

SUBJECT: Increasing the size limit for an urban homestead

COMMITTEE: Financial Institutions — favorable, without amendment

VOTE: 6 ayes — Averitt, Solomons, Ehrhardt, Elkins, Pitts, Juan Solis
0 nays
3 absent — Denny, Grusendorf, Marchant

SENATE VOTE: On final passage, March 18 — 29-2 (Nelson, Ogden)

WITNESSES: None

BACKGROUND: Art. 16, sec. 50 of the Texas Constitution protects a homestead from forced sale for payment of debts, except the purchase or improvement of the homestead, taxes, certain partitions such as in a divorce, refinancing of a lien, and, as of 1997, home equity loans and reverse mortgages. Art. 16, sec. 51 limits an urban homestead to a lot or lots consisting of one acre, together with any improvements. A homestead may be used as either a home or a place of business. A rural homestead consists of up to two hundred acres, in one or more parcels. Any property beyond these limitations is excluded from the homestead.

DIGEST: SJR 22 would increase the size of an urban homestead to 10 acres from one acre. It would require urban homesteads to be a single parcel of land or comprised of contiguous lots. It would allow urban homesteads to be used as a home or as both an urban home and a place of business.

A release or refinancing of an existing lien against part of a homestead would not create an additional burden on the part of the homestead property that was not released or subject to the refinancing, and a new lien would not be invalid only for that reason.

The proposal would be presented to the voters at an election on November 2, 1999. The ballot proposal would read: “The constitutional amendment increasing the maximum size of an urban homestead to 10 acres, prescribing

permissible uses of urban homesteads, and preventing the overburdening of a homestead.”

**SUPPORTERS
SAY:**

SJR 22 would extend to more Texans the right and freedom to use private property as security for a loan. Many people live within cities on tracts of land that exceed one acre in size. Under current law, they generally are not able to obtain a home equity loan, which is available to nearly all other home owning Texans, because their legal homestead may represent only a portion of their home property. The home equity requirements in the Constitution prohibit use of collateral other than the homestead as security for a home equity loan. Selling off part of the excess land may not be desirable or even possible due to subdivision restrictions or restrictive covenants on minimum lot sizes. If SJR 22 were approved, then urban homeowners could obtain a home equity loan on homesteads of up to 10 acres.

The proposal also would protect the business homestead, while at the same time allowing property owners with both an urban home and a business interest on the same property to qualify for a home equity loan. An urban homestead would not lose its homestead character because part of it was used for business purposes. Property owners would be prohibited from obtaining an equity loan on non-contiguous property, such as a home on one side of town and a business on the other.

The proposal, and its enabling legislation SB 496, would remove ambiguities that have arisen over the so-called overburdening and spreading of loans secured by a homestead. Because the law is not definitive, Texas courts have ruled that refinancing of existing liens cannot be applied to a smaller portion of homestead property than the original lien, an action that would “overburden” the parcel. Courts also have ruled that refinancing of existing liens or new home equity loans cannot be applied, or “spread,” to a larger property than that securing the original loan.

Lenders in other states routinely approve new loans and refinancing of existing loans that courts in Texas would view as overburdening or spreading. SJR 22 would stipulate that refinancing an existing loan on a portion of the homestead would not constitute overburdening and would not invalidate the lien. SB 496 would specifically state that any judicial doctrine prohibiting spreading would not apply in Texas.

SJR 22
House Research Organization
page 3

OPPONENTS SAY: There should not be a specific limit as to the size of an urban homestead. Instead of being subject to an arbitrary cutoff of 10 acres, or any other size, urban homeowners ought to be able to secure a home equity loan, reverse mortgage, or other extension of credit with the entire parcel of land they own.

NOTES: SB 496 by Harris, the enabling legislation for SJR 22, is on today's General State Calendar.