

SUBJECT: Changing legislative terms, creating pay commission, other revisions

COMMITTEE: Select Committee on Constitutional Revision — committee substitute recommended

VOTE: 4 ayes — Driver, Puente, G. Lewis, Mowery

1 nay — Solomons

2 absent — Bailey, Dutton

WITNESSES: (*On original version:*)
For — None

Against — Gary Freeman, County Justices of the Peace and Constables Association of Texas; *Registered but did not testify:* Patricia Ott, County Justices of the Peace and Constables Association of Texas

On — Jim Allison, County Judges and Commissioners Association of Texas

BACKGROUND: The Texas Constitution originally was adopted in 1876. Since then, the Legislature has proposed 567 amendments, and Texas voters have approved 390 of those amendments.

DIGEST: CSHJR 69 would propose amending the Texas Constitution to change the length of terms for members of the Texas House and Senate; establish a commission to set salaries for legislators and to recommend salaries for executive branch officials and judges; place certain ethics requirements into the Constitution; set limits on ad valorem taxation; establish jurisdictions for state courts; and allow smaller cities to adopt home-rule charters.

Legislative changes.

Terms of office. CSHJR 69 would increase the term of office for state senators from four to six years and increase the term for House members from two to four years.

Senators elected in 2002 would draw lots for two-, four-, and six-year terms at the beginning of the 78th Legislature in 2003. All senators then would serve six-year terms after subsequent elections. In the election immediately following the apportionment conducted after each decennial federal census, senators would draw four- or six-year terms.

House members would serve four-year terms, but a new House would have to be chosen after every apportionment. House members elected after each apportionment would draw lots for two- and four-year terms. This procedure would begin with the 2002 election of members for the 78th Legislature, beginning in 2003.

Salary commission. CSHJR 69 would establish a nine-member Texas Salary Commission that would recommend the rate of compensation for elected and appointed officers of the executive branch and for state district court and appellate court judges and justices. The commission would set salaries for the lieutenant governor and for members of the Legislature, including the House speaker.

Commission members would be appointed by the governor and approved by the Senate for six-year terms, with the terms of three members expiring every two years. A commission member could not hold another public office.

Salaries paid to executive or judicial branch officers could not exceed the commission's recommendations. However, pay rates would be set by law and through the appropriations process, and the commission's recommendations would not entitle an officer to be paid at that rate.

In addition to setting legislators' salaries, the Texas Salary Commission would have to set a per-diem payment for members of the Legislature and the lieutenant governor. The per-diem could be raised or lowered biennially but could not exceed the amount of the federal income-tax deduction for daily living expenses. The term "compensation" would include salary or a per-diem but not other benefits or reimbursements for expenses.

Until the commission provided a different salary and other compensation, legislators would be entitled to their current compensation of \$600 per month.

CSHJR 69 would repeal Art. 3, sec. 24a(e) of the Constitution, which allows the Texas Ethics Commission to recommend a salary (with voter approval) or per-diem for legislators, the House speaker, and the lieutenant governor.

Organizing before legislative sessions. CSHJR 69 would allow the Legislature to provide by law for a organization assembly within 45 days of the start of a regular legislative session. Members of the new Legislature could meet and adopt rules of procedure and joint rules. During these organizational sessions, the Senate could elect a president pro tempore, and the House could elect a speaker.

Ethics provisions. CSHJR 69 would prohibit legislators from receiving compensation, other than their legislative salaries, when appearing before or dealing with a state executive or administrative agency. The provision also would prohibit legislators from directly or indirectly sharing in any fee paid to another person appearing before or lobbying those agencies.

The proposed amendment would prohibit a constitutional elected executive branch officer from holding any other civil or corporate office, practicing any other profession, or holding any other job. This provision would provide a six-month exemption to any senator who assumed the office of lieutenant governor or governor.

Judicial provisions. CSHJR 69 would provide for uniform jurisdiction statewide for all courts at the same level, effective September 1, 2003. All other provisions making exceptions from uniform jurisdiction would be repealed as of that date. Also, the Legislature could provide by law for a jury in a criminal case to informed about a law or other procedure, such as parole, mandatory supervision, or good-conduct time, that could affect the length of a prisoner's incarceration.

Taxation and home-rule charters. CSHJR 69 would allow the Legislature to enact exemptions and other relief from ad valorem taxation in addition to existing constitutional exemptions.

Any political subdivision, including a city, county, school district, or special-purpose district, that did not have a property tax before September 1, 2001, could not impose one without voter approval. Those political subdivisions

could not issue general-obligation bonds backed by property taxes, except refunding bonds, unless a majority of voters approved. A political subdivision could not create a debt unless it provided at the same time for paying the interest and principal when due.

CSHJR 69 would provide that a city or town of any size, rather than only a city with at least 5,000 people, could adopt or amend a home-rule charter.

The proposal would be presented to Texas voters at an election on November 6, 2001. The ballot proposal would read: "The constitutional amendment relating to the operations of state and local government, including the compensation and outside employment and activities of state officials, legislative procedures and the terms of members of the legislature, the jurisdiction of the courts, the operation of juries in criminal cases, local and ad valorem taxation and general obligation bonds, and the chartering of cities and towns."

SUPPORTERS
SAY:

CSHJR 69 offers a reasonable middle ground between a full revision of the Constitution and amendments that merely would eliminate duplicative and obsolete provisions. Texans should not have to wait for much more of the 21st century to elapse before updating this 19th century document, and CSHJR 69 would provide a vehicle to make some needed substantive changes.

CSHJR 69 would select portions of the comprehensive revision proposed by last session's HJR 1 by Junell/SJR 1 by Ratliff and would allow Texas voters decide on these changes without completely revamping the Constitution. These are the proposals most likely to gain public support in November 2001.

Legislative changes. Lengthening the terms of office for state representatives and senators would provide more continuity and experience in both bodies. It would reduce the number of elections and would ease the pressure to raise money for too-frequent political campaigns. Fewer state elections would be desirable to cut voter fatigue from too many political campaigns and elections.

Longer terms are not unprecedented. State senators already serve four years,

while U.S. senators serve six-year terms. In several states, House members serve four-year terms and remain fully accountable and responsive to the voters.

Organizing session. CSHJR 69 would allow each new legislature to hold an organizational meeting between the November elections and the start of the regular session. The 140-day session is too short and constrained. Moving up certain administrative functions, such as establishing rules and electing leadership, would help the Legislature avoid wasting valuable time early in a session on largely routine or ceremonial functions and, instead hit the ground running on the first day to spend more effort on substantive legislative matters.

Before the 77th Legislature convened, the Senate decided to call a special interim meeting to elect an acting lieutenant governor to fill the position vacated when Lt. Gov. Rick Perry became governor upon the resignation of President-elect Bush. Resolving that potentially disruptive decision before the start of the session was beneficial. Pre-session organizational sessions could become even more important during leadership transitions in the Legislature.

Salary commission. Texas no longer can maintain the fiction that the state can rely on a part-time “citizen” Legislature. Service during the legislative session has long been a financial hardship on members, and members face continuing demands on their time, even during an interim when there are no special sessions. Serving on interim committees and many other on-going duties makes being a legislator a full-time position. A monthly salary of \$600 is inadequate and needs to be reviewed.

The Texas Ethics Commission never has used its constitutional authority to recommend salaries to the voters. This provision should be replaced with a more effective mechanism to review salaries. Establishing an independently appointed commission would remove political considerations for setting state salaries. The new Texas Salary Commission would offer only recommendations, not binding decisions, on executive branch salaries.

Salaries of all elected officers and judges should be reviewed to determined if they are competitive. State salaries always will trail the compensation for

managers and executives in the private sector, but a closer degree of equity should be achieved.

Ethics. Legislators representing clients before executive and administrative agencies present many possibilities for conflicts of interest. State agencies may be intimidated when considering cases argued by those who set their budgets and write their rules. The need to prevent corruption and provide for open and accountable government justifies placing this standard in the Constitution, where it cannot be altered or abolished easily.

State elected officials also should have no outside employment while in office. The Texas Salary Commission should address any disparities in their compensation to ensure that they are paid adequately.

Judicial changes. The current Constitution and statutes create a patchwork of courts with differing jurisdictions. It would be more equitable for all courts of a certain level to be granted the same kind of jurisdiction. Both businesses and law firms have statewide operations and should be able to expect similar procedures in courts throughout Texas.

Juries should have the right of “truth in sentencing” and the right to determine how other laws and procedures would affect the amount of time a person would serve in prison. Some jurors make rule-of-thumb calculations in determining sentences. This process should be standardized to protect the rights of those convicted and the safety of the public.

Taxation. In the 1770s, Americans revolted against “taxation without representation,” and that spirit remains alive today. CSHJR 69 would ensure that voters have a chance to approve new property taxes or general-obligation bonds financed by those property taxes.

Municipal charters. Smaller cities, particularly those in high-growth areas, should be able to vote to adopt or amend a home-rule charter. A home-rule charter provides more flexibility in meeting local needs than do the statutory provisions governing general-law cities.

OPPONENTS
SAY:

CSHJR 69 falls short of a complete revision while offering more substantive changes than the minor revisions voters have considered in recent elections.

This grab-bag of measures jumps from changes in the legislative and executive branches to revisions in local government. Potentially controversial or confusing provisions could cause voters to reject the entire package, including individual changes that might have wide public support.

Legislative changes. Longer terms would benefit incumbents rather than citizens and potential challengers. The current terms were set to keep legislators accountable to the citizens. Voters have a duty to remain vigilant and informed, regardless of the number of elections.

Six years is too long a term for a state senator. The comparison with the U.S. Senate is not valid. The U.S. Senate effectively has been in continuous session since 1789, and the apportionment — two senators per state — never changes. Texas Senate districts must be redrawn after each census, and the terms would have to be adjusted. These adjustments would cause some Senate seats to be contested more often each decade. CSHJR 69 would exacerbate the existing problem caused by varying terms determined by lot in the Senate and also would force the House to reckon with the problem of adjusting four-year terms every 10 years.

Salary commission. By creating an appointed salary commission that would not be directly accountable to Texas citizens, CSHJR 69 would allow a backdoor method for raising salaries much like the one used by Congress. Legislators probably need a raise from \$600 a month, but this decision should be made in the sunshine, through a vote of the people. Texans do not need a commission to increase legislative salaries, especially without any standard or upper limit, as with the current per-diem payment.

Ethics. Existing ethics requirements and conflict-of-interest laws already regulate legislators who represent other clients before executive and administrative agencies. Whether this representation intimidates bureaucrats or unduly helps certain clients seems to be based on anecdotal evidence.

Statute-like standards such as this ethics provision do not approach the level of fundamental law needed in a constitution. Such specific rules compound problems already encountered in a lengthy and confusing document.

Judicial changes. Court jurisdictions should reflect the needs of particular

communities. District courts and some county courts in large urban areas need to be specialized to handle family law matters, drug cases, or other legal issues of importance in the community.

Taxation. Voters should be able to approve any specific exemption to ad valorem taxation. Reducing taxes for a particular special interest means higher taxes for all other taxpayers, who should have a voice in deciding whether an exemption is justified.

Municipal charters. Some cities with populations of more than 5,000 do not have home-rule charters because of the expenses associated with drafting a charter and holding an election. Smaller cities tend to have limited paid staff, and most would not have the need or desire to adopt a municipal charter.

OTHER
OPPONENTS
SAY:

The drafters of the 1876 Constitution provided no mechanism to replace the entire document. Rather than pass half-measures like CSHJR 69 or piecemeal amendments to eliminate duplicative and obsolete provisions, the Legislature should let Texas citizens decide on a method to call a new constitutional convention to review all proposed change systematically.

NOTES:

During the 76th Legislature, SJR 1 by Ratliff and HJR 1 by Junell proposed a complete revision of the Texas Constitution. SJR 1 was considered by the Senate State Affairs Committee in March 1999 but left pending. HJR 1 died in the House Select Committee on Constitutional Revisions.

HJR 69 as filed was identical to HJR 1 offered in 1999.