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—special legislative report—

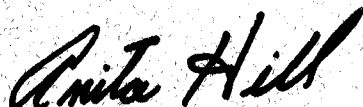
August 17, 1987

No. 138

1987 Constitutional Amendments and Referendum Propositions

Twenty-five constitutional amendments, a record number, will be submitted to Texas voters at the Nov. 3, 1987 general election. Voters will also be asked to decide two referendum propositions -- whether pari-mutuel wagering on horse racing and greyhound racing should be legalized and whether to appoint or elect members of the State Board of Education.

The 25 proposed amendments and the two referendum propositions are analyzed in this report in the order that they will appear on the November ballot.



Anita Hill
Chairman



Ed Watson
Vice Chairman

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INTRODUCTION

This year's ballot will include 25 proposed constitutional amendments, surpassing the previous record for a single election of 16 amendments submitted on Nov. 8, 1966 (all but one were approved). Voters this year will also be asked whether two statutes previously enacted by the Legislature should take effect -- SB 15, permitting pari-mutuel wagering on horse races and greyhound races, and SB 86, cancelling next year's scheduled election of the State Board of Education and retaining selection of board members by appointment.

Since the order of the amendments on the ballot was selected at random, related amendments are scattered throughout the ballot. This Introduction lists some of the related amendments and also includes some general background about the constitutional amendment process.

Joint Resolutions

All constitutional amendments are proposed by the Legislature in the form of joint resolutions. A joint resolution proposing a constitutional amendment must be approved by a two-thirds vote of each house of the Legislature (100 votes in the House of Representatives; 21 votes in the Senate). The joint resolution includes the text of the proposed amendment along with other provisions such as the date on which the proposed amendment will be submitted to state voters and the wording of the amendment proposition that is to appear on the ballot.

One of the joint resolutions, SJR 12, is unusual because it includes two separate amendments. Both deal generally with tax exemptions -- Amendment No. 10 would allow certain personal property to be exempted from local taxation, and Amendment No. 11 would exempt certain goods in transit from local taxation.

Publication

Art. 17, sec. 1 of the Texas Constitution requires that a brief explanatory statement of the nature of any proposed constitutional amendment, along with the wording of the ballot proposition for the proposed amendment, be published twice in each newspaper in the state that prints official notices. The first publication of that notice must be made not later than 50 days, and not more than 60 days, before the date of the election.

The secretary of state's office prepares the explanatory statement, which must also be approved by the attorney general.

The secretary of state's office arranges for the required newspaper publication, often by contracting with a state press association. The estimated cost of publishing each proposed amendment twice in newspapers across the state is \$45,000.

Implementing Legislation

Some amendments to the Constitution 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 implementing legislation to fill in the details of how the amendment will operate. The Legislature frequently adopts implementing legislation in advance, with the effective date of that legislation contingent on voter approval of a particular amendment. If the amendment is rejected by the voters, then the implementing bill, or at least those portions on the bill dependent on the constitutional change, are inoperative.

State Bonds

General obligation bonds

General obligation bonds are a means of using the state's credit to borrow money for a particular purpose. The state pledges its "full faith and credit" as a guarantee that the bond principal and interest will be repaid. Repayment of the bonds has first claim on revenues deposited in the state treasury.

Art. 3, sec. 49 of the Texas Constitution prohibits the creation of state debt, with a few minor exceptions. Therefore, in order for the state to use its credit to issue state general-obligation bonds, an amendment to the Constitution specifically authorizing those bonds must be approved.

Five amendments on the November ballot would authorize a total of \$1.925 billion in state general-obligation bonds:

Amendment No. 8 -- \$500 million, for prison,
youth correction and mental
health/retardation facilities.

Amendment No. 7 -- \$400 million, for local
public works

Amendment No. 23 -- \$400 million, for water development

Amendment No. 19 -- \$500 million, for super collider
assistance

Amendment No. 6 -- \$100 million, for agricultural development;
\$15 million, for new product development;
\$10 million, for small business support

Amendments No. 7, 8 and 23, authorizing a total of \$1.3 billion in state general-obligation bonds, have been offered as a package called the "Build Texas" program.

Bond review board

All of the amendments authorizing issuance of general-obligation bonds provide for prior review and approval of those bonds by a state agency. During the 1987 regular session the Legislature enacted SB 1027, creating the Bond Review Board consisting of the governor, the lieutenant governor, the speaker of the House, the state treasurer and the comptroller.

A question has arisen about whether the House speaker, as a member of the legislative branch, can serve on a board that exercises executive functions without violating the constitutional separation-of-powers requirement. All of the amendments proposing general-obligation bonds specifically provide that members of the executive, legislative or judicial branches can serve on any bond review board. In addition, Amendment No. 21 on the November ballot would grant general authority to the Legislature to include the House speaker on committees that include members of the executive branch and exercise executive functions.

State Support for Private Enterprise

Various provisions of the Texas Constitution prohibit state or local governments from using public funds or credit to benefit private individuals or enterprises. Amendment No. 4 on the November ballot would allow the Legislature to authorize government assistance for certain economic-development purposes. It is a companion to Amendment No. 6, which would authorize issuance of state general-obligation bonds to finance state economic-development programs.

Two other amendments on the November ballot would create exceptions to the broad restrictions on state and local support of private enterprises. Amendment No. 1 would permit the state to guarantee up to \$5 million for a self-insurance fund established by the grain warehouse industry. Amendment No. 5 would amend Art. 3, sec. 52-b of the Constitution, which

prohibits public assistance to build or maintain turnpikes. It would permit the Highway Department to participate in joint projects with the Texas Turnpike Authority and would also permit certain counties to levy a tax to supplement turnpike toll revenues.

Legislative and Executive Branches

Several amendments would alter the relationship between the executive and legislative branches of state government:

Amendment No. 9 would make legislators eligible for election or appointment to an executive office during the term for which they were originally elected.

Amendment No. 21, mentioned earlier, would allow the House speaker to serve as a member of committees that include executive branch officials and have executive functions.

Amendment No. 22 would allow the Legislature to limit the authority of outgoing governors to make appointments to vacancies occurring after the election of their successor.

Local Taxes

Tax exemptions

Several amendments on the November ballot would exempt certain property from local ad valorem (property) taxation:

Amendment No. 3 would extend an existing constitutional provision, which freezes the school taxes on a person's homestead when that person reaches age 65, to the deceased person's surviving spouse, if the spouse is over 55 when the person dies.

Amendment No. 10 would allow the Legislature to exempt non-income-producing personal property. Local taxing units could override this exemption

Amendment No. 11 would exempt certain property temporarily in the state to be used in manufacturing or processing. Local taxing units could override this exemption.

Amendment No. 20 would allow the Legislature to exempt off-shore oil and gas drilling equipment while it is held in storage.

Taxing authorities

Several amendments would either create new local taxing authorities or expand the taxing authority of existing taxing units:

Amendment No. 2 would raise from three cents per \$100 valuation to six cents per \$100 the maximum tax rate that a rural fire-prevention district could levy, with voter approval. The maximum tax rate increase would apply only to districts wholly or partly including a county with more than 400,000 residents.

Amendment No. 5, mentioned earlier, would allow counties with a population over 400,000, any adjoining county or any city or district within such counties to levy a property tax, with voter approval. Revenue from the tax could be used to subsidize turnpike tolls that are inadequate to retire turnpike bonds or to maintain and operate a toll road that is at least partially within the taxing jurisdiction.

Amendment No. 13 would allow the Legislature to authorize creation, with voter approval, of emergency-services districts to provide emergency medical and ambulance services, rural fire prevention and control services and other emergency services. The district property-tax rate could be no more than 10 cents per \$100 valuation.

Amendment No. 18 would allow the Legislature to authorize creation of jail districts, which could, with voter approval, levy taxes and issue bonds to construct jail facilities for one or more counties.

Amendment No. 25 would allow the Legislature to authorize Randall County to levy a property tax, with voter approval, of up to 75 cent per \$100 valuation on those areas of Randall County not currently served by a hospital district. The revenue would pay for the Amarillo Hospital District's assuming the health care responsibilities for residents of those areas of Randall County.

Local Government

Since counties and cities are political subdivisions of the state, several proposed constitutional amendments would affect local government concerns:

Amendment No. 15 would abolish the office of county treasurer in Nueces, Gregg and Fayette counties.

Amendment No. 16 would allow counties with a population of more than 150,000 to have more than one justice of the peace position per JP precinct.

Amendment No. 17 would allow the Legislature to decide which municipal functions are immune, or partially immune, from liability for damages.

Amendment No. 24 would allow counties to perform work without compensation for other governmental entities wholly or partially within the county.

A somewhat related proposal, Amendment No. 14, would permit the Legislature to allow district and county prosecutors to appeal court rulings in criminal cases.

Provision for Surviving Spouses

Two amendments concern the rights of surviving spouses after the death of their spouse:

Amendment No. 3, mentioned earlier, would extend for surviving spouses who are age 55 or over when their spouse died the freeze on school district property taxes established when their spouse reached age 65.

Amendment No. 12 would allow spouses to agree in writing that upon their death, all or part of their community property would automatically become the property of the surviving spouse.

Referendum Propositions

SB 15, enacted by the 69th Legislature during its second special session in August 1986, and SB 86, enacted by the 70th Legislature during its second special session in July 1987, require approval by the voters in a statewide referendum before they can take effect. Neither bill proposes a constitutional amendment; voter approval of the referendum is a condition that

must be satisfied before the provisions of either bill can become operative. The Constitution neither permits or prohibits this procedure.

In SB 15, which would legalize local-option pari-mutuel wagering on horse races and greyhound races, the Legislature provided that the "referendum proposition" would appear on the ballot beneath the proposed constitutional amendments. The Legislature made the same provision for ballot placement of the "referendum proposition" in SB 86, which would fill the positions of the State Board of Education by appointment rather than by election. The governor by proclamation decided that the "referendum proposition" for SB 86 would go first on the ballot, and the one for SB 15 would go second, both beneath the proposed constitutional amendments.

1988 Amendments

Thus far the 70th Legislature has proposed three additional constitutional amendments to be submitted to the voters at the Nov. 8, 1988 general election. Those amendments currently scheduled for 1988 include:

HJR 2 -- establishing an economic stabilization
(rainy day) fund

SJR 8 -- dedicating federal highway grants
to pay for state highway expenses

HJR 5 -- creating a Texas Growth Fund for investing
part of the state permanent funds
in economic development programs and
broadening the investment discretion
of the state permanent funds.

HOUSE
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Constitutional amendment analysis

Amendment No. 1 (HJR 104)

SUBJECT: State guarantee of grain warehouse insurance

DIGEST: HJR 104 would amend the Constitution to add Art. 3, sec. 50-e allowing the Legislature to guarantee up to \$5 million for a grain warehouse self-insurance fund.

Should such a self-insurance fund reach \$5 million, as certified by the state comptroller, the state guarantee of the fund would expire.

HJR 104 also declares that any enabling legislation passed by the Legislature in anticipation of the voter's approval of this amendment shall be valid, in spite of any challenge based solely upon its anticipatory nature. The proposed amendment states that any conflict between it and any other constitutional provision should be resolved in favor of the new section.

The ballot proposal reads: "The constitutional amendment to provide for the surety of a grain warehouse fund to be established by the grain industry for the protection of farmers and depositors of grain in public warehouse facilities."

SUPPORTERS
SAY:

HJR 104 would lay the groundwork to protect Texas farmers and grain depositors by ensuring that grain elevator and storage companies can continue to operate in a financially sound and stable manner. Texas farmers need to be able to store their excess grain crops at reasonable prices, as well as be protected in case of the financial failure of grain facilities.

In the last several years, Texas has had two to three storage-facility failures a year, out of an estimated total of 757 grain-storage structures with a capacity of almost one billion bushels. Through mid-1987, bonding companies for grain elevators had lost more than \$600,000 in Texas. As losses have outstripped premiums collected, many of the companies remaining in the field have raised bonding rates to levels that elevator operators cannot afford.

Other states have found creation of a self-insurance pool, guaranteed by the state, to be a workable solution. In lieu of obtaining bonding coverage through a private carrier, grain-storage businesses can contribute to a fund that is deposited in an interest-bearing account. The fund reimburses farmers for losses resulting from failure of a storage facility.

Both the state and federal governments currently require grain elevator operators to post surety bonds to guarantee farmers and grain depositors against loss should a grain elevator go out of business. However, current bonding requirements cover only around 25 percent of the value of the grain in a storage facility, and bonds for even that limited coverage have been difficult to obtain because of the increasing number of elevator failures. A self-insurance pool would allow the elevator operators to band together and provide their own surety bonds, which could also cover more of the total value of the grain. But to get such a self-insurance pool off the ground and attract participation by the grain elevator operators, the pool will need a guarantee by the state to cover its losses until the amount in the pool reaches \$5 million, enough to cover all but the most catastrophic level of elevator failures.

The state guarantee for any grain warehouse self-insurance fund would be temporary, lasting only long enough for the fund to become fully operational -- once the fund reached \$5 million, the guarantee would expire. Officials of the Texas Department of Agriculture say that proposed self-insurance program would not require any additional public funds over the initial \$5 million surety, so the fund would not be coming back for more once the initial surety expired.

Enacting implementing legislation for this constitutional amendment at this point would have been putting the cart before the horse. After the amendment is approved, the next Legislature will have plenty of time to craft workable implementing legislation that would limit the potential loss exposure of the state.

HJR 104
Amendment No. 1
page 3

HJR 104 is strongly supported by farmers, grain elevator operators, and even the insurance companies themselves, who would prefer to withdraw from this segment of the insurance market, as many other bonding companies have already done, in favor of a system of self-insurance by the elevator operators.

OPPONENTS
SAY:

This amendment would set the bad precedent of the state using its credit rating to bail out certain industries that have become poor bonding or insurance risks.

The current crisis in the farm economy shows few signs of improvement. Therefore, it must be assumed that the warehouse storage industry will exhibit more weakness and that more facilities will fail. Such a drain would quickly overwhelm any interest accrual in a self-insurance fund. The state would likely have to continue to pour more of its general revenue funds into a depleted fund.

The exit of private firms from this portion of the bonding business would leave no fallback system. The odds are good that the state would be forced to continue to act as the guarantor of last resort in order to keep storage space available for Texas farmers.

The state has no assurance that any legislation passed in the future to implement this amendment would limit the recovery of an individual at a reasonable level. States such as Illinois have experienced serious depletion of their insurance pools because they attempted to reimburse claimants for 100 percent of their losses, which almost bankrupted their funds and surety and eventually forced the state to return for additional appropriations.

The voters should not be asked to approve this amendment without also seeing the details of how it would be implemented, but no implementing legislation has yet been approved by the Legislature.

Before the state gets into the business of guaranteeing private self-insurance funds for grain elevator operators, the Texas Department of Agriculture should

HJR 104
Amendment No. 1
page 4

first be required to investigate the circumstances behind the recent grain facility failures. If the public's money is to be used to guarantee payment to a grain depositor, the taxpayers should first be assured that the financial practices of grain depository facilities are above reproach.

The Legislature, during the same session in which it passed this proposed amendment, passed legislation that will help the grain-elevator bonding dilemma in another way, by easing the requirements for the security that grain elevators operators must file with the Texas Department of Agriculture as a guarantee against their failure. Until this new legislation has had a chance to work, this amendment is premature.

NOTES:

HB 1721 by Waterfield, which becomes effective on on Sept. 1, 1987, reduces grain warehouse bonding requirements and provides that grain warehouse operators may, in lieu of a bond, deposit with the state cash, a letter of credit payable to the state, a certificate of deposit from a federally insured bank, or negotiable securities approved by the Texas Department of Agriculture (TDA). TDA is the state agency responsible for accepting bonds. The bill also made changes in current law concerning disposal of abandoned or unclaimed grain and grain sold by a warehouse operator to satisfy an outstanding debt.

No implementing legislation was enacted by the Legislature in anticipation of approval of HJR 104.

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Constitutional amendment analysis

Amendment No. 2 (HJR 60)

SUBJECT: Maximum tax-rate increase for some rural fire districts

BACKGROUND: Under Art. 3, sec. 48-d of the Texas Constitution, counties are authorized to form rural fire-prevention districts, which are allowed by statute to provide and contract for fire-fighting, emergency-rescue and emergency-ambulance services. The county commissioners courts of the counties comprising the district call elections to confirm organization of the district and the levy of a property tax of not more than three cents per \$100 valuation to support district operations.

DIGEST: HJR 60 proposes a constitutional amendment to raise the cap on rural fire-district tax levies in certain counties. A rural fire-prevention district located wholly or partly in a county with a population exceeding 400,000 residents, based on the most recent federal census, could collect a property tax of up to six cents per \$100 valuation, if approved by the voters in the district.

The ballot proposal reads: "The constitutional amendment to raise the maximum property tax rate that may be adopted by certain rural fire prevention districts, but only if approved by the districts' residents."

SUPPORTERS
SAY:

HJR 60 and HB 53, its implementing legislation, would guarantee that larger rural fire-prevention districts could raise enough revenue to support necessary services. Districts located near large cities are having trouble paying for contracted services provided by the urban fire departments because the three-cent tax rate does not generate enough revenue. Consequently, these districts are left with inadequate fire-fighting and emergency-rescue services.

The problem has become particularly acute in unincorporated areas of rapid growth, such as southern Tarrant County, that are part of a rural fire-prevention district. These areas are close enough to city fire departments for the rural fire-prevention

HJR 60
Amendment No. 2
page 2

district to contract for their services yet are so far away that the expense for the cities is greater than the rural fire-prevention district can afford to pay with its limited tax levy.

Allowing these rural fire-prevention districts with suburban jurisdiction to raise more revenue would ensure that they could pay for necessary services, but only if their voters believe that the increase is justified. The vital nature of the services provided justifies giving local voters in limited areas where those services are needed the flexibility to decide the issue.

The emergency-services districts proposed by SJR 27, Amendment No. 13 on the November ballot, are a different entity that has nothing to do with the problem this amendment is intended to solve. This amendment is limited to districts that are already established and include all or part of counties with a population of 400,000 or more. SJR 27 would create a new entity to provide emergency services for counties of any size. Moreover, SJR 27 would allow a maximum property-tax rate of ten cents per \$100 valuation, while this amendment would limit the maximum tax to six cents per \$100.

OPPONENTS
SAY:

The Legislature has no business proposing a tax-raising mechanism to the voters during this time of economic hardship. In today's ailing state economy, the taxpayers can ill afford to pay the higher taxes this amendment would authorize.

Raising the allowable tax rate for fire districts would jeopardize the ability of other taxing authorities such as counties and school districts to raise revenue. The property tax base is already spread thin, and it would be irresponsible to allow another local district to siphon off even more tax revenue.

OTHER
OPPONENTS
SAY:

SJR 27, Amendment No. 13 on the November ballot, would authorize another type of rural taxing authority -- emergency medical services districts, which could tax residents up to ten cents per \$100 property valuation. SB 669, the implementing

HJR 60
Amendment No. 2
page 3

legislation for SJR 27, would allow existing rural fire-prevention districts simply to convert to emergency-services districts, which would provide at least the same services, thereby effectively raising their maximum tax rate from three cents per \$100 to ten cents per \$100. There is no need for both amendments in a Constitution that already contains too many redundant provisions.

NOTES:

HB 53 by Leonard, the implementing legislation adopted during the second called session, would become effective upon voter approval of HJR 60. It would raise the allowable property tax rate to six cents per \$100 valuation for rural fire-prevention districts located wholly or partly in a county with a population exceeding 400,000 residents. The board of fire commissioners would be required to order an election to raise the property-tax rate beyond three cents in an existing fire-prevention district. If the tax-rate increase were not approved by a majority of the eligible voters, another election could not be held for one year.

SJR 27, also on the November ballot (Amendment No. 13), would allow the creation of rural emergency-service districts that could levy taxes of up to 10 cents per \$100 property valuation.

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Constitutional amendment analysis

Amendment No. 3 (HJR 48)

SUBJECT: Surviving-spouse school-tax homestead exemption

BACKGROUND: Art. 8, sec. 1-b, Texas Constitution provides various exemptions from property taxes for residence homesteads. A residence homestead is the principal residence of the owner, which is a house and yard (maximum of 20 acres), condominium, townhouse or mobile home.

To claim property as a homestead, taxpayers must own the property and use it as their principal residence on Jan. 1 of the year for which the exemption is sought.

The Constitution allows all individual homesteads an exemption from school taxes on \$5,000 of the property's valuation. In addition, if the county in which the homestead is located collects a farm-to-market road tax or a flood-control tax, homeowners are entitled to an exemption from this tax of \$3,000 in valuation. Art. 8, sec. 1-b (b) allows the governing board of a political subdivision that taxes property (i.e., county, city, town, school district, junior college district) to offer a homestead exemption of up to 30 percent of the homestead's market value. Beginning in 1988 the maximum percentage will drop to 20 percent.

The Constitution authorizes additional homestead exemptions for the disabled and persons 65 years old or older. Art. 8, sec. 1-b (c) allows the Legislature to grant these persons an additional tax exemption of \$10,000 in value from public school taxes. Art. 8, sec. 1-b (b) allows any taxing unit to offer an exemption of at least \$3,000 to the disabled and those over 65.

Art. 8, sec. 1-b (d) prohibits any increase in school ad valorem taxes on the homestead of a person 65 years old or older. The taxes are frozen from the time a homeowner receives the over-65 exemption, except that school taxes can be levied on any increased value resulting from improvements to the home. The tax freeze lasts for as long as the person over 65, or a

HJR 48
Amendment No. 3
page 2

person whose spouse is claiming the over-65 exemption, uses the property as their homestead.

DIGEST:

HJR 48 would amend Art. 8, sec. 1-b (d) of the Texas Constitution to extend the protection against increases in school ad valorem taxes on the homestead of a person 65 or older to that person's surviving spouse, if the spouse was 55 years or older at the time of the person's death. The protection would be effective as long as the residence remained the homestead of the surviving spouse, subject to limitations imposed by the Legislature.

The ballot proposal reads: "The constitutional amendment to limit school tax increases on the residence homestead of the surviving spouse of an elderly person if the surviving spouse is at least 55 years of age."

SUPPORTERS
SAY:

HJR 48 would protect surviving spouses who are 55 years old or older from suffering a huge increase in school property taxes in the year after their spouse dies. Consider the example under current law of a 63-year-old widow of a man who died at age 70 in 1986. The couple's school-district property taxes would have been frozen at 1981 levels (the year the husband turned 65) for five years. But in 1987 the widow, too young to qualify for protection from tax increases, must pay the full amount of taxes levied on her home. These taxes are likely to be double those paid in 1986, since land values and tax rates have increase dramatically in the past few years in many parts of the state. When she turns 65 the widow will qualify for protection from further increases, but her taxes will be frozen at a much higher level than she was paying before her husband's death. Only if she were 65 at the time of her husband's death would her maximum taxes remain frozen at the 1981 level.

This proposed constitutional amendment would protect both widows and widowers who are at least 55, but younger than 65, when an over-65 spouse dies. They would otherwise face a huge tax burden in the year after their spouse's death. It would keep taxes at the level paid when the older spouse was alive.

The proposed amendment would only extend to surviving spouses a tax exemption that they already had before their spouse died. The policy of granting such exemptions has already been written into the Constitution, and making this small extension would avoid imposing additional hardship on a bereaved person. Some spouses have been forced to sell their homes because they could not afford to pay the increased taxes. This amendment would prevent such unnecessary hardships.

Elderly taxpayers often face the problem of owning a homestead that is rapidly appreciating in value at a time when their income has been reduced by retirement and remains relatively constant. As their prime earning years are over, they can face sharp increases in their taxes as the value of their most significant asset, their homestead, soars, along with their tax bill. The Legislature and voters decided that those who reach 65 and will be living in the same homestead should at least know that their school taxes, usually the largest component of their property tax bill, will never be higher.

An age cut-off of 55 for spouses who could retain the tax freeze of their spouse is appropriate. A younger surviving spouse is more likely to be able to work and pay the same taxes as others of that age. The special protection from tax increases should be limited to those people most likely to need them -- older surviving spouses. Using a particular age, income or any other criterion as a qualification for receiving a benefit is acceptable as long as it can be justified by a rational public policy purpose.

OPPONENTS
SAY:

HJR 48 would unfairly give special consideration to homeowners who happen be married to someone age 65 or older. A 62-year-old single woman is likely to have fewer resources than a 55-year-old widow who has just inherited her husband's part of their house and estate, yet she would get nothing from this proposal. A couple that never had enough money to buy a home would gain nothing from this protection,

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Amendment No. 3
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regardless of age or need. A person whose spouse dies at age 64 would gain nothing from this change.

HJR 48 would give special protection to a small group of people who happen to fall into the right category. Extending this special privilege is unfair, especially at a time when the other taxpayers face the likelihood of higher school taxes.

OTHER
OPPONENTS
SAY:

The surviving spouse of a person 65 or older should not continue to enjoy a tax break just because of their age. Property tax breaks should be continued only because of proven economic need. Many older persons are economically well off and should carry their share of the tax load. Exemptions should be allowed only when persons who have reached 65 can prove they need the tax break because they have limited financial resources.

If continuing the homestead exemption for surviving spouses is good policy, then there should be no limitation on the age of the spouse. Limiting the exemption to surviving spouses age 55 or older is arbitrary and discriminates on the basis of age.

If protection against school-tax increases is necessary, then protection against other property-tax increases is also necessary. This resolution should be broadened to protect surviving spouses from all sudden jumps in property taxes after death of their over-65 spouse, if it is to be approved at all.

The Legislature should not cut the revenues of school districts needed to fund public education programs. It should at least make the provision permissive on a local option basis, so that those districts that cannot afford this tax break need not give it.

NOTES:

HB 872 by Schlueter would have amended the Tax Code to extend the protection against increases in school ad valorem taxes to a surviving spouse (no limitation on age), as long as the survivor continued to use the residence as a homestead and remained unmarried.

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HB 872 was sent to the House Calendars Committee during the 1987 regular legislative session but was never set for consideration on the floor.

The State Property Tax Board's Report of the Findings of the 1986 Property Value Study of School and Appraisal Districts estimates that property value exempted under the over-65 homestead exemption totals \$12.2 billion out of the 1986 value estimate of \$824 billion.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 4 (HJR 5)

SUBJECT: Public loans and grants for economic development

BACKGROUND: Art. 3, sec. 50 of the Texas Constitution prohibits the state from aiding an individual or a corporation by lending money, providing land, goods or services on credit or guaranteeing payment to a third party who provides aid to an individual or corporation. Art. 3, sec. 51 states that the Legislature has no power to make or authorize grants of public funds to an individual or corporation. Art. 3, sec. 52 prohibits the Legislature from authorizing a municipality to lend its credit or grant public funds to an individual or corporation. Art. 8, sec. 3 states that taxes may be collected only for public purposes. Art. 11, sec. 3 prohibits municipalities from making an appropriation to, loaning their credit to or purchasing stock in a corporation. Art. 16, sec. 6 prohibits any appropriation for private or individual purposes, unless authorized by the Constitution.

DIGEST: HJR 5 would amend the Texas Constitution to add a new sec. 52-a to Art. 3, permitting the Legislature to create programs and make loans and grants of public money for economic development and diversification, the elimination of unemployment or underemployment, the stimulation of agricultural innovation, the growth of agricultural enterprises and the expansion of transportation or commerce. Money constitutionally dedicated to other purposes could not be loaned or granted.

Bonds issued by a city, county or other political subdivision and payable from ad valorem taxes to finance loans and grants authorized by the Legislature would be subject to approval by local voters.

The Legislature would be authorized to enact an enabling law in anticipation of the adoption of this amendment.

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Amendment No. 4
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The ballot proposal reads: "The constitutional amendment authorizing the Legislature to provide assistance to encourage economic development in the state."

SUPPORTERS
SAY:

HJR 5 is an essential element in the economic development package passed by the Legislature this year. This proposed constitutional amendment would permit the Legislature to authorize the loans and grants that would fund the Texas Agricultural Fund, Texas Small Business Incubator Fund and the Texas Product Development Fund, which would be established by HJR 4 (Amendment No. 6). It would also permit local governments to issue general obligation bonds for economic development programs, subject to voter approval.

HJR 5 is necessary to override certain current constitutional provisions that might be construed as prohibiting economic development investments by the state or local governments that aided individual companies. The courts have generally interpreted existing constitutional provisions to permit grants for public purposes. Since the agricultural fund, product development fund and small-business incubator fund are intended to benefit the public by fostering economic growth and diversity, this proposed change is in the spirit of the current provisions. However, to avoid any delay or confusion in the establishment of these proposed new programs, it would be prudent to clarify that public loans and grants for economic development and diversification, the elimination of unemployment or underemployment, the stimulation of agricultural innovation, the growth of agricultural enterprises and the expansion of transportation and commerce are indeed for public purposes and constitutionally acceptable.

The Constitution has been amended many times to provide for specific programs that are in the public interest. For example, Art. 3, sec. 52, which prohibits the Legislature from authorizing a local government to lend credit or grant public funds to any individual or corporation or to become a stockholder in a corporation, has been modified by new sections to, among other things, allow the payment of medical

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expenses of law enforcement officials by counties. Establishment of programs for economic development would certainly be as worthy a use of public funds as this exception and would no more weaken the general constitutional ban on the use of public funds for private purposes than did this earlier amendment.

HJR 5 contains several safeguards to ensure that the abuses that the current constitutional provisions are meant to prevent would not occur under the proposed economic development programs. A local government would not be allowed to issue general obligation bonds under these programs without the approval of its voters. The Legislature would have to authorize any loan or grant program that local governments might finance through bond sales.

HJR 5 by itself would not obligate a dime of state money -- other constitutional amendments would have to be approved before the state could issue bonds to finance economic development programs. HJR 4, which would permit the issuance of \$100 million in bonds for the agricultural fund, \$15 million for the product development fund and \$10 million for the small business incubator fund, is an example of the process of examination, debate and public approval through which any new financing program would have to pass. In addition, enabling legislation would have to pass the scrutiny of both the Legislature and governor.

OPPONENTS
SAY:

HJR 5 is an attempt to circumvent one of the pillars of the Texas Constitution -- the prohibition against use of public funds for private enrichment. There are at least six separate sections of the Constitution, one even dating from statehood in 1845, that are intended to prevent the giveaway of the taxpayers' money to private interests. Texas voters should not ignore the lessons of history embodied in these provisions just because the state has recently faced some economic difficulties. Calling an open-ended raid on the public treasury an "economic development" program does not make it any less dangerous or fiscally irresponsible.

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The original reason for the adoption of Art. 3, secs. 50, 51 and 52, Art. 8, sec. 3, Art. 11, sec. 3, and Art. 16 sec. 6 in the 19th century remains sound -- to prevent the government from aiding private parties in their grandiose schemes for "internal improvements." The legislatures of that time were prone to corruption by private interests and had ceded vast amounts of the public domain to the promoters of railroads and canals. The public outcry against these scandals was so strong that the Constitution of 1876 contained repetitive prohibitions to guarantee that public money would never be used again to enrich individuals and corporations.

HJR 5 would nullify the safeguards built into the Texas Constitution to permit a limitless amount of public money to be used to finance the business schemes of individuals and private corporations. The restrictions in the proposed constitutional amendment on the use of public money for private purposes are so broad that they are meaningless -- any project that hired one person could claim to be eliminating "unemployment or underemployment." In fact, it is hard to think of any business venture that could not fit under the "economic development" rubric. Political influence would inevitably determine who would receive grants and loans and who would not -- an invitation to corruption that the current restrictions are designed to avoid.

HJR 5 would also invite a flood of private schemes to be funded by local governments. Fast-talking businesspeople would descend on county and city officials, promising an Eldorado of jobs and wealth if only the local government would float bonds to pay for their project. Private enterprises would pit local governments against one another in escalating bidding wars for public subsidies. Private advertising dollars would saturate the local media with messages for the voters to support bond issues to benefit particular business schemes. If the publicly subsidized project fails, as such business ventures often do in an increasingly volatile financial environment, those left holding the bag would not be just private investors, but local taxpayers as well.

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Amendment No. 4
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OTHER
OPPONENTS
SAY:

The best way for state and local government to promote economic development would be to maintain the public education system and public services. The economic growth of such states as Massachusetts and California has been based on a skilled, educated work force and on high-technology spin-offs from institutions of higher education. Individual venture capital investors have been drawn to the environment created by these states and have poured private money into supporting economic development there.

The proper role for the state of Texas would be to give adequate support to public and higher education and to infrastructure improvements such as highways, bridges, airports, sewer systems and parklands. It should let the free market and individual entrepreneurs take the risks and reap the rewards of investment in individual projects.

If the agricultural fund, product development program or small-business incubator fund proposed by the companion proposal, HJR 4, (Amendment No. 6), are worthwhile, they could be authorized by a specifically limited constitutional amendment. The veterans' land program, water development bonds and the park development fund were all authorized by tightly drawn constitutional amendments. The proposed economic development funds could be similarly authorized, without throwing open the doors to the State Treasury, as this proposed amendment would do.

NOTES:

HB 4 by A. Smith, which would implement some of the provisions of HJR 4 and HJR 5, is described in the Notes section of the analysis of HJR 4 (Amendment No. 6).

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 5 (HJR 65)

SUBJECT: State and local assistance for turnpike projects

BACKGROUND: Art. 3, sec. 50 of the Texas Constitution prohibits the Legislature from lending or giving the state's credit to any person, association, municipal corporation or other corporation. The provision dates from 1876.

In 1954 sec. 52-b was added, specifically prohibiting the Legislature from granting public money or state credit to any person, corporation or state agency, public corporation, etc. that is authorized to build or maintain turnpikes. According to The Constitution of the State of Texas: An Annotated and Comparative Analysis, the 1954 provision was added to mollify opponents of the Texas Turnpike Authority, created by legislation during the same legislative session in which the amendment passed to finance the building of the Dallas-Fort Worth Turnpike. The amendment was added to preempt any recourse against the state by the holders of turnpike revenue bonds. The newer section "merely repeats for would-be turnpike builders the prohibition . . . in Art. 3, sec. 50."

Local governments and counties are authorized in sec. 52 (b) and (c) to issue bonds for toll roads under certain circumstances.

DIGEST: HJR 65 would amend Art. 3, sec. 52-b to allow joint highway projects by the Texas Turnpike Authority and the State Department of Highways and Public Transportation. It would permit the state to contribute money from any source to the turnpike authority for such projects.

Commissioners courts of counties with population of more than 400,000, any adjoining county or any city or district within those counties would be allowed to levy a property tax, after approval by local voters. The revenue from that tax could be used to pay all or part of the principal and interest on turnpike bonds or the maintenance and operation of toll roads wholly or

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partially within the taxing jurisdiction, to the extent that tolls were insufficient for those purposes. This part of the amendment would be self-executing, taking effect independently of any implementing legislation.

The ballot proposal reads: "The constitutional amendment authorizing agreements between the State Department of Highways and Public Transportation and the Texas Turnpike Authority and the governing bodies of counties with a population of more than 400,000, adjoining counties and cities and districts located in those counties to aid turnpikes, toll roads, and toll bridges by guaranteeing bonds issued by the Texas Turnpike Authority."

**SUPPORTERS
SAY:**

HJR 65 would help fund needed construction projects by allowing the highway department, the Texas Turnpike Authority and local governments to pool their money.

Texas metropolitan areas have transportation needs that could be met more quickly if projects were undertaken as turnpikes rather than as freeways, especially if they have received a relatively low priority ranking from the highway department. Building a highway using federal money takes much longer than building a turnpike to the same standards. Ultimately these turnpikes will become part of the state highway system. In the meantime, state highway dollars would be freed to construct and maintain roads in parts of the state where toll roads would not be feasible.

Ratings of Texas Turnpike Authority bonds would improve if state backing were allowed. Better bond ratings would save money that otherwise would go for higher interest rates. Building these projects sooner also could save money because, even with low inflation, costs are still rising.

This constitutional amendment would assure that Texas could use recently appropriated federal money for an experimental turnpike project. Federal money generally can be spent on toll bridges and not toll roads, but Texas is to be the site of one of three experimental toll-road grant projects. Whether current state law would allow that money to be spent is not entirely

clear; this amendment would clarify the point beyond question.

OPPONENTS
SAY:

Building more toll roads would be an inequitable way to meet Texas' transportation needs. Toll roads place a heavy burden on those drivers who live and work near toll roads while sparing those who do not. The burden is apparent when comparing tolls to gasoline taxes, which are paid by drivers across the state. A typical 20-mile turnpike trip costs \$1.60 to \$2; gasoline taxes for a 20-mile trip on a freeway total only 15 cents, assuming car gets 20 miles per gallon. Gas wasted while waiting in toll-booth lines is another cost for drivers.

Tax money should not be used as backing for toll road bonds. If anticipated tolls are insufficient to raise the revenue necessary to pay for these roads, then they should not be built in the first place.

Tolls have a way of lingering long after the project is paid for. The legislation accompanying this amendment specifically would allow revenues from one toll project to be used for others that are extensions of the original project or part of a nebulous "integrated system of turnpike projects." The only absolute limitation would be that the agreements could not exceed 40 years, so presumably the tolls would finally end at that point.

NOTES:

HB 1364, legislation passed in tandem with HJR 65, becomes effective on Aug. 31, 1987. The bill would allow the highway commission to contract with the Texas Turnpike Authority to share costs on a turnpike, toll road or bridge to be owned and operated by the authority. Local governments would be allowed to issue bonds or make payments for construction, maintenance and operation of turnpike projects under agreements with the turnpike authority. The bill stipulates that its enactment before approval of any related constitutional amendment or federal act would not invalidate the statute because existing constitutional provisions would permit many joint projects involving the highway department, turnpike authority and counties.

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HB 1364 was amended to specify that tolls collected under a highway department-Texas Turnpike Authority agreement could be used to fund other projects only if they are extensions of the original project or are part of an "integrated system of turnpike projects."

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 6 (HJR 4)

lost in 1987 *passed in 1989*

SUBJECT: Bonds for agriculture, new products, small business

DIGEST: HJR 4 would amend the Constitution to authorize the Legislature to issue a total of \$125 million in general obligation bonds to provide venture financing for small businesses, new products and agricultural production, processing and marketing.

The Legislature could authorize issuance of up to \$100 million in general obligation bonds to provide initial funding for a Texas Agricultural Fund to foster the production, processing and marketing of Texas agricultural products grown by small Texas agricultural businesses. This program could provide financial assistance, including direct and indirect loans, loan guarantees, purchases and acceptances of loans, insurance and coinsurance. The agricultural fund would be funded with the bond proceeds, loan repayments, other receipts from loans and any other money deposited by the Legislature or other parties.

The Legislature could authorize issuance of up to \$15 million in general obligation bonds to establish a Texas Product Development Fund to assist the development and production of new or improved products through loans, loan guarantees and equity investments. Revenue for the product development fund would come from the proceeds of the bonds, royalties, dividends, loan paybacks, fees paid for loan guarantees, investment and loan income and other amounts that the Legislature could deposit.

The Legislature could authorize issuance of up to \$10 million in general obligation bonds to establish a Texas Small Business Incubator Fund to stimulate small business growth through loans and grants. The fund would also receive income from loan repayments, other receipts from the loans and grants and any other revenue deposited by the Legislature.

A small business incubator backed by the fund would be exempt from ad valorem taxation in the same manner that public charities are exempted.

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The Legislature could require that the issuance of the bonds, the use of the bond proceeds and the rules adopted by an agency governing the use of bond proceeds be reviewed and approved by an entity that could include members of the executive, legislative and judicial branches of state government.

Bonds authorized by the proposed amendment would be general obligation bonds, backed by a pledge of the first money coming into the Treasury each fiscal year that was not constitutionally dedicated.

The ballot proposal reads: "The constitutional amendment authorizing the Legislature to provide for state financing of the development and production of Texas products and businesses."

**SUPPORTERS
SAY:**

Texas is at an economic turning point. Oil revenues are running dry, and the state's traditional economic base of farming and ranching is endangered. It is imperative that the state preserve its agricultural economy while fostering the development of small businesses and new products. This proposed constitutional amendment is a key part of the economic development package passed by the Legislature this year to rejuvenate the Texas economy.

The largest element of HJR 4 is the proposed Texas Agricultural Fund, which would give financial assistance to small Texas agricultural businesses to produce, process and market crops and products grown or produced primarily in Texas. The \$74 billion-a-year agriculture sector has been the cornerstone of the Texas economy for generations and still provides 20 percent of all jobs in Texas. However, the current farm crisis has eliminated jobs, closed rural banks, bankrupted seed stores and equipment dealers and devastated rural communities.

The agriculture sector could become a renewed source of employment if the state helped develop new farm products and new methods of marketing. Additional jobs could be brought to Texas if more of the nation's food processing were located in the state. Currently Texas processes only 6 percent of the nation's food, even

though it is the second most productive agricultural state. This amendment would permit loans to promising agricultural businesses that cannot locate adequate financing. The program would not compete with the private sector, which has been unable or unwilling to help farmers out of their current dilemma.

The proposed amendment would also authorize \$15 million in general obligation bonds for a Texas Product Development Fund. Carefully screened projects with a good chance of success could obtain this money through loans or equity investments in innovative products and services. Traditional lenders have been refusing loans to support new products, not because they believe the products will fail but because capital has turned away from Texas business in general. The Texas Product Development Fund would provide the capital necessary to help new businesses develop new products and get them into the marketplace. Private capital would flow to successful products, the state's loans would be repaid with interest, and the seed money in the fund would be recycled to nurture other new products.

Finally, HJR 4 would authorize \$10 million in bonds for a Texas Small Business Incubator Program. Incubators provide office space, equipment, secretarial help and a variety of technical and management advice for new businesses trying to get off the ground. Small companies have a failure rate of 80 percent in their first five years. Many fail because of problems with taxes, red tape, regulations and marketing, not because their products or concepts are poor. Incubators provide the most valuable resource that new, struggling small businesses need -- experienced advice that helps them avoid the pitfalls that often trap developing companies.

If small businesses can overcome these early obstacles, their potential for job creation is enormous. Small businesses generate two-thirds of the new jobs in the U.S. each year. The incubators financed by this new state fund would assist new businesses in Texas to beat the odds and survive to create a revived economic climate for the state.

These programs would not break new ground; they have been tested across the country, and they work. Nine states have product development programs, and 28 states, including Texas, have small-business incubator programs. In Texas, the Gulf Coast Small Business Incubator has spawned 283 businesses and created 1,600 jobs in its three years of existence. It has managed to obtain \$6 in other funding for every \$1 of state money.

Programs like those proposed by HJR 4 are a major reason why other states have surged ahead of Texas in attracting and building industry. Tennessee, Massachusetts and California are involved in helping industry in a number of ways and routinely report better economic growth than Texas.

The programs created by this proposed constitutional amendment would not be a limitless drain on state resources. A specific amount of revenue would be raised from bond sales and used to establish the economic development programs. These programs would then be on their own and would have to rely on other sources of revenue, including royalties, dividends, repayments and interest, for their continued existence. The state would receive royalties and dividends too, and the success of even a handful of applicants could bring in revenue that could exceed the initial expense.

There will be no more Spindletops in Texas. New breakthroughs in technology, like the development of superconducting materials, are the modern-day equivalent to the discovery of a new oil field. It is important that the voters be given the opportunity to decide whether the state should tap this new source of wealth.

The prohibitions on aid to private business contained elsewhere in the Constitution were added in the 19th century to deal with abuses of an age long past. Newer sections of the Constitution allow specific uses of public funds for individuals and corporations, such as the payment of medical expenses of law enforcement officials. Today's citizens should have the chance to weigh the costs and benefits involved in a small state investment in building a new economy to create jobs and generate tax revenue.

These programs would contain plenty of safeguards. For example, no funding would be available to open a town's 10th pizza parlor. Venture funding would be available only for production and processing by small agricultural businesses, development of new products and services and support of job creation by small businesses. Applicants to all these programs would face exhaustive examination of their financial soundness to ensure that any investment of state dollars would be soundly made.

OPPONENTS:
SAY:

Texas has a long tradition of prohibiting the use of tax money for private purposes. The state should not abandon its traditional opposition to government meddling in the marketplace just because of some transitory hard times. Texas is on a tight budget -- the state needs money for prisons, education, services and other traditional spheres of government activity. This is not the time to take state money and spend it on pie-in-the-sky economic development schemes.

The state can better spend its money by investing in higher education, vocational education and community colleges, which provide a firm foundation for future economic growth. By providing job training and research dollars, the state can promote new business without getting into competition with banks, private investors and other sources of private capital.

Any effort by the state to lend money where traditional financial institutions fear to tread should be viewed with caution. The state should not become a lender of last resort for people who want backing for some hare-brained invention that the experts have already spurned as unworkable or financially unsound. Calling an expenditure of state funds a "development fund" does not make it any less dangerous or fiscally irresponsible.

It is inevitable that the managers of these programs would have to pick and choose among businesses applying for these funds. Every time a government dollar goes to one of these new businesses, it would give that

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business a competitive edge not enjoyed by others who lack state subsidies. A program financed by state money would be tainted with the suspicion that it had been selected on the basis of political clout rather than intrinsic merit.

Small businesses have a failure rate of 80 percent within five to seven years; the state should not invest tens of millions of tax dollars in businesses practically guaranteed to fail. The marketplace has served us well in weeding out businesses that cannot make it and in making room for those that will grow and prosper. The state should not interfere in this process.

The state already has approximately \$5.5 billion in outstanding bond debt. The general-obligation bonds authorized by this and other amendments on the November ballot would add almost \$2 billion more to the state debt load, which future generations will have to retire. Adding so much state-bond debt would drive up interest rates and compete with more appropriate local-bond sales to finance public works projects such as water and sewer systems. The Texas "pay as you go" philosophy has been eroded enough; rejecting inappropriate bond schemes such as this one would help stop the state's slide into serious debt difficulty.

NOTES:

The Texas Product Development Fund and the Small Business Incubator Program would be implemented by HB 4 by A. Smith, which created a new Texas Department of Commerce.

Texas product development fund

Under those provisions of HB 4 that would become effective only if the voters approve HJR 4, the Texas Product Development Fund would provide financing only for new and improved products that are exploitable commercially and could not obtain other financing on reasonable terms. Applicants would agree to provide the state with royalties, patent rights or an equitable interest in the product.

In allocating venture financing, the department would consider an applicant's financial condition, market prospects and the integrity of its management, as well as the state of development of the product and the likelihood of its commercialization.

The department would also consider whether a product would create or preserve jobs and benefit the economy of the state, whether venture financing was necessary because financing was unavailable on reasonable terms in traditional capital markets, whether there was a reasonable assurance that the potential revenues from the sale of the product could repay any venture financing and whether the product would be used to the maximum extent possible in facilities located in Texas.

Small business incubator program

HB 4 would also establish a Small Business Incubator Program to provide space, equipment, secretarial and legal services and management and technical consultants to help new businesses get off the ground. New businesses would receive advice on commercialization and marketing of their product, ways to obtain private financing, how to deal with taxation and regulations and basic management skills.

The Small Business Incubator Program would involve 50 percent funding by the state and 50 percent from local sponsors, including municipalities, educational institutions, development corporations created by state law and private organizations. The state could make loans or grants of as much as \$250,000 to enable sponsors to acquire or lease land and buildings or to purchase equipment and furnishings.

The state could also award challenge grants to provide seed capital to tenants of a small-business incubator. Every \$1 in state money for challenge grants would have to be matched by \$3 in private investment. The new commerce department would establish and oversee the SBI program, but the incubators themselves would be run by local sponsors.

Local SBI sponsors would evaluate applicants to determine the likelihood that their business would be

profitable, whether their products or services would be new or improved, the potential market for the product or service, whether the business would generate new jobs but not eliminate old ones and whether the business was a new plant start-up or a new venture opportunity and not just a relocation of an existing business.

Each sponsor's program would need the support of local business, labor, education and governmental entities and would have to coincide with existing area and local economic-development plans. Sponsors would report annually on the number of jobs and businesses generated by their program. Tenants of an incubator would have to relocate to a permanent location within 24 months.

Texas agricultural finance authority

HB 49 by Harrison, enacted during the second called session, established a Texas Agricultural Finance Authority to issue up to \$45 million in general obligation bonds to help diversify Texas agriculture. Issuance of the bonds is contingent on adoption of the constitutional amendment proposed by HJR 4. HB 49 also established a Texas Agricultural Fund in the state Treasury and authorized it to receive state, federal or other money.

Diversification programs that could be supported by the fund would include production, processing, marketing or export of Texas crops. The authority could loan money directly to eligible agriculture businesses or to lenders on their behalf, insure or guarantee such loans, and administer or participate in programs by others to provide such financial assistance.

Loans would be made to agricultural businesses not otherwise able to obtain such financing. The loans would have to represent a reasonable risk. Applicants would pay the costs related to applying.

The authority can also issue up to \$500 million in revenue bonds, which do not require constitutional authorization.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 7 (SJR 55)

SUBJECT: State bonds for local public works projects

DIGEST: SJR 55 would amend the Constitution to allow the Legislature to issue up to \$400 million in general-obligation bonds for grants and loans to local governments. The grants could be made to plan and design public facilities. The loans could be made to acquire, repair or build those facilities.

A local project fund would be established in the state Treasury with the bond proceeds, income from investing the proceeds and repayments of financial assistance provided from the fund. The fund would be used to make the grants and loans and to pay the principal and interest on the bonds and other expenses, without the need for further appropriation by the Legislature. Money in the fund not needed for bond payments could be used to finance revenue bonds to support local public facilities.

The amendment would allow the Legislature to require review and approval of the bond issues and bond projects. Regardless of any other constitutional provision, any review board could include members or appointees of the executive, legislative and judicial departments.

The ballot proposal reads: "The constitutional amendment providing for the issuance of general obligation bonds to finance certain local public facilities."

SUPPORTERS
SAY:

This proposed amendment is part of Lt. Gov. Bill Hobby's \$1.3 billion "Build Texas" program to boost the state's sagging economy. Making money available to build such high-priced items as jails, hospitals, libraries, airports, ports, parks and convention centers would quickly create badly needed jobs for Texans. By sending a message of confidence in the future, it would also attract business outside the state to come to Texas.

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The entire "Build Texas" program -- which also includes proposals for \$500 million in bonds for prisons and mental health and mental retardation facilities (Amendment No. 8) and \$400 million for water bonds (Amendment No. 23) -- is expected to create more than 50,000 jobs and pump \$3 billion into the state economy. The economic activity promoted by the local projects would help cover the cost of the bonds by increasing state and local tax revenues. Over the long-term the infrastructure built with the bonds would support the continued growth and diversification of the state economy.

The state and local governments cannot afford to wait until there is enough money to pay for new public facilities up front, in cash. Supporting public works projects with bonds paid back over many years would be a conservative and business-like approach to financing, since the facilities would have long useful lives. Issuing bonds and starting construction now would make more sense because interest rates are relatively low, land prices have fallen dramatically and contractors would offer very competitive bids.

In these austere economic times, it would be unfair to force the taxpayers to pay for new facilities all at once. Not only could they not afford it, but it would be forcing them to pay for something that mostly will benefit future generations. By issuing bonds, the state can avoid raising taxes and avert an immediate drain on general revenue. Those that will be using these public facilities would pay for them, a little at a time.

Texas cannot afford to ignore its long-term development just because of its current fiscal problems. The state can easily afford to take on additional debt. Texas ranks only 46th among the 50 states in the amount of per-capita long-term debt. Also, SJR 55 would allow debt-service payments on the bonds to be made from repayments received from local governments, in order to lower the cost to the state General Revenue Fund.

The bond review board created during the regular session will ensure that the state can monitor and

coordinate the size of its long-term debt. Only if a majority of the five top officeholders in the state approve a bond will it be issued -- a hurdle high enough to stop any unnecessary issue.

The state properly may help finance local projects. The only outright grants would be made for planning and design. Acquisition, construction and equipping of local facilities would be supported by loans, which would be paid back by the local governments. The state has an interest in creating jobs and stimulating the economy, whether it is done building state facilities or local projects.

Fifty years ago the entire nation benefitted from President Franklin Roosevelt's Works Progress Administration, which supplied jobs to Americans and stimulated the economy in the midst of the Great Depression. Many cities in Texas still use the dams, post offices and other facilities built by that program. The "Build Texas" program can bring similar benefits to Texas now, during the continuing economic disruption caused by the collapse of oil prices.

OPPONENTS
SAY:

It would be bad public policy for the state to take on more debt now to finance a massive public works program. The number and dollar amount of bond issues issued by state agencies already has increased dramatically in recent years. In the 1986 fiscal year 14 different state agencies floated a total of more than 50 issues with a value of \$3.6 billion -- more than the total value of all state bonds issued in the previous four years. Another \$2 billion in general obligation bonds have been authorized in the Texas Constitution but not yet issued, including \$830 million in water development bonds. The outstanding state debt at the start of 1986 totaled \$5.6 billion, an increase of 130 percent in six years.

A dangerous trend would be perpetuated with this and other bond proposals. On the November ballot the state is facing not only \$1.3 billion in debt for the "Build Texas" program, but also \$500 million for supercollider assistance, \$400 million for water bonds and \$125 million for economic development assistance. It is

time for the voters to stop this explosion of state debt and return to the time-honored "pay as you go" system.

Texans are proud of their tradition of paying cash for their government programs and should not abandon that financially sound practice in the face of a temporary economic slowdown. Bond financing should be used as a last resort, if at all. The tenuous promise that financing local construction might improve the state's economy does not justify further debt. If local governments feel that a library or a park is worth the expense, they are free to float bonds or raise taxes to pay for them. But the state should not be increasing the burden on all the taxpayers of Texas for the sake of projects that would benefit only individual communities.

Issuing bonds creates a vicious cycle of debt that is next to impossible to break. It should be obvious from the current federal deficit that the state should not continue spending money it does not have.

The newly created bond review board just provides a facade of control behind which agencies will be able to churn out larger mountains of bonds. The standard that bonds have to meet, that they are "advisable" in the opinion of the board, is too weak and would likely be little more than a rubber stamp for the grandiose schemes of the bond issuers.

NOTES:

Under HB 4, passed during the 1987 regular session, the newly created Texas Department of Commerce would administer a \$400 million bond program for local public facilities. Public facilities eligible for grants and loans would include parks, airports, jails, bridges, ports, convention centers, auditoriums and museums. Ineligible local project would include water supply projects, treatment works, or flood control measures eligible for financial assistance under the Water Code. The department could also issue revenue bonds for the same purpose.

The department could issue up to \$5 million in grants per fiscal year. The amount of any single grant could

not exceed 50 percent of the anticipated cost of preliminary planning and design a local government expects to spend in the two years after receiving the grant. Grants could be issued until Sept. 1, 1989.

Applications for loans under the bond program could not be submitted after Sept. 1, 1991. The department could issue loans having a final maturity of two years or less and could repay the principal plus interest on the loans from the proceeds of other loans made under the program.

HB 4 would also permit issuance of revenue bonds to provide financial assistance to local governments for public facilities, to pay the costs of issuance of the general-obligation bonds and to pay the principal or interest on any outstanding bonds.

The provisions of HB 4 concerning financial assistance to local governments for public facilities would take effect only if HJR 55 is approved by the voters.

HB 4 also created a the bond review board (as did SB 1027, also enacted during the regular session). The board consists of the governor, speaker of the House, lieutenant governor, treasurer and comptroller. State agencies, statewide entities created by statute and other entities issuing bonds on behalf of the state will have to apply to the board for approval before issuing a bond or signing an installment sale or lease-purchase agreement with a term longer than five years or an initial principal larger than \$250,000.

HCR 189 by Williamson created the Select Interim Committee on Capital Construction to study the financing of public facilities or infrastructure, including roads and bridges, sewers, water systems, mass transit systems, and public buildings. Committee members include the governor; lieutenant governor; speaker of the House; the chairs of the House and the Senate State Affairs Committees; the chair of the State Purchasing and General Services Commission; the chair of the Texas Public Building Authority; five public members appointed by the governor and four public members appointed by the speaker and by the

lieutenant governor. The committee's study will include an assessment of infrastructure needs, a review of current construction procedures, and recommendations for improving funding mechanisms. The report is to be completed by January 1989, when the 71st Legislature convenes.

HOUSE
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Constitutional amendment analysis

Amendment No. 8

(SJR 56)

SUBJECT: Bonds for prisons, youth corrections and
mental health/mental retardation projects

DIGEST: SJR 56 would add sec. 49-h to Art. 3 of the
Constitution to allow the Legislature to authorize
issuance of up to \$500 million in general obligation
bonds for facilities for the Texas Department of
Corrections, Texas Youth Commission and Texas
Department of Mental Health and Mental Retardation.
The bond proceeds could be used for acquiring,
constructing or equipping new facilities or for major
repair and renovation of existing facilities.

While any of the bonds or interest is outstanding, the
amount due would have a first claim on state revenues
not otherwise dedicated by the Constitution for some
other purpose.

SJR 56 would authorize the Legislature to require
review and approval of the bonds and projects under
this amendment. Notwithstanding any other
constitutional provision, any entity created or
directed to review such projects could include members
of the executive, legislative and judicial departments
of the state, or their appointees.

The ballot proposal reads: "The constitutional
amendment authorizing the issuance of general
obligation bonds for projects relating to corrections
institutions and mental health and mental retardation
facilities."

**SUPPORTERS
SAY:**

SJR 56 and its implementing legislation, SB 1407,
would allow the state to undertake vital construction
and renovation projects needed by the Texas Department
of Corrections, the Texas Youth Commission and the
Texas Department of Mental Health and Mental
Retardation. Many of the facilities used by these
agencies are seriously overcrowded, while others badly
need repair or renovation. The state is under federal
court orders to reduce overcrowding and improve
conditions at prison, youth correction and mental
health and mental retardation facilities.

Authorization of these bonds would provide the essential financing mechanism for the state to meet its obligations in good faith.

During this time of severe budget constraints, no funds are available for these agencies to carry out the expensive construction, repair and renovation projects they need to accommodate the greatly increased demand upon their facilities and to make court-ordered improvements. The use of bond issues, which stretch the payout period over many years, would allow the state to begin these building projects without resorting to even higher taxes to raise the large amount of revenue that would be required to pay for all of this work up front.

The use of general obligation bonds would provide Texas with an alternative funding source with attractive repayment terms and reasonable interest rates. The state would not have to make any bond payments during the next biennium, easing the burden during difficult times, and the unused portions of bond proceeds could be drawing interest while they remained in the control of the state treasurer.

The implementing legislation for this constitutional amendment provides for proper and complete oversight of the bond finance program by the bond review board and the Texas Public Building Authority board of directors. This oversight will ensure that bond proceeds are allocated for the most important projects and that proper procedural methods are followed in the bond issues. The oversight authorities would also see that building projects were fairly distributed around the state.

The use of general obligation bonds as a financing device requires voter approval, thereby giving the citizens of Texas a chance to express their will directly about the priority of investing state money in corrections and mental health/mental retardation facilities. These bonds will allow Texas to continue its progress in meeting the needs of all of its citizens in a responsible manner.

The corrections and mental health/retardation facilities funded by these bonds are essential and will be built one way or another -- general obligation bonds just happen to be the most cost-effective way to proceed. If the voters do not approve the constitutional authorization for general obligation bonds, then the only viable alternative would be for the state, or cities and counties, to issue revenue bonds, which do not require constitutional authorization or voter approval. Since general obligation bonds have first draw on state revenue for repayment, investors consider them more secure, and they can be sold at a lower interest rate. The interest rate on revenue bonds is higher because repayment depends on an appropriation by the Legislature or other less secure payment source. The interest rate on revenue bonds may be even higher since the state's bond rating has dropped due to state's economic difficulties.

The amendment is part of the "Build Texas" program backed by Lt. Gov. Bill Hobby to get the state back on its feet. The other parts of the package include \$400 million in water bonds (Amendment No. 23) and \$400 million in bonds for local public facilities (Amendment No. 7) Together, these proposals will assure the state of a solid future.

**OPPONENTS
SAY:**

The excessive use of state general-obligation bonds will eventually cost the state far more than would a regular appropriation from general revenue. The Texas tradition of "pay as you go" has long maintained the state's good credit rating, and it should not be abandoned just because the state has hit transitory bad economic times.

The Legislative Budget Office estimated that an extra \$46.5 million per year would be needed to service the debt created by issuance of the bonds. The estimate assumed a 20-year payout on the debt and a 7 percent interest rate. Based on those projections, by the end of the bond obligation in the year 2008, the state would have paid an estimated sum of \$940 million out of general revenues for construction and renovation projects worth around \$500 million. The state should continue to follow its long-standing practice of paying

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costs as they accrue rather than paying Wall Street exorbitant interest costs for short-term gain.

Texas has long been ranked low nationwide in terms of the amount of outstanding state indebtedness, but now, at a time of serious economic crisis, Texas is considering a vast increase in the amount of debt obligations. The Legislature has begun to use bond issues as a panacea for the state's budget woes. Various measures have been enacted which will drastically raise the level of bond debt which the state must carry and service. Also on this November's ballot are proposals for \$1.3 billion in bonds for the "Build Texas" program, \$500 million for support for the supercollider project and \$125 million in economic development bonds, along with millions of dollars in revenue bonds for various other purposes such as state building construction. With all of these bonds outstanding and requiring debt service over the next 20 years, the state will have to use larger and larger portions of general revenue funds to service the principal and interest.

Without an actual increase in revenue sources, the state will become more and more dependent upon bond and deficit financing. If the experience of other cities and states is any indication, refinancing of previous bond issues will become a more frequent practice as more and more of those outstanding bonds come due, which in turn will result in higher cumulative interest costs. It will become harder for Texas to break that cycle once it becomes hooked.

This amendment would only add to the state's increasingly complex web of indebtedness. Although the proposed amendment refers only to general obligation bonds, SB 1407, the implementing statute for SJR 56, also authorizes the Texas Public Finance Authority to issue revenue bonds for the same purposes as SJR 56. The Legislature has also authorized other deficit financing schemes to build correctional facilities, including lease-purchase and issuance of city and county revenue bonds to build prisons. By rejecting this amendment, state voters could send a strong message that they disapprove of this irresponsible loading of debt onto future generations.

NOTES:

SB 1407 by McFarland, the implementing legislation, will allow the Texas Public Finance Authority to issue the general-obligation bonds authorized by SJR 56, should it be approved by the voters.

SB 1407 also authorizes the Texas Public Finance Authority to issue revenue bonds for construction, repair or renovation of existing state facilities, corrections facilities and mental health and mental retardation institutions. The authority would lease the facilities to the appropriate agency, which would pay the authority from appropriated funds an amount sufficient to pay the principal and interest on the bonds, maintain a reserve fund to service the debt and reimburse the authority for other costs and expenses. This portion of SB 1407 is not contingent on approval of SJR 56.

The total combined amount of general obligation and revenue bonds issued under the act could not exceed \$500 million. The Legislature would have to authorize by statute any specific projects to be financed.

SB 1407 specifies that bonds issued under its provisions would require approval by the Bond Review Board, which is composed of the governor, lieutenant governor, speaker of the House, treasurer and comptroller. The Texas Department of Corrections would have to submit to the bond review board a master plan for construction of corrections facilities before any bond proceeds could be distributed for corrections projects.

HB 146 by Ceverha et al., enacted by the Legislature during the second called session, will allow cities and counties to issue revenue bonds to acquire, construct, equip or enlarge correctional facilities and lease those facilities to the state. State lease payments, which could not be made before the end of the current budget biennium, Sept. 1, 1989, would be used to pay the principal and interest on the bonds. Local voter approval would not be required to authorize issuance of the revenue bonds, but no local ad valorem tax revenue could be used to pay for the bonds. If the state is to

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lease the project, the Legislature must authorize in advance the specific project and method of financing.

SB 1, the General Appropriations Act for fiscal 1988-89, appropriated money from "bonded construction funds" for construction, repairs and renovations and additional capacity for the Texas Department of Corrections, the Texas Youth Commission and the Texas Department of Mental Health/Mental Retardation.

For the Texas Department of Corrections, \$62,078,731 in bonded construction funds would be used for various additions, repairs and renovations listed in the bill (Rider 5, page I-74-75). SB 1 provides for \$213,829,000 to be spent from bonded construction funds to build additional capacity. The funds could be used to add no more than 10,500 beds, including the 4,500 already under construction at the Michael Unit and 10 trusty facilities. Those facilities, constructed under a "lease-purchase" arrangement, would be purchased outright with bonded construction funds. New facilities authorized in SB 1 include one new prison unit with a capacity of 2,500 inmates, a minimum of two regional reintegration medium security units, a minimum of two alternative incarceration (shock probation) units or two new trusty camps, and construction, repair and renovation of the Rusk Skyview facility (Rider 49, page I-84).

SB 1 appropriated \$18,800,682 in bonded construction funds to the Texas Youth Commission for construction and repair of sixteen designated projects (page II-66; Rider 14, page II-69).

SB 1 lists seven projects designated for construction, repairs and renovation at the Texas Department of Mental Health/Mental Retardation, costing a total of \$54,018,400. Of that amount, a maximum of \$47,142,300 would come from bonded construction funds. Use of bond proceeds for specific projects must be approved by the Legislative Budget Board before the bonds are submitted for review and approval by the Bond Review Board (Rider 38 (a), page II-57-58).

HOUSE
RESEARCH
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Constitutional amendment analysis

Amendment No. 9 (SJR 9)

SUBJECT: Eligibility of legislators for other offices

BACKGROUND: Under Art. 3, sec. 18 of the Texas Constitution, representatives and senators are ineligible during the period of their elected terms for other offices that are created or for which "emoluments" (salary or other benefits) have been raised during their terms.

Legislators are also ineligible during their elected terms for any office to which an appointment is made in whole or in part by either branch of the Legislature, as when the Senate confirms appointees. For example, legislators cannot serve as state judges or as members of executive boards or commissions during the period for which they are elected, even if they resign before the end of their term.

Members of both houses are prohibited from voting for other members to fill offices that may be filled by a vote of the Legislature, except as provided by the Constitution. However, this prohibition is thought to have applied only to legislative election of U.S. senators prior to 1913. Art. 3, sec. 9 specifically provides for election of the speaker of the House, president pro tempore of the Senate and acting lieutenant governor in case of a vacancy.

In 1985 the 69th Legislature increased the salary of all state employees by 3 percent. In 1986 George Strake, chair of the State Republican Executive Committee, refused to accept the application of Sen. J. E. "Buster" Brown, who was elected in 1984 to a four-year term as senator, as a candidate for attorney general in the 1986 Republican primary. Strake based his refusal on the constitutional prohibition regarding increases in "emoluments" of office. The Texas Supreme Court, in Strake v. Court of Appeals, 704 S.W. 2d 746 (1986), held that the 3 percent raise was an increase in "emoluments" that rendered Sen. Brown ineligible to run for attorney general in 1986. The court also determined that an Appropriations Act rider intended to eliminate the salary increase for any office to which a

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member of the Legislature was elected was contrary to the Constitution and therefore void. An earlier Supreme Court decision, Hall v. Baum, 452 S.W. 2nd 699 (1970), had prohibited then-state Sen. Ralph Hall from filing in the Democratic primary for governor in 1970 in the middle of his Senate term.

DIGEST:

SJR 9 would delete the provision of Art. 3, sec. 18 of the Texas Constitution rendering state senators and representatives ineligible during their elected terms for offices for which "emoluments" had been increased during their terms. Former legislators entering such offices would not be entitled to an increase authorized during their legislative terms but could receive raises adopted by subsequent legislatures.

The amendment would remove the prohibition against legislators voting for other legislators to fill offices that may be filled by a vote of the Legislature. It also would remove ineligibility of legislators for offices appointed in whole or in part by either house of the Legislature.

The ballot proposal reads: "The constitutional amendment to provide that a member of the legislature is eligible to be elected or appointed, and to serve in a different state office but may not receive an increase in compensation granted to that office during the legislative term to which he was elected."

**SUPPORTERS
SAY:**

SJR 9 would remove constitutional provisions that keep otherwise qualified legislators from serving in elective and appointive offices. Current provisions are intended to prevent potential conflicts of interest, but they are too sweeping in their impact on legislators and choices before the electorate. They deny legislators with extensive experience in state government the opportunity to serve their state in another capacity in state office.

Under the Supreme Court's interpretation of the "emoluments" provision, no legislator is eligible to run for any office with an overlapping term if a pay raise, even just a small increase intended to keep all state employees even with inflation, was approved

during that term. As a result, legislators who want to run for other offices, and sympathetic colleagues, could be led to work against salary increases they otherwise would support. Under a strict interpretation, even upward adjustments in forms of compensation such as travel allowances could be construed as increased "emoluments" and thereby bar legislators from serving in that office during the period of the term for which they had been elected.

The potential wrath of voters against legislators who vote for a hefty increase for the office they plan to seek would deter such behavior. In any event, the proposed amendment would eliminate the problem of unfair enrichment by simply denying legislators any raise approved during their House or Senate terms. Denying the raise would make more sense than barring these people from service.

The existing provision provides only illusory protection against conflict of interest. For example, a legislator can vote for a pay raise for an office such as railroad commissioner. The legislator can run for that office, win, and receive the pay raise for the remaining months of the fiscal biennium, as long as the legislator does not assume the office during the period of the legislative term to which he or she was elected. It would make more sense to eliminate this contradictory provision entirely rather than to try to restrict service in state government by experienced legislators.

The current salary provision hinges the political fate of the state on pure chance. Senators draw lots after each redistricting, when all run for election, to stagger their terms. Those whose terms happen to coincide with the four-year cycle for state executive officials can run for those offices. But those whose terms still have two years to run when the terms of most executive offices expire are out of luck if they wish to be candidates for those offices. There is no reason to treat two sets of senators differently.

Public hearings on Senate confirmation would guard against conflicts of interest in connection with

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gubernatorial appointments of legislators. Media and public attention would be attracted if it became apparent that a governor was paying off a friendly legislator. Texas should not deny itself the service of legislators who have many years' expertise in policy areas that pertain to appointive positions.

OPPONENTS
SAY:

This amendment would remove important protections that have been in the Texas Constitution since 1845 just to satisfy the political ambitions of a few state senators.

Under current law, those senators and House members who seek other offices must relinquish their seats because the term of the office sought begins only when their legislative term ends. They must choose either to seek reelection or another office, but not both. Yet this amendment would allow senators with two years left on their terms to vote to raise the salary of an office, run and lose, then return to the Senate to vote on the salary and office appropriations for of the incumbent to whom the senator lost.

Prohibiting even the possibility of legislators' profiting from their votes is a fundamental aspect of good government. It is needed to avoid any appearance of impropriety or corruption in order to preserve public trust in government officials. The Founding Fathers wrote a similar provision into the U.S. Constitution. The provision was invoked in 1973, when President Richard M. Nixon nominated Ohio Sen. William Saxbe for attorney general. The nomination was delayed until the salary increase passed while Saxbe was a senator was rescinded. No one suggested amending the U.S. Constitution to accommodate Sen. Saxbe. No reason exists to amend the Texas Constitution to accommodate the thwarted hopes of one state senator.

On the last day of the 1987 regular legislative session, the conference committee slipped in a change to this proposed amendment that would compromise the integrity of the appointment process. If the provision that now prevents legislators from taking offices appointed in whole or in part by either house were repealed, the governor would be free to reward a

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sympathetic legislator with an appointment to one of the many positions that pay far more than the Legislature. Public scrutiny would not necessarily prevent such vote-buying, nor is it likely that all such deals would come to light in confirmation hearings.

OTHER
OPPONENTS
SAY:

Denying officials' raises approved when they were senators or representatives is an unnecessary precaution. Legislators who run for office and governors who appoint legislators are accountable to the voters, who can better judge if any impropriety occurred in granting the pay raise. The salary for an official will be appropriate or not depending on the duties of that official, not any prior service by that official in the Legislature.

NOTES:

SJR 9, as passed by the Senate, would have granted legislators eligibility for offices when "emoluments" of office were raised as part of a general increase applicable to all offices. The House version of SJR 9 added a prohibition against legislators receiving any raise while serving in a new office during the term for which they had been elected to the Legislature.

The House-Senate conference committee on SJR 9 accepted the House version denying any raise to legislators who assume a new office until their elected legislative term has elapsed. It also added new provisions, not included in either the House- or Senate-passed versions of SJR 9, that would delete the current prohibitions on appointment of a legislator to any office appointed in whole or part by either branch of the Legislature and barring legislators from voting for another legislator for any office filled by vote of the Legislature.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 10 (SJR 12)

SUBJECT: Local-option taxation of personal property

BACKGROUND: Under Art. 8, sec. 1 (d) of the Texas Constitution, the Legislature is required to exempt from ad valorem taxation household goods and personal effects not held or used for the production of income. The Legislature is allowed to exempt all or part of the personal property homestead of a family or single adult.

DIGEST: SJR 12 would amend the Texas Constitution to permit the Legislature to exempt any non-income-producing tangible personal property, except residential structures, from ad valorem taxation. Local taxing authorities could override the exemption and levy a tax, unless the property was exempted by some other law.

The ballot proposal reads: "The constitutional amendment to allow the Legislature to exempt from ad valorem taxation certain personal property not held or used for the production of income."

SUPPORTERS
SAY:

SJR 12 would bring some order to the taxation of tangible personal property, such as boats, planes and recreational vehicles. These items are currently not included in the definition of non-income-producing household goods and personal effects, for which the Constitution currently requires a tax exemption.

SJR 12 would allow the Legislature to grant an exemption for almost all tangible personal property not held for production of income. However, local taxing authorities would be permitted to override the exemption and levy the tax.

The vast majority of taxing units in the state have chosen not to tax certain personal property, even though technically the law provides no exemption for that property. For example, many taxing units now ignore boats, planes and RVs because the expense of locating and appraising the property is greater than the potential tax revenue. This amendment would bring the Constitution and statutory law into compliance with

local practice, by allowing a de jure exemption for property that is already de facto exempt.

Since most taxing districts are not now collecting a personal-property tax, most of the income that opponents claim would be lost is not being collected anyway. Even those taxing units that do tax boats, planes and RVs spend almost as much in administering the tax as they finally collect, so their net revenue loss would be minimal if they chose not to continue imposing the tax.

Some taxing units do derive significant income from taxing tangible personal property. For example, Nueces County collects \$600,000 a year for boats moored at Corpus Christi, and many counties with large private airports tax private airplanes. The local option would allow these taxing unit to continue taxing this property, but they would have to take affirmative action to override the exemption.

The proposed constitutional amendment would simply permit, not require, the Legislature to grant a tax exemption for this property. The Legislature could limit the exemption in a manner that was least disruptive. For example, SB 367, the implementing legislation enacted by the Legislature to take effect if this amendment is approved by the voters, would exempt only non-income producing recreational boats. The Legislature is well aware of the local revenue situation and can expected to be cautious in granting any new exemptions.

OPPONENTS
SAY:

Exempting personal property from taxation would save money for the wealthy, while shifting the tax burden onto those Texans who cannot afford such expensive items. If no taxing units chose to override the personal-property tax exemption proposed by this amendment, property taxes collected on tangible personal property would drop by \$167 million over the next biennium. The already-overburdened homeowner would have to make up the difference.

SJR 12 is a rich-persons' special-interest amendment proposed at a time the rest of us are facing higher taxes to maintain vital state and local government

functions. For example, the only tax exemption enacted by the Legislature in anticipation of approval of this amendment was for recreational boats. There is no justification for exempting such luxury items from local taxation.

OTHER
OPPONENTS
SAY:

A full statewide tax-exemption for non-income-producing tangible personal property, except residential structures, would be better than this amendment's local-option exemption. Allowing boats, planes and RVs to be taxed in some counties but not in others would encourage owners to move their property to a non-taxing unit, depriving the taxing unit of its anticipated income and encouraging disrespect for the law.

The House Select Committee on Central Appraisal Districts, created in 1985 to review certain aspects of local property taxation, recommended that all non-income-producing tangible personal property be exempted from taxation. The committee found that the taxation of this property was not uniform among appraisal districts, so that some boat, plane or RV owners were paying substantial local taxes while owners in neighboring counties were not taxed at all. The select committee recommended a full exemption to ensure uniformity. Instead, SJR 12 would permit the continuance of the current pattern of disparate treatment that the select committee was trying to end.

The implementing legislation for this amendment, SB 367, would exempt from taxation only non-income-producing recreational boats. Allowing the Legislature to make such piecemeal exemptions for some forms of personal property and not others will only exacerbate the confusion. In the interest of fairness and consistency, this amendment should simply exempt all non-income producing property from local taxation, as the Constitution now does for household goods and personal effects.

NOTES:

The implementing legislation for SJR 12, SB 367 by Parker and Whitmire, would exempt from local taxation non-income-producing recreational boats. However, local taxing authorities could override the exemption and impose a tax.

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Amendment No. 10 is included in the same joint resolution, SJR 12, as Amendment No. 11, granting a tax exemption for certain goods in transit (the "freeport" exemption). Although both amendments were proposed in the same joint resolution, they will be voted on separately, and adoption of one is not contingent on adoption of the other.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 11 (SJR 12)

SUBJECT: Tax break for goods in transit ("freeport" exemption)

BACKGROUND: The "freeport" statute, sec. 11.01 of the Tax Code, exempts from ad valorem taxation goods passing through Texas that remain for no longer than 175 days for the purpose of assembling, storing, manufacturing, processing or fabricating. The Dallas Court of Appeals, in Dallas County Appraisal District v. L. D. Brinkman, 701 S.W. 2d 20 (1985), held that this provision unconstitutionally attempted to grant an exemption by statute that was not authorized by the Constitution. The Texas Supreme Court has refused a writ of error, allowing the opinion striking down the "freeport" statute to stand.

DIGEST: SJR 12 would amend the Texas Constitution to include the provisions of the "freeport" law. It would exempt from taxation goods, wares, merchandise and ores, except oil, gas and petroleum products, passing through the state that are detained in the state for no longer than 175 days for the purpose of assembling, storing, manufacturing, processing or fabricating.

A county, school district or municipality could tax all or a percentage of the appraised value of this exempt property for the tax year 1988 if it took official action before Jan. 1, 1988, and for tax years starting Jan. 1, 1989 if it took official action before April 1, 1988. Official action by a county, school district or municipality to tax a percentage of the value of the property would set a ceiling for the percentage that could subsequently be taxed. Any of these entities could exempt the property from taxation for 1987, and could, for any future years, rescind its action to tax the property.

The ballot proposal reads: "The constitutional amendment providing for the exemption from ad valorem taxation of certain property that is located in the state for only a temporary period of time."

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**SUPPORTERS
SAY:**

SJR 12 would reinstate a tax exemption that has been a proven incentive for economic development. Property brought into Texas temporarily to be processed before shipment to other states, such as cloth to be sewn into blue jeans or pipe segments to be prepared for oil drilling, was exempted from taxation by the Legislature under the "freeport" statute. Under the protection of the statute many billions of dollars of goods have been brought into the state each year, providing jobs for Texans and contributing to the economic strength of the state.

Ten states offer similar "freeport" tax incentives to attract assembling, manufacturing and processing businesses, while 37 others exempt all inventory goods. Texas must be able to compete with these states by reinstating its successful "freeport" law. SJR 12 would follow the court's ruling by amending the Constitution to continue the exemption already provided by the "freeport" statute.

SJR 12 would allow cities, counties and school boards the option of taxing this property in tax year 1988 if they act before Jan. 1, 1988. If they chose to wait until after Jan. 1 but before April 1, 1988, they could tax this property starting in in tax year 1989. This would prevent those taxing units that have relied on taxing "freeport" property from suffering an unanticipated drop in property tax revenue. These taxing units are aware of the potential impact of a "freeport" exemption and would be able to act quickly to maintain the tax, if they chose.

Taxing units that have not taxed property temporarily in the state, or that decide that the cost of identifying such property would make imposing the tax unprofitable, would not have to take any action to maintain the exemption in their jurisdiction -- the exemption would be automatic, unless the unit took affirmative action to impose the tax.

**OPPONENTS
SAY:**

SJR 12 would deprive cities, counties and school districts of a substantial portion of their tax base. A "freeport" exemption would deprive nine large appraisal districts of more than \$5.1 billion of

taxable value, reducing property tax revenue by more than \$70 million per year. Additional costs would be forced on these taxing units to pay for investigations to distinguish between "freeport" and "non-freeport" property. The lost revenue and increased costs would have to be made up with higher taxes on other property or further reductions in municipal services or educational programs.

The provisions of SJR 12 allowing local taxing units to opt out of the exemption are too narrow. Only six weeks would be allowed between the adoption of this proposed amendment and the deadline for official action by a city, county or school district to tax "freeport" property in 1988. Many taxing units would be unable to meet these rigid requirements and would lose tens of millions of dollars a year as a result. This proposed amendment operates backward -- local taxing units should have to act to exempt "freeport" property if they wish, rather than force the exemption on units that do not act to opt out.

Prohibiting taxing units from setting a higher percentage of the value to be taxed than the percentage set initially would be too arbitrary. A taxing unit could responsibly set a low percentage initially, when it did not need as much revenue, then could not raise the rate when its revenue needs increased. As a result, the limitation could backfire, as taxing units would have an incentive to set their initial percentage higher than they would actually need in order to preserve that higher percentage for future revenue needs. The brief period given taxing units to determine whether to levy the tax on freeport property for 1988 might add to the pressure on the local governments to err on the high side, since they would not have sufficient time to evaluate in detail how much revenue they might require from this source.

OTHER
OPPONENTS
SAY:

The proposed constitutional amendment is so ambiguous that it could generate more court challenges to clarify its meaning, placing another cloud on the "freeport" taxation issue and further discouraging businesses from sending their goods to Texas for processing. The provision requiring cities, counties

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and school districts to take official action to set an initial percentage rate of taxation, and prohibiting subsequent increases in that percentage, could be interpreted as allowing the first taxing unit to act to bind the other units to its maximum percentage. This interpretation could ignite an unseemly scramble among the taxing units to be the first to act in order that their percentage would establish the maximum percentage. Different taxing units have different revenue needs, and the action of one should not bind the others.

NOTES:

Amendment No. 11, the "freeport" exemption, is included in the same joint resolution, SJR 12, as Amendment No. 10, which would allow the Legislature to exempt other personal property from ad valorem taxation. Although both amendments were proposed in the same joint resolution, they will be voted on separately, and adoption of one is not contingent on adoption of the other.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 12 (SJR 35)

SUBJECT: Community property with right of survivorship

BACKGROUND: Under Texas' long-standing community property system, spouses are equal owners of all their community property. As a general rule, all property acquired by a spouse during a marriage is presumed to be community property, unless there is proof to the contrary. Community property may be changed in form without affecting its legal status as community property. For example, if community property is sold or exchanged for other property, the proceeds of the sale or exchange becomes a part of the community estate.

Art. 16, sec. 15 of the Texas Constitution provides that all property belonging to a spouse before marriage, and all property acquired by a spouse by way of gift or inheritance during a marriage, is the separate property of that spouse. By a specific written agreement, spouses may divide community property into separate property held by each spouse.

Generally, if spouses do not make specific provision by will concerning who will inherit their share of community property, their community property share passes as provided in the intestacy statutes. Art. 45 of the Texas Probate Code provides that when a spouse dies and makes no different provision by will, one-half of the community property goes to the surviving spouse and one-half goes to the children of the deceased spouse. Only if the deceased spouse has no surviving children, or surviving descendants of those children, does the deceased spouse's share of the community estate go to the surviving spouse.

DIGEST: SJR 35 would amend Art. 16, sec. 15 of the Texas Constitution to permit spouses to agree in writing that upon their death, all or part of their community property becomes the property of the surviving spouse.

The ballot proposal reads: "The constitutional amendment permitting spouses to hold community property with right of survivorship."

SUPPORTERS
SAY:

A joint tenancy with a right of survivorship is an arrangement in which two or more persons jointly own property and when one owner dies, that owner's interest in the property automatically passes to the other owner or owners. This ownership arrangement has the advantage of eliminating the need to deal with probating wills or with intestacy proceedings, if a joint owner has no will. However, since the early 1960s Texas courts have ruled that a joint tenancy with right of survivorship cannot be created with community property. This proposed constitutional amendment would simply permit such an arrangement to be made for community property.

In Hilley v. Hilley, 342 S.W.2d 565 (1961), securities were purchased by a husband and wife and were issued to them as joint tenants with full right of survivorship. The spouses intended for the securities to pass to the surviving spouse upon the death of the other spouse. When the husband died, his son sued to determine whether securities purchased with community funds could legally pass to the wife as her separate estate upon her husband's death.

The Texas Supreme Court in the Hilley decision held that the securities were community property and could not belong to the wife as her separate property upon the husband's death. The Supreme Court said that, under the Texas Constitution, property that a spouse acquired during marriage in any manner other than by gift, inheritance, purchase with separate funds or partition does not and cannot be that spouse's separate property.

The court noted that the Constitution and Texas law do give couples a way to arrange for their share of community property to pass automatically to the survivor. Married couples who want to establish joint tenancies with rights of survivorship must first convert their community property into separate property by entering into a partition agreement. Only then can a married couple establish a joint tenancy with right of survivorship.

In 1961, following the Hilley decision, the Legislature amended sec. 46 of the Texas Probate Code, concerning joint tenancy, by adding the provision that any husband and wife may agree in writing to create out of their community property a joint estate with rights of survivorship. However, the Texas Supreme Court, in Williams v. McKnight, 402 S.W.2d 505 (1966), said that the Legislature's change in the law violated the Texas Constitution. Under Art. 16, sec. 15 of the Constitution, statutory partition of community property into separate property is a necessary prerequisite to a written agreement between a husband and wife to create a joint estate with rights of survivorship.

Texas courts have denied married couples an easy means of holding their property with right of survivorship. Many Texas couples are unaware of the requirement for partition before they can effectively establish survivorship rights in their community property. For example, most couples assume that by merely signing the survivorship agreement on their bank's signature card they have created survivorship rights in their funds on deposit. Yet a deceased spouse's interest in these bank deposits would not pass to the surviving spouse as intended. It would pass by will, or by intestacy if the decedent had no will. If the deceased spouse had no will, as many Texans do not, the spouse's interest in the joint accounts would not go to the surviving spouse, but rather to the deceased spouse's children.

Texas spouses hold a substantial amount of assets in a form -- the attempted joint tenancy -- that is ineffective to achieve their desired purpose. This constitutional amendment would form a clear underpinning for legislation that would allow joint tenancies with rights of survivorship.

Texas married couples need a simple way to assure that surviving spouses will get all of a designated portion of the community property of their deceased spouse. They should not be forced to make a will or partition property.

SJR 35 is the necessary foundation for SB 893 by Caperton, a new law that will become effective only if

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this proposed amendment passes. That bill would explicitly permit Texas couples to hold community property with a right of survivorship. Couples could make arrangements to provide that their property passes simply and automatically upon the death of a spouse to the surviving spouse, without having to execute wills or go through a lengthy and expensive probate process.

**OPPONENTS
SAY:**

SJR 35 and statutory implementation of this constitutional amendment would fundamentally alter the long-standing protections of community property in Texas. Such a departure from the established principles of community property law would lead to confusion and uncertainty. There has already been too much chipping away of the community property system, which exists to protect the interests of both spouses in property acquired during their marriage.

Unless spouses agree otherwise, property acquired during the marriage is generally considered to be community property, subject to the joint control, management and disposition by the spouses. Upon the death of a spouse or dissolution of the marriage, each spouse has a one-half interest in all the community property. This "community assumption" protects the ownership interests of both spouses and their heirs. Any arrangement to transform community property into separate property should be closely scrutinized.

The Texas Constitution and Texas statutes already allow couples to arrange for the community property share of either spouse to pass to the survivor, as long as the necessary formalities are observed. Spouses can partition their community property into separate property and then make an effective survivorship agreement covering the property separately owned. Each spouse can choose individually to provide for a right of survivorship in their separate property benefitting his or her spouse. There is no need to alter, and undermine, the community property protections in the Constitution and laws just to do what married couples already have the legal capacity to do.

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NOTES:

SB 893 by Caperton would implement the provisions of SJR 35 by allowing spouses to agree in writing that all of their interest in community property should become the property of the surviving spouse. SB 893 will become effective only if SJR 35 is adopted by the voters.

A related bill passed during the 1987 regular session, HB 715 by Grusendorf, provides that, notwithstanding any other law, an agreement can confer survivorship rights on parties to a joint account if the agreement specifically states: "On the death of one party to a joint account, all sums in the account on the date of death vest in and belong to the surviving party as his or her separate property and estate." HB 715 also provides that a financial institution that pays a sum from a joint account under a written survivorship agreement will not be liable to the deceased party's heirs or the beneficiaries of the deceased party's estate. HB 715 becomes effective on Aug. 31, 1987.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 13 (SJR 27)

SUBJECT: Creation of emergency-services districts

DIGEST: SJR 27 proposes a constitutional amendment to authorize the Legislature to allow creation of emergency-services districts. Upon approval by eligible voters in a district, the commissioners courts of participating counties could levy a property tax of not more than 10 cents per \$100 valuation. A district created under this provision could provide emergency medical and ambulance services, rural fire prevention and control services and other emergency services authorized by the Legislature.

The ballot proposal reads: "The constitutional amendment to allow for the creation and establishment, by law, of special districts to provide emergency services."

SUPPORTERS SAY: This proposed constitutional amendment and its implementing legislation would give rural counties the ability to provide emergency services and to raise sufficient revenue to support those services.

Many rural areas are too remote from emergency services provided by larger cities, and residents of those areas need a mechanism for providing those services themselves. Speed can mean the difference between life and death when an accident occurs, and rural counties need a means of providing emergency medical services to their residents in a quick and efficient manner, just as cities do.

Rural fire-prevention districts, which are already constitutionally authorized, provide mostly fire-prevention services. They have limited statutory authority to provide emergency-rescue and ambulance services, but this authority has proven inadequate. Rural counties also need facilities such as emergency-treatment centers, but they have no constitutional or statutory authority to fund such facilities. In addition, rural fire-prevention districts cannot raise enough revenue to support such

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services due to the three-cent cap on taxes imposed on the districts by the Constitution. Counties need the flexibility to create a new kind of taxing district devoted solely to providing emergency services.

Counties would not be obligated to create emergency services districts; this amendment and its implementing legislation would simply give them the option. A district could be entirely within a county or include parts of several counties. Either way, the voters and taxpayers of the area involved would have the final say. If local taxes were already too high, the voters could reject a proposed district. The implementing legislation would not even allow the consideration of a proposed district unless a specified number of residents in a county petitioned for it. Safeguards such as these would ensure that no district would be created unless its residents felt that taxes to fund the district were justified. Residents in rural counties should not be prevented from raising revenue for this purpose if they are willing to do so.

The ballot language for this proposal need not state explicitly that the proposed district would have authority to raise revenue -- any district providing such services would by definition have the power to tax. Informed voters will be fully aware that the proposed amendment involves authorizing taxing authority.

OPPONENTS
SAY:

After passing the highest state-tax hike in history, the Legislature is now presenting state voters with one more vehicle to raise their taxes even higher. In today's ailing state economy, the taxpayers can ill afford to pay even higher taxes than those already approved. At the very least, the cap on the allowable tax rate for these districts should be lowered.

The implementing legislation for SJR 27, SB 669 by Blake, would allow rural fire-prevention districts to convert to emergency-services districts. The effect of that conversion would be to raise the maximum tax rate for those districts from three cents per \$100 valuation to 10 cents per \$100. This backdoor attempt to raise

the maximum rate for rural fire-prevention districts should be rejected.

Another proposed amendment on the November ballot, HJR 60 (Amendment No. 2), also proposes to raise the maximum tax that certain rural fire districts can levy, to six cents per \$100. To pass both these amendments would potentially subject rural residents to too large a tax burden.

The constant chipping away of a county's tax base only jeopardizes the ability of existing taxing authorities to raise revenue. A revenue source like a property tax can only be spread so thin. Yet this amendment would authorize one more property tax to compete for scarce revenues.

The ballot language proposing this amendment is disingenuous. When the joint resolution proposing this amendment was originally introduced, the ballot language made clear that emergency districts would be given the authority to raise property taxes within their jurisdictions. However, the ballot language was deliberately changed later to delete any mention of the districts' taxing authority. The voters should be given an accurate picture of what the proposed amendment would do, especially when it involves authorizing new taxes.

NOTES:

Two bills would become effective upon approval of this amendment by the voters. SB 669 by Blake would allow a county, or two or more counties, through their commissioners courts, to create emergency-services districts. With voter approval, a district could levy property taxes of up to 10 cents per \$100 valuation.

Creation of an emergency-services district would be initiated by the filing of a petition with the county clerk of each county in the proposed district. In a hearing, the commissioners court would determine whether to grant the petition request to create the district. Approval of each county's commissioners court in the proposed district would be required.

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Upon granting the petition, the commissioners court or courts would call an election to approve creation of the district and to authorize the imposition of a property tax to fund it. If the proposal was defeated, no election on the subject could be held until a year had passed.

An emergency-services district could sell bonds and repay the debt by levying taxes or pledging designated revenue, or both. Any bonds secured in full or in part by taxes would have to be approved by majority vote in a specially called election.

A rural fire prevention district could convert to an emergency-services district with the approval of district voters in an election. SB 669 would also provide for an emergency-services district to be expanded or dissolved.

Another bill passed during the 1987 regular session, HB 1226 by Williamson, would also become effective upon adoption of SJR 27. It would provide a similar mechanism for creation of an emergency-services district, but could be used only in counties with a population of 125,000 or less. If the voters once rejected the formation of an emergency-services district under HB 1226, the commissioners court could not call another election under terms of the bill. Businesses certified to provide their own emergency services in a district formed under this bill could be exempt from the district's property taxes if they used certain equipment.

HJR 60, also on the November ballot (Amendment No. 2), would let certain rural fire districts raise their tax rate to six cents per \$100 valuation. The higher levy could be used by districts partly or wholly in a county with a population exceeding 400,000.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 14 (SJR 34)

SUBJECT: Appeals by the state in criminal cases

BACKGROUND: Art. 5, sec. 26 of the Texas Constitution states that in criminal cases the state has no right of appeal. If a defendant appeals and gets a favorable decision from an intermediate court of appeals, the state can only ask the Court of Criminal Appeals to take up the issue on the court's own motion.

DIGEST: SJR 34 would amend the Constitution to allow the state to appeal in criminal cases as authorized by statute.

The ballot proposal reads: "The constitutional amendment giving the state a limited right to appeal in criminal cases."

**SUPPORTERS
SAY:**

When an error occurs at trial, the defendant in a criminal case can now appeal to seek review and correction of the error. However, when the prosecution in a criminal case believes that a mistake has been made, it has no recourse on appeal to seek review and correction of that error. As a result, guilty defendants can go free due to an error, and the state can do nothing about it.

In order to make the appellate process in criminal cases more fair, SJR 34 would allow the Legislature to grant the state the ability to appeal, under such circumstances that it determined were justified. This change would bring Texas more in line with the rest of the nation since it is now the only state that flatly bans all appeals by the state in criminal cases.

When the prosecution believes that an erroneous ruling has been made at trial, there is no way for the state to appeal to try to get that ruling overturned. This is unfair. Prosecutors would not abuse the power to appeal by harassing defendants. Under implementing legislation that would become effective if this proposed amendment is approved, a district attorney would be required to certify that an appeal was not for the purpose of delay and was important to the case.

Prosecutors are too busy to file frivolous appeals. Besides, during the appeal, the defendant would normally be free on bond, so a prosecutor would have little to gain by delay.

Unlike defendants, prosecutors need the power to file interlocutory appeals (before any final decision in the case) to avoid double jeopardy, trying a defendant twice for the same offense. For example, if a defendant's motion to suppress a confession is denied, and that defendant is subsequently found guilty, the defendant can appeal that ruling at the end of the trial. But if the defendant's motion to suppress the confession is granted, and as a result the prosecution is unable to prove its case and the defendant is acquitted, an appeal by the state at that point would be useless. Once a defendant has been found innocent, even though that outcome resulted from an erroneous court ruling, the defendant cannot be retried -- U.S. and Texas constitutional bans on double jeopardy do not allow a new trial regarding a ruling made after the jury has been impanelled. Thus any evidentiary point would have to be appealed by the state before the jury was impanelled.

Some judges almost always rule against the state on any issue about which they are unsure in order to avoid having their decision appealed by the defendant. Other judges generally rule for the state in order to allow the issue to be decided by appeal by the defendant. Allowing the state to appeal would discourage judges from playing these kinds of games and would encourage them to concentrate on the merits of each case.

Informal surveys of other states indicate that only about 5 percent of appeals in criminal cases are initiated by the state, so the likelihood is that state appeals would be reserved for only the most egregious cases.

There is no need to set conditions in the Constitution itself on a right of appeal by the state. The law of criminal procedure is constantly evolving, and the Legislature should have the flexibility to adapt state appeal procedures when needed, rather than return to

the voters to amend the Constitution every time some small adjustment is required.

OPPONENTS
SAY:

Allowing a state right of appeal would go against a long-standing Texas tradition without any real justification. The situations in which a prosecutor would need to appeal are rare because most judges are very reluctant to suppress evidence or quash an indictment without a compelling reason.

Over-zealous prosecutors could use a state right of appeal to harass people that they know they could not convict, especially in politically important cases. Many defendants have great difficulty paying an attorney to represent them at trial. Having to pay for one or more interlocutory appeals filed by the prosecution before the case even goes to trial would be an unreasonable burden on the defendant.

Allowing prosecutors to file interlocutory appeals would create long delays in criminal prosecutions and would increase the backlog of cases. The provision in the proposed implementing statute that appeals filed by prosecutors be given precedence would not help; such appeals could still last for months or years. Furthermore, many categories of cases are given precedence already; adding yet another category would just create an even greater backlog in the courts of appeal. Besides, the statutory requirement to give precedence to these kinds of cases would not apply to the Court of Criminal Appeals, where the backlog is already a year long. By the time the state's appeal has gone through the courts of appeals and the Court of Criminal Appeals, a year and a half or two years could have passed.

The language of the ballot proposal is misleading in referring to a "limited" right of state appeal because there are no limits in the amendment itself. The amendment would allow the Legislature to authorize any kind of appeals by prosecutors.

OTHER
OPPONENTS
SAY:

If prosecutors are given a right to interlocutory appeals, then defendants should be given the same right. The kinds of decisions that could be appealed

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by the prosecution should at least be limited to those that would terminate the case. Alternatively, the prosecutor should be required to dismiss the case if the appeal is denied. These necessary restrictions would allow the prosecution to appeal when necessary to avoid the double jeopardy problem blocking appeals after a defendant's acquittal yet would limit that privilege only to instances when such appeals are unavoidable. These restrictions should most appropriately be included in the proposed constitutional amendment, not merely the implementing legislation, which can be easily changed.

NOTES:

A similar amendment, HJR 97, was rejected by the voters in 1980 by a vote of 1,544,020 for, 1,687,900 against. That proposed constitutional amendment differed from SJR 34 in that it specified what kinds of orders could be appealed and would have given the right of interlocutory appeal to defendants.

SB 762, the implementing legislation granting the state authority to appeal under this proposed constitutional amendment, would become effective only if SJR 34 is approved by the voters.

SB 762 would allow the state to appeal the following kinds of orders from the trial court:

- 1) An order dismissing an indictment, information, or complaint, or dismissing any part of one;
- 2) An order arresting or modifying a judgment;
- 3) An order granting a new trial;
- 4) An order sustaining a claim of former jeopardy;
- 5) An order suppressing evidence, suppressing a confession or suppressing an admission, so long as jeopardy has not attached and the prosecutor certifies that the appeal is not taken for the purpose of delay and the order is of substantial importance;
- 6) A sentence that the state alleges to be illegal.

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An appeal filed by the state would have to be filed within 15 days of the entry of the order. The state would have a right to a stay of proceedings if it filed the appeal.

The court of appeals would be required to give precedence to appeals filed by the state, and in those cases, the state would pay all costs of appeal except the costs of defendant's attorneys. The state would also have the right to raise any issue of law if the defendant appealed from a conviction.

If the state appealed, a defendant would have the right to remain free on existing bail or to have reasonable bail set. The defendant would have a right to release on personal bond if the appeal was from an order that would terminate the prosecution.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 15 (HJR 35)

SUBJECT: Abolishing Nueces, Gregg and Fayette county treasurers

BACKGROUND: Art. 16, sec. 44 of the Texas Constitution requires all but six of the 254 counties to elect a county treasurer. Andrews, Bee, Bexar, Collin, El Paso and Tarrant counties abolished the office after the adoption of authorizing constitutional amendments in 1982 (Bee and Tarrant), 1984 (Bexar and Collin) and 1985 (Andrews and El Paso).

The county treasurer's duties in Andrews, Bee and Tarrant counties were assigned to the county auditor. In Bexar and Collin counties, the duties were assigned to the county clerk. In El Paso County, the county commissioners court determines who performs the duties of the treasurer.

County treasurers are responsible for the receipt, deposit and disbursement of county funds within guidelines specified by county commissioners courts. County treasurers also must keep accurate accounts of all county receipts and expenditures and make financial reports to the county commissioners court.

Texas law requires each county with a population of 10,000 or more to have an auditor appointed by the district judge or judges. The auditor must oversee all books and records of offices that collect county money. In some counties the auditor also serves as a purchasing agent. State law requires every county with a population of 350,000 or more to have annual independent audits of all county funds.

Nueces County had a population of 283,100, Gregg County 109,700 and Fayette County 20,500 as of 1982.

DIGEST: HJR 35 would amend the Constitution to abolish the office of county treasurer in Nueces, Gregg, and Fayette counties.

The county treasurer office in Nueces and Fayette counties would be abolished if this amendment is

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approved by a majority of voters both statewide and in those respective counties. The office in Gregg County would be abolished if the amendment is approved statewide.

If approved by the voters, the office of county treasurer would be abolished in Fayette County on the day following the date of the official vote canvass for this amendment and in Gregg and Nueces counties on Jan. 1, 1988.

The duties of the county treasurer in Fayette County would be transferred to the county auditor or the successor to that official. The duties of the county treasurer in Nueces County would be transferred to the county clerk. Gregg County would allow the county commissioners court to transfer the duties to another county officer.

The ballot proposal reads: "The constitutional amendment to provide for the abolition of the office of county treasurer in Gregg, Fayette and Nueces counties."

SUPPORTERS
SAY:

The office of county treasurer is no longer worth maintaining in a number of Texas counties. Nueces, Gregg and Fayette counties consider the office a costly anachronism and want to abolish it to save money. The county treasurer merely serves as transfer agent -- receiving money, depositing funds and issuing checks on warrants. These duties can be performed by another county officer.

The county auditor in Fayette County is already handling most of the treasurer's duties. The commissioners court appointed a part-time treasurer following the appointment of the elected treasurer to another county position. The part-time treasurer is paid \$100 a year to sign county checks twice a month.

The incumbent treasurers in Gregg and Nueces counties ran for office on a platform favoring abolition of the position. The state should allow local residents to implement the preference they showed in these elections.

Independent audits of the county auditor or any other officer performing the treasurer's job would protect taxpayers against mistakes and fraud and would maintain a prudent system of checks and balances.

Abolition of any county office is an important step that should be justified to and reviewed by the Legislature and state voters on a case-by-case basis. Simply allowing all counties the option of abolishing their county treasurer office would not be justified and would cause needless political disruption in counties all over the state.

OPPONENTS
SAY:

The trend toward abolition of constitutionally created county offices is unfortunate. Elective officials are more responsive to the people, and their positions should not be abolished, especially when the result is that an elected official's duties are to be given to an appointed official.

The county treasurer, as the elected official who safeguards the county's funds, serves an important function. The treasurer ensures that county funds are properly deposited in order to earn maximum interest and accounts for receipts and disbursements. It is appropriate that the "watchdog" of the county treasury should be chosen by the voters for this specific function. In that way the official with the primary responsibility for control of county funds is most accountable.

The treasurer plays a significant role in the checks and balances in county government. The treasurer serves as an independent check on the power of the county commissioners court over expenditures of county funds.

If any office should be abolished as duplicative, it should be the county auditor. The auditor's duties could be transferred to the elected county treasurer, who is not beholden to the county commissioners for appointment to that job. That change could be accomplished by statute, eliminating the expense and

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confusion of an additional constitutional amendment on the ballot.

OTHER
OPPONENTS
SAY:

This constitutional amendment should simply allow all counties the discretion to decide by local option whether or not they need county treasurers. Under this proposal, if the voters in the affected counties later change their minds and wish to elect a county treasurer, another constitutional amendment will be necessary.

Holding a a statewide election to abolish a few county treasurers every two years is a waste of state tax money. It costs \$45,000 to place each amendment on the ballot because a description of each amendment must be published in newspapers across the state. So far we have abolished six county treasurer offices, two at a time, at a total cost of more than \$135,000. By rejecting this amendment, the voters could send a message to the Legislature to stop this expensive piecemeal approach. Adding these local amendments to an already overcrowded ballot only creates confusion and voter apathy toward those amendments with statewide application.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 16 (SJR 6)

SUBJECT: Justice of the peace precincts in certain counties

BACKGROUND: Art. 5, sec. 18(a) of the Texas Constitution governs the number of justice of the peace precincts into which counties must be divided, according to population. As amended in 1983, the Constitution requires four to eight precincts in counties with a population of 30,000 or more; two to five precincts in counties of 18,000 to 30,000; and one to four precincts in counties of less than 18,000. A separate provision for two to six precincts in Chambers County was added in 1985.

One justice of the peace must be elected from each precinct. In any precinct in which there is a city with a population of 18,000 or more, two justices of the peace must be elected.

DIGEST: SJR 6 proposes a constitutional amendment to allow counties with populations of 150,000 or more, according to the most recent federal census, to have more than one justice-of-the-peace court per precinct.

The current provision requiring two justices of the peace in precincts containing a city of 18,000 or more would be modified to apply only to counties with populations of less than 150,000, according to the most recent federal census.

The ballot proposal reads: "The constitutional amendment providing that certain justice precincts may contain more than one justice of the peace court."

SUPPORTERS SAY: The state has 15 counties with 150,000 or more residents, according to the 1980 census. Granting these urban counties the discretion to determine the number of justices per precinct would help them draw precincts that comply with both the Texas Constitution and the federal Voting Rights Act. County commissioners drafting a precinct plan should consider population density, geographical boundaries and communities of interest. These criteria sometimes do not coincide with the location of cities of 18,000 or more. This

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arbitrary population bracket ties the hands of urban counties working in good faith to design justice precincts that are equitable and proper.

Dallas County has developed a districting plan supported by various community groups and approved by the U.S. Department of Justice, which administers the federal Voting Rights Act. The plan calls for two justices of the peace in half of the county's eight precincts. This plan would balance the workload among justices of the peace without changing the number of precincts or positions. (Only the precinct boundaries would be altered.)

Dallas County has received legal advice that inclusion of multi-judge precincts in its plan violates the Texas Constitution because the provision regarding cities of 18,000 or more residents has been interpreted to apply only to cities of that size that are wholly contained in a precinct. Under this interpretation, unless a city of 18,000 is wholly contained within the precinct, only one JP can be elected from the precinct.

The "wholly contained" interpretation could prevent counties from using the two-justice provision to ease workload imbalances resulting from wide variation in the populations of justice precincts. Urban counties contain major cities and suburbs that spill over into adjoining counties and thus cannot be wholly contained in a precinct. If a city once wholly contained in a precinct annexed territory outside the precinct, the precinct could no longer elect two JPs.

The "wholly contained" interpretation works the other way as well. It could encourage some counties to gerrymander justice of the peace precincts by splitting or shaving cities in order to avoid triggering the requirement for two justices per precinct.

Amending the Texas Constitution is the least expensive and most expedient means for Dallas and other counties to assure the validity of plans including multi-judge precincts. Seeking a declaratory judgment that this provision of the Texas Constitution is invalid under the U.S. Constitution would be a long and costly

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process that might have to be repeated by other counties with circumstances that vary slightly. Simply going ahead with the plan and hoping that no court challenges result would be a risky and short-sighted approach.

While this amendment would add another population criterion, it is based on the experience that problems in drawing justice of the peace precincts are generally confined to urban counties. Other population brackets in the Constitution that would not be changed by this amendment may bear reexamination, but such controversies should not be allowed to jeopardize correction of the immediate problem.

OPPONENTS
SAY:

Allowing large counties complete discretion to set the number of justices of the peace in each precinct would increase the potential for political abuses. Positions could be created for friends and abolished when occupied by foes. Similar abuses by county commissioners under current law have occurred regardless of county size, so the 150,000 population threshold would offer no protection.

There is no need to amend the Constitution based on pure speculation about how the current provision might or might not be interpreted. Legal opinions vary concerning whether or not the Dallas County plan would be ruled acceptable. The court opinions may have been incorrectly decided, or they apply only to the narrow circumstances of the particular case decided. In either case, the issue is again before an appellate court and could be decided before this amendment is even voted on.

The emphasis that backers of this amendment place on U. S. Justice Department approval seems excessive. Strict population standards are not applied to judicial districts because they do not involve the election of officials representing particular constituencies. The department has previously approved abolition as well as inclusion of multi-judge precincts in Texas. There is no need to amend the Texas Constitution based on unfounded speculation about how the federal government will rule.

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OTHER
OPPONENTS
SAY:

The solution to the problem of arbitrary population brackets is not to add yet another arbitrary population bracket. Allowing county commissioners flexibility to draw precincts with more than one justice is a good idea that ought not be limited to counties of 150,000 or more residents.

Dallas County's concern could be addressed in ways that would better serve the state as a whole. All references to city boundaries should be removed. The appropriate number of justices of the peace in a county has nothing to do with whether precinct residents live in a city, "wholly contained" or otherwise. Only population brackets tied to criteria like county population, number of precincts and precinct population are likely to produce reasonably balanced workloads and levels of service.

If major revision is not possible, the provision could be improved by simply inserting language to nullify the interpretation that a city of 18,000 must be "wholly contained" within a precinct in order for two justices to be elected from that precinct. Alternatively, the Constitution could stipulate that two justices would be required in a precinct containing part of a city of 18,000, or some higher figure, or it could require that two justices be elected whenever 18,000 residents of a particular city live within a single justice precinct. Instead of simply correcting the immediate problem, the change proposed in this amendment would make the standards even more complicated.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 17 (SJR 26)

SUBJECT: Liability immunity for municipalities

BACKGROUND: Governments are protected from liability lawsuits by the common-law doctrine of sovereign immunity. In determining the degree of protection afforded by sovereign immunity, Texas courts have distinguished between the governmental functions of a city and non-governmental (proprietary) functions.

Governmental functions are those performed by a city for the benefit of all citizens in the state, such as enforcing the law or putting out fires. Proprietary, or non-governmental, functions are those that benefit only the citizens of the town, such as running an amusement park or a public utility.

Sovereign immunity does not apply to proprietary functions performed by a municipality. No distinctions are made between the two functions in determining sovereign immunity for state and county governments.

Municipal liability for governmental functions is governed by the Tort Claims Act, which partially abolished sovereign immunity in cases of negligence in the use of property or motor vehicles and in cases of defective premises. The current limit on municipal liability in these cases is \$100,000 per person and \$300,000 per occurrence for personal injury or death and \$100,000 per occurrence for property damage.

The Tort Claims Act does not apply to municipal proprietary functions. There are no limits on the amount of damages that can be recovered in a lawsuit arising from proprietary functions.

DIGEST: SJR 26 would amend the Texas Constitution to allow the Legislature to define by statute the functions of a municipality that are governmental and those that are proprietary. The Legislature would be authorized to redefine functions even though different definitions existed in previous statutes or common law. The amendment would apply to laws enacted by the

70th Legislature or by subsequent sessions of the Legislature.

The ballot proposal reads: "The constitutional amendment to define for all purposes the governmental and proprietary functions of a municipality."

SUPPORTERS
SAY:

This constitutional amendment is a necessary element of the tort-reform package that was passed by the Legislature during the first special session last June. Through peculiarities in the common law, our cities have been victimized by liability lawsuits in a way county and state governments have not. The ultimate victim is the taxpayer, who pays the heavy price of unreasonably high jury verdicts with money that ought to go for needed services. This amendment and SB 5, its implementing legislation, would define governmental and proprietary functions to clarify beyond question which activities are to be protected by limitations on damage awards.

In the past, the courts have exercised the sole power to decide whether a municipal government function is governmental or proprietary. Since the Texas Supreme Court has recently interpreted the "open courts" provision of the Texas Constitution, which guarantees all citizens the right to have their suits heard, as restricting the Legislature's power to limit damage awards, a constitutional amendment is necessary to allow the Legislature to define municipal functions and limit liability by statute.

The definitions of governmental and proprietary are glaringly inconsistent, providing little guidance on when cities are liable for damages. For example, according to case law, providing a sewage system is a governmental function, but providing a water system is proprietary. Sanitary sewers are governmental, but storm sewers are proprietary. Repairing traffic lights is governmental but repairing the streets is proprietary. Repairing an airport runway and providing an airport are both governmental. Providing libraries and parks is proprietary.

There is no complete list of governmental or proprietary functions in the law books. Numerous

municipal activities are not yet defined, since the Tort Claims Act, which repealed sovereign immunity to permit cities to be sued for certain governmental acts, is less than 20 years old and has not been thoroughly interpreted. The established common law does not control the court's rulings on municipal functions.

SB 5, the tort reform act passed by the Legislature during the first June special session, lists 33 specific functions that would be considered governmental, including police and fire protection, health and sanitation services, street design, construction and maintenance, and solid waste and garbage removal collection and disposal. Other governmental functions would include operation of jails, hospitals, sanitary and storm sewers, airports, waterworks, parks, zoos, museums, libraries, coliseums, swimming pools and traffic signals. Municipal liability for governmental functions would be limited to \$250,000 per person and \$500,000 per occurrence for personal injury and \$100,000 per occurrence for property damages.

SB 5 defines proprietary functions to include operation and maintenance of public utilities, amusements and any activity that is abnormally dangerous or ultrahazardous. Municipal liability for proprietary functions would not be limited.

The number of lawsuits against cities has been growing in recent years, as has the size of damage awards. Of 390 cities surveyed by the Texas Municipal League (not including Houston, Dallas or San Antonio), nearly 47 percent had been sued in the past two years. On average, each of these cities had been sued five times. The survey reported a total of 826 suits, with an average of \$525,000 at risk in each suit. Extrapolating from this sample, one could conclude that Texas cities currently face some 2,000 lawsuits which could cost them as much as \$1 billion.

The civil justice crisis not only exposes cities to large financial risk, it deprives cities of affordable insurance and, in some cases, of any insurance at all. More than 70 percent of the municipalities surveyed reported that their insurance costs had increased, with

an average rate hike of 122 percent for less coverage than under earlier policies. The average increase for law enforcement liability insurance was 61 percent this year and 126 percent for the past three years, the Texas Municipal League found, while general-liability insurance costs increased by 55 percent. As a result, almost two-thirds of cities have had to settle for less complete coverage against suits than they could previously afford.

The Legislature should be able to weigh the public policy considerations involving lawsuits against municipalities, determine which functions are purely governmental and set limits on liability for any injuries resulting from those functions. It should also be able to weigh all factors and decide which municipal functions are proprietary and therefore subject to unlimited liability. Bringing certainty and predictability to municipal liability would not only help cities but those they serve as well.

OPPONENTS
SAY:

SJR 26 would allow the Legislature to override 200 years of common law, carefully reasoned legal precedents by which the courts have determined which functions of a city are governmental and which are proprietary. This attack on a historical legal principle would be carried out for the ostensible purpose of responding to a tort-suit crisis that never really existed.

Insurance companies obviously have increased premiums and reduced coverage of municipal insurance policies. However, the cause of this contraction of the insurance market was not an increase in the number or size of law suits against cities but rather a decrease in the profits of insurance companies.

The property-casualty insurance business has long been characterized by an "underwriting cycle," swinging from boom periods of high profitability to bust periods of intense price competition. From 1979 to 1985, the property-casualty insurance industry experienced a steady increase in underwriting losses (i.e. the difference between the amount collected in premiums and the amount paid out in losses, expenses and dividends). Insurance companies try to offset underwriting losses

with income generated by investing the money that they keep in reserve for payment of future claims. However, during the 1980-82 period of high interest rates, companies engaged in "cash-flow underwriting," setting prices far below the levels necessary to meet expected losses, in order to attract premiums that could be invested at high interest rates. In theory the difference between income from premiums and the amount paid out in losses could be made up with interest income. But when interest rates fell, the industry was stuck with inadequate premium levels.

The insurance industry responded with the astounding increases in premium charges and restrictions on coverage that have been suffered by municipalities in the past few years. The squeeze engineered by the insurance industry worked -- for the industry. According to the Wall Street Journal, the property-casualty insurance industry reported a record net income of \$12.7 billion in 1986, compared to a net profit of \$1.9 billion in 1985. Their operating profit, which combines the pre-tax underwriting loss with the pre-tax net investment income, increased from a \$5.6 billion loss in 1985 to a \$5.6 billion profit in 1986.

The liability insurance crisis, in whatever form it existed, is now over. Since insurance companies are again raking in the money, they should be able to provide affordable insurance to cities without asking the voters to change the Constitution to rewrite the rules of municipal liability.

The tort law system that the insurance industry is trying to change performs a vital and socially useful function. The possibility of lawsuits keeps cities accountable, forcing them to be sure that employees drive city-owned vehicles safely and responsibly and that someone is assigned to keep trees trimmed back from stop signs.

The current law imposes limits on liability to prevent extremely high damage awards stemming from a city's truly governmental functions. However, when a city operates a hospital, builds a bridge or runs an airport, why should it be exempt from the safeguards

our liability system provides for all innocent victims of negligence? This constitutional amendment would allow the Legislature to cap damages for these functions and many others, lessening the incentive for safe operation and discriminating against litigants whose damage claims are higher than the cap.

This constitutional amendment would also set the dangerous precedent of validating the constitutionality of statutes classifying governmental and proprietary functions, notwithstanding any other provision of the Constitution, for all subsequent sessions of the Legislature. Such a sweeping validation of laws yet to be passed is dangerously overbroad and could be abused by future legislatures. The more responsible course would be to leave the Constitution unamended and let the courts determine whether individual statutes exceed the scope of constitutional authority. At the very least those legal precedents already established concerning whether a municipal function is governmental or proprietary should be retained, not swept away by legislative whim.

NOTES:

SB 5 by Montford et al., which distinguishes municipal governmental and proprietary functions, was enacted by the Legislature during the first special session and becomes effective on Sept. 2, 1987. SB 5 defines municipal governmental functions as those functions enjoined on a municipality by law and given by the state to be exercised in the general public interest. The act lists 33 specific governmental functions. It defines as proprietary functions those that a municipality may perform at its discretion in the interest of its inhabitants, including the operation of public utilities, the operation of amusement parks and any abnormally dangerous or ultra-hazardous activity.

Municipal liability for governmental functions is limited to \$250,000 per person and \$500,000 per occurrence for personal injury and \$100,000 per occurrence for property damages. Municipal liability for proprietary functions is not limited.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 18 (HJR 18)

SUBJECT: Authorization for jail districts

DIGEST: HJR 18 would amend the Constitution to authorize the Legislature to allow the creation, financing and operation of jail districts. The Legislature could empower such districts to issue bonds and levy property taxes to retire the bonds and to pay the operating costs of the district. Any bonds issued and property taxes levied for this purpose would require the approval of the voters in the district.

The ballot language reads: "The constitutional amendment relating to the creation, operation, and financing of jail districts."

SUPPORTERS SAY: This amendment and HB 400, its implementing legislation, would protect the public by ensuring that counties with limited revenue can still afford to build jails to hold prisoners. Several counties that do not individually have enough money to build new jails could pool their resources and levy new taxes to finance much-needed jail construction and upgrading to meet state-mandated standards.

Overcrowding in our state prisons has made it imperative that counties have adequate facilities to house prisoners. Each time the Texas Department of Corrections reaches capacity and closes prison doors to new inmates, counties have no choice but to keep those inmates in county jails.

Providing government mechanisms for cooperative arrangements and alternative financing has become a necessity in today's distressed Texas economy. The elimination in 1986 of a federal revenue-sharing program that provided funding assistance for jail construction makes it especially urgent for counties to have new financing options. Cooperative arrangements would provide a more efficient use of resources by avoiding duplication of facilities that counties can ill afford. Many rural counties with few prisoners must still bear the cost of maintaining a separate jail and staff for these prisoners.

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Current law, which allows two or more counties to contract with one another for the joint operation or construction of a single jail, fosters inter-county rivalries that hamper contract negotiations. As a result, not one jail has been built or operated under this provision. The creation of jail districts would eliminate county rivalry because a district would be one single entity, no matter how many counties are included in it. Moreover, taxes collected for jail construction could be overseen more closely if managed by a separate body, rather than pooling county funds from several different counties.

The implementing legislation for this proposed amendment would also provide a mechanism for jointly financing the construction of juvenile detention centers. Counties have found it difficult to find the revenue for construction of these facilities.

In most cases, it would not be politically feasible for a sheriff to relinquish control of a county jail in order to devote more time to law enforcement, even when that is the most appropriate course. Under HJR 18 and HB 400, a sheriff in a county whose jail is located in another county could devote full time to law enforcement without fear of political repercussions.

A jail district could be created only if enough residents petitioned for it and it was approved in an election. Moreover, the board of directors of a jail district would be an elected body that could be voted out of office if wasteful decisions were made. County residents should be able to decide for themselves whether they would benefit from the creation of a jail district; HJR 18 would provide a mechanism for them to make that decision.

The importance of giving counties affordable options to finance jail construction far outweighs the added distance attorneys might have to travel to visit prisoners in jails located in another county.

It would only make sense to grant eminent domain authority to jail districts since counties already have this authority. It would serve the public better to

allow a jail district to decide where a jail should best be located.

OPPONENTS
SAY:

In this time of economic hardship, the last thing residents of Texas counties need is one more governmental agency to tax them. HJR 18 and HB 400 would encourage unnecessary spending for new jail construction. Given separate authority to levy taxes and sell bonds, the board of directors of a jail district would be more likely to build a new jail rather than renovate an old one, while a county commissioners court would weigh all of the competing county priorities in determining the need to construct a new jail. Moreover, counties often do not need new jails because the maximum stay in a county jail is only one year, while more dangerous criminals are incarcerated in state prisons.

The problems now faced by counties that want to enter into joint construction ventures under current law would only be exacerbated by the creation of jail districts. The board of the jail district would be open to political influence since the county commissioners themselves would appoint the initial board members. In addition, the implementing legislation provides that the county with the largest population in a district would have more representatives on the board than the other counties in the district.

Encouraging counties to build and operate jails jointly would hamper the process of justice. Defense and prosecuting attorneys could be required to travel long distances to visit a prisoner who was in a jail located in another county. In addition, having to transport the prisoner greater distances could delay court appearances. The added distance would also place a hardship on families who want to visit relatives detained in another county's jail.

Joint operation and construction of jails could also produce negative economic results. For example, a county that already has a jail could choose to join a jail district with other counties and send its prisoners to a jail outside of the county. A jail that is perfectly useful could thereby be shut. The loss of

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a jail in a county, and the jobs connected with it, could prove detrimental to that county's economy.

Giving jail-district boards the right of eminent domain could result in the jail facilities being located in the area that resists least or has the poorest, least influential citizens. Even though individual counties have eminent domain authority, giving this power to jail districts would make the problem worse.

NOTES:

HB 400 by Williamson would implement HJR 18 and would become effective upon approval of the amendment by the voters. HB 400 would allow the commissioners court of a county, or of two or more counties, to create jail districts. These jail districts could finance and implement the construction, acquisition or renovation of a jail to serve the counties in the jail district. With voter approval, the districts could sell bonds and levy property taxes.

Creation of a jail district would require a petition to be filed with the county clerk of each county in the proposed district. Ten percent of the registered voters in a county would have to sign the petition to make it valid. In a hearing, the commissioners court would determine whether to grant the petition request to create the district. Approval of each county's commissioners court would be required.

The commissioners courts could appoint a district board. The board would have three directors from the county with the largest population and two each from the other counties. The appointed board could call a confirmation election at which the residents of the counties in the proposed jail district would decide whether to create it. In the same election, voters would decide the board's authority to issue bonds and levy taxes.

The board could sell bonds and repay the debt by levying taxes or pledging designated revenue, or both. Any bonds secured in full or in part by taxes would have to be approved by a majority in a specially called election.

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A board could hire a general manager and other employees. The district could acquire land, easements and other interest in property necessary to build or renovate jail facilities and would have the power of eminent domain.

Competitive bidding would be required for construction projects of more than \$5,000. Any contractor chosen must be bonded and the board would be required to have the construction monitored. Provisions are made for construction contracts to be changed if additional work becomes necessary.

The board would be required to determine in a hearing that a jail facility met contract specifications and construction was completed before conveying the facility to the receiving county. The receiving county would be the owner of the facility and would be responsible for all operation, maintenance, upkeep and administration of the jail, including the right to alter, relocate, close, or discontinue operation of the facility. The jail district would have no further responsibility for the jail, except for the continued duty to service the outstanding debt. The district would be solely responsible and liable for the payment of principal and interest with respect to those bonds or other debts.

After the facility was conveyed to the receiving county, and all bonds and other debts were retired, the jail district could be dissolved. Any remaining funds would be handed over to the county assuming jurisdiction and control of the completed jail and would be used to maintain the facility.

Under current law (VACS art. 5115c), the commissioners courts of two or more counties may enter into contracts to construct, acquire, or operate a jail facility jointly. A county can use the same methods of financing as it is allowed to use to operate its own jail, including the issuance of county general-obligation bonds, if allowed by law.

HOUSE
RESEARCH
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Constitutional amendment analysis

Amendment No. 19 (HJR 88)

SUBJECT: Bonds for superconducting super collider

BACKGROUND: The U.S. Department of Energy is currently taking proposals from states seeking to become the site of the proposed superconducting super collider -- the world's largest and most advanced particle accelerator. Texas and 40 other states are competing. State proposals for the project were due at the Department of Energy by Aug. 3, 1987. The final decision is expected in January 1989.

The superconducting super collider (SSC) will be a particle accelerator located in a 52-mile-long, 10 foot-wide circular underground tunnel. Researchers will try to simulate conditions existing at the time the universe was created, seeking explanations to the four basic forces of nature -- gravity, electromagnetism, radiation and the force that binds atomic nuclei. To do this, thousands of magnets will guide two beams of protons in opposite directions around the tunnel where they will collide head-on at the speed of light. The collision will create new subatomic particles, which, when analyzed, could help answer fundamental questions about the nature of matter and energy.

Congress appropriated \$25 million in 1988 to continue research and development of a site for the super collider. It has not to date appropriated any money for construction.

In 1985 the Legislature created the Texas National Research Laboratory Commission to coordinate state efforts to obtain the super collider project. The commission received \$3.9 million in funding for fiscal 1988-89.

DIGEST: HJR 88 proposes a constitutional amendment to allow the Legislature to authorize an appropriate agency to issue up to \$500 million in general obligation bonds for the superconducting super collider. Proceeds from the bonds would go in a

special fund to be used, without further appropriation, to pay for any appropriate activities of the super collider research facility being planned by the U.S. government. The fund would consist of proceeds of the bonds, any income from investment of money in the fund, appropriations by the Legislature to pay maturing bonds and any other amounts authorized to be deposited in the fund by the Legislature.

As a general obligation of the state, bond payments would have priority claim on the first money coming into the state treasury that was not otherwise dedicated to another use by the Constitution.

The Legislature could create an entity to review and approve the sale of the bonds and the use of the bond proceeds. This entity could include members or appointees of members of the executive, legislative and judicial branches of state government.

The amendment would also let the Legislature authorize the appropriate agency to grant any land or property to the U.S. government for the super collider research facility.

The bonds would constitute a general obligation of the state and the Legislature would appropriate funds to pay the principle and interest.

The ballot proposal reads: "The constitutional amendment authorizing the issuance of general obligation bonds to fund undertakings related to a Superconducting Super Collider research facility sponsored or authorized by the U.S. government."

**SUPPORTERS
SAY:**

The federal superconducting super collider project is one of the most exciting opportunities available for Texas to diversify its economy and attract federal research dollars. The state could reap considerable benefits from an investment of \$500 million in general obligation bonds to help convince the federal government to locate the project here.

The super collider would be a major economic boon to Texas. It will cost an estimated \$4.4 billion or more

to build and to have an annual operating budget of \$200 to \$300 million. Construction would create more than 4,000 construction jobs during a six-to-nine year construction phase. Once the facility is operational it would permanently employ more than 3,000 scientists, technicians and support personnel.

The SSC, just like major military installations, would provide constant revenue to nearby communities, generating all sorts of jobs and small business. As discoveries are made and commercialized, high-technology companies would spring up in the state.

Other states have been quick to realize the economic development potential of the super collider. California, Colorado and Illinois are offering substantial financial inducements to get the SSC. Texas must also demonstrate its commitment.

The potential practical benefits derived from the scientific discoveries made possible by the super collider project are limitless. Examining the basic building blocks of nature could lead to new discoveries in medicine, electronics, energy and allied fields that could eventually transform our daily lives.

A project of this magnitude would generate so much positive publicity for Texas that it would attract other industries, benefiting the entire state. The super collider may have other side benefits such as providing cogenerated electric power for the city nearest the site.

Making Texas the home of the most expensive scientific research instrument ever built would put Texas on the map in the national and international scientific community. This project will attract top scientists from around the world. A research facility of this magnitude would generate other research facilities and bolster the scientific community at Texas universities.

Texas has lagged behind other states when it comes to attracting federal investment in research and development. Although third in total population, Texas is 10th in the number of federal research dollars spent

per state. Texas does not have a single federal research lab; it should aggressively seek one of the biggest. The super collider will act as a catalyst and a magnet to bring even more federal research labs and dollars here. Voters should be given the opportunity to approve this "pump priming" constitutional amendment and provide money to bring the super collider to this state.

The \$500 million in bonds would be a down payment on the future economic development of the state. Texas has done little to take advantage of the economic-development possibilities of bonds, especially for one-time capital-construction outlays. Texas can no longer depend on oil, agriculture or real estate for wealth. This project could be the equivalent of bringing in a major new military installation or the whole space program.

The only real question about whether the state should go all out to bring the super collider to Texas involves whether this type of basic scientific research should be done at all. But it was just this sort of basic research that led to the recent breakthrough in superconductivity at the University of Houston, a breakthrough with the potential for all kinds of practical applications in the world of energy. Other nations are supporting this type of basic research, and the U.S. cannot afford to lag behind.

Recent superconductivity discoveries have not rendered the super collider project obsolete. It remains to be seen whether superconductivity will work on a large scale or when it will have practical application in a facility such as the super collider. If successfully developed, superconductivity could be a money-saving factor for a project like the super collider; the project would still retain its great potential for scientific breakthroughs.

A particle accelerator of this type is "clean" research; it would generate relatively little radioactive waste. The U.S. Department of Energy has categorically denied any link between locating the

super collider here in exchange for Texas accepting the high-level radioactive waste dump.

The Domenici amendment to the 1987 supplemental appropriations bill (HR 1827), which prohibits the Department of Energy from considering "financial and other incentives" in selecting the site for the SSC, would not render the proposed bond package obsolete. The Domenici amendment is unclear and confusing. On the one hand, it prohibits consideration of financial and other incentives and, on the other hand, fails to preclude a state from offering financial incentives. In any event, Texas must be prepared to offer reasonable incentives as it competes for this economic development prize, and the bonds in HJR 88 are the centerpiece of the state's incentive package.

The federal government is going to build the super collider, and it might as well be in Texas. The people of the state have nothing to lose and all to gain by voting for these bonds. No bonds will be issued unless Texas is chosen as the super collider site.

OPPONENTS
SAY:

The super collider is a high-cost, scientific boondoggle of unknown purpose and little practical application. While 41 states are fighting for this facility, its cost-benefit ratio is unknown. Furthermore, this \$500 million bond debt (\$1 billion if the state revenue bonds authorized by statute are included) would radically increase state debt during a fiscal crisis.

Bonds are state government's form of credit card debt, with interest costs that would inflate enormously the final cost of these kind of projects. Texas is having a hard enough time raising enough tax money to pay for current expenses without saddling its citizens with higher taxes down the road to pay off a load of bond debt for an esoteric scientific project with few practical applications.

Texas' bond rating has been dropping, which means the money would be even more expensive to borrow. The state's capacity for responsible debt is not unlimited, and it should start setting some priorities about where

any money raised through debt financing should go. The Legislature has approved a plateful of bond-debt proposals for voters to decide on this November. This proposal is only a part of the huge debt being proposed.

Legislation passed in the 1987 session would allow an additional \$500 million in bond debt to be incurred for the SSC -- revenue bonds that could be issued without voter approval but that could tap state general revenues. This would mean a total of \$1 billion in debt devoted to the super collider project.

This project is just one more example of the federal government pitting states against one another in an unseemly bidding war. In addition to the \$1 billion incentive being offered by the state, communities are offering free land, citizen-subsidized electricity and breaks on construction costs to get the super collider. They may wake up to find the super collider's alleged economic benefits are spread over too many years to make up for the breaks they have given to the federal government. The permanent jobs will go mostly to scientists and trained technicians from outside of the state, not to local people.

The collider might have some short-term economic benefit to the people of the immediate area as it is built. However, the long-term benefits are more ephemeral. The project would hardly benefit towns and taxpayers in other areas of the state, even though they would be forced to pay the bills.

The notion that the super collider would offer practical payoffs and improve Texas' and U.S. industrial competitiveness is specious. For example, Dr. James Krumhansl, professor of physics at Cornell University and vice president of the American Physical Society, said in a letter to Energy Secretary John Herrington regarding the super collider: "In the past 30 years I have not seen that particle physics has made any substantive contribution to technology generally, nor energy science and technology specifically. The proposed project will not be different. This investment will do nothing, either, to improve our

scientific technological or industrial competitiveness."

Reputable scientists believe new discoveries in superconductivity mean that the enormous type of super collider envisioned by its backers may be obsolete. At the least, it would mean that a much smaller super collider would be needed, with more limited economic benefits that would not justify the huge amount of bonds proposed by this amendment.

Who is going to pay the bill for the water and electricity it will take to run this facility? When operating, the facility will use as much as 2,000 gallons of water per minute, 2.8 million gallons per day. Accelerating the atomic particles takes 20 trillion electron volts, requiring 250 megawatts of electricity, enough to power a small city. The federal government expects the winning community to provide cheap power and water as an inducement to awarding the super collider. This drain on local capacity could raise electric and water bills in the affected area. Local citizens who agree to subsidize a 20-trillion-volt facility may find they are paying a high cost for new jobs that may well go mainly to outsiders.

The bonds would have no real effect on the site selection. U. S. Sen. Pete Domenici of New Mexico amended the request for super collider site proposals so that financial and other incentives by state and local governments cannot be taken into consideration in the site selection process. There is no reason to authorize \$500 million for a location incentive if the federal government is barred from considering it.

Serious concerns have been raised about whether a tacit quid pro quo is being developed by the U. S. Department of Energy -- Texas gets the super collider but only if it accepts the high-level nuclear waste dump under consideration for the Panhandle. DOE may deny that there is any such explicit trade-off, but it cannot help but consider that factor as the location decision is made. If the two projects are a package deal, then Texas would be better off without both.

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NOTES:

The Legislative Budget Office estimates the cost of the \$500 million in general obligations bonds from 1988 through 2008 would be \$46.5 million per year, assuming a 20-year payout and 7 percent interest.

The 70th Legislature passed HB 1909 by A. Luna, which designates the Texas National Research Laboratory Commission (TNRL) as the "appropriate" agency to handle the development, financing and operation of the SSC should it be located in Texas. The TNRL would issue the \$500 million in general obligation bonds that would be authorized under HJR 88.

HB 1909 would also allow the TNRL to issue \$500 million in revenue bonds if the SSC is located here, making the total amount of bonds the state could issue for the SSC \$1 billion. The Legislature could appropriate funds to pay off the \$500 million in revenue bonds. No bonds could be issued for which the Legislature would be obligated to pay appropriated money prior to Sept. 1, 1989.

The bond proceeds could be used to carry out "eligible undertakings" or to pay for such undertakings carried out by others. "Eligible undertakings" made necessary by the superconducting super collider would include acquisition of land or interest in land, acquisition and construction of buildings, improvements, structures and utilities, site preparation, architectural engineering, legal and related services, acquisition and installation of machinery, equipment, furnishings and facilities, and acquisition of licenses, permits and approvals from any governmental entity.

HB 1909 requires the comptroller to use the "first money coming into the state treasury not otherwise appropriated by the constitution" to pay SSC general-obligation bond debt, if there is insufficient money in the SSC fund to pay the principal and interest on the general obligation bonds.

All bonds issued would have to be reviewed and approved by the bond review board, consisting of the governor,

the lieutenant governor, the House speaker, the state treasurer and the comptroller.

The 70th Legislature passed three other bills concerning the location of the super collider in Texas. SB 1428 by Edwards required the Texas National Research Laboratory Commission to submit at least two site proposals for consideration by the U. S. Department of Energy. The commission has chosen sites near Waxahachie south of Dallas and near Amarillo in the Panhandle. A local group is backing another site in the Garden City area in West Texas.

HB 2085 by Stiles authorizes the establishment of local research authorities with powers to finance infrastructure needed for the super collider project should it locate in Texas.

HB 2448 by Colbert allows the land commissioner to propose land swaps between land owned by the Permanent School Fund or the Permanent University Fund and any other land of equal value if it were needed to locate the super collider site in Texas. The state would retain the mineral rights on any state land traded for the super collider site.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 20 (HJR 96)

SUBJECT: Tax exemption for off-shore drilling rigs in storage

BACKGROUND: Oil and gas well drilling equipment is taxable by counties and other local taxing units if it is inside the limits of Texas coastal waters. Beyond the three-league (10.35 miles) limit of Texas waters lie federal waters, where rigs cannot be taxed by local governments.

DIGEST: HJR 96 would amend the Texas Constitution to allow the Legislature to exempt from ad valorem taxation any mobile off-shore oil and gas well drilling equipment that is being stored. The exemption would only apply to equipment in storage in a county bordering on the Gulf of Mexico or on a bay or other body of water adjacent to the gulf.

The ballot proposal reads: "The constitutional amendment to authorize the Legislature to provide ad valorem tax relief for certain off-shore drilling equipment that is not in use."

SUPPORTERS
SAY:

The fall in oil prices over the last few years has put many off-shore drilling rigs into storage, where they earn nothing. This makes it very difficult for the owners to pay taxes. Many of these rigs have been moved from Texas waters to Louisiana or other states to escape taxation. In many cases the rigs have simply been moved across the channel of the Sabine River to the Louisiana side. If these rigs were exempted from taxes, they would likely move back to the Texas side where they could be more easily maintained by their owners. This would lead to increased employment and increased economic activity in Texas.

Providing a tax-exemption incentive to keep these rigs in Texas would be a much greater benefit to the counties where these rigs might be stored than the minimal amount of taxes they now collect on the rigs that are left in the state.

The companies that own drilling rigs are typically not giant multinational corporations, but smaller firms owned by Texans and employing Texans, who would ultimately benefit the most from this small break.

This exemption should not be made dependent on the price of oil, as some have suggested. Once oil prices go up enough so that these rigs can profitably be put back to work, they will be taken out of storage and automatically lose the exemption anyway.

This amendment would promote economic development in areas hardest hit by oil-price uncertainty. A group is planning to build a rig storage yard in Port Arthur. These plans may be scuttled, and the yard located outside the state, if this tax relief is not approved.

No one would move rigs into storage for a few days at the beginning of a year just to get the exemption. The cost of moving a rig and the lost revenues from the time that the rig could have been drilling would be far more than any savings in taxes.

OPPONENTS
SAY:

Counties and other taxing units already hard hit by the loss of tax revenue caused by lower property values do not need their revenues cut even more by special tax breaks. When one industry gets a break, other taxpayers must make up the tax loss. The Legislative Budget Office has estimated that the revenue loss in Jefferson County would be approximately \$200,000 and the loss in Nueces County would be around \$300,000 from exempting from taxation off-shore drilling equipment in storage.

The state should not give special tax breaks to a particular group when many others are having similarly difficult economic problems. Large numbers of land-based drilling rigs are in storage, just as are off-shore rigs. These land rigs generally belong to even smaller, more vulnerable companies than the ones that own off-shore rigs. Why should the off-shore operators be singled out for special treatment?

Many other industries are also in a recession but get no special tax treatment from local taxing units. This

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proposed amendment is merely special-interest legislation stemming from a temporary economic condition.

OTHER
OPPONENTS
SAY:

The determination of whether a rig is in storage would be made as of January 1 of each year, so if a rig was working all year, but was placed in storage from December 25 through January 5, then it would be exempt from taxes. This amendment would encourage maneuvers to avoid local taxes.

The proposed tax exemption could be counter-productive, creating an economic incentive to keep off-shore drilling rigs in storage instead of drilling and creating jobs. Energy companies will wait until prices rise even higher before they will risk losing their tax break by taking their equipment out of storage. The exemption should at least be tied to a reasonable level of oil and gas prices and expire when prices rise high enough to promote use of the exempt equipment.

NOTES:

HB 2082, the implementing legislation for HJR 96, will become effective January 1, 1988 if the amendment is approved by the voters. The bill specifies that to qualify for the exemption, off-shore drilling equipment must be in or adjacent to a Gulf county, be in storage for reasons other than repair and maintenance, and not be in use to drill a well where it is stored.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 21 (SJR 17)

SUBJECT: Speaker serving as member of executive committees

BACKGROUND: Art. 2, sec. 1 of the Texas Constitution divides state power among three distinct departments: legislative, executive and judicial. Members of one department are prohibited from exercising powers "properly attached" to the other departments, except as expressly permitted in the Constitution.

Unlike the lieutenant governor, who has legislative authority as president of the Senate, the speaker of the House of Representatives is not among members of the executive department listed in art. 4, sec. 1 of the Constitution. (The other listed members are the governor, the secretary of state, the comptroller, the treasurer, the land commissioner and the attorney general.) The speaker is thus considered ineligible to serve on agencies or committees that include executive department members and perform executive functions.

The powers of the legislative department are described in Art. 3 of the Constitution.

DIGEST: SJR 17 would amend Art. 3 of the Constitution to allow the Legislature to include the speaker of the House in the membership of agencies or committees that include executive department members and perform executive functions.

The ballot proposal reads: "The constitutional amendment permitting the legislature to include the speaker of the house of representatives or the speaker's appointee in the membership of an executive agency or committee."

SUPPORTERS SAY: This amendment is necessary to allow the speaker to serve as a full, voting member of certain committees that require the participation of senior state officials. For example, there is some question concerning whether the speaker can act as a member of the cash management committee, which decides on issuance of short-term state debt to manage temporary

cash shortfalls, and of the bond review board that will review and approve issuance of state general-obligation bonds. These entities are not exclusively executive or legislative in function. Issuance of state debt is closely related to the legislative appropriations process. Allowing the speaker to vote on such committees and boards would enhance accountability and oversight by the Legislature and cooperation among branches of government.

Both the cash management committee and the bond review board are composed of the governor, the lieutenant governor, the speaker, the comptroller and the treasurer. Although it was originally intended that all five members would vote on cash management notes, the lieutenant governor and the speaker were made non-voting members due to the concern about the separation-of-powers problem involving the speaker. SB 789 by Farabee, effective Sept. 1, will eliminate the voting prohibition for these two officers, but provides that the speaker's voting power is contingent on constitutional permission. SB 1027 by Farabee, also effective Sept. 1, contains an identical provision for the membership of the Bond Review Board.

The separation-of-powers provision of the Texas Constitution does not create an impenetrable wall between the departments of state government. It allows for exceptions when appropriate for the effective management of government. Indeed, some of these exceptions are among the cornerstones of the system of checks and balances. For example, the lieutenant governor, a member of the executive department, presides over the Senate, part of the legislative branch, and can even vote to break ties. The governor crosses into the legislative arena by vetoing legislation. The Senate, by confirming gubernatorial appointments, shares in executive appointment powers. The comptroller participates in the legislative process by estimating projected revenues, which limits the amount of money the Legislature can appropriate and by certifying that the state budget is balanced.

This constitutional change would not automatically place the speaker on any executive committee or agency;

it would merely allow the Legislature to do so where appropriate. The Legislature's direct responsibility to voters would prevent it from needlessly or wrongfully appointing the speaker to what might be construed as an executive committee. Since the Senate, as well as the House, would have to approve any such change, there would be an internal check within the legislative branch itself that would prevent the House speaker from becoming a voting member of an inappropriate executive committee.

Although not elected statewide, the speaker is accountable to the voters in a district and to House members from districts across the state. Moreover, as one of the most important state officials, the speaker in effect serves a statewide constituency because the speaker's actions are scrutinized statewide.

The exception in the separation of powers created by this amendment would be appropriately narrow -- it applies to the speaker alone, not to any other legislators who might be appointed to quasi-executive bodies. It is also limited to committees that include officers of the executive branch -- all of those officers, with the single exception of the secretary of state, are elected by the voters, as is the speaker. Allowing the speaker and the lieutenant governor to appoint legislators to executive committees would go farther than is necessary and would only confuse the issue.

OPPONENTS
SAY:

The intent of the separation of powers provision must be preserved as a check and balance against abuse of power by one branch of the state government. Blurring the lines among the three branches of government would remove necessary restraints on government power. Strong policy reasons, not just a desire for cosmetic order or political niceties, should be pressing before breaching that constitutional barrier.

Creating the broad exception proposed by this amendment would concentrate too much power in a member of the legislative branch, upsetting the delicate balance of separated authority. The speaker, as a member of the the House of Representatives, could not remain an

effective check on the actions of executive department members while acting as a quasi-executive. The concept of checks and balances by one branch against another is one of the foundations of American democracy. One official cannot obtain overwhelming power without limitation by another branch of government. National events of the past few years serve as a reminder of the wisdom of the Founding Fathers, as the legislative and judicial branches of the federal government have restrained the executive.

The speaker is not truly equivalent to the lieutenant governor, who is part of the executive branch and, like the other members of the boards involved, is elected statewide. While the Constitution gives the lieutenant governor the authority to preside over the Senate, that executive official is not a member of the Senate. On the other hand, the speaker is elected to the House from a single district and is chosen by House members for the purely legislative role of presiding over that body.

Several other amendments on the November ballot make specific provision for the speaker to be a voting member of a board to review and approve issuance of state general-obligation bonds. If an exception to the separation of powers is to be made, it should be specifically authorized in the Constitution itself. Yet this proposal would create an open-ended authorization for the Legislature to enact a statute adding the speaker any number of executive committees, with no review by the voters concerning whether such an exception would be appropriate.

OTHER
OPPONENTS
SAY:

The proposed amendment would not go far enough in eliminating confusion and doubt surrounding appointments by the speaker and the lieutenant governor to various hybrid entities that are neither wholly executive nor wholly legislative. Previous appointments of legislators by the lieutenant governor and the speaker to entities such as Pension Review Board and the Sesquicentennial Commission may not have been constitutional. The proposed amendment should clarify that appointees of the speaker and lieutenant

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governor are eligible to serve on certain executive agencies when appropriate.

The provision allowing appointment of the speaker to executive agencies and committees should at least be strictly limited to those entities consisting only of elected officials. Otherwise the speaker could be appointed to higher education boards or other inappropriate positions, creating a conflict with existing appointment processes. The separation of powers provision, the most important protection against dual office-holding, should not be breached to this extent.

NOTES:

The ballot language in SJR 17 refers to allowing appointees of the speaker to serve on executive agencies or committees. Authorization for the speaker to make such appointments had been included in the original version of SJR 17 but was removed by a Senate floor amendment. The House amended SJR 17 to include appointments by the speaker and the lieutenant governor. The House version also would have allowed such appointments only to executive agencies or committees that included elected officials. The House-Senate conference committee appointed to resolve the differences between the two versions adopted the Senate version of SJR 17 but did not change the wording of the ballot language. SJR 4 by Farabee was introduced during the second called session to correct the ballot language; it passed the Senate but died in the House Calendars Committee.

SB 789 by Farabee would, contingent on voter approval of SJR 17, allow the speaker to be a voting member of the cash management committee, which must approve any state notes issued to eliminate state cash shortfalls.

SB 1027 by Farabee creates a bond review board that will review and approve issuance of certain state bonds. Several proposed constitutional amendments on the November ballot would authorize issuance of state general-obligation bonds -- all provide for review and approval by a bond review board, and all would allow the speaker to be a voting member of that board.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 22 (SJR 53)

SUBJECT: Limits on appointments by lame-duck governor

BACKGROUND: VACS art. 19a was enacted in 1983 to prohibit a lame-duck governor from filling state and district office vacancies after Nov. 1 if those vacancies occurred before Nov. 1, with certain exceptions. Vacancies created by the death of an officeholder between Oct. 1 and Nov. 1 can be filled as long as the term would not have otherwise expired during that period. Expiration of a term of office is considered to create a vacancy for purposes of the statute.

If a vacancy occurs between Nov. 1 and the date the governor is to leave office, the outgoing incumbent can appoint persons to partial terms ending Feb. 1 of the following year, when the new governor will be in office. The outgoing governor can also fill vacancies for terms specified in Article 5 of the Constitution, which pertains to the judicial branch.

The 1983 act changed the expiration date of terms on several boards and commissions to Feb. 1 of odd-numbered years, but with varying effective dates. The last of the changes are to take effect by Feb. 1, 1989.

DIGEST: SJR 53 would authorize the Legislature to limit the terms of office of persons appointed by outgoing governors to fill vacancies occurring on or after the Nov. 1 preceding the general election for governor. Such appointments could be limited to periods ending before the term of the appointee would otherwise have expired or before the next election at which a vacancy is to be filled. The expiration of a term of office or the creation of a new office would constitute a vacancy.

The ballot proposal reads: "The constitutional amendment to allow the legislature to limit the authority of a governor to fill vacancies in state and district offices during the end of a governor's term if the governor is not reelected."

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SUPPORTERS
SAY:

SJR 53 would safeguard the intent of the 1983 law restricting lame-duck gubernatorial appointments. Legal and political arguments surrounding some of the post-election appointments by Gov. Mark White indicated that a constitutional change is required to clarify the Legislature's authority to restrict appointments.

The fact that Gov. Bill Clements has indicated that he will not seek reelection has nothing to do with this proposed amendment. In fact, the lame-duck statutory restrictions imposed by statute were first applied to Gov. White and would affect all future lame duck governors, Republican and Democrat alike. The policy of leaving major appointments to the incoming governor, who has a fresh mandate from the voters, has merit regardless of party. Besides, Gov. Clements could well be succeeded by another Republican.

The intent of VACS art. 19a, the existing lame-duck statute, is to ensure that governors who decline reelection or are rejected by the voters will not be able to extend their influence after they leave office via "midnight appointments." New governors should not have to wait nearly two years into their terms, when the next round of appointments expires, in order to exert significant influence on state boards and commissions.

Although many of the legal arguments aimed at blunting the intent of the lame-duck law are somewhat farfetched, they cannot be ignored. Narrowly interpreted, the lame-duck prohibition applies only to end-of-term vacancies and not to mid-term vacancies. This interpretation would have serious implications as no regular term will expire during future lame-duck periods, since all of the expiration dates have been advanced to fall within the term of the new governor. Whether newly created offices, such as the initial appointments to the Texas Racing Commission, could be filled during the lame-duck period has also been questioned.

It can be argued that prohibiting the governor from filling vacancies without providing for some other means of filling them may violate Art. 4, sec. 12 of

the Constitution, which states that the governor fills all state and district vacancies unless some other means of filling the vacancy is otherwise provided by law. Various arguments can also be made against allowing vacancies to be filled by a lame-duck governor only for a period that is shorter than the entire period of the term.

The proposed constitutional amendment would clear up any uncertainty about the lame-duck statute by explicitly authorizing the Legislature to make these restrictions. The proposed amendment would also ensure beyond challenge that the Legislature could limit lame-duck governors to short interim appointments that would terminate soon after the new governor assumed office.

The proposed amendment is permissive, not mandatory. If the Legislature preferred not to apply the lame-duck restriction to all officials, such as exempting judges, it could do so. The amendment would simply clarify that lame-duck appointment limitations imposed by statute do not conflict with the Constitution.

The portion of the proposed amendment stating that expired terms and new offices constitute vacancies was intended not as an exclusive definition of "vacancy" but as a clarification that these situations are covered by the provisions of the amendment. Obviously when a person dies or resigns from office it creates a vacancy in that office. The proposed amendment would clearly cover such mid-term vacancies under either statutory or logical rules of construction. The proposed amendment would allow the Legislature to limit lame-duck appointments to "a period that ends before the vacant term otherwise expires," which obviously refers to mid-term appointments, not just to expired terms and newly created offices.

OPPONENTS
SAY:

The Legislature does not need the authority to restrict appointments made by the governor while the governor remains in office. Just because a governor is leaving office does not mean that the outgoing governor should not be able to exercise the full authority of that office.

Allowing the chief executive to make post-election appointments enhances continuity in government and has worked well at the federal level. Current constitutional provisions reflect the governor's mandate to use the appointment power for the governor's entire term of office. The Legislature can, if it chooses, set a different date for the expiration of the term of an office or the beginning of a term for a new office. But those vacancies that occur while the outgoing governor still serves should be filled by that governor.

The Senate has the prerogative of refusing to confirm lame-duck appointments, as it did with some made by Gov. Bill Clements after his 1982 defeat. But the Legislature should not be able to restrict the governor's authority to make those appointments.

The timing of this attempt to amend the Constitution suggests that it is intended to constrain the current governor, who has said he will not seek another term. The 1983 law, replete with loopholes, was enacted to justify after the fact the highly partisan action by the Senate in refusing to confirm several late-term appointments made by Gov. Clements. Yet it proved no impediment for Gov. Mark White to make a number of "midnight appointments" during his lame-duck period. The proposed amendment is just an attempt to make sure that Clements, when he ends his current term, cannot do what White was allowed to do.

OTHER
OPPONENTS
SAY:

It is not at all clear that this proposed amendment will have any significant effect in clarifying the authority of the Legislature to restrict the most important cases of lame duck appointment.

The amendment would not provide the authority necessary for the Legislature to prevent lame-duck governors from filling vacancies that occur when a term of office has not yet expired. Mid-term openings resulting from death or resignation would not be covered because the proposed amendment states explicitly that only expired terms and creation of new offices constitute vacancies.

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The failure of this amendment to deal with mid-term openings renders meaningless the authority it would provide to the Legislature to limit lame-duck governors to making appointments only for abbreviated terms. The Legislature needs no special authority to limit lame-duck appointments to newly created offices, since when it creates those offices it can provide that their terms would not begin until after a lame-duck governor had left office. Preventing a lame-duck governor from making appointments to fill expired terms is unnecessary because the Legislature has already changed the expiration date for all offices so they will not fall during lame duck periods. The voters should send this defective amendment back to the Legislature to draft another that actually does what this one only purports to do.

NOTES:

SB 183 by Edwards, a related bill, was introduced during the 1987 regular session but did not pass. The bill would have eliminated the lame duck appointment exception for vacancies resulting from the death of an officeholder between Oct. 1 and Nov. 1. It also would have defined "vacancy" to include filling new offices and those vacated by resignation, death, removal or ineligibility during the entire lame-duck period, not just those vacated before Nov. 1. The current provision for emergency appointments to partial terms would have been restated, and the judicial offices exempted from the lame-duck restrictions would have been specified.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis

Amendment No. 23 (SJR 54)

SUBJECT: Bonds for water projects

BACKGROUND: In 1985 Texas voters approved a constitutional amendment, HJR 6, authorizing the Water Development Board to issue \$980 million in general-obligation bonds. Of the \$980 million, \$400 million was earmarked for state participation in reservoirs, conveyance, water-supply and wastewater-treatment facilities; \$190 million was for wastewater-treatment projects in "hardship" political subdivisions (i.e., cities or others that could not otherwise sell their own water bonds) and regional wastewater treatment facilities; \$190 million was for "hardship" water-supply projects and water-supply projects in areas that are converting from ground-water to surface-water supplies and \$200 million was for structural and non-structural flood-control projects ("structural" flood-control requires construction of public works such as dikes and levees; "non-structural" flood control means controlling flood damage without building, e.g., by converting floodplains to parkland).

Texas voters also approved previous constitutional amendments authorizing the state to issue general-obligation bonds for water development projects in 1957 (\$200 million) and in 1976 (\$200 million). Voters approved bonds for "water-quality enhancement" (sewage-treatment plants) in 1971 (\$200 million) and in 1976 (\$200 million). The Texas Water Development Board administers the bond program and puts the proceeds from bond sales into the Water Development Fund.

Of the \$980 million bonding authorization approved in 1985, \$830 million has not been issued. Remaining are \$400 million of the bonds for state participation in various water development projects, \$80 million for water-supply projects, \$190 million for wastewater treatment and \$160 million for flood-control. The Water Development Board earlier this year sold \$110 million in bonds for water-supply projects and \$40 million in bonds for flood control projects.

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DIGEST:

SJR 54 would amend Art. 3 of the Texas Constitution by adding sec. 49-d-6, authorizing the Water Development Board to issue an additional \$400 million in general-obligation bonds. Of that \$400 million authorization, \$200 million would be earmarked for "hardship" water-supply projects, regional water-supply projects and water-supply projects in areas that are converting from groundwater to surface water supplies; \$150 million for "hardship" wastewater-treatment projects and regional wastewater treatment projects; and \$50 million for structural and nonstructural flood-control projects.

Bond proceeds would be deposited in the Texas Water Development Fund. Financial assistance from the proceeds would be subject only to availability of funds. The bonds authorized by SJR 54 would be subject to the maximum interest rate established by Art. 3, sec. 65 of the Constitution (a weighted annual average rate of 12 percent).

The Legislature could require review and approval of issuance of the bonds, use of the bond proceeds or rules governing use of the bond proceeds. The bond review board could include members or appointees of the executive, legislative or judicial branches.

The ballot proposal reads: "The constitutional amendment to authorize the issuance of an additional \$400 million of Texas Water Development Bonds for water supply, water quality, and flood control purposes."

**SUPPORTERS
SAY:**

Texas needs money for water projects because the customary sources of funding, especially federal grants, are dwindling. Funding cutbacks have hurt both water-supply and water-quality projects. Federal funds accounted for \$2.6 billion (81 percent) of the total \$3.2 billion spent in Texas on water-quality projects in the 1973-1982 decade, including \$1.24 billion in EPA construction grants for sewage-treatment plants. But the federal share of these grants is expected to decline to 33 percent in the fiscal 1985-1989 period and Congress appears to favor phasing the program out completely by 1990.

Additional bonding authority is needed to replenish the funds supporting water-supply and flood control

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projects. Of the \$190 million in bonds for water-supply projects authorized in 1985, \$80 million remains. The board sold \$110 million of bonds for water-supply projects in the first bond sale. Of the \$200 million authorized for flood-control projects, \$160 million in bonding authorization remains. Bonding authority diminished by the first bond sale and forthcoming bond sales needs to be replaced to get through the next biennium.

The additional \$200 million in bonding authority for wastewater treatment projects is needed to provide the required matching state funds for a new federal revolving fund for building and upgrading wastewater treatment plants. This program, which replaces the federal construction grants program, establishes a perpetual revolving loan program that requires 20 percent matching funds from the states.

General obligation bonds are the most cost-effective means of raising the large amount of money needed to finance water projects. The state uses its superior credit rating to raise money that is in turn loaned to local governments to finance water projects at a lower interest rate than the local governments would have to pay on their own bonds. The local governments in turn pay back the loan, which includes a sufficient amount for debt service. Since 1980 payments by local governments have been sufficient to cover debt service on the bonds, so no state general-revenue has been needed for bond debt service.

A significant change applicable to bonds authorized by SJR 54 is that the Legislature can require review of the issuance of these water bonds and approval of any projects. This new board will coordinate issuance of state bonds to ensure that state does not accrue an excessive amount of state debt.

OPPONENTS
SAY:

Less than two years ago voters approved a constitutional amendment permitting the state to issue \$980 million of bonds for water projects. Of that \$980 million bonding authorization, \$830 million remains unissued. In addition to the substantial amount of funds remaining from the 1985 proposal, a number of new financing mechanisms were created during the regular session that will be adequate to fund water projects

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over the next biennium. These include SB 807 by McFarland, which became effective June 17, 1987. SB 807 established a water pollution control financial assistance program and a water resources revenue program, which will allow Texas to take advantage of the federal funds under the revolving loan program. HB 734 by T. Smith, which became effective June 19, 1987, created the Texas Water Resources Finance Authority, which is authorized to sell bonds to raise revenue to refinance water projects. Through this legislation a great deal more bond-financing capacity was provided to the state for water projects. It is not entirely clear whether the state needs or should have \$400 million more in general-obligation bond authorization.

The implications of debt-financing, selling bonds to raise cash, need to be seriously considered. Although it may be a short-term solution to state government's cash flow problems, there are risks involved. These risks are similar to the risks people encounter in using credit cards to buy now and pay later. During healthier economic times it was safe for government agencies in Texas to sell bonds because it could be assumed that revenues would keep growing to cover future debt payments. Now it is more risky because revenue sources have leveled off or decreased. With almost \$2 billion in general obligation bonds on the November ballot, plus millions of dollars more in revenue bonds authorized for various purposes, voters need to examine closely whether certain needs can be deferred.

NOTES:

The implementing legislation, HB 72 by T. Smith, which passed the Legislature during the second called session, would allow the Water Development Board to issue the additional \$400 million in negotiable bonds authorized by SJR 54.

After Jan. 1, 1988 no bonds could be issued by the Water Development Board or bond proceeds used to finance a project unless the issuance or project was first reviewed and approved by the bond review board. HB 72 would take effect only if SJR 54 is adopted by the voters.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis Amendment No. 24 (HJR 83)

SUBJECT: County work for other governmental entities

DIGEST: HJR 83 would allow a county to perform unpaid work for government entities located partly or entirely inside its boundaries. The county could use county equipment and personnel.

The governmental entity would have to request the work in writing. After receiving the request, the county commissioners court would determine in an open meeting whether the county could do the work without interference with scheduled work or work reasonably expected to be done. The commissioners court would have to determine the costs to the county of performing the service and state those costs in writing. It would have to approve or disapprove the request in an open meeting.

The ballot proposal reads: "The constitutional amendment to permit a county to perform work, without compensation, for another governmental entity."

SUPPORTERS
SAY: HJR 83 would save local taxpayers money by allowing counties to assist the other governments in the county. Counties are now constitutionally prohibited from assisting governmental entities with work projects. Yet in many cases counties could cooperate and assist on work projects for other governmental entities such as school districts, municipal utility districts or port authorities.

Improving public facilities within its boundaries would help a county as well as the other governmental entity. Counties do not always have a project underway and find their equipment and employees sitting idle awaiting the next job. They could easily assist other governmental entities during these times. A school district in the county may need a playground graded but lack the equipment to do the job. The county could assist the school district at no additional cost to the county, since it already has the personnel and equipment. This would cost the county little but would provide a great

savings to school-district taxpayers since the district would not have to hire a contractor just to do a small job. In some cases local governments have difficulty finding a contractor who will take a very small job -- the county would be able to fill this gap.

The proposed amendment contains several limitations to prevent any possibility of abuse. Another governmental entity would have to file with the county a written request for the work. At an open meeting, the county commissioners court would have to (1) find that the work would not interfere with currently planned or reasonably expected county work; (2) state in writing any cost to the county of performing the requested work; and (3) specifically approve or disapprove the request. Public scrutiny of these requests, along with county self-interest, would ensure that this limited authority would be used properly.

OPPONENTS
SAY:

Allowing counties to perform work without compensation at the request of other governmental entities would open the door to endless possibilities of favoritism and abuse. Counties could face awkward decisions about what work to do and which governments to aid. County projects could lose their priority if the county underestimated the scope of a project that it agreed to do.

Not all county taxpayers would benefit equally from such projects. Only county residents who lived within the governmental entity involved would benefit from the county work, although all county taxpayers would pay for the work. Private developers who control a governmental entity such as a road district or utility district could prevail upon county commissioners to do work that would economically benefit the developer. The amendment would even allow the county to do work outside of the county for a school district or city that is only partially within the county.

The burden of financing these projects would not be evenly distributed among the different precincts in the county. Most county budgets are divided on a precinct-by-precinct basis, which means that some precincts would have to use more of their own employees

and budget to fund these outside projects. Some precincts could end up doing more work outside the county than inside.

Counties should not perform any type of work for any governmental entity without some kind of reciprocal payment. Counties should at the very least have mutual-cooperation or inter-governmental-aid agreements with the entities that benefit from the county work.

Difficult questions would arise if the work done by a county proved to be unacceptable to the other government, or if the work were faulty and resulted in injury or property damage. These questions would be particularly troubling if the work was done outside of the county for an entity that straddles county lines.

OTHER
OPPONENTS
SAY:

This proposed constitutional amendment is too broadly worded and should at least include a definition of the "work" that the county could perform for another governmental entity. For example, under this amendment it would be possible for a county to install an entire sewage system for a city. While most of the discussion of the amendment has focused on construction and similar projects, there is nothing that would prevent application of the amendment to office "work" such as accounting and data processing.

HOUSE
RESEARCH
ORGANIZATION

Constitutional amendment analysis Amendment No. 25 (SJR 5)

SUBJECT: Changing hospital district boundaries; Amarillo
Hospital District jurisdiction in Randall County

BACKGROUND: Certain hospital districts with an area of less
than an entire county were created by constitutional
amendment until 1962, when another amendment authorized
the creation of such districts by statute. Changes in
these constitutionally created districts, including
boundary and jurisdiction changes, must be made through
constitutional amendment.

In 1958 voters approved a constitutional amendment,
Art. 9, sec. 5, authorizing creation of the Amarillo
Hospital District. The district has the same
boundaries as the city of Amarillo, which includes
parts of Potter and Randall counties. The district can
levy a property tax of up to 75 cents per \$100
valuation on property within the city of Amarillo to
support district operations. The district assumed all
responsibilities for erecting hospital facilities
within the city and for providing medical and hospital
care for indigent patients.

The 1958 amendment also authorized Potter County to
levy a tax of up to 10 cents per \$100 valuation in
those portions of the county not within the city limits
of Amarillo. The tax revenue is paid to the Amarillo
Hospital District. In return, the Amarillo Hospital
District assumed the county's responsibilities for
providing hospital facilities and for providing
hospital care to needy individuals of the county.

Randall County currently has responsibility for
providing medical care to its indigent residents who do
not live in either the Amarillo Hospital District or
the South Randall County Hospital District, which was
established by statute in 1971. The district tax rate
is limited by law to 75 cents per \$100 valuation.

DIGEST: SJR 5 proposes a constitutional amendment that would
allow the Legislature to authorize, by law,
constitutionally created hospital districts to change

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their boundaries or jurisdiction. Such changes would have to be approved by a majority of the district's voters in an election.

SJR 5 also would allow the Legislature to authorize Randall County to pay the Amarillo Hospital District to assume responsibility for indigent health care in the part of Randall County that is not included in the South Randall County Hospital District. Randall County could levy a property tax to cover the costs of paying the Amarillo Hospital District. The tax could not exceed 75 cents per \$100 valuation. The tax would be levied only on property in Randall County that is outside the City of Amarillo and the South Randall County Hospital District. Voters in the area to be taxed would have to approve the tax.

If the tax was approved by the voters in the affected area of Randall County, the Amarillo Hospital District would be required to assume the responsibilities of Randall County for indigent care. Randall County could not levy taxes or issue bonds for hospital purposes or to provide hospital care for needy residents.

Randall County would have to reimburse the state \$45,000 for the costs of publishing the resolution.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to permit the Amarillo Hospital District to serve certain residents of Randall County, to authorize Randall County to provide financial assistance to the district, and to authorize certain hospital districts to change their boundaries or jurisdiction with voter approval."

SUPPORTERS
SAY:

Parts of Randall County are not served by a hospital district and need such service. The Amarillo Hospital District is willing to provide the needed help. This constitutional amendment would allow the portion of Randall County not now served by a hospital district to decide by election if they want to participate in this hospital district by paying taxes to it.

All constitutional amendments must be published in newspapers across the state prior to the election in

order to acquaint the voters with the various ballot proposals. It is only fair that the people most affected by this proposed amendment -- residents of Randall County -- pay the cost of publishing it statewide. They would only be required to absorb this cost if the amendment is approved statewide and the affected voters of Randall County approve the hospital district tax levy.

Allowing other hospital districts created in the Constitution to make boundary changes with statutory authority, instead of by constitutional amendment, is a much-needed provision that will save state voters time and money. It is not reasonable to ask voters all across the state to vote each time one local hospital district needs to make a boundary change. Each time a constitutional amendment is published it costs the state \$45,000, and adding these local amendments to the statewide ballot creates confusion and voter apathy toward those amendments with statewide application.

Any election to approve expansion of the boundaries or jurisdiction of a hospital district created by the constitution would not necessarily be limited to the voters of the district alone. Nothing would prevent the Legislature from requiring by statute that the voters in an area proposed to be added to the district also approve the change.

OPPONENTS
SAY:

This amendment would authorize increased taxes for property owners in the affected part of Randall County. With taxes increasing on the state and local level, and the economy of the Panhandle in difficult straits, it is questionable whether this additional tax burden should be authorized at this time.

It would be unfair to make Randall County pay the state the \$45,000 cost of publishing this amendment statewide. The county did not put the hospital district in the state Constitution; the Legislature and state voters did that. Besides, this amendment would also have statewide impact. It would authorize making boundary changes by statute for constitutionally created hospital districts in various parts of the state. Randall County should not be singled out to

SJR 5
Amendment No. 25
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pay for a change that will benefit other counties. Amendment No. 15 on the November ballot would benefit only Fayette, Gregg and Nueces counties by abolishing their county treasurer offices, yet those counties would not be required to reimburse the state.

OTHER
OPPONENTS
SAY:

The language of SJR 5 requiring Randall County to pay the cost to the state of publishing the proposed constitutional amendment statewide may not do what it is intended to do. The joint resolution proposing the amendment, SJR 5, says that Randall County shall pay the state \$45,000 "to reimburse the state for the cost of publishing the resolution required by this subsection." Yet the "resolution required by this subsection," subsection (e) of Art. 9, sec. 5, refers only to a resolution to be passed by the Amarillo Hospital District to assume Randall County's responsibilities for indigent health care. Since the state would not incur any costs for publishing a resolution passed by the Amarillo Hospital District, Randall County arguably should not have to "reimburse" the state for anything.

The amendment would allow hospital districts created by the constitution to expand their boundaries if approved by the voters of the district. However, there is no requirement that voters in the area proposed for expansion approve the expansion of the district's boundaries to include them. Since those persons in the expanded area would have to pay taxes to the district, they should also have a say in whether that tax would be imposed on them.

NOTES:

The implementing legislation for this amendment is contained in HB 147 by Riley, enacted by the Legislature during the second called session. HB 147 originally dealt only with municipal annexation, but the bill was amended in the Senate by Sen. Sarpalius to add the provisions relating to the Amarillo Hospital District and Randall County. The legislation authorizes a tax rate of 75 cents per \$100 and requires elections both for annexing and, upon petition, deannexing portions of Randall County by the Amarillo Hospital District.

HOUSE
RESEARCH
ORGANIZATION

Referendum proposition analysis

Referendum No. 1

(SB 86)

SUBJECT: Method of selecting State Board of Education

BACKGROUND: Art. 7, sec. 8 of the Texas Constitution requires the Legislature to provide for a State Board of Education (SBOE). The Constitution limits board-member terms to a maximum of six years but does not specify the number of members nor manner of selection. Over the years the state has had both elective and appointive systems. From 1929 to 1949 board members were appointed; from 1949 to 1984 they were elected. In 1984 the Legislature, in HB 72, created a "transitional" appointed board that is scheduled to be replaced by an elected board in January 1989, with the board members chosen in the 1988 election.

Powers and duties of the board

The Texas Education Agency consists of the State Board of Education, the State Department of Education and the state commissioner of education. The SBOE sets policies and adopts rules and regulations for TEA and appoints the commissioner. The SBOE also acts as the Board for Vocational Education.

The SBOE makes budget recommendations, adopts the annual operating budget for the agency, sets and enforces standards for school accreditation and teacher training, approves and purchases textbooks, adopts rules for teacher certification and competency testing, designates minimum curriculum standards, adopts rules for the 20 regional education-service centers, sets limits on athletic activities, recommends legislation to the governor and the Legislature, directs investment of the Permanent School Fund and apportions the Available School Fund.

The SBOE also may review adjudicative decisions by the commissioner on grievances against local school boards or by TEA (e.g., personnel matters). The board's action can be appealed to a district court in Travis County.

History of the SBOE

The SBOE, created in 1866, was originally composed of the governor, the comptroller and an appointed superintendent of public education. The Constitution of 1869 eliminated the board and gave exclusive authority instead to an elected superintendent. The 1876 Constitution, under which Texas continues to operate, originally established a three-person board consisting of the governor, the comptroller and the secretary of state. Under an amendment adopted in 1929, the Legislature was given discretion to determine how members would be selected. From 1929 to 1949, the board was a nine-member body appointed by the governor.

In 1949 the board became an elected body, with one member representing each of the state's congressional districts. In 1949 the Legislature also replaced the elected superintendent of public instruction with a commissioner of education appointed by the elected board.

HB 72, passed in 1984, eliminated the 27-member elected board and created a 15-member transitional board appointed by the governor. The appointees were nominated by the Legislative Education Board (LEB) which was also created under HB 72. The LEB consists of the lieutenant governor, the House speaker, the chairs of the House Public Education and Senate Education committees, the chairs of the House Appropriations and Senate Finance committees, two representatives named by the speaker and two senators named by the lieutenant governor. The LEB named three nominees from each of 15 state-board districts, and the governor chose one of the three. The board appointees were subject to Senate confirmation.

The terms of the current appointed board members expire on Jan. 1, 1989. In the 1988 general election, the 15 SBOE positions are currently scheduled to be filled by election to staggered four-year terms.

The board-district residency requirement for members is one year. Persons who receive any compensation from the state or a political subdivision, engage in any "organized public educational activity" or are

registered lobbyists cannot serve. The governor designates the board chair, who may not serve more than two consecutive terms as chair.

Boards in other states

Eleven of the 49 states that have state boards of education (Wisconsin has none) have elected boards. They are Alabama, Colorado, Hawaii, Kansas, Louisiana, Michigan, Nebraska, Nevada, New Mexico, Ohio and Utah. The Louisiana board has three appointed members besides its elected members.

The governor appoints the state board in 34 states. In Florida elected officials serve as ex officio members. In New York the board members are elected by the legislature. South Carolina's board is elected by legislative delegations. In Washington the state board is elected by local school districts.

DIGEST:

SB 86, enacted by the Legislature during the second called session, provides for a referendum for state voters to decide whether the State Board of Education (SBOE) will remain appointed or revert to elected status, as currently scheduled.

The ballot proposal reads: "The State Board of Education shall be composed of members who are appointed from districts instead of elected, with equal representation from throughout the State of Texas."

If the proposition is approved, SB 86 will become effective, and the board election scheduled to be held under the terms of HB 72 would be eliminated. If the proposition is defeated, the terms of SB 86 will have no effect, and the 15 positions on the SBOE will be filled at the general election in November 1988.

If the proposition carries, the current appointed board would remain in office until Jan. 1, 1989. The governor would then make new appointments to the board. The 15 SBOE members would be appointed by the governor from a pool nominated by the Legislative Education Board (LEB). Appointments would be subject to Senate approval. The LEB would nominate three persons for

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each of the 15 districts, and the governor would choose one for each district.

Board members would serve staggered four-year terms. To stagger the terms, the appointees would draw lots to determine which seven would initially serve for two-year terms. Board member terms would expire on Feb. 1 of each odd-numbered year. The governor would fill vacancies on the SBOE if a member were unable to complete a term. The appointments would be made with due regard to the race, creed, sex, religion and national origin of the appointees so that the board membership reflects the population of the state.

The Legislature would be required to reapportion the SBOE districts at the first regular session following a decennial census. After reapportionment, one member would be appointed to the board from each district. The new board would draw lots to restagger their terms, and seven of the appointees would serve terms of two years.

**SUPPORTERS
SAY:**

Extending the current appointive system for the State Board of Education would provide continuity in state education policy at a time when public education is at a crossroads, facing the challenges of restricted state revenues and lawsuits threatening the state finance system. The appointed board has done exemplary work since its appointment in 1984. The SBOE has been steadfast carrying out the reforms of HB 72.

To change the board now would endanger the education reforms. In addition, the Texas Education Agency is to undergo sunset review in 1989. The current board has developed the expertise necessary to guide the TEA through this process. It would be harmful and confusing to change the board just before this review.

Just because the Legislature decided back in 1984 that the SBOE should revert to elected status in 1988 does not mean that under the current circumstances that would still be a good idea. In 1984 no one knew how well the appointed board would operate. Since the voters would be choosing the new board next year, they should at least be given the opportunity to cast a vote of confidence in the current system. Maintaining the

progress that has already been made in implementing education reform is far more important than sticking to some dubious political "deal" that was cut over three years ago.

The 15 SBOE districts are so large that the person of average means running in an election for the board could scarcely mount an effective campaign. The districts are almost twice the size of a congressional district. It would take a Herculean effort to attempt a campaign covering such an area, and all to win a non-paying position. Most candidates would be either the idle rich or single-interest candidates who could raise the necessary funds but who would not necessarily have the best interests of the school-children of Texas at heart.

The current board has been widely acknowledged as being open and responsive to the concerns of all segments of the education community and the public. Several members of the current board say that they have no desire to become politicians and run for election to the board. To inject partisan politics into board deliberations now would throw away the progress that has been made.

Voter turn-out in past SBOE elections has been very low, leaving it to just a few to decide who would be a member of the board. Under an appointive system, the members of the SBOE would be chosen by elected officials who would be accountable for the appointments they make. The system for appointing members to the board is fair and would ensure that the most qualified people in the state will be appointed. The appointments would not be the usual political patronage positions filled by the governor -- the governor could appoint only persons nominated by the Legislative Education Board, so a broad political consensus would be required for each appointment. The current board appointed by that system has functioned very effectively.

OPPONENTS
SAY:

The Legislature and the voters never intended for the SBOE to remain an appointed board. The appointed board was supposed to be transitional -- a bridge that would lead back to the time-tested elective system.

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The temporary appointed board was part of a compromise reached during negotiations over HB 72. The voters should not go along with an attempt by this Legislature to go back on its word that the board would revert to an elective system.

No matter how good the current board has been, there is no longer adequate justification for shielding board members from the popular will. Retaining an appointed board any longer would foster an elitist image of the board that could undermine public support for education reform. If education reform is as beneficial to the state as its promoters claim, then the people should be trusted to elect board members who will maintain the standards already established.

No referendum is needed on the question of selecting SBOE members. The decision was made in 1984 by the Legislature -- under HB 72 the board will revert to elective status after a transitional period. An elected board is the best way to ensure representative government, responsive to the people. If the electorate believes that the current members of the SBOE are capable of continuing in their positions, they will elect them to the job.

There is no reason to believe that the people of Texas will make a mistake and elect the "wrong" people to the SBOE. Any member who does not live up to the voters' expectations will be removed from office in the following election.

OTHER
OPPONENTS
SAY:

Moving to an appointive board was a positive step in 1984, and the Legislature should have just continued it by statute. The voters elected the Legislature to decide matters such as this. A referendum is not necessary, only adding to an already overcrowded ballot. Moreover, there are real questions concerning whether such a referendum would be binding or even constitutional. The Legislature should simply change the law so that the appointive system becomes permanent.

HOUSE
RESEARCH
ORGANIZATION

Referendum proposition analysis

Referendum No. 2

(SB 15)

SUBJECT: Pari-mutuel wagering on horse races and greyhound races

BACKGROUND: Pari-mutuel literally means "a mutual wager." The term refers to a betting pool in which those who bet on the winners of the first three places in a race share the total amount of money wagered, minus a percentage for the management of the track.

Gambling in a public place is currently illegal in Texas, except for authorized local-option bingo games. The state permitted legal betting on horse races from 1905 to 1909 and from 1933 to 1937.

DIGEST: SB 15, the Texas Racing Act passed by the Legislature in 1986, will permit pari-mutuel wagering on horse races and greyhound races on a county-option basis, if voters approve the act in a statewide referendum on Nov. 3, 1987.

If the voters reject the referendum proposal, and then the requirement that the act be approved by the voters in a referendum is subsequently challenged and invalidated by a court, the act would still expire as soon as that court judgment became final.

The referendum proposal will appear below the proposed constitutional amendments on the Nov. 3 ballot. The referendum proposal reads: "The legalization of pari-mutuel wagering under the Texas Racing Act on a county-by-county local option basis."

Provisions of SB 15, the Texas Racing Act

If the voters approve the referendum, SB 15 would exempt persons who engage in pari-mutuel wagering on authorized horse races or greyhound races from prosecution under the anti-gambling provisions of the Texas Penal Code.

Local voter approval would be required before a racetrack license could be issued in a county. A local-option county election could be initiated by

either the county commissioners court or a voter petition signed by a number of registered voters equal to 5 percent of the votes cast in the county in the last gubernatorial election. If a license proposal failed, another election could not be held in that county for five years. A local-option election to rescind pari-mutuel wagering could be held two years after the local election permitting pari-mutuel wagering.

A racetrack could not operate in a home-rule city unless a majority of the voters in the city had voted in favor of pari-mutuel wagering in the statewide referendum, even if pari-mutuel wagering was approved in a local-option county election.

Texas Racing Commission

The Texas Racing Commission would consist of two ex officio members -- the chair of the Public Safety Commission and the comptroller -- and six members appointed by the governor. Commissioners would receive a per-diem allowance and reimbursement for expenses. The commissioners could not have any financial interest in a racetrack or be related to anyone with a financial interest in a racetrack. They could not accept payment from a racetrack association or place a bet on a race in Texas. Commission employees would be prohibited from having any financial interest in a racetrack and from racing horses and greyhounds in Texas.

The commission would be under the provisions of the Sunset Act and, unless renewed, would be abolished on Sept. 1, 1993.

Regulation and enforcement

The racing commission would regulate all Texas horse racing and greyhound racing, regardless of whether it involved pari-mutuel wagering. The commission would be divided into two separate areas of expertise: greyhound racing and horse racing. The commission would act as a single unit regarding matters that deal with both.

The commission would establish rules for racing and would oversee all aspects of horse races and greyhound races. All racing participants, except spectators, would be required to apply for a license at least every three years. The Department of Public Safety would check the fingerprints of all applicants. The commission could deny a license if this background check brought to light unethical or criminal behavior.

The commission would issue three types of horse-track licenses:

Class-1 tracks -- No more than four class-1 tracks could operate statewide. They could operate in a county, or a county adjacent to, a county with a population of 750,000 or more (Harris, Dallas, Bexar and Tarrant). These tracks would have races a minimum of 45 days a year. The application fee would be at least \$15,000.

Class-2 tracks -- There would be no limit on the number of class-2 racetracks. These tracks could have races for no more than 44 days a year, except a class-2 racetrack located in a national historical district could have races more than 44 days a year. The application fee would be at least \$7,500.

Class-3 tracks -- These racetracks would be operated by a county or nonprofit fair. They could not have races more than 16 days a year. The application fee would be at least \$2,500.

The commission could only license three greyhound racetracks in the state. The license application fee would be at least \$20,000. Each greyhound track would have to be located in a county with a population of 190,000 or more that includes all or part of a Gulf island (Galveston, Nueces and Cameron). Greyhound-racetrack operators could have as many as 300 evening and 150 matinee performances each year. (A performance would be not more than 13 consecutive races.)

A racetrack license applicant would have to be a U.S. citizen and a 10-year resident of Texas. If the

applicant were a corporation, over 50 percent of the stock would have to be owned by Texans, and the corporation would have to be incorporated in Texas. A majority of any applying partnership, firm or association would have to be 10-year residents of Texas. The commission could deny a racetrack license to anyone with a background of unethical or criminal behavior. No person could hold financial interests in more than two racetracks.

Before receiving a track license, an applicant would have to post a \$100,000 bond. The commission could issue a temporary license for racing in the county where a permanent track would be built, and it could deny a license to an applicant who began construction of a track prior to approval. Any construction or renovation plan that would cost more than \$5,000 would be subject to commission approval.

The commission would require all racing associations (racetrack operators) to keep financial records and submit financial statements. The commission could enter racetrack offices and subpoena records and witnesses.

The commission would approve all racing officials for each race. It would appoint three stewards and a state veterinarian to supervise each horse race meeting. The commission would pay the three stewards for each horse race. The commission would appoint three judges and a state veterinarian for each greyhound race. The commission would employ one judge for a greyhound race; the other two judges would be paid by the greyhound racetrack operators. The veterinarians at each race would be paid by the respective racetrack operators.

Stewards and judges would be designated peace officers with the power to impose a maximum \$5,000 fine and a one-year suspension for unethical practices or violations of racing rules. Offenses requiring greater penalties would be referred to the commission.

The commission would maintain and exchange criminal justice information and record checks with other states and agencies. It would establish provisions for anonymous reporting of violations.

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The commission would require post-race testing of animals. The Texas Veterinary Medical Diagnostic Laboratory would conduct tests for prohibited drugs.

Restrictions on pari-mutuel wagering

Persons of legal drinking age (21) could wager. All minors younger than 16 would have to be accompanied at the tracks by a parent or guardian. All wagering would take place within the track enclosure. The commission would determine whether to prohibit Sunday racing and would grant tracks up to five additional racing days a year for "charity days," during which the track's revenues would be donated to charities.

The commission would not permit wagering by telephone or on credit. Automatic teller machines could not be placed in the racetrack enclosure.

Touting (giving tips or soliciting bets), race fixing, allowing bookies into the racing enclosure, and using illegal medication or credentials would be third-degree felonies (punishable by two to 10 years in prison and a fine of up to \$5,000). Offenders would also be subject to an indefinite suspension from racing or from the racing enclosure itself. For lesser offenses and any infraction of commission rules, offenders would be ejected from the racing enclosure. Entry after ejection would be a class-A misdemeanor (punishable by maximum penalty of a \$2,000 fine and one year in jail).

Distribution of pari-mutuel revenue

A horse-racing association would deduct up to 20 percent for every pari-mutuel pool, to be split among the state, race winners and the association (racetrack operators). Five percent of the pool would go to the state, 5 percent to the purses for race winners, and 8 to 10 percent to the association, depending on the type of wager. On a regular wager (wagering on a single animal in a single race) the association would collect 8 percent of the pari-mutuel pool. On multiple wagers (wagering on two or more animals in one or more races,

Pari-mutuel Wagering
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or on one animal in more than one race) the association would collect 10 percent.

The breakage (a few pennies per payback on each dollar wagered) on horse racing would be set aside for purse supplements for daily Texas-bred races and for special awards for Texas-bred horses.

A greyhound-racing association would deduct up to 20 percent from every pari-mutuel pool, to be split among the state, race winners and the association. Six percent of the pool and 50 percent of the breakage would go to the state. At least 3.5 percent of the pari-mutuel pool would be used for the purse and would be divided between the dog owner (35 percent) and the contract kennel (65 percent). The association would receive 8.5 percent to 10.5 percent of the pool depending on the type of wagering -- regular or multiple. The remaining 50 percent of the breakage would be evenly divided between the association and the Texas Greyhound Breeders Association.

The comptroller would collect the state's share of each pari-mutuel pool and deposit it in the General Revenue Fund. The commission would deposit the money it collected from licenses and fees in the State Treasury to the credit of the Texas Racing Commission Fund. The Texas Racing Commission Fund could only be appropriated to administer and enforce the Texas Racing Act. Any unappropriated money in the fund would revert to the General Revenue Fund at the end of the biennium. Money could be appropriated from the General Revenue Fund to administer the act; however, the racing fund would have to reimburse the General Revenue Fund within one year of the appropriation, plus 12 percent interest.

County commissioners courts could levy and collect a 15-cent per-person admission fee from tracks within the county. The counties could collect an additional 15-cent fee to be distributed among cities in the county according to their population.

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SUPPORTERS
SAY:

Pari-mutuel horse racing and greyhound racing would generate badly needed revenue for the state. The Legislative Budget Office estimates that pari-mutuel wagering could raise for the General Revenue Fund an additional \$25.6 million in fiscal 1988-89, \$138.6 million in fiscal 1990-91 and more than \$101 million in fiscal 1992 alone. Local government treasuries would also benefit -- the LBO estimates they would receive more than \$7 million a year by fiscal 1992. Because only those who bet on horses and dogs would pay, this revenue source would be a form of voluntary contribution and would ease the pressure for more taxes.

If the voters do not approve pari-mutuel wagering in a statewide referendum, it will not happen in Texas. This is a democratic way to determine this controversial issue -- let the people decide. The racing act contains a "failsafe" provision in case the referendum proposal is defeated and is later challenged and declared unconstitutional in court. The law specifically states that it would become operative only if voters approve -- even if a court rules that the referendum was unconstitutional. This way, the people are assured of having the final word.

Horse racing would boost the economic development of the state as well as provide extra public revenue. Racetracks would directly add \$418 million to the state's economy and create 11,000 new jobs. This direct contribution would produce a ripple effect adding a total of \$1.2 billion yearly and up to 20,000 jobs. Another 8,000 temporary jobs would be created in track construction, which should pump about \$563 million into the economy during the first two years.

Texas farms and rural areas would especially benefit from pari-mutuel horse racing. The Texas Department of Agriculture estimates that by 1992 pari-mutuel racing could generate \$138 million in economic activity for Texas farmers, with a ripple effect of \$427 million.

Texas is encircled by pari-mutuel states and by tracks in Mexico, which draw heavily on Texas bettors. If Texas had its own tracks, dollars now flowing to tracks out of state would stay at home.

Opponents claim that several states, including Oklahoma, have been reducing their take of the pari-mutuel pool to improve earnings for track operators. However, these changes only recognize that the industry had been overtaxed and should now be encouraged to expand. No other industry pays as much of its gross profits in state tax, particularly when it is just starting. These tax breaks, far from signaling the industry's decline, are designed to ease its growing pains.

Regulation of horse racing and greyhound racing would not be a drain on state revenue. This bill specifically provides for repayment, with interest, in the unlikely event that the Texas Racing Commission should ever require any general-revenue funds after its initial start-up.

The racing act has tough provisions to block infiltration of organized crime in the Texas racing industry. All persons, even grooms, would have background and fingerprint checks before they could obtain a license. Anyone with an unethical or criminal history would be prohibited from receiving a license to work at a racetrack. The commission would closely scrutinize racetrack financial records and could enter racetrack offices unannounced.

Gambling on horses already occurs in Texas, but now only the bookies benefit. Pari-mutuel wagering would reduce the illegal betting by giving bettors an honest, state-regulated alternative.

It is unfair to blame the legitimate sports of horse racing and greyhound racing for the plight of compulsive gamblers. This social problem should be treated directly, not by a futile effort to prohibit pari-mutuel wagering.

Horse racing competes mainly for a share of the entertainment dollar of middle-income persons. The majority of racetrack bettors have incomes over \$30,000. Lower-income persons, if they bet, prefer other forms of gambling such as lotteries and numbers games.

While some people may be morally opposed to pari-mutuel wagering, their numbers are decreasing. Two polls taken in 1985, one by Texas A&M researchers, found more than 60 percent of Texans support pari-mutuel racing. In any case, morality should not be legislated. Texas government's role should be to regulate pari-mutuel operations to ensure a fair, legal outlet for those who wish to participate. Besides, no racetrack would be located in any county unless a majority of those voting in a local-option election approved.

Greyhound racing would help provide a year-round tourist industry for the Gulf coast. Greyhound racing would help reduce high unemployment in Galveston, Nueces and Cameron counties. Texas is the second largest producer of greyhounds in the United States, and the state should benefit from this resource.

Greyhound racing can only be held in coastal counties because of the climate. Greyhound racing is a 300-day-a-year sport -- it would be too cold in other parts of the state to hold these outdoor races year-round.

Greyhound racing uses mechanical lures for the dogs to chase. No live animals would be endangered. It is already illegal in Texas to abuse a live animal, so the dogs would be protected.

No industrial development bonds would be available to provide a public subsidy for construction of racetracks. The federal government already prohibits use of these bonds to finance racetracks anyway.

Arguments about the constitutionality of the 10-year residency requirement and the statewide referendum are unfounded. There is similar residency language in other statutes. Nothing in the Constitution prohibits the Legislature from making the operation of a law contingent on voter approval.

**OPPONENTS
SAY:**

Whenever gambling is legal, illegal gambling also increases, and organized crime prospers. Former FBI director William Webster has said he knows of "no situation in which legalized gambling was in place

where we did not eventually have organized crime." The long-term harm of introducing this criminal element into the state would far outweigh any short-term financial benefit.

The financial benefits of pari-mutuel betting have been over-blown. Pari-mutuel revenues in surrounding states have never produced more than 1 percent of a state's budget. In fact, at least eight states have reduced, or are in the process of reducing, their share of the pari-mutuel take. New Jersey, for example, has reduced its take to 0.5 percent. Oklahoma lowered its take to 2 percent on the first \$100 million and 4 percent on the next \$50 million, then 6 percent on the rest. An accountant commissioned to study betting in Texas for the Texas Horse Racing Association has said that Texas must lower its proposed share as well if racing is ever to flourish.

If this act is passed, the state would end up subsidizing pari-mutuel horse racing, a dying industry. The National Association of State Racing Commissions reports that total state revenue from gambling declined more than \$71 million between 1982 and 1986. Attendance is down, and the amounts wagered have not kept up with inflation. Further pari-mutuel wagering would absorb money that otherwise would be spent on consumer goods, the sales of which add to the state's sales-tax revenue. The estimates of jobs created and taxes collected and "economic-multiplier ripple effects" are seriously inflated. Even if they were right, these benefits would not balance out the destructive impact of pari-mutuel betting.

A legal betting system cannot compete with illegal book-making operations, which let bettors gamble on various kinds of events on credit. Bookies also never report winnings to the IRS.

Gambling also introduces public corruption. The Justice Department's organized-crime section found that where organized crime is involved in gambling, serious corruption of the police and the criminal justice system follows almost inevitably. The large sums of money involved also attract illegal manipulation, or race "fixing." Louisiana's experience in 1981 is

illustrative: cases of attempted bribery, use of illegal drugs and race fixing forced all of the state racing commissioners to resign.

Legalized betting on horse race and dog races would introduce a wide segment of the state population to gambling, exacerbating the serious social problem of compulsive gambling. It would not only provide the "addict" with more opportunities to gamble, it would also bring out many latent compulsive gamblers. Like alcoholism, compulsive gambling can ruin careers and families.

Legalized gambling is especially hard on the poor, who are encouraged to squander what little money they have on the get-rich-quick dream. The state share of gambling profit should at least be dedicated to Aid to Families with Dependent Children or some other problem to help the poor, who would suffer disproportionately from legalized gambling. State-sponsored gambling in effect imposes a regressive tax because gamblers are drawn disproportionately from among the poor. Government cannot prevent people from throwing their money away, but neither should it become a part to the transaction.

OTHER
OPPONENTS
SAY:

Greyhound racing should not be limited to just three coastal counties. Every county should have the opportunity to have greyhound racing.

Making operation of the pari-mutuel statute contingent on voter approval in a referendum is constitutionally questionable. Nowhere does the Texas Constitution permit this procedure. The voters elected the Legislature to make this decision, not pass the buck back to them.

The 10-year residency requirement for track owners could violate the right to equal protection guaranteed by the U.S. Constitution. Federal courts have struck down similar residency laws.

NOTES:

Gov. Bill Clements said in March 1987 that he would not appoint the members of the Texas Racing Commission unless the voters approve the referendum on Nov. 3, 1987.

The General Appropriations Act approved by the Legislature on July 21 includes an initial appropriation of \$500,000 in general revenue for the Texas Racing Commission for fiscal 1988-89, plus an additional \$1 million if the pari-mutuel referendum is approved. Fee collections would reimburse this initial general-revenue appropriation.

Secretary of State Jack Rains has ruled that local-option county elections for legalizing pari-mutuel wagering can be held simultaneously with the statewide referendum on pari-mutual wagering on Nov. 3, 1987. If the referendum loses statewide, the local-option county election result would have no effect.