

HOUSE RESEARCH ORGANIZATION

focus report

Texas House of Representatives

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CONSTITUTIONAL

Amendments Proposed

for November 2009 Ballot

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Amending the Constitution

Texas voters have approved 456 amendments to the state Constitution since its adoption in 1876. Eleven more proposed amendments will be submitted for voter approval at the general election on Tuesday, November 3, 2009.

Joint resolutions

The Texas Legislature proposes constitutional amendments in joint resolutions that originate in either the House of Representatives or the Senate. For example, Proposition 1 on the November 3, 2009, ballot was proposed by House Joint Resolution (HJR) 132, introduced by Rep. Frank Corte and sponsored in the Senate by Sen. Jeff Wentworth. 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, 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 14 by Corte, adopted by the 81st Legislature earlier this year, includes two propositions to amend the Constitution on this year's ballot: one restricting use of eminent domain authority and another establishing a National Research University Fund to assist emerging research universities. HJR 36 by Otto includes three separate propositions to amend the Constitution, each concerning property taxation. 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. For example, early in its 2007 regular session, the 80th Legislature adopted SJR 13 by Averitt, a proposed constitutional amendment to make a proportionate reduction in the school property tax freeze amount for the elderly and disabled, and set the election for Saturday, May 12, 2007, a uniform election date when many local jurisdictions also held elections. In recent years, including 2009, most proposals have been submitted at the November general election held in odd-numbered years. However, another recent exception was in 2003, when all joint resolutions proposing constitutional amendments adopted by the 78th Legislature 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 following 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 \$90,882, 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.

P

revious Election Results

Analyses of the sixteen proposals on the November 6, 2007, ballot appear in House Research Organization Focus Report No. 80-8, *Constitutional Amendments Proposed for November 2007 Ballot*, August 24, 2007.

Proposition 1: Transferring constitutional facilities funding for Angelo State University

FOR	696,426	66.3%
AGAINST	353,922	33.7%

Proposition 2: Authorizing general obligation bonds to finance student loans

FOR	718,282	65.8%
AGAINST	372,659	34.2%

Proposition 3: Annual 10 percent cap on increases in homestead taxable value

FOR	769,908	71.5%
AGAINST	306,830	28.5%

Proposition 4: General obligation bonds for state agency construction and repair projects

FOR	627,609	58.2%
AGAINST	451,440	41.8%

Proposition 5: Allowing a temporary property tax freeze for smaller city development

FOR	690,650	66.0%
AGAINST	355,583	34.0%

Proposition 6: Property tax exemption for a personal vehicle used for business activities

FOR	800,005	73.7%
AGAINST	285,537	26.3%

Proposition 7: Selling property acquired through eminent domain to former owner at original price

FOR	867,973	80.3%
AGAINST	212,555	19.7%

Proposition 8: Revisions to home equity loan provisions

FOR	823,189	77.6%
AGAINST	238,136	22.4%

Proposition 9: Exempting residence homesteads of totally disabled veterans from property taxation

FOR	932,418	86.2%
AGAINST	149,275	13.8%

Proposition 10: Deleting constitutional references to county office of inspector of hides and animals

FOR	806,652	76.6%
AGAINST	246,914	23.4%

Proposition 11: Requiring legislators to cast record votes on final passage

FOR	893,686	84.5%
AGAINST	163,553	15.5%

Proposition 12: Authorizing \$5 billion in general obligation bonds for highway improvements

FOR	670,186	62.6%
AGAINST	400,383	37.4%

Proposition 13: Allowing judges to deny bail in certain cases involving family violence

FOR	916,173	83.9%
AGAINST	176,189	16.1%

Proposition 14: Permitting judges reaching mandatory retirement age to finish their terms

FOR	814,148	75.0%
AGAINST	271,245	25.0%

Proposition 15: Authorizing general obligation bonds to fund cancer research

FOR	673,763	61.5%
AGAINST	422,647	38.5%

Proposition 16: Bonds for water and sewer services to economically distressed areas

FOR	650,533	60.8%
AGAINST	419,914	39.2%

Source: Secretary of State's Office

Authorizing city and county financing to buy buffer areas near military installations



HJR 132 by Corte (Wentworth)

Background

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. The section has been amended several times, including the addition of sec. 52-a, which authorizes a loan or grant of public money for economic development purposes.

Tax Code, ch. 311 governs the use of tax increment financing. Local governments use tax increment financing to make structural improvements and infrastructure enhancements within a designated reinvestment area. These improvements often are undertaken to promote the viability of existing businesses and to attract new commercial enterprises to the area. The costs of the improvements are repaid by future tax revenues derived from the property in the area.

Digest

Proposition 1 would authorize the Legislature to allow cities and counties to issue bonds or notes to finance the acquisition of buffer areas or open spaces next to military installations to prevent encroachment or to construct roadways, utilities, or other infrastructure to protect or promote the mission of the military installation. The city or county could pledge increases in property tax revenues from the area to repay the bonds or notes.

The ballot proposal reads: “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.”

Supporters say

Proposition 1 is necessary to grant clear, specific authorization for cities and counties to use bonds or notes to buy land to create buffer areas around military installations. Questions have been raised about whether cities and counties have this constitutional authority, and Proposition 1 would settle those questions. While local entities currently may issue bonds to buy land in blighted areas that meet certain urban renewal criteria, land around military installations often does not meet these criteria.

Proposition 1 would allow cities and counties to address a growing need to protect military installations from encroachment by preventing or limiting development of the surrounding area. Texas is home to numerous military installations, and in some areas, commercial and residential development has moved closer and closer to the facilities, resulting in problems for both the military facilities and those involved in the development. For example, homes and schools may be incompatible with artillery exercises or other military training. In other cases, excessive light from nearby developments can make military operations difficult. In at least one case, at San Antonio’s Camp Bullis, development has reduced trees and foliage around the installation and may have forced endangered species and other wildlife into the boundaries of the facility. These problems can make it difficult for the facilities to perform or expand their missions, which ultimately could lead to closure of the base.

Proposition 1 would give local governments a tool to help prevent and address the problems that come with the encroachment of development near military installations. Cities and counties would be able to issue bonds or notes to raise the funds to purchase land around military installations as a buffer zone or to construct infrastructure, such as roads or utilities, to divert the path of future development from the installation or otherwise promote the mission of the installation. While the land around military installations may be protected

through land-use restrictions, zoning, or other methods, Proposition 1 would give cities the additional option of purchasing the land.

It would be appropriate to allow the Legislature to authorize cities and counties to expend public funds for the public purpose of aiding local military installations because of the vital role the installations play in the nation's security and their importance to local economies. Military facilities often serve as the cornerstones of local economies, providing jobs and other economic benefits, and Proposition 1 would give cities and counties a way to protect these benefits. Proposition 1 would ensure that expenditures of public funds were appropriate by requiring that they be spent only for buffer zones to prevent encroachment or for infrastructure to protect or promote the mission of the military installation.

Proposition 1 would not force any local jurisdiction to issue bonds or to increase taxes. Any decision to use the authority in Proposition 1 would be made on the local level, and bonds or notes would have to be approved locally, either by voters or the governing body of the city or county. Unchecked encroachment on military installations could lead to interference in the facilities' mission, or even closure, which could harm a local economy and taxpayers more than would a locally approved bond issue. Cities and counties would have the additional option of using tax increment financing by pledging increases or a portion of increases in property tax revenue in a specified zone to the repayment of the bonds or notes issued.

Proposition 1 would not in any way encourage the use of eminent domain or change current law on acquiring property for a public purpose. Proposition 1 could result in fewer proposed takings of land through eminent domain because cities could turn first to using bond proceeds to purchase land at market value and in

some cases could buy the land for a planned buffer zone years before they would have considered using eminent domain to acquire the land.

Opponents say

While protecting military bases is a worthy goal, cities and counties should not be given another reason to increase property taxes. Higher property taxes used to finance bonds to purchase land or build infrastructure could overburden property owners who already carry a heavy load. Proposition 1 could further increase the tax burden on other property owners if it resulted in land in a potential buffer zone being purchased by a city or county and, as publicly owned property, no longer could be taxed.

Notes

HB 4130 by Corte, the enabling legislation for Proposition 1, was placed on the General State Calendar in the House during the 2009 regular session of the 81st Legislature, but died when no further action was taken. HB 4130 would have authorized cities and counties to issue bonds or notes, including tax increment bonds or notes authorized under the state's Tax Increment Financing Act, to finance the acquisition of buffer areas or open spaces adjacent to military installations. The buffer areas would have been solely 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. If HB 4130 had been approved by the Legislature, it would have taken effect December 1, 2009, if a constitutional amendment such as Proposition 1 authorizing the Legislature to enact such legislation were approved by the voters.

Requiring appraisal of residence homesteads based solely on their homestead value



HJR 36 by Otto (Williams)

Background

Texas Constitution, Art. 8, sec. 1 requires all real and tangible personal property to be taxed in proportion to its value. Determining the “highest and best use” of a particular piece of property is a generally accepted property appraisal technique used to help determine the market value of real property. Among real estate appraisers, “highest and best use” is that which is legally permissible, physically possible, financially feasible, and most profitable. The term is not defined by the Tax Code.

Digest

Proposition 2 would amend Art. 8, sec. 1 of the Texas Constitution to authorize the Legislature to provide for taxation of a residence homestead based solely on the property’s value as a residence homestead, regardless of whether the residential use of the property by the owner was considered the highest and best use of the property.

The ballot proposal reads: “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.”

Supporters say

The constitutional requirement that property be taxed in proportion to its value has all too often meant that county tax appraisers have valued property based on its “highest and best use” rather than on its current use. For example, a residential property in or near a commercial district may be valued based on its commercial potential even though it currently is being used as a residence. Proposition 2 and its enabling legislation would require that the market value of a residence homestead be determined by its value as a residence homestead, regardless of whether that is the highest and best use of the property.

Some Texas homeowners have seen their property appraisals double or even quadruple in a short period, not because the value of their homes increased, but because the highest and best use of the land dramatically changed. While the 10-percent cap on annual increases in taxable value of residence homesteads mitigates the impact of large increases in appraised market value, it still means that every year the taxes on the property will rise substantially. Where property use is restricted by zoning regulations, residential homesteads are somewhat protected from dramatic changes in highest and best use — for example, from residential to commercial. But those areas of the state not covered by zoning regulations are susceptible to substantial increases in appraised value based solely on changes of land use in the area where the homestead happens to be located.

Texas already protects certain types of property from large appraisal increases due to changes in highest and best use. For example, the taxable value of agricultural or timber land is appraised based on the land’s capacity to produce agricultural or timber products, not on its market value, which usually is much higher. Residence homesteads do not have such protection.

Proposition 2 would protect Texas homesteads from increases due to changes in highest and best use by allowing the Legislature to ensure that the properties were appraised only on the basis of the property’s value as a residence homestead. These protections are especially necessary to protect homeowners whose neighborhoods are in transition from residential to commercial use. This limitation on the appraisal process would apply only to residence homesteads, not to other residential property such as apartments or vacation homes.

Opponents say

Proposition 2 would arbitrarily move the property appraisal process further away from a true valuation of property according to its worth. According to some estimates, allowing residential homestead property to be valued based solely on its residential use and exempted

from a highest and best use valuation would reduce taxable property values, thereby reducing local tax revenue and requiring a local tax increase or spending cuts to offset the revenue loss. The owners of residence homesteads already receive a substantial benefit from the 10-percent annual limitation on the increase in the taxable value of their property, plus other value exemptions and tax freezes that owners of other types of property do not receive.

When school districts' property values per student are lower, the state must provide additional funding to these districts under the Foundation School Program's equalization formulas. The state cannot afford to

increase its obligations in this manner, especially when state finances are expected to be spread thin over the next few years.

Notes

HB 3613 by Otto, the enabling legislation enacted by the 81st Legislature during its 2009 regular session and signed by the governor, would require that the land of a residence homestead be appraised as a residence and not based on the highest and best use of the property. This provision would take effect only if voters approve Proposition 2.

Allowing state enforcement of uniform property appraisal standards and procedures



HJR 36 by Otto (Williams)

Background

Texas Constitution, Art. 8, sec. 23(b) requires that the administrative and judicial enforcement of uniform standards and procedures for appraisal of property for property (ad valorem) tax purposes be prescribed by statute and originate in the county where the tax is imposed.

Digest

Proposition 3 would remove the current constitutional requirement that administrative and judicial enforcement of uniform standards and procedures for property appraisal originate in the county where the tax is imposed.

The ballot proposal reads: “The constitutional amendment providing for uniform standards and procedures for the appraisal of property for ad valorem tax purposes.”

Supporters say

Proposition 3 would authorize the Legislature to enact laws that would require local appraisal districts to follow best practices and standard procedures to ensure appropriate and accurate appraisals that determine the value of property for taxation purposes. Statewide uniformity and equity of appraisal processes can be achieved only by amending the Texas Constitution to allow direct state enforcement authority and oversight of local appraisals.

Property owners across the state have seen large increases in the appraised value of their property. Many property owners claim these increases are inequitable and are caused by differing local appraisal practices and methods across different appraisal districts. However, the Texas Constitution requires that administrative and judicial enforcement of uniform standards and procedures for appraisal of property originate in

the county where the tax is imposed. This provision has been interpreted to mean that the state has little meaningful supervisory or administrative power over the standards and methods that local appraisal districts use to value property.

Property located in one Texas county should be appraised in the same manner and according to the same rules as similar property located in another Texas county. Taxpayers should be able to enforce uniformity and equity through meaningful state oversight. Proposition 3 would allow the state to oversee the appraisal system directly and take the necessary action to address inequities and inconsistencies in property appraisal.

Opponents say

Proposition 3 is unnecessary. The state already exerts influence over property appraisal standards and practices through training provided to appraisers by the state Comptroller’s Office and through the comptroller’s annual property tax study. In the property tax study, the state compares its own property value findings to the appraisal values produced by local appraisal districts. If the local values vary too much from those arrived at by the state, local school districts risk losing some state funding. The property value study already provides sufficient enforcement and incentives for local appraisal districts to produce accurate property valuations.

Proposition 3 could lead to a loss of local control. County appraisal districts know their local markets and economic realities better than state officials do. Enforcing standards at the state level could impose a one-size-fits-all solution that might not produce the most accurate appraisals for each local district.

The Legislature did not enact enabling legislation for Proposition 3. It would be better for the electorate to wait and see what kind of laws the Legislature proposes to enforce statewide uniformity of local appraisal standards before granting broad authority to the Legislature to enact such laws.

4

Proposition

Establishing the National Research University Fund

HJR 14 by Corte (Duncan)

Background

Texas Constitution, Art. 7, sec. 17 authorizes two higher education funds to provide capital support for Texas public institutions of higher education that are not eligible to receive proceeds from the Permanent University Fund (PUF), the endowment that supports capital spending at certain institutions of the University of Texas and the Texas A&M systems. One of the funds, the Permanent Higher Education Fund (PHEF), was established by the Legislature starting in 1995 under the authority of Art. 7, sec. 17(i) and was intended eventually to become a permanent endowment to support non-PUF institutions. From 1996 to 2001, the PHEF endowment received appropriations of about \$50 million per year. In fiscal 2002, the \$50 million appropriation was reduced, and the Legislature has made no appropriations to the PHEF endowment since 2003. The estimated current value of the corpus is about \$500 million.

While the non-PUF institutions have not yet benefited from the PHEF endowment, since 1985 they have received capital spending support through annual appropriations required by Art. 7, sec. 17, known as the Higher Education Fund (HEF). The HEF consists of general revenue fund appropriations of no less than \$100 million per year, and each of the non-PUF institutions receives at least a minimum annual allocation amount set by statute. Institutions may use their allocations to acquire land, construct and equip buildings or other permanent improvements, repair or rehabilitate buildings, or purchase capital equipment, library books, and library materials. They also may use their allocations to pay debt service on HEF-backed bonds. For fiscal 2010-11, the Legislature appropriated \$525 million for the HEF allocations.

The Constitution requires that investment income of the PHEF endowment be credited back to the fund until the fund balance reaches \$2 billion. As with the PUF, the corpus of the PHEF cannot be spent. When the fund balance reaches \$2 billion, 90 percent of the

income generated by the endowment will be distributed annually to the non-PUF institutions and will replace the constitutionally guaranteed HEF general-revenue allocations.

Texas has three tier-one research universities, also called flagship universities — the University of Texas at Austin and Texas A&M University, both public, state-supported institutions, and Rice University, a private institution. “Tier one” is used to describe the status associated with high-performing research universities. Some attributes of these institutions include membership in the American Association of Universities; at least \$100 million in federal research grants annually; the size of endowments; the quality of the faculty and the number of faculty with membership in one of the national academies; the number of faculty awards; the number of doctorates awarded; and selective admissions.

The Texas Higher Education Coordinating Board classifies research universities in two categories: research universities and emerging research universities. The public institutions designated as emerging research universities in Texas are:

- Texas Tech University;
- the University of Texas at Arlington;
- the University of Texas at Dallas;
- the University of Texas at El Paso;
- the University of Texas at San Antonio;
- the University of Houston; and
- the University of North Texas.

Digest

Proposition 4 would amend Texas Constitution, Art. 7 by adding sec. 20 to establish the National Research University Fund (NRUF) for the stated 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.

The balance of the Permanent Higher Education Fund (PHEF) endowment would be transferred to the credit of the NRUF as of January 1, 2010, and the constitutional authorization for the PHEF endowment would be repealed. The NRUF would consist of money transferred or deposited to the fund and any interest or other return on investment assets of the fund. The Legislature could dedicate state revenue to the fund.

Eligibility criteria for receiving distributions from the fund would be established by the Legislature. Eligible state universities could use distributions from the fund only for the support and maintenance of educational and general activities that promoted increased research capacity at the university. Eligible institutions that received distributions in a two-year budget period (fiscal biennium) would remain eligible in subsequent budget periods. The University of Texas at Austin and Texas A&M University would not be eligible to receive money from the fund.

The Legislature would administer the fund, which would be invested in the manner and according to standards for investment of the Permanent University Fund. The portion of the total return on investment assets of the fund that would be available for appropriation in a two-year budget period would be the portion necessary to provide, as nearly as practicable, a stable and predictable stream of annual distributions to eligible state universities and to maintain the purchasing power of the investment assets of the fund.

Every two-year budget period, the Legislature would be required to allocate or provide for the allocation of funds to eligible state universities. The money would be allocated based on an equitable formula established by the Legislature or an agency designated by the Legislature. The Legislature would have to review and adjust the formula at the end of each two-year budget period.

In each two-year budget period, the Legislature could appropriate all or a portion of the total return on all investment assets of the NRUF for the purposes of the fund. The Legislature could not increase distributions from the fund if the purchasing power of investment assets for any rolling 10-year period were not preserved. The amount appropriated from the fund in any fiscal year would be capped at 7 percent of the investment assets' average net fair market value. Until

the fund had been invested long enough to determine the purchasing power over a 10-year period, the Legislature could authorize another means of preserving the purchasing power of the fund.

The ballot proposal reads: "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."

Supporters say

Proposition 4 and its enabling legislation, HB 51 by Branch, would establish a pathway for emerging research universities in Texas to achieve nationally recognized, tier-one status. The proposed amendment would establish a fund that would be a dedicated, long-term source of funding for eligible institutions. It would transfer the long-dormant permanent HEF endowment to a National Research University Fund for the purpose of boosting state-supported research universities to national prominence. It would not affect nor diminish the yearly distribution of general revenue allocations that provide capital spending support for the non-PUF institutions.

The need for a highly educated workforce in Texas cannot be overstated, and Proposition 4 would be a new effort in pursuing that goal. Tier-one universities, generally defined as those that annually commit more than \$100 million to research, are critical in keeping the state in the forefront of research as competition increases for talent, ideas, and economic development. If Texas is to achieve a globally competitive workforce, it must make dramatic gains in the education of its population. Tier-one universities are one of the best ways to develop a highly skilled workforce, especially in the sciences, engineering, and professional fields critical to economic success.

Texas trails other states in the number of tier-one research universities. California has nine tier-one universities, and New York has seven. Lack of major research and development infrastructure is costing Texas billions of dollars every year in lost opportunities to attract research funding.

Texas has a population of more than 24 million and only three tier-one institutions: UT-Austin and Texas A&M University, which are public, and Rice University, which is private. It is no surprise that the state's top-notch public institutions have more applicants than they can admit. Texas is losing more than 10,000 high school graduates a year to doctoral-granting universities in other states. At the same time, the state is recruiting only 4,000 students per year from other states, resulting in a net loss of 6,000 students a year. The presence of additional tier-one universities would expand the educational opportunities available to Texas students and keep more of them in the state.

A principal reason the University of Texas at Austin and Texas A&M University have reached the level of tier-one status is long-term, sustained funding from the Permanent University Fund. Proposition 4 proposes to tap the unused funds in the inactive PHEF endowment because two-year appropriations alone cannot create a tier-one university. Having dedicated, guaranteed funding would allow emerging research institutions to achieve tier-one status, which would allow them to attract and retain top talent while generating important research.

The eligibility criteria set by statute for receiving distributions from the fund should be stringent because Texas universities striving for tier-one status would be competing not only with each other, but nationally. Currently, none of the seven universities designated as emerging research institutions meets the eligibility requirements, which would set high goals for which they would have to strive to attain tier-one status.

Opponents say

While the goal of adding new top-tier state universities is laudable, in this time of economic downturn and fiscal restraint Texas should focus more of its limited resources, including the funds in the PHEF endowment, on those institutions that are the closest to attaining tier-one status. Because of the urgency of developing more nationally competitive research universities, it would make more sense to target those emerging research institutions farthest along the path to attaining national tier-one status rather than spread too thinly funding for all seven institutions designated as emerging research universities.

Other opponents say

The funding criteria in the enabling legislation could be too difficult for some institutions — especially historically underfunded institutions and those that primarily serve minorities — to achieve. Some institutions would start at a disadvantage because they have not been granting doctoral degrees as long as others, and the eligibility criteria would perpetuate this disadvantage. The number of doctoral degrees required should be lower or the populations served should be taken into account. Targeting areas of population growth, especially the border region, would make more sense if the state were serious about serving high-growth, underserved areas.

Notes

HB 51 by Branch, the enabling legislation enacted by the 81st Legislature during its 2009 regular session and signed by the governor, would establish eligibility criteria for institutions to receive distributions from the National Research University Fund. This provision would take effect only if voters approve Proposition 4. The bill stipulates that money could not be distributed from the NRUF before the two-year state budget period beginning September 1, 2011. An institution would have to meet specific criteria, including being designated as an emerging research university, and would have to spend \$45 million in restricted research funds for two consecutive years. Institutions also would have to meet four of six criteria:

- an endowment of at least \$400 million;
- the awarding of at least 200 doctor of philosophy degrees in each of the two previous years;
- top-flight faculty, based on professional achievement and recognition, including membership in national academies;
- high-achieving freshmen for two years;
- designation as a member of the Association of Research Libraries or its equivalent; and
- high-quality graduate level programs, based on the number of graduate level programs, admission standards for those programs, and level of institutional support for graduate students.

HJR 14 includes two unrelated propositions proposing two different constitutional amendments. HJR 14 originally proposed only a change in eminent domain authority, but was amended late in the 2009 regular session to add the provisions of Proposition 4, which would convert the corpus of the Permanent Higher Education Fund endowment into a new National Research University Fund. Proposition 11, the eminent domain provisions in HJR 14, is discussed starting on page 25 of this report.



Allowing consolidated boards of equalization for appraisal districts

HJR 36 by Otto (Williams)

Background

Texas Constitution, Art. 8, sec. 18(c) requires the Legislature to provide for a single board of equalization, also known as an appraisal review board, for each entity that appraises the value of property for taxation purposes. Tax Code, sec. 6.41 establishes an appraisal review board for each appraisal district. An appraisal review board is authorized to resolve disputes between taxpayers and the appraisal district. The board's primary function is to hear appeals of the appraised value of taxable property. Under Art. 8, sec. 18(c), the members of the appraisal review board must be residents of the area covered by the appraisal district and may not be elected officials of either a county or the governing body of another governmental entity that levies taxes.

Most Texas counties are covered by their own central appraisal districts. Randall and Potter counties, which contain Amarillo, share a consolidated appraisal district but have separate appraisal review boards.

Digest

Proposition 5 would amend Texas Constitution, Art. 8, sec 18(c) to allow two or more adjoining appraisal districts to form a single consolidated board of equalization (appraisal review board).

The ballot proposal reads: "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."

Supporters say

Proposition 5 would authorize the Legislature to allow adjoining counties to form consolidated appraisal review boards, which could operate more efficiently

than separate boards. Many sparsely populated counties have a difficult time finding enough qualified and willing candidates to sit on their appraisal review boards. Proposition 5 would allow counties to join together and pool their talent. Having fully staffed and qualified appraisal review boards would help ensure a more professional, equitable, and timely appraisal review process.

The Constitution already allows the Legislature to authorize counties to consolidate appraisal services, and Proposition 5 also would allow consolidation of the appraisal review boards that consider appeals of appraisals. Counties that share appraisal functions report significant savings and improvements in efficiency and quality. Counties should be allowed to share appraisal review board functions as well. Counties that chose to establish joint appraisal review boards would have to be contiguous, so board members would be neighboring residents familiar with valuation issues in their immediate area.

Opponents say

Only residents of an appraisal district should decide appeals of appraisals of property located in that district. Local appraisal review boards know their county markets and local economic realities. Bringing in outsiders from another county could result in a loss of local control of a local issue.

Notes

HB 3611 by Otto, the enabling legislation enacted by the 81st Legislature during its 2009 regular session and signed by the governor, would allow the boards of directors of two or more adjoining central appraisal districts to form a consolidated appraisal review board by inter-local contract. This provision would take effect only if voters approve Proposition 5.

Renewing Veterans' Land Board bond authority for land and mortgage loans



HJR 116 by Corte (Van de Putte)

Background

The Veterans' Land Board (VLB), established by Texas Constitution, Art. 3, sec. 49-b, issues and sells state general obligation bonds to finance land purchases and mortgage loans for Texas veterans. The VLB administers these programs through the General Land Office. Because the bonds are backed by the state's credit, the money raised through issuance of the bonds is repaid at a lower rate of interest, which in turn allows a lower-than-market interest rate on the housing and land-purchase loans to veterans financed by the bonds.

Through the Veterans' Housing Assistance Program (VHAP), the VLB makes home mortgage loans of up to \$325,000 toward the purchase of a home by qualified Texas veterans. VHAP loans are funded with bond proceeds and other money deposited into the Veterans' Housing Assistance Fund or the Veterans' Housing Assistance Fund II.

The Texas Veterans' Land Program (VLP) provides up to \$80,000 in loans to qualified veterans to purchase tracts of land of at least one acre. The VLB purchases the tract of land in which the Texas veteran is interested and resells it to the interested person. VLP loans are funded with bond proceeds and other money deposited into the Veterans' Land Fund.

Since 1946, voters have approved, in increments, a total of \$4 billion in general obligation bonds to fund the VLB land-purchase program and, starting in 1983, the home-mortgage loan program. The most recent bond authorization for these programs, in 2001, authorized the VLB to issue up to \$500 million in additional general obligation bonds to provide home-mortgage loans to Texas veterans.

Texas Constitution, Art. 3, sec. 49-j limits the amount of state debt that may be issued that is payable from the General Revenue Fund. The limitation does not apply to bonds that are reasonably expected to be paid from other revenue sources and do not draw on general revenue funds. The Bond Review Board classifies the bonds authorized for the VLB's veterans'

home-mortgage and land-purchase financing programs as self-supporting general obligation bonds because the bond debt is expected to be paid from revenues received through the programs they support, including investment income and repayment of the principal and the interest and fees on the loans made to participating veterans.

Digest

Proposition 6 would amend Texas Constitution, Art. 3, sec. 49-b(w) to authorize the Veterans' Land Board to provide for, issue, and sell state general obligation bonds for the purpose of selling land or providing home-mortgage or land-purchase loans to Texas veterans. The principal amount of outstanding bonds never could exceed the total principal amount of state general obligation bonds previously authorized for these purposes by prior constitutional amendments.

These bonds would not be included in the calculation of the amount of state debt payable from the General Revenue Fund used to determine the state debt limit under Art. 3, sec. 49-j. The bond proceeds would be required to 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.

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

Supporters say

Proposition 6 would help secure uninterrupted bonding authority for the VLB to continue financing land purchases and home mortgages for Texas veterans at lower-than-market rates as a reward for their service. The VLB's current bonding authority to fund the Veterans' Housing Assistance and Veterans' Land programs, which have served more than 120,000

veterans since their inception, is forecast to be exhausted at the end of 2009. Proposition 6 not only would replenish the VLB's bonding authority to meet the short-term demand for financing these programs but would prevent the VLB from having to engage in the cumbersome process of periodically seeking voter approval to fund these veterans' benefits in the foreseeable future.

Proposition 6 would "evergreen" the bonding authority for the Veterans' Housing Assistance and Veterans' Land programs, meaning that the VLB could issue new bonds to fund these programs as already-issued bonds are retired. Voters demonstrated their approval of this type of funding mechanism in 2001 when they approved a constitutional amendment authorizing additional bond authority for the Veterans' Housing Assistance Program that similarly allows more bonds to be issued as existing bonds are retired — up to the \$500 million authorized by the amendment. Proposition 6 simply would take this approach a step further by "evergreening" all of the bonding authority that voters previously have approved for the VLB loan programs.

Over the years, voters have approved constitutional amendments authorizing issuance of a total of \$4 billion in bonds for financing veterans' land purchases and home loans. Almost all of those bonds have been issued, but about \$2 billion of the bonds issued years ago have since been retired or redeemed. If Proposition 6 were approved, this \$2 billion, as well as the principal amount of any existing bonds retired in the future, still would be available to fund the VLB loan programs.

Under the current system, the amount of bonds previously issued and eventually paid off counts against the total amount of bonds authorized to be issued, despite the fact that those bonds no longer are outstanding and the debt has been retired. Even though the voters previously have approved more than enough bond capacity to satisfy the needs of the loan programs, they must be asked once again to authorize additional bond capacity when new funding is needed.

Because of the limited rate at which new program funding is required, the funding mechanism in Proposition 6 likely would mean that the VLB would never again need to seek new bond authority for the Veterans' Housing Assistance and Veterans' Land

programs. Use of the programs is limited by veterans' demand for loans, as well as a prohibition in federal tax law against issuing more than \$250 million in qualified veterans' mortgage bonds per year.

Proposition 6 would make obtaining funding for the Veterans' Housing Assistance and Veterans' Land programs more stable and efficient. Historically, when funding for these programs has been exhausted, the voters have had to approve new funding in increments of up to \$500 million. If funding is exhausted sooner than expected, some veterans may be unable to obtain the program benefits they seek until the Legislature and the voters have approved additional bonding authority.

The "evergreening" process that would be authorized by Proposition 6 also would be safe for Texas taxpayers. The VLB's veterans' loan programs are self-sufficient. The bond obligations are fully paid with fund investment income and with the principal, interest, and fee payments made by participating veterans. These revenue sources provide stable funding for the program. Because the VLB uses conservative underwriting standards for its loan programs, they historically have had a very low foreclosure rate. Despite the recent economic challenges that have caused foreclosure rates in other markets to skyrocket, the foreclosure rate on land and home mortgage loans issued by the VLB programs has remained less than 0.5 percent.

Opponents say

Proposition 6 in effect would authorize the Veterans Land Board to issue more than \$2 billion in new state-backed bonds for the veterans' land-purchase and mortgage-loan programs, a considerable expansion of state debt. Voters would be re-authorizing the issuance of bonds originally authorized as long as 60 years ago and since paid off and retired.

State bonds are long-term debt and generally are not issued and ultimately retired until decades after they originally were authorized by the voters. The reauthorization of bonds allowed by Proposition 6 should apply only to those bonds previously authorized and retired as of this year, and any bonds retired in the future should have to be reauthorized by the voters before they could be reissued as state debt.

Allowing members of the Texas State Guard to hold civil office



HJR 127 by P. King (Carona)

Background

Texas Constitution, Art. 16, sec. 40 prohibits a civil official from holding more than one civil office for which the official is paid unless the other office is:

- a justice of the peace;
- a county commissioner;
- a notary public;
- a postmaster;
- an officer or enlisted person in the National Guard, National Guard Reserve, Officers Reserve Corps, or Organized Reserves of the United States;
- a retired officer or retired enlisted person in the United States Army, Air Force, Navy, Marine Corps, or Coast Guard;
- a retired warrant officer; or
- an officer or director of a soil or water conservation district.

The state's military forces consist of the Texas National Guard and the Texas State Guard. The Texas National Guard has two components: the Texas Army National Guard and the Texas Air National Guard. The Texas National Guard may be ordered to active duty in the state by the governor to provide trained and equipped military personnel to assist civil authorities in the protection of life and property and the preservation of law and order in Texas. It also is a first-line reserve component of the U.S. Army and Air Force and may be called to active federal service by the president for war, national emergencies, or national security augmentation.

The Texas State Guard is an all-volunteer state reserve military force, subject to active duty when called by the governor to serve the state in a time of emergency. The Texas State Guard actively participates in statewide community programs by providing a variety of services, including security, traffic and crowd control, and searches for missing children. The Texas State Guard provides trained and equipped individuals to supplement the Texas National Guard and replaces the Texas National Guard when that force is called to federal service.

Digest

Proposition 7 would amend Texas Constitution, Art. 16, sec. 40 to add officers and enlisted members of the Texas State Guard and any other militia or military force organized under state law to the exceptions from the prohibition against holding dual offices.

The ballot proposal reads: "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."

Supporters say

Proposition 7 simply would correct an oversight in the Texas Constitution by adding officers and enlisted members of the Texas State Guard and other Texas military forces to the list of offices that civil officials can hold while holding another office. Current exceptions to the dual-office-holding prohibition allow officials to serve their country by also holding office in the National Guard and military reserves. However, the Texas State Guard and other Texas state military forces were overlooked during earlier amendments to this section exempting other members of the National Guard and Reserves.

The State Guard has been very active in recent years and provides vital services to Texas in times of disaster. Many civil officials are members or would like to become members of the Texas State Guard or other Texas military forces. Proposition 7 would allow them to do so while still holding another civil office. Being an officer or enlisted person in the Texas State Guard or militia is not incompatible with being a civil official, such as a member of a city council or school board. There is no inherent conflict of interest between the two offices, so there is no reason not to allow a person to serve in both positions.

Opponents say

Adding new exceptions, however justified, to the constitutional prohibition against dual office-holding only would compound the problem of requiring that specific offices be excluded by a constitutional amendment. Instead, all specific exceptions to dual office-holding should be eliminated from the Texas Constitution and replaced with a general prohibition against holding two offices simultaneously, while authorizing the Legislature to make any needed exceptions by statute.

Texas courts have well-established standards for determining whether two offices held by the same

person are incompatible due to overlapping authority or conflicting loyalties. These determinations should be made on a case-by-case basis rather than trying to anticipate every potential exception in the Constitution, which already is too lengthy and needlessly detailed.

Notes

SB 833 by Carona, enacted by the 81st Legislature during its 2009 regular session and signed by the governor, states that membership in the state military forces is not considered a civil office of emolument. This provision will take effect January 10, 2010, if the voters approve Proposition 7.

Authorizing the state to contribute resources to veterans' hospitals

HJR 7 by Flores (Hinojosa)



Background

About 1.7 million veterans currently live in Texas. The U.S. Department of Veterans Affairs operates nine in-patient veterans' hospitals in Texas — in Amarillo, Big Spring, Bonham, Dallas, Houston, Kerrville, San Antonio, Temple, and Waco. In federal fiscal year 2008, veterans' hospitals in Texas recorded almost 51,000 in-patient visits from veterans in the state. The U.S. Department of Veterans Affairs also contracts with hospitals throughout the state to provide certain services for veterans living in areas where there is not a nearby veterans' hospital or where the local veterans' hospital is at capacity and unable to provide care. For example, there currently is not an in-patient veterans' hospital in the Rio Grande Valley, but there are contract facilities in Brownsville, Edinburg, Harlingen, and McAllen that provide certain medical services for veterans.

Digest

Proposition 8 would add Texas Constitution, Art. 16, sec. 73 to authorize the state to contribute money, property, and other resources to establish, maintain, and operate veterans' hospitals in Texas.

The ballot proposal reads: "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."

Supporters say

Proposition 8 would grant clear constitutional authority for the state to contribute resources to establish, operate, and maintain veterans' hospitals. Art. 3, sec. 51 of the Texas Constitution prohibits the grant of public money to any individual, association of individuals, municipality, or other corporation, and state support for a veterans' hospital could run afoul of this prohibition. This constitutional amendment would allow

Texas voters the opportunity to ensure beyond question that the state could contribute to a federal initiative to build, operate, and maintain veterans' hospitals in the state.

Veterans have sacrificed much to keep their country safe and secure and deserve to have ready access to the benefits that they have earned. Proposition 8 would encourage the U.S. Department of Veterans Affairs to partner with the state to establish, maintain, and operate veterans' hospitals across the state as the need arises. With only a limited number of veterans' hospitals in Texas, the rising cost of traveling to these facilities can impede or delay necessary health care for some veterans and place a burden on the families of those veterans admitted to a veterans' hospital far from home. Proposition 8 would improve access to medical care for Texas veterans, especially in underserved areas such as the Rio Grande Valley.

State voters previously have approved constitutional amendments to allow housing and land-purchase loan assistance funding for veterans and for funding of veterans' rest homes and veterans' cemeteries. A constitutional amendment would be an appropriate mechanism to ensure that the state has the authority to contribute to veterans' hospitals as well. The state already has entered into partnership with the federal government to develop seven veterans' home facilities — in Amarillo, Big Spring, Bonham, El Paso, Floresville, McAllen and Temple — and three veterans' cemeteries — in Abilene, Killeen, and Mission — and could do the same if necessary to encourage the federal government to locate a new veterans' hospital in Texas.

Opponents say

Amending the Texas Constitution to authorize the state to contribute money, property, and other resources for the establishment, maintenance, and operation of veterans' hospitals is not necessary. The Constitution would not prevent the state from contributing to a veterans' hospital, and the Legislature enacted a

statute this year to allow such a contribution without making that statutory authorization contingent on a constitutional amendment. While the state previously has approved several constitutional amendments for veterans' housing and land-purchase loan assistance programs and for the funding of veterans' rest homes and cemeteries, these amendments primarily concerned the funding mechanisms for these programs.

Amending the state Constitution to send a message to the federal government to build a veterans' hospital in Texas likely would have little or no effect on the federal government's decision. The federal government has been contracting with private hospitals to augment in-patient and emergency care for veterans rather than constructing expensive new veterans' hospitals. Moreover, specifically authorizing state contributions for veterans' hospital facilities that previously have been funded exclusively by the federal government could

lead to the expectation that the state would contribute a portion of the funding for future facilities.

Notes

HB 2217 by Flores, enacted by the 81st Legislature during its 2009 regular session and signed by the governor, requires the Texas Veterans Commission and the Department of State Health Services to work with the U.S. Department of Veterans Affairs and any other appropriate federal agency to propose the establishment of a veterans' hospital in the Rio Grande Valley region. HB 2217 also allows the state to contribute money, property, and other resources for the establishment, maintenance, and operation of a veterans' hospital in the Rio Grande Valley region. HB 2217 took effect June 19, 2009, and was not contingent on voter approval of a constitutional amendment.

Establishing a right to use and access public beaches



HJR 102 by Raymond (Hinojosa)

Background

The Texas Open Beaches Act, Natural Resources Code, ch. 61, enacted by the Legislature in 1959, grants the public a free and unrestricted right to access state-owned beaches and a right to use any public beach or larger area extending from the line of mean low tide to the line of vegetation bordering the Gulf of Mexico. The line of vegetation is defined as the seaward boundary of natural vegetation that spreads continuously inland. The act applies to all beaches to which the public has acquired a right of use or an easement under principles of Texas common law.

The act prohibits the construction of a barrier that interferes with the free and unrestricted right to access and use any public beach subject to the public beach easement. The commissioner of the General Land Office must enforce the open beaches law strictly to prevent encroachments against public access to beaches. The act also authorizes the commissioner to adopt rules regulating construction that would limit public access to and use of the beach landward of and bordering a public beach up to the first public road generally parallel to the beach, or to within 1,000 feet of mean high tide.

The line of vegetation, and therefore the public beach, can shift because of erosion, storms, or construction of seawalls and other manmade barriers. The Natural Resources Code defines how beach boundaries may be determined when there is no clearly marked line of vegetation and in other instances, such as areas adjacent to certain seawall structures.

Digest

Proposition 9 would amend the Texas Constitution by adding Art. 1, sec. 33 to establish the public's unrestricted right to use, and have access to and from, public beaches. The right would be dedicated as a permanent public easement.

A public beach would be defined as a state-owned beach bordering on the seaward shore of the Gulf of Mexico, extending from the mean low tide to the landward boundary of state-owned submerged land. It also would include any larger area from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public had acquired a continuous right of use or an easement under Texas common law.

The Legislature could enact laws to protect the right of the public to access the beach and to protect the easement from interference and encroachments. The constitutional provision would not create a private right of enforcement.

The ballot proposal reads: "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."

Supporters say

Proposition 9 would strengthen the Open Beaches Act in two respects — by enshrining it in the Texas Constitution and by putting it to a public vote to demonstrate the extent of support among Texas voters for open beaches. The amendment would not change current practices but would highlight core principles in current law that have been accepted and acknowledged in common law and in state statutes.

In addition to securing open beaches against any future legislative or judicial action that could undermine this important legal principle, approval of Proposition 9 would be a vote of support for open beaches in Texas. The state has numerous valuable natural coastal resources that Texans are able to access and enjoy. A vote to secure open beaches would send a strong message that the state's residents wish to preserve access to these resources for present and future

generations. Adding the amendment to the first article in the Constitution, the Texas Bill of Rights, would affirm that access to and use of public beaches in Texas is a fundamental right.

While weather events and natural processes along the coast have put some property owners in the difficult situation of not being able to build new structures or losing structures that end up on public beaches due to erosion, this is a risk that a beachfront property owner assumes and is fully aware of when buying or building a house adjacent to a public beach. Earnest money contracts, deeds, and title policies all contain provisions alerting owners to the risks of natural events moving the line of vegetation and potentially causing their private structures to become located on a public beach. Owning a home near the beach is inherently risky, as hurricanes and other weather events can irreparably damage a house or change the boundaries of the public beach.

Opponents say

The Open Beaches Act already provides too much authority to the state to restrict the right of private landowners to enjoy their property. Placing this statute in the Constitution would validate and entrench overbearing state practices that effectively punish property owners for events beyond their control.

Proposition 9 would lock into the Constitution a law that has allowed the state to force property owners to remove structures that end up on the public beach when it shifts due to weather events and erosion. The state historically has assumed a public easement on property located on public beaches without compensating property owners when the vegetation line shifts. Many homes along the Gulf Coast were in existence before erosion or winds and storm surge from weather events, such as hurricanes, moved the line of vegetation, leaving their homes and other structures on the public beach.

Allowing board members of emergency services districts to serve four years

HJR 85 by Harless (Patrick)

Background

Texas Constitution, Art. 3, sec. 48-e authorizes the Legislature to create emergency services districts (ESDs). ESDs are political subdivisions established by local voters that provide emergency medical services, ambulance services, rural fire prevention and control services, or other emergency services authorized by the Legislature. ESDs are governed by Health and Safety Code, ch. 775. Texas Constitution, Art. 3, sec. 48-e authorizes the commissioners courts of participating counties to levy a property tax, as approved by district voters, of not more than 10 cents for every \$100 of value for the support of ESDs.

Each of the 283 currently established ESDs is led by a five-member board of commissioners, whose members serve two-year terms. Members are appointed or elected, depending on the area covered by the service district. By statute, the only ESDs for which board members are elected are those wholly within Harris County (31 ESDs) and those that cover more than one county (eight ESDs). The board members for other ESDs are appointed by the county commissioners court of the county in which the district is located.

The two-year term limit for all emergency services commissioners is established by Art. 16, sec. 30 of the Texas Constitution, which generally limits the term of all offices to two years unless the Constitution specifies otherwise.

Digest

Proposition 10 would amend Art. 16, sec. 30(c) of the Texas Constitution to authorize the Legislature to allow members of the governing board of an emergency services district to serve terms of up to four years, rather than the current maximum two-year term.

The ballot proposal reads: “The constitutional amendment to provide that elected members of the governing boards of emergency services districts may serve terms not to exceed four years.”

Supporters say

By authorizing the Legislature to increase the maximum terms for ESD board members from two years to four years, Proposition 10 would promote stability and continuity on ESD boards and allow board members more time to acquire experience in providing for emergency services to their communities. The general two-year term was established in the 19th century to limit the authority of the government, but longer terms have become necessary under certain circumstances to allow board members to learn fully the duties of their positions and provide experienced leadership.

The Texas Constitution has been amended several times to allow the Legislature to set four-year terms for the board members of certain governmental entities, notably hospital districts, whose duties sometimes relate to and overlap with ESDs. HB 2529 by Harless, the enabling legislation for Proposition 10, would apply four-year terms for ESD board members only to those districts for which the board members are elected. Ultimately, the time spent by district board members running for election and re-election every two years is time taken away from serving their communities.

The election for emergency services commissioners serving two-year terms sometimes has led to the politicization of what is supposed to be an essentially nonpartisan office. ESD board member elections for two-year terms are held every year since the terms of board members are staggered so that the entire board does not come up for election all at the same time. These frequent elections typically have low voter turnout, which could allow a well-funded candidate who touted partisan political positions to influence the outcome of an election. By allowing longer terms, Proposition 10 would help shield members of the governing board of an ESD from improper political influence and constant campaigning and ensure that they were selected on the basis of their credentials and experience.

Opponents say

Proposition 10 would diminish public oversight of the members of the governing boards of emergency services districts. Emergency services districts have great powers and responsibilities. Those ESD board members who are elected should be held accountable to the voters by election every two years, the same as members of the Texas House of Representatives. Voters should be able to exercise the same level of local control of board members of ESDs that they do with other elected officials.

The argument that frequent elections of emergency services commissioners leads to over-politicization is misplaced because these elections are nonpartisan. Candidates who inject inappropriate partisan politics into nonpartisan elections risk having such tactics

backfire due to voter resentment. The current system provides adequate protection against improper political interference.

Notes

HB 2529 by Harless, the enabling legislation enacted by the 81st Legislature during its 2009 regular session and signed by the governor, would take effect on January 10, 2010, only if voters approve Proposition 10. HB 2529 would amend the Health and Safety Code to increase from two years to four years the term of service for the board members of an ESD located wholly in a county with a population of more than 3 million (Harris County) or located in more than one county. The bill would require the election for ESD commissioners to be held every two years, rather than annually, for staggered four-year terms.

Restricting use of eminent domain to taking property for public purposes



HJR 14 by Corte (Duncan)

Background

Texas Constitution, Art. 1, sec. 17 prohibits a person's property from being taken, damaged, or destroyed for public use without adequate compensation or consent of the owner. The power of government to claim private property for public benefit is commonly referred to as eminent domain authority. Texas has granted this authority to governments, special districts, and some private entities that serve public functions, such as utilities and hospitals.

The 79th Legislature, in its second called session in 2005, enacted SB 7 by Janek, which prohibits governmental or private entities from using eminent domain authority 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 economic development is a secondary purpose that results from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas.

SB 7 was enacted in response to the U.S. Supreme Court's decision in *Kelo v. City of New London*, 545 U.S. 469 (2005), which broadly allowed use of eminent domain for economic development purposes but also permitted states to restrict such authority.

The Texas Urban Renewal Law, under Local Government Code, ch. 374, defines a "blighted area" as an area that is not a slum but is characterized by deteriorating infrastructure and hazardous conditions. Under sec. 374.016, municipalities may use eminent domain to acquire property in designated areas if the municipality determines that at least 50 percent of the structures in the area are dilapidated beyond the point of feasible rehabilitation or otherwise are unfit for rehabilitation and that other characteristics of blight

exist, such as overcrowding of structures on the land, mixed uses of structures, deficient streets, or deficiencies in public utilities or recreational and community facilities.

Digest

Proposition 11 would amend Texas Constitution, Art. 1, sec. 17 to restrict the taking of property to instances in which the taking, damage, or destruction was primarily for ownership, use, and enjoyment by the state, a local government, or the public at large or by an entity given the authority of eminent domain under the law or for the elimination of urban blight on a particular parcel. Public use would not include the taking of property for transfer to a private entity for the primary purpose of economic development or enhancement of tax revenues.

On or after January 1, 2010, the Legislature could enact a general, local, or special law granting the power of eminent domain to an entity only by a two-thirds vote of all the members elected to each house.

The ballot proposal reads: "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."

Supporters say

Proposition 11 would add key protections against abuses of the power of eminent domain by defining in the Constitution the legitimate purposes for which property may be taken. Current language in the

Constitution governing eminent domain is very broad, stating that no person's property should be taken for a public use without adequate compensation. The existing language does not specify what constitutes a legitimate "public use." In enacting SB 7, the Legislature took an important step in reforming eminent domain law and practices in the state by prohibiting the taking of private property primarily for economic development purposes or to confer a private benefit on a private entity. However, SB 7 left open a number of issues, including establishing a new constitutional framework to restrict the use of eminent domain to clearly public purposes.

A constitutional amendment would have both practical and symbolic value in protecting private property — practical value in placing clear restrictions on the use of eminent domain and symbolic value in sending a strong message from the Legislature and voters that eminent domain must be used for very limited purposes only when absolutely necessary. A further restriction would require the Legislature to approve any new grant of eminent domain authority by a two-thirds vote of the membership of each chamber.

The requirement that any taking of private property be solely for "ownership, use, and enjoyment" of the state or a local government or the public as a whole would convey a common concept found in federal and other laws. The language would require a condemning authority to keep the property in its ownership, occupy the property, and use the property for some productive purpose. It would prohibit a public entity from taking property and then, in effect, transferring the rights to that property to a private entity by allowing it to own, occupy, and profit from the property. Further, it would prohibit acquiring property through eminent domain with no clear plans to put the property to a pressing use.

No private property should be taken without a compelling reason and plan for its use. Proposition 11 would place this intent in the Constitution in general terms that would prevent many abuses, but would not affect legitimate takings. According to the Legislative Budget Board, this constitutional change would not have a significant fiscal impact on the state or on local governments. Proposition 11 also would apply to the wide range of parties authorized by law to exercise eminent domain authority and subject them to the same requirements as public entities. Secondary uses of taken property, such as leasing space in an airport or hospital, would be allowed.

Proposition 11 would protect property owners from such misuses of eminent domain authority as taking a property on the ground that it is blighted, then transferring the property to another private interest in the name of economic redevelopment. The amendment would resolve a problem with eminent domain power not addressed by existing law, which allows municipalities to condemn and clear whole neighborhoods at a time as long as 50 percent of the affected properties are determined to be blighted. This allows municipalities to take the properties of honest, hardworking residents and business people merely due to hazards that may exist in part of their neighborhood, which subverts individual property rights for an ill-defined notion of a common good.

Under Proposition 11, property owners no longer would be subjected to condemnation due to overall neighborhood conditions because each parcel would have to be reviewed independently and determined to be blighted. Protecting property rights of established owners who have been able to maintain their properties in distressed areas would allow those owners actively to partake in the revitalization of their own communities.

Opponents say

Proposition 11 could have unintended consequences by introducing language into the Constitution that courts ruling on eminent domain cases could interpret in varying ways. The proposed constitutional amendment could create a grey area around the legitimate uses of eminent domain and be an invitation for future litigation that would be costly for the state and local governments. If a court found that the new language prohibited certain uses of eminent domain that previously had been considered legitimate, the new interpretation would be difficult to change. For instance, the amendment would not apply to "incidental uses" nor allow the "transfer" of property to a private entity for the "primary purpose of economic development." The lack of definition for these key terms would allow courts to assume a significant role in determining how the amendment would apply in practice.

The Constitution is not the proper forum for testing new legal terms and provisions concerning eminent domain that may have uncertain implications. If the courts interpret these constitutional changes in an unforeseen manner, they would be very difficult to

change or clarify. It would be more appropriate to test these new laws in statutory form first before locking them into the Constitution.

Proposition 11 would erode a municipality's ability to designate a blighted area and use its eminent domain authority to promote urban renewal, which is important for long-term urban vitality. Municipal governments use their power of eminent domain to clear blighted areas for urban renewal as an absolute last resort. Such actions require expensive and long-term relocations, court proceedings, demolitions, and planning efforts. Municipalities seldom try to use their eminent domain authority under the blight-removal provisions unless they are left with no other options to correct rampant health and safety concerns that affect the quality of life of everyone living in the neighborhood.

Under Proposition 11, municipalities would have to make a blight determination on each property individually. Blighted areas often are poorly platted and un-surveyed and contain unconventionally shaped lots that lack proper documentation. Property owners in blighted areas can be difficult to locate, and no allowance would be made for owners who had vacated, abandoned, or otherwise neglected property for long periods. This would limit a municipality's ability to address structural safety hazards, inadequate infrastructure, and limited commercial opportunities. Removing an important and longstanding tool available to cities would diminish their ability to improve the quality of life of residents who need the most assistance.

Other opponents say

Proposition 11 could increase the number of entities that could be granted authority to use eminent domain, contrary to the general intent of the amendment to limit use of this authority. A provision that would allow the Legislature to enact a law granting the power of eminent domain to an "entity" by a two-thirds vote of each house could provide the necessary legal basis for expanding the types of entities given this power. The amendment does not specify the types of "entities" that could be granted eminent domain authority, which could range from local governments to private corporations or utilities. This broad language could allow a wide range of entities to seek the power of eminent domain from the Legislature. The two-thirds vote requirement is not sufficient to prevent future misuse of any expanded eminent domain power.

Notes

HJR 14 includes two unrelated propositions proposing two different constitutional amendments. HJR 14 originally proposed only a change in eminent domain authority, but was amended late in the regular session to add the provisions of Proposition 4, which would convert the corpus of the permanent Higher Education Fund endowment into a new National Research University Fund. Proposition 4 is discussed starting on page 10 of this report.

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