

SUBJECT: Allowing cities to donate used equipment to rural volunteer fire departments

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 4 ayes — Talton, Van Arsdale, Hunter, Wong
0 nays
3 absent — Bailey, Edwards, Menendez

WITNESSES: For — Lisa Miller, State Firemen’s and Fire Marshal’s Association of Texas;
Bill Webb, Etoile Volunteer Fire Department and Rural Fire Advisory
Council

Against — None

On — Don Galloway, Texas Forest Service; Jeff Moore, Office of the
Attorney General

BACKGROUND: Government Code, sec. 791.011 authorizes a local government to contract with another local government in this state or a bordering state to perform governmental functions or services, including firefighting services.

In 1997 the Legislature enacted HB 680 by Turner, authorizing the director of the Board of Regents of the Texas A&M System to sell, lend, or make available used or obsolete firefighting equipment to the Texas Forest Service for its use or for distribution to volunteer fire departments.

Art. 3, sec. 52 of the Texas Constitution prohibits the Legislature from authorizing any county, city, town, or other political subdivision from lending its credit or granting public money or anything of value to any individual or corporation, with certain specified exceptions such as for certain economic development and improvement purposes.

In 2001, the Legislature adopted, and the voters approved (Proposition 5), SJR 32 by West, a constitutional amendment allowing a municipality to

donate outdated or surplus firefighting equipment, supplies, or other materials to an underdeveloped country, such as Mexico.

DIGEST:

HJR 61 would amend the Texas Constitution to add Article 3, section 52i, authorizing a municipality to donate surplus equipment, supplies, or other materials used in fighting fires to the Texas Forest Service (TFS) or a successor agency. The TFS in turn would be authorized to redistribute these materials to rural volunteer fire departments based on need.

The proposal would be presented to the voters at an election on Tuesday, November 4, 2003. The ballot proposal would read: "The constitutional amendment authorizing municipalities to donate surplus fire-fighting equipment or supplies for the benefit of rural volunteer fire departments."

SUPPORTERS
SAY:

HJR 61 would clarify and legitimate the practice of donation from municipal fire departments to rural volunteer departments. Since enactment of HB 680 by Turner in 1997, municipal departments have been providing volunteer departments with excess equipment through the TFS's "Helping Hands" program. HJR 61 would enable such fire departments to donate their equipment with full confidence that they were acting in harmony with the state constitutional prohibition against using public funds for private purposes. The exception created by HJR 61 would be very narrow and specific for a justified purposes.

This proposed constitutional amendment would facilitate crucial aid to volunteer fire departments operating with minimal funds. Because urban fire departments usually replace their equipment frequently, a municipal department's discarded fire truck could be of extreme value to a volunteer department.

HJR 61 wisely would empower an experienced state agency to collect, evaluate, and distribute donated equipment with maximum efficiency. TFS currently distributes equipment only after certifying that the equipment is of usable quality, and HJR 61 would continue to prevent volunteer fire departments from receiving ineffective or dangerous used equipment.

This proposal would not affect the continued donation of surplus equipment to Mexico that was authorized under SJR 32 adopted by the 77th Legislature.

Volunteer fire departments in Texas often have higher standards for equipment than fire departments in Mexico, so there would be little concern regarding potential conflicts between these two initiatives. Further, HJR 61 would allow a municipality to choose whether to donate excess equipment to a rural volunteer fire department or to an underdeveloped country. Thus, Texas cities on the border still would be permitted to donate their excess equipment to Mexico if such an action was deemed in the municipality's best interest.

**OPPONENTS
SAY:**

The purpose of Art. 3, section 52 of the Texas Constitution is to protect taxpayers by requiring compensation for any transfer of public property, and HJR 61 would undermine this safeguard. Because Texas taxpayers have paid for firefighting equipment, they should retain part of their investment should the asset leave their municipality. Therefore, Texas municipalities should not be allowed to donate equipment outright, but should be allowed to sell it at a reduced cost to volunteer departments. Current law allows cities and towns to sell the equipment but does not provide for reduced-cost sales. Such sales of equipment to volunteer fire departments would provide support to these organizations while allowing communities to recoup part of their firefighting investment.

NOTES:

The Legislative Budget Board anticipates no fiscal implication to the state from HJR 61 other than an estimated cost of \$85,275 for the required publication of the resolution before the election.

The two joint resolutions adopted by the House thus far this session — HJR 4 by Nixon, authorizing caps on non-economic damages, and HJR 12 by Chisum, repealing the ad valorem tax exemption for travel trailers — would be submitted to the voters on September 13, 2003. The only joint resolution adopted by the Senate thus far this session — SJR 22 by Harris, allowing the Legislature to allow certain commercial loans above the interest rate cap — would be submitted to the voters on November 4, 2003.