

SUBJECT: Amending the Constitution to allow wage garnishment for UI recovery

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 4 ayes — J. Davis, R. Anderson, Murphy, Sheets
0 nays
3 absent — Vo, Miles, Reynolds

WITNESSES: For — (*Registered, but did not testify:* Kathy Barber, National Federation of Independent Businesses; Jon Fisher, Associated Builders and Contractors of Texas)
Against — Rick Levy, Texas AFL-CIO

BACKGROUND: Tex. Const., Art. 16, sec. 28 prohibits the garnishment of wages except to enforce court-ordered child support payments or spousal maintenance.

DIGEST: HJR 122 would amend the Texas Constitution to allow garnishment of wages for the recovery of fraudulently obtained unemployment insurance (UI) benefits.
The proposal would be presented to the voters at an election on Tuesday, November 8, 2011. The ballot proposal would read: “The constitutional amendment authorizing garnishment of wages for the recovery of fraudulently obtained unemployment benefits.”

SUPPORTERS SAY: HJR 122 would work in conjunction with the enabling legislation, HB 2494, to allow the Texas Workforce Commission (TWC) to recover fraudulently obtained UI benefits through garnishment of wages. Together, HJR 122 and HB 2494 would give TWC a powerful tool to recover and protect taxpayer funds and prevent unjust enrichment of people who abuse the UI system.
Given the state’s elevated unemployment rate, it is more important than ever to ensure that the limited resources of the unemployment compensation fund go to deserving Texans who legitimately need the

benefits. Also, in this weak economy, the state needs to protect its small businesses from the cost to the fund of fraudulent claims.

Over the last five years, unscrupulous operators have collected nearly \$38 million in fraudulently obtained UI benefits. Over roughly the same time period, TWC has been able to recover only about \$10 million through litigation of fraud cases. Currently, the only practical method TWC has to collect these funds is by deducting them from the future UI benefit payments of those who committed the fraud. The agency needs another collection method to recover funds from individuals who have found employment and are no longer applying for UI benefits.

Garnishment of wages, as HJR 122 and HB 2494 would authorize, would be the tool that TWC needs. TWC would ensure the protection of due process by garnishing the wages only of individuals who had committed an offense under the statutory definition of fraudulently obtaining benefits. Other states have recognized the value of this tool, including Oregon, Connecticut, Washington, and Maryland. Ultimately, HJR 122 and HB 2494 would let the citizens of Texas decide whether they wanted to grant TWC the authority to protect their unemployment system through wage garnishment.

HJR 122 would have no cost to the state, other than the one-time expense of the publication of the resolution, and TWC could absorb the duties and responsibilities of HB 2494's provisions within existing resources.

OPPONENTS
SAY:

Garnishment of wages is such a serious intrusion on an individual's property rights that Texans have constitutionally banned it except in very specific, very personal cases — when a court has ordered someone to support his or her child or former spouse. HJR 122 and HB 2494 unjustifiably would elevate this particular kind of debt to a particular state agency to the level of child support and alimony. TWC can and should use the other remedies it already possesses, including prosecution, to recover fraudulently obtained UI benefits.

HJR 122 also could allow the abridgement of due process. While child support and alimony payments must be court-ordered for wages to be garnished, HJR 122 would not constitutionally require a court order before wages were garnished to recover fraudulently obtained UI benefits. Instead, the protection of due process would depend on the implementation of HB 2494's provisions and the means used to determine

whether an individual had committed an offense. Neither piece of legislation provides a guarantee that TWC would ensure due process before garnishing an individual's wages.

HJR 122 and HB 2494 would not meaningfully improve the condition of the unemployment compensation fund. UI benefits fraud in Texas is minimal and has been overstated. While \$100 million in overpayments of UI benefits in 2010 has been cited, this figure includes both fraudulently and nonfraudulently obtained improper benefits, while the legislation would aid recovery only of fraudulently obtained benefits. In their 2009 annual performance audit of state UI programs, the U.S. Department of Labor found that the Texas UI system had a fraud rate of just 0.82 percent, far below the national average of 2.05 percent. The Legislative Budget Board has determined that HB 2494 and HJR 122 would not recover enough money to make a significant fiscal impact to the state, nor would they recover enough to reduce the employer UI tax.

Although it has been suggested that the payout of fraudulent benefits has resulted in higher employer UI taxes, the jump in employer taxes in recent years actually was triggered by the unemployment compensation fund balance falling beneath its statutory floor in July 2009, which was due to the fund's statutorily induced volatility in combination with the national economic downturn. TWC was forced to borrow more than \$1.4 billion from the federal government, an amount that dwarfs even the highest estimates of fraudulent claim loss.

NOTES: Consideration of HB 2494 by Legler, the enabling legislation for HJR 122, has been postponed until today's calendar.