Article XVI, Texas Constitution, to authorize the legislature to provide that members of the governing board of an emergency services district may serve terms not to exceed four years.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. The services controlled by emergency services districts are important enough to local communities to justify longer terms for district commissioners to provide greater continuity and experience in district leadership. The proposed amendment would provide emergency services district commissioners time to gain such expertise. The Texas Constitution provides an exception to the two-year limitation for a number of political subdivisions, including hospital districts, with which emergency services districts share certain responsibilities and areas of concern. Furthermore, requiring commissioners to run for election and reelection every two years unnecessarily detracts from the work of the district and runs the risk of politicizing an otherwise nonpartisan office, increasing the likelihood that a candidate will be selected based on political savvy rather than qualifications for the position.

Comments by Opponents. Emergency services districts have authority over critical services and broad powers to exercise that authority, including the power to levy taxes. The proposed amendment would weaken emergency services district commissioners' accountability to the public by diluting the primary means by which voters exert influence over elected officials. Members of the Texas House of Representatives are elected every two years, and the voting public should expect the same amount of control in selecting the officials who serve in a strictly local capacity.

Text of H.J.R. 85:

HOUSE JOINT RESOLUTION

proposing a constitutional amendment to allow the legislature to provide for members of a governing board of an emergency services district to serve terms not to exceed four years.

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

SECTION 1. Section 30(c), Article XVI, Texas Constitution, is amended to read as follows:

(c) The Legislature may provide that members of the governing board of a district or authority created by authority of Article III, Section 48-e, Article III, Section 52(b)(1) or (2), or Article XVI, Section 59, of this Constitution serve terms not to exceed four years.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 3, 2009. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment to provide that elected members of the governing boards of emergency services districts may serve terms not to exceed four years.”

House Author: Patricia Harless
Senate Sponsor: Dan Patrick

Amendment No. 11 (H.J.R. 14, Article 1)

Wording of Ballot Proposition

The constitutional amendment to prohibit the taking, damaging, or destroying of private property for public use unless the action is for the ownership, use, and enjoyment of the property by the State, a political subdivision of the State, the public at large, or entities granted the power of eminent domain under law or for the elimination of urban blight on a particular parcel of property, but not for certain economic development or enhancement of tax revenue purposes, and to limit the legislature's authority to grant the power of eminent domain to an entity.

Analysis of Proposed Amendment

The proposed amendment would amend Section 17, Article I, Texas Constitution, to restrict the taking, damaging, or destroying of a person's property for public use to circumstances in which the taking, damage, or destruction is necessary for the ownership, use, and enjoyment of the property by the State of Texas, a political subdivision of the state, the public at large, or an entity granted the power of eminent domain, or for the elimination of urban blight on a particular parcel of property. The proposed amendment would also specify that in Section 17, Article I, the term "public use" does not include the taking of property for transfer to a private entity for the primary purpose of economic development or enhancement of tax revenues. Effective January 1, 2010, the proposed amendment would limit the legislature's ability to grant the power of eminent domain to an entity by requiring the grant to be approved by two-thirds of all the members elected to each house.

Background

The Fifth Amendment to the United States Constitution prohibits the taking of private property for public use without just compensation, a provision commonly referred to as the "takings clause." Section 17, Article I, Texas Constitution, contains a similar clause prohibiting a person's property from being taken, damaged, or destroyed for or applied

to public use without adequate compensation, unless the property owner consents. The authority of government to claim private property for public use is called eminent domain and is considered an inherent attribute of sovereignty. Texas, as sovereign, has granted the authority of eminent domain by statute to entities other than the state, including political subdivisions, special districts, and private concerns, such as utilities and common carriers. The process of acquiring property through the use of eminent domain is called condemnation.

In 2005, the United States Supreme Court ruled in *Kelo v. City of New London*, 545 U.S. 469, that the Connecticut city's use of eminent domain to acquire private homes for economic development qualified as a public use under the U.S. Constitution's takings clause and indicated in its ruling that states could impose public use requirements that are stricter than the federal standards. In response to the court's decision, the 79th Legislature, 2nd Called Session, 2005, in Senate Bill 7, enacted Section 2206.001, Government Code, which prohibits governmental or private entities from using eminent domain to take private property if the taking confers a private benefit on a particular private party through the use of the property, is for a public use that merely is a pretext to confer a private benefit on a particular private party, or is for economic development purposes, unless the development is a secondary purpose that results from municipal community development or urban renewal activities to eliminate a blighted area.

Summary of Comments

The following paragraphs are based on comments made about the proposed amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. The proposed amendment would enhance the property protections established statutorily in 2005 by placing in the Texas Constitution clear restrictions on the use of eminent domain and by specifying that "public use" excludes the taking of property for the primary purpose of economic development or enhancement of tax revenues.

The proposed language relating to the “ownership, use, and enjoyment” of condemned property would provide strong direction to courts that rule on eminent domain cases. The language would require a condemning authority to own, use, and enjoy condemned property and would prohibit an entity from acquiring property through eminent domain with no clear plans to put the property to public use. Contrary to what many opponents to the measure have suggested, that language would not interfere with the lease of property to a third party or other similar arrangements.

The proposed amendment would close a loophole that allows governmental entities to take well-maintained land on grounds of “blight,” claiming that the taking is necessary because surrounding parcels are blighted, by allowing a government to condemn for blight only if the parcel being condemned is itself blighted. In addition, local governments would be unable to take large parcels of property and sell or lease them to a private developer to build new developments with the intent of increasing local tax revenues.

Other Comments. The proposed amendment is an important first step in accomplishing the eminent domain reform that is needed in Texas, but it would not adequately protect property owners because it would not clearly define acceptable uses of eminent domain. Additional protections should be enacted, including compensation for lost access to property, the payment of a fair market price, and the right to repurchase land that is taken for one purpose and used for another.

Comments by Opponents. The proposed amendment attempts to address problems that largely were resolved statutorily. Allowing Texas courts more time to review and further define the state’s current eminent domain laws could resolve many lingering concerns about the extent of protections for property owners under the existing laws, while placing the proposed changes in the Texas Constitution would make them permanent, for all practical purposes, and any unintended effects could impede legitimate eminent domain actions that are necessary for state and local public projects.

The proposed language referring to the “ownership, use, and enjoyment” of condemned property is unclear and would leave to the courts the power to determine the legitimate scope of eminent domain in Texas. That language could lead to future litigation and give rise to varying court interpretations that might differ from the legislature’s intent, undermining decades of judicial precedent and costing taxpayer dollars. Statutory law, not the constitution, is the proper forum for testing experimental terms with uncertain implications. In addition, that language would create ambiguity about the legitimate uses of eminent domain and could prevent local governments from entering into leases and other arrangements with third-party vendors to provide ancillary services at public facilities on property acquired through eminent domain—for example, airport hangars, hospitals, hotels, restaurants, and parking facilities—that would serve the general public and boost the local tax base. The language should have been amended to read “ownership, use, *or* enjoyment,” thus providing greater flexibility more appropriate for a constitutional provision.

Furthermore, the proposed amendment would allow the legislature, upon a two-thirds vote of all the members, to grant any entity, including a private entity, the authority of eminent domain. While utilities and common carriers long have had this authority, which those enterprises need for their operations, the proposed amendment would potentially allow any party to obtain the authority of eminent domain and would not protect home or business owners from losing their property for a private development project.

See page 27 for the text of H.J.R. 14.