

# HOUSE RESEARCH ORGANIZATION

*focus report*

Texas House of Representatives

April 19, 2007

CONSTITUTIONAL

## Amendment Proposed

for May 2007 Ballot

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# mending the Constitution

Texas voters have approved 439 amendments to the state Constitution since its adoption in 1876. One more proposed amendment will be submitted for voter approval at a special election on Saturday, May 12, 2007.

## Joint resolutions

The Legislature proposes constitutional amendments in joint resolutions that originate in either the House or the Senate. For example, Proposition 1 on the May 12, 2007, ballot was proposed by Senate Joint Resolution (SJR) 13, introduced by Sen. Kip Averitt and sponsored in the House by Rep. Leo Berman. Art. 17, sec. 1 of the Constitution requires that a joint resolution be adopted by at least a two-thirds vote of the membership of each house of the Legislature (100 votes in the House of Representatives, 21 votes in the Senate) to be presented to voters. The governor cannot veto a joint resolution.

Amendments may be proposed in either regular or special sessions. A joint resolution includes the text of the proposed constitutional amendment and specifies an election date. A joint resolution may include more than one proposed amendment. For example, HJR 68, adopted in 2003, included a proposition allowing the Veterans' Land Board to use excess assets for veterans' homes and a separate proposition adopting a total-return investment strategy for the Permanent School Fund. The secretary of state conducts a random drawing to assign each proposition a ballot number if more than one proposition is being considered.

If voters reject an amendment proposal, the Legislature may resubmit it. For example, the voters rejected a proposition authorizing \$300 million in general obligation bonds for college student loans at an August 10, 1991, election, then approved an identical proposition at the November 5, 1991, election after the Legislature readopted the proposal and resubmitted it in essentially the same form.

## Ballot wording

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

## Election date

The Legislature may call an election for voter consideration of proposed constitutional amendments on any date, as long as election authorities have enough time to provide notice to the voters and print the ballots. In recent years, most proposals have been submitted at the November general elections held in odd-numbered years. However, all joint resolutions proposing constitutional amendments that the 78th Legislature adopted during its 2003 regular session set Saturday, September 13, 2003, as the election date. Proposition 1 has been set on the ballot for Saturday, May 12, 2007, a uniform election date when many local jurisdictions also will be holding elections.

## Publication

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

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The secretary of state prepares the explanatory statement, which must be approved by the attorney general, and arranges for the required newspaper publication. The estimated total cost of publication twice in newspapers across the state is \$77,468, according to the Legislative Budget Board.

## **Enabling legislation**

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

## **Effective date**

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

# Proportionate reduction in elderly and disabled school tax freeze amount



SJR 13 by Averitt (Berman)

## Background

Under Texas Constitution, Art. 8, sec. 1- b(d), the amount of property taxes imposed by a school district on the residence homestead of a person who is age 65 or older or disabled may not be increased while the property remains the residence homestead of the person or the person's spouse. If the person age 65 or older who qualifies for the limitation dies, the limitation remains in place for a spouse who was age 55 or older at the time of the person's death.

The limitation does not apply to most improvements that increase the value of the property. The Legislature may provide for transfer of all or a proportionate amount of the tax freeze amount for a qualifying person who establishes a different residence homestead. When the Legislature increased the homestead exemption by \$10,000 in 1997, it also amended Art. 8, sec. 1-b(d) to require a reduction in the tax freeze amount for those who previously had received it to reflect the higher homestead exemption.

In its third called session in 2006, the 79th Legislature enacted HB 1 by Chisum, which provided for state aid to school districts to reduce school property taxes by 11.3 percent in tax year 2006 and one third (33.3 percent) in tax year 2007 and beyond.

## Digest

Proposition 1 would add Art. 8, sec. 1-b(d-1) to the Texas Constitution, to specify, for homeowners who were age 65 or older or disabled and received a limitation on school property taxes in the 2007 tax year, that the Legislature could provide for a reduction in the limitation amount to reflect a reduction in the tax rate from tax year 2006. The Legislature also could provide for a reduction in the limitation amount to reflect a rate reduction that occurred between tax year 2005 and tax year 2006. In accordance with Art. 8, sec. 1-b(d), the Legislature could provide for the continuation of the limitation amount until the limitation expired.

Proposition 1 would take effect on the date an official canvass showed adoption of the amendment by voters and would apply to the entire 2007 tax year.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to provide for a reduction of the limitation on the total amount of ad valorem taxes that may be imposed for public school purposes on the residence homesteads of the elderly or disabled to reflect any reduction in the rate of those taxes for the 2006 and 2007 tax years."

## Supporters say

Proposition 1 – in conjunction with the enabling legislation, HB 5 by Berman – would provide tax relief to senior citizens and to those who received federal disability payments by ensuring that school tax amounts frozen for these citizens were reduced proportionally to reflect recent school tax reductions granted by the Legislature for all other property owners. For example, if a school district reduced its tax rate by one third, a tax bill that previously was frozen at \$1,000 would drop in the following tax year to \$667, where it would remain frozen. Without this amendment, many elderly or disabled homeowners who have had their school district taxes frozen for a number of years would be unlikely to benefit from property tax relief measures recently enacted by the Legislature.

Many elderly and disabled homeowners live on fixed incomes and should be granted the benefit that other homeowners received last year and will receive starting this year from the reduction in school property taxes. The Legislature made a similar adjustment in the tax freeze amount in 1997 when it increased the homestead exemption amount so that everyone would receive tax relief from the change.

The primary purpose of offering a school property tax freeze to senior citizens and the disabled is to give budget certainty to people who live on fixed incomes, and the adjusted freeze should operate in the same way. Proposals

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that would adjust the limitation amount upward if school tax rates subsequently were increased could cause elderly and disabled homeowners to face a substantial increase in their expenses, which might make it financially difficult for some to continue living in their homes.

## Opponents say

The property tax reduction enacted recently by the Legislature was intended to provide tax relief to those Texans whose tax bills have soared in recent years as a result of rising property values and increases in local school property tax rates. Senior citizens and disabled homeowners generally have been shielded from these increases by having their property tax bills frozen, regardless of their income or ability to pay local school district taxes. These individuals already have received significant tax relief, especially those whose residence homesteads have increased substantially in value since their tax bills were frozen. There is no need to provide a special additional benefit to these individuals by reducing their taxes even more.

The property tax freeze already benefits individuals owning wealthier homes more than those with modest residences. Any future reduction should be targeted only to the elderly and disabled under a certain income level.

## Other opponents say

It would be fairer to all property owners if the tax freeze amount were allowed to float. While elderly and disabled homeowners deserve to receive the extra tax relief that SJR 13 and HB 5 would grant, they also should have to assume the proportionate tax burden when rates inevitably rise – at least until the amount reached the level at which their taxes originally were frozen. Elderly and disabled homeowners still would receive additional tax relief under such a system because, unlike other property owners, their tax bills would never rise above the amount they paid for 2006. Moreover, elderly and disabled residents who participate in school tax rollback elections would have no incentive to vote against higher taxes if their tax burden remained unchanged regardless of the outcome.

While school property tax rates may continue to drop after 2007, SJR 13 and HB 5 would not allow for any corresponding reductions in the tax freeze amount. As a

result, the Legislature would have to repeatedly change the law and seek voter approval to amend the Constitution to allow seniors and disabled citizens to benefit from future tax cuts. The Legislature should amend the law and the Constitution one time to allow for automatic tax freeze reductions in the future.

## Notes

The enabling legislation for Proposition 1, HB 5 by Berman, has passed the House and the Senate and been sent to the governor.

HB 5 would amend the Tax Code to apply the proportionate reduction in a school district's property tax rate from tax year 2006 to tax year 2007 in calculating the maximum amount of school property taxes owed by individuals whose tax bills were frozen because they were disabled or at least 65 years old. If the new calculations resulted in a school property tax bill lower than the amount at which it was frozen, the lower amount would be established as the new cap. A homeowner who was eligible for the limitation in tax year 2005 also would receive a proportionate reduction in the maximum amount based on a reduction in the school district tax rate that occurred between tax year 2005 and tax year 2006. The adjusted tax amount would take into account improvements that increased the value of the homestead.

School districts would be entitled to additional state aid to the extent that adjustments authorized by HB 5 reduced the revenues districts could collect from taxable property. HB 5 would ensure the reductions made under this section would not be applied in calculating the amount of money distributed to school districts under state funding formulas.

HB 5 would take effect whenever Proposition 1 took effect, if the voters approve it.

The Legislative Budget Board estimates that the cost to state general revenue to compensate school districts for the loss of school tax revenue due to SJR 13/HB 5 would be \$276.3 million for fiscal 2008-09. The projected five-year total cost to the state for fiscal 2008-12 would be \$774.7 million.

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