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## A Constitutional Heritage Left by the Carpetbaggers

In 1873, Richard Coke was elected Governor of Texas having defeated the incumbent E. J. Davis, a Republican Reconstructionist. Two years later, with the Democrats firmly in control, Texans set about drafting a new constitution. After almost a decade of carpet-bagger rule in the post-Civil War era, Texans' were skeptical of vesting too much power in government. As a result, the 1876 Constitution attempted to limit spending and debt creation, legislative actions and executive privilege. Detail usually found in statutes in other jurisdictions became a traditional part of the Texas constitution.

Wholesale revision attempts have not been successful; the last, in 1975, was overwhelmingly defeated by the voters. Changes to the constitution have had to come in the form of amendments—a form seemingly readily accepted by Texans. Through 1988, a total of 465 amendments will have been submitted to the electorate; 287 have been approved (see table).

The 70th Legislature approved another 28 amendments (a new record) for voter consideration. Twenty-five of these will be on the ballot this year; the other three will be submitted in 1988.

### The 1987 Constitutional Amendments

The amendments included on the November 3rd ballot are listed in numerical order on page 2. The discussion that begins on page 3 groups the proposals by topic.

**Bonded Debt.** Texas is a pay-as-you-go state; the constitution requires a balanced budget and prohibits debt creation. Prohibits, that is, except where it is otherwise specifically authorized; a practice frequently utilized. Five amendments (Nos. 6, 7, 8, 18 and 23)

authorize the legislature to issue additional state bonds.

**Economic Development.** Three amendments (Nos. 1, 4, and 5) are directly related to the state's current economic development efforts. Each is an attempt to overcome the constitutional ban on government lending credit or granting public moneys to an individual or corporation. (Some of the bond authorization proposals also could be grouped as economic development endeavors.)

**Property Tax Exemptions.** The constitution once required that all property be subject to ad valorem taxes based on full market value. Over the years a long list of exceptions have been written into the constitution by amendment. Proposals Nos. 3, 10, 11, and 20 would expand that list.

**State Government.** Three proposals (Nos. 9, 21, and 22) pertain to limitations on state executive and legislative offices.

**County Government.** County organizational structure and authority are severely restricted by the constitution. Amendments Nos. 15, 16, and 24 would provide some limited flexibility for counties.

**Special Districts.** The constitution authorizes the legislature to create various types of special districts for the performance of specific functions. Proposals Nos. 2, 13, 18, and 25 pertain to these limited local governments.

**Miscellaneous Provisions.** The final three amendments (No. 12, Community Property; No. 14, State Criminal Appeals; and No. 17, Municipal Tort Liability) deal with separate, but important, topics.

### Constitutional Amendments by Year Voted

	Proposed	Adopted
Pre 1960	232	140
1960-1969	81	55
1970-1979	65	40
1980-1986	59	52
1987	25	
1988	3	
Total	465	287

### Two Binding Statewide Referenda

Texas' voters, for the first time, have been asked by the legislature to pass statutory law. In each case, the subject matter was so controversial that the legislature could not reach a conclusion on their own. Public referendums most often are included as advisory matters, but in this case they are binding votes.

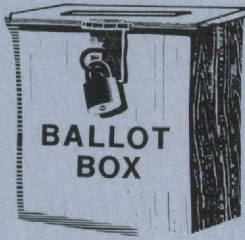
**State Board of Education.** No. 1 proposes to retain the present appointed status for the State Board of Education. A "yes" vote means the Board members will be appointed; a "no" returns the members to an elected status.

**Pari-mutuel Betting.** No. 2 proposes to permit, on a local-option basis, wagering on horse or dog races. A "yes" vote would allow local voters to approve betting.

**Annual  
Meeting**

**Friday,  
November 13**

**Austin**



# November 3rd Ballot

## Constitutional Amendments

1. Authorizes establishment of \$5 million grain warehouse self-insurance fund ..... p. 6
2. Doubles to 6 cents the maximum property tax rate for rural fire prevention districts in counties over 400,000 population ..... p. 8
3. Extends school property tax freeze on homesteads of the elderly to a surviving spouse aged 55 years or older ..... p. 6
4. Permits loans and grants of public money for economic development programs ..... p. 5
5. Allows the state and certain local governments to provide funds for Texas Turnpike Authorities ..... p. 6
6. Authorizes issuance of \$125 million in general obligation bonds for development of agriculture, new products and small businesses ..... p. 4
7. Authorizes issuance of \$400 million in general obligation bonds for grants and loans to local governments for construction of public facilities ..... p. 3
8. Authorizes issuance of \$500 million in general obligation bonds for construction of correctional facilities and mental health institutions ..... p. 3
9. Allows legislators to be elected or appointed to a different state office during their legislative term of office ..... p. 7
10. Authorizes, subject to tax authority approval, property tax exemption for nonincome-producing tangible personal property ..... p. 6
11. Exempts goods in transit from property taxation, subject to local government override ..... p. 6
12. Permits spouses by written agreement to hold community property with right of survivorship ..... p. 9
13. Authorizes creation of emergency-service districts funded by a property tax up to 10 cents with voter approval ..... p. 8
14. Allows the state to appeal in criminal cases as provided by statute ..... p. 9
15. Abolishes the office of treasurer in Nueces, Gregg and Fayette counties ..... p. 8
16. Provides for more than one justice of the peace court in certain precincts ..... p. 8
17. Allows the legislature to statutorily define the governmental and proprietary functions of a municipality ..... p. 8
18. Authorizes the creation of jail districts financed with bonds and property taxes subject to voter approval ..... p. 9
19. Authorizes the issuance of up to \$500 million in general obligation bonds to finance a super collider research facility ..... p. 8
20. Authorizes a property tax exemption for off-shore drilling rigs in storage ..... p. 4
21. Allows the speaker of the house to serve as a member of executive committees ..... p. 7
22. Allows the legislature to limit the terms of office of certain appointees of a lame-duck governor ..... p. 7
23. Authorizes the issuance of \$400 million in general obligation bonds to finance water supply, water quality and flood control projects ..... p. 3
24. Permits counties to perform work without compensation for other governmental units located within the county ..... p. 8
25. Authorizes certain hospital districts to change their boundaries with voter approval and authorizes Randall County to participate in, and provide financial assistance to, the Amarillo Hospital District ..... p. 9

## Referenda

1. To determine whether the members of the State Board of Education will be elected or appointed by the governor ..... p. 10
2. To permit pari-mutuel wagering on horse and greyhound racing on a county-option basis p. 10

# Additional State Bonds

## 7

### Local Public Works

This proposed amendment would enable the legislature to authorize the issuance of up to \$400 million in state general obligation (G.O.) bonds to aid local governments in the construction of public facilities. Bond proceeds would go into a special local project fund in the state treasury that could be used:

- (1) to make grants to local governments for the design and planning of public facilities, and
- (2) to make loans for the acquisition, construction, repair, renovation and equipping of such facilities.

Fund balances not needed for bond debt service could be used to finance revenue bonds for the same purposes.

Review and approval of the bond issue and of the use of the bond proceeds could be required by the legislature. The Texas Department of Commerce Act, the comprehensive economic development bill passed by the legislature last summer, lays out the specifics of the bond program and delegates administration to the Department. In addition the bond issues would have to be approved by the Bond Review Board (see box on page 4).

## 8

### State Facilities Bonds

Up to \$500 million in G.O. bonds for adult and youth corrections institutions and for mental health and mental retardation institutions could be authorized by the legislature if this amendment were approved. Bond proceeds could be used to acquire, construct or equip new facilities, or to repair or renovate existing facilities.

Implementing legislation delegates administration of this bond program to

the Texas Public Finance Authority. The Authority is also authorized to issue revenue bonds for the same purposes. However, the combined G.O. and revenue bond issues may not exceed \$500 million. In the case of revenue bonds, the Authority would lease the facilities to an agency, and funds appropriated to that agency would be pledged to bond service.

In any event, specific projects to be financed with bond proceeds will require legislative approval, and any bonds issued would have to be approved by the Bond Review Board. The Department of Corrections is required to submit to the Review Board a master construction plan before it could receive any bond proceeds.

The Water Development Board

## 23

### Water Bonds

would be authorized to issue an additional \$400 million in G.O. bonds for various water projects under this amendment. Of the total authorization, \$200 million would be used to finance water supply projects, \$150 million would be for water quality projects, and the remaining \$50 million would fund flood control projects.

As with other bond proposals on the ballot, the legislature would be allowed to require review and approval of the bond issues, the use of bond proceeds, or state agency rules governing use of

## Definitions

**General Obligation Bonds**—G.O. bonds are backed by the full faith and credit of the state and constitute a first draw on available revenue; issuance requires passage of a constitutional amendment.

**Revenue Bonds**—Revenue bonds are secured only by specifically designated revenues and not by the general credit of the state; thus, constitutional authorization for their issuance is not required. If pledged revenues are insufficient to meet debt service requirements, bondholders have no recourse against the state. Pledged revenues generally are fees and other receipts derived from operation of some enterprise (such as a toll road), but also may include state appropriations.

**"Gimmick" Bonds**—This term is used to describe revenue bonds that are secured principally by state appropriations. Typically, an authority is created by statute to issue bonds for the acquisition of some facility which is in turn leased back to the state for an amount sufficient to meet debt service requirements (see Amendment No. 8 for an example). Technically, the state is not obligated beyond the constitutionally mandated two-year life of the current appropriation. However, the practical effect is to create general state debt without a constitutional authorization.

**Implementing or Enabling Legislation**—As the name implies, this is legislation required to implement some constitutional grant of authority. "Self-enacting" provisions of the constitution require no further legislation because all the necessary details are included. In contrast, "empowering" provisions must have additional legislation to be effective because the legislature is only authorized to take some action previously prohibited by the constitution. Such legislation can be passed at the same time as the authorizing amendment, with a proviso that it is effective only if the amendment wins voter approval, or can be left to some future legislature.

the bond proceeds. The implementing legislation for this amendment provides that after January 1, 1988, no bonds could be issued by the Water Development Board or bond proceeds used to finance a project unless the bonds or project have been reviewed and approved by the Bond Review Board.

Over the past 30 years several constitutional amendments have authorized the issuance of bonds for water projects. The most recent, in 1985, authorized a \$980 million bond issue dedicated to various types of water projects. Some \$830 million of these bonds have yet to be issued.

## 19 Super Collider Bonds

The federal government currently is deciding where to locate a multi-billion dollar superconducting super collider research facility. It will be the world's largest and most advanced particle accelerator research lab. The super collider will be a 53-mile-long, circular, underground tunnel in which streams of protons will be forced to collide at the speed of light. The collision will cause the protons to break into subatomic particles, which will be analyzed by scientists in an attempt to discover the very basis of matter and energy. Authorized bond funds are sought as an inducement to choosing a Texas site (four locales remain in the competition) for the research lab.

This proposed amendment would authorize the legislature to provide for the issuance of \$500 million in G.O. bonds to fund undertakings related to the super collider research facility. Authority for the legislature to require review and approval of bond issues and the use of the proceeds and to authorize an appropriate agency to grant land or property to the federal government is included in the amendment.

Enabling provisions for this amendment designate the Texas National Research Laboratory Commission as the agency to handle the siting, development and operation of the super collider research facility. The commission (a nine-member body appointed by the governor) was established by the legis-

lature in 1985 to formulate and present the state's siting proposal to the federal government.

The commission would be responsible for issuing the \$500 million in G.O. bonds. An additional \$500 million in revenue bonds could be issued by the commission. Potentially, \$1 billion would be available to finance virtually any undertaking necessary to the research facility's completion. Any bonds issued would be subject to Bond Review Board approval.

## 6 Economic Development Bonds

Initial funding for three new economic development endeavors would be provided by a \$125 million bond issue that would be authorized by this amendment.

- A program to enhance the production, processing and marketing of agricultural products by small Texas agricultural businesses would be allocated \$100 million.

- An effort to aid in the development of new or improved products would receive \$15 million.
- A small-business incubator program would get \$10 million to be used to assist in the development of small businesses in the state.

Legislative authority to provide for bond review and approval also is included in the amendment, and advance approval of the Bond Review Board would be required.

A special treasury fund would be established to support each of these development programs. In addition to bond proceeds, fund revenues would include related receipts from other sources such as loan repayments, fees, investment income and legislative appropriations.

The product development program would involve loans, loan guarantees and other types of financing to private businesses that experience difficulty in securing venture capital. In the incubator program, small businesses share common space, equipment, and support personnel and have access to technical and management consultants. State and local sponsors share funding on an equal basis to establish and oper-

## Bond Review Board

For the first time Texas has an administrative mechanism for general oversight of all state debt. A new Bond Review Board is charged with the review and approval of all general obligation and revenue bond issues. Installment sales or lease-purchase obligations which have a term longer than five years or a principal amount greater than \$250,000 also are subject to advance approval by the Board.

The five-member board is composed of the governor as chairman, lieutenant governor, speaker of the house, treasurer and comptroller. If amendment No. 21 (see page 7) allowing the speaker to serve on executive agencies does not pass, the speaker will become a nonvoting member.

Any bond or other obligation issued by or on behalf of the state first must be submitted to and approved by the Board. (Bonds issued by local governments are not included.) The Board has general rule making authority, and is specifically authorized to exempt bonds where a review is considered unnecessary or impractical.

The Board appoints a director to manage the bond finance office, and may delegate its bond approval authority to the director. At the end of each fiscal year, the office is to publish a report listing the amount of bonds outstanding, applicable repayment schedules, and any other relevant information. When requested by the Board, the state auditor is required to review and report on the disposition of bond proceeds.

Agencies which issue state bonds retain the right to select their own bond counsel, underwriter, financial advisor or other service provider in connection with bond issuance. The Board's review does not affect the attorney general's duty or right to review bonds under other statutes.

**Texas State Bonded Debt**  
(Millions of Dollars)

**General Obligation Bonds:**

	Authorized*	Outstanding	Unissued
Veterans Land & Housing	\$2,250.0	\$1,440.7	\$ 450.0
Farm and Ranch Finance	500.0	0.0	500.0
Water Bonds**	1,580.0	491.7	868.7
Student Loans	285.0	106.9	79.5
Farm and Ranch Loan Security	10.0	10.0	0.0
Park Development	75.00	29.8	29.2
Ag. Water Conservation***	<u>200.00</u>	<u>0.0</u>	<u>200.0</u>
Subtotal	\$4,900.0	\$2,079.1	\$2,127.4
Perm. Univ. Fund Bonds		648.1	
High. Ed. Constitutional		<u>209.3</u>	
Total	\$4,900.0	\$2,936.5	\$2,127.4

**G.O. Bond Proposals:**

Small Business	\$ 10.0		
Product Development	15.0		
Agricultural Products	100.0#		
Local Infrastructure	400.0#		
Super Collider	500.00#		
State Agencies	500.00#		
Water Bonds	<u>400.00</u>		
Subtotal	\$1,925.0		
Total G.O. Bonds	\$6,825.0	\$2,936.5	\$2,127.4

**Revenue Bonds (Unaudited):**

Colleges and Universities	\$ 941.2
Texas Housing Agency	1,361.6
Texas Turnpike Authority	342.2
Texas Armory Board	22.5
Public Finance Authority	178.6
Indust. Development Corp.	794.0
Hospital Equipment	<u>62.2</u>
Total Revenue Bonds	\$3,702.3

\*total bonds originally authorized; because of bond repayments and refinancing, outstanding and unissued may not equal authorized total.

\*\*An additional \$250 million in local water bonds can be guaranteed by the state. This provision expires in 1991 unless 2/3 vote of the legislature authorizes its extension.

\*\*\*2/3 vote of each house of the legislature is required to issue these bonds. The authorization expires in 1989.

#Up to \$500 million in revenue bonds for the super collider also have been approved. If the local infrastructure bonds are approved, an unlimited amount of revenue bonds also may be issued for this purpose. Bonds for state agencies (Department of Corrections; Mental Health, Retardation Department; Youth Commission) can total \$500 million in G.O. bonds, if approved, or revenue bonds or a combination. Only \$45 million of G.O. bonds for agriculture finance may be outstanding at any one time, but \$500 million in revenue bonds for the same purpose also were authorized.

ate the incubators. The proposed amendment provides that the incubator facilities would be exempt from property taxes. Both these programs are assigned to the Texas Department of Commerce.

The agricultural development program is the responsibility of a newly created Texas Agricultural Finance Authority within the Department of Agriculture. The authority could participate in various financial assistance programs, including direct loans and loan guarantees. Statutory authorization provides for an initial issue of up to \$45 million in G.O. bonds. In addition, the authority also is allowed to issue up to \$500 million in revenue bonds.

## Economic Development



### Economic Development Funds

The constitution specifically prohibits the legislature from giving or lending the state's credit or granting public moneys to any individual, association or corporation. Similarly, a local government may not be authorized to lend its credit, etc.

Despite this seemingly strict prohibition, the courts have interpreted these provisions to permit grants or loans as long as they are deemed to be for "public purposes." However, the general principles used to determine what constitutes a "public purpose" often leave doubt in any given case. Thus, some feel that specific constitutional authority is needed to prevent challenges to various economic programs that might be undertaken and funded by the state and/or local governments.

This proposed amendment would empower the legislature to create programs to make loans and grants of public moneys, not otherwise dedicated by the constitution, to develop and diversify the state's economy, to eliminate unemployment or underemployment,

to stimulate agricultural innovation, to foster the growth of agricultural enterprises, and to expand transportation or commerce in the state. Any bonds payable from property taxes that are issued by a local government in connection with economic development programs created by the legislature must be approved by a majority voting in a local election.

## **1** Grain Warehouse Self-Insurance

The state Agriculture Code requires public grain warehouse operators to be licensed by the Texas Agriculture Department. To insure grain depositors against losses, operators also are required to maintain on file with the department a bond (or certain other designated securities) ranging in amount

from \$15,000 to \$500,000 based on grain-storage capacity. Recent losses have limited the availability of bonded insurance coverage.

This proposed amendment would provide another means of protecting against potential losses by allowing the legislature to provide for the guarantee of a Texas grain warehouse self-insurance fund up to a \$5 million maximum. Once the fund reached \$5 million, as certified by the comptroller, the state guarantee of the fund would cease. Enabling legislation to create the fund has not been adopted.

## **5** Turnpike Projects

The legislature is constitutionally prohibited from lending the state's credit or granting public money to an entity authorized to construct or oper-

ate toll roads or turnpikes. This proposed amendment would alter that prohibition by allowing the Department of Highways and Public Transportation to enter into joint highway projects with the Texas Turnpike Authority. The state would be allowed to contribute money from any available source to pay the costs of the Turnpike Authority's turnpikes, toll roads or toll bridges.

This proposed amendment also would authorize local governments in counties with more than 400,000 population, plus adjoining counties, to levy a property tax to finance Turnpike Authority projects located within the taxing entity. The property tax levy requires voter approval, but there is no limit on the tax rate. The rate would be set at a level sufficient to pay all or part of the costs (either debt service or maintenance and operation) of projects located within the taxing jurisdiction to the extent that net operating revenues were inadequate to cover such costs.

# Property Tax Exemptions

## **3** Elderly Homesteads

Part of the 1978 "tax relief" amendment provided a school tax freeze on homesteads of persons aged 65 or older. School district property taxes on such property may not be raised except to the extent that the property value is increased by added improvements.

This proposed amendment would extend the freeze to a surviving spouse aged 55 or older at the time of the person's death. The tax relief afforded a surviving spouse would be subject to any exceptions provided by general law, and would continue as long as the property remained his or her residence homestead.

exempted is subject to ad valorem taxation. A constitutional exemption is mandated for household goods and personal effects that are not held or used for income production. Similarly, the legislature is authorized to exempt all or part of personal property homesteads. The latter is the basis of the current statutory exemption for non-business automobiles.

Under this proposed amendment, the legislature would be allowed to expand personal property exemptions to include all other personalty, except residential dwellings, not held or used for income production. However, a local government would be able to override the statutory exemption and continue to tax the property.

This added exemption would primarily involve boats, airplanes and recreational vehicles. Although not contingent on adoption of this amendment, a statutory exemption for non-business recreational boats was approved this year. Local governments may choose to continue to tax such boats, but only if appraisal districts are

reimbursed for appraisal costs.

## **11** Goods in Transit

Since 1963 Texas has had a "freeport" statute exempting from the property tax goods temporarily stored in the state for eventual shipment to points outside the state. After several amendments, the current exemption applies to property that is (1) transported into and destined for shipment out of the state, (2) located in the state for no longer than 175 days, and (3) used for manufacturing, processing and other purposes. Because of the statute's questionable constitutionality, it was not uniformly applied by taxing jurisdictions around the state. In 1985, the Texas Supreme Court upheld the statute's unconstitutionality.

This amendment would add the current freeport provisions to the constitution. Under a local-option feature, a

## **10** Personal Property

All tangible property not specifically

county, city or school district would be able to override the exemption and tax all or a percentage of the property's appraised value. If taxed at a percentage of full value, the property could not subsequently be taxed at a higher percentage. However, the action to tax the property could later be rescinded. Affirmative local government action

would be required by April 1, 1988.

## 20 Idle Offshore Drilling Rigs

A property tax exemption for offshore oil and gas well drilling equip-

ment stored while not in use in a county bordering the Gulf of Mexico or an adjacent body of water could be provided by the legislature under the provisions of this proposed amendment. Implementing legislation limits the exemption by excluding rigs that are in storage solely for repair or maintenance.

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## State Government

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## 9 Eligibility of Legislators

Legislators, even those that resign before their office term expires, may not be elected or appointed to any office that was either created or for which the salary was increased during their term of office. They also are prohibited during their term of office from serving in any position that is appointed in whole or in part by either the House or the Senate, except as specifically provided in the constitution. The effect of these prohibitions is to keep more than half the legislative members from running for statewide office.

These prohibitions would be removed by the proposed amendment with the proviso that former legislators would not be entitled to receive any pay increase that was adopted during their legislative term for the office they assume. They would, however, receive any pay raises authorized by subsequent legislatures.

## 21 Speaker's Authority

The separation-of-powers clause expressly prohibits members of the legislative branch from exercising any executive powers except as permitted elsewhere in the constitution. This is thought to prevent legislators from serving as members of any agency or committee that contains members of

the executive branch or that exercises executive functions. As a result the House speaker is unable to serve in any joint legislative/executive arrangements. No such restrictions apply to the lieutenant governor, the Senate's presiding officer, because that office is constitutionally designated a part of the executive branch.

If approved, this amendment would specifically authorize the legislature to include the speaker in the membership of any executive agency or committee. Pending passage, legislation has been adopted that makes the speaker (along with the governor, comptroller, treasurer and lieutenant governor) a member of the cash management committee and the bond review board. The cash management committee approves issuance of short-term notes to cover temporary state cash shortfalls. The bond review board is described in the box on page 3.

## 22 Lame-Duck Appointees

Gubernatorial appointments to vacant state and district offices made during the interim between legislative sessions are submitted for senate approval when the legislature next convenes. Controversy surrounding last-minute appointments by lame-duck governors prompted the legislature to pass a 1983 statute limiting such appointments.

With a few minor exceptions, the statute provides that after November 1st in a general election year, a governor who is not reelected may not fill vacancies in office that occurred before

November 1st. Vacancies that occur after November 1st may be filled by the outgoing governor, but the appointee's term of office expires the following February 1st. A governor's ability to make lame-duck appointments was further limited by changing the terms of offices of state boards and commissions so that they expire on February 1st of odd-numbered years after a new governor takes office.

The governor's appointment authority is specifically granted in the constitution, so there is some question as to the validity of a statute that restricts gubernatorial appointments. The proposed amendment addresses these potential questions by authorizing the legislature to limit the terms of office of persons appointed by a lame-duck governor after November 1st preceding a general election.

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## County Government

### 15 Abolish County Treasurers

Voters will have the fourth opportunity since 1982 to abolish the office of county treasurer in certain counties—this time in Nueces, Gregg and Fayette counties. Previous amendments abolished the office in Bee and Tarrant counties (1982), in Bexar and Collin counties (1984), and in Andrews and El Paso counties (1985).

The Gregg County treasurer will be abolished if the proposed amendment is approved by voters statewide. In both Nueces and Fayette counties, the amendment must receive majority approval both statewide and in the individual counties. In Nueces County the treasurer's duties would be transferred to the county clerk; in Fayette County to the county auditor; and in Gregg

County to the county auditor or to an elected official as designated by the commissioners court.

### 16 JP Precincts

The constitution currently specifies the number of justice precincts in each county according to population. Further, one justice of the peace and one constable are to be elected in each precinct; two JPs are to be elected in each precinct that contains a city with 18,000 or more inhabitants.

This proposed amendment would give the commissioners court in all counties with 150,000 or more population the authority to determine the number of JPs to be elected in each precinct. Smaller counties would remain subject to the current constitutional provisions.

### 24 Unpaid County Work

Granting public money or anything of value by one political subdivision to another is prohibited by the constitution. This amendment would allow counties, under certain specified conditions, to use county equipment and personnel to perform work free of charge for other governmental units within the county.

A written request from the governing body of the political subdivision involved and an authorization order adopted in open meeting by the commissioners court would be required before the work could be performed. In addition, the commissioners court would be required to find that the work would not interfere with the county's own work schedule and to make a written determination of the costs involved.

## Special Districts

### 2 Rural Fire District Taxes

Creation of rural fire prevention districts supported by a property tax, approved by local residents, not to exceed 3¢ per \$100 valuation is authorized by the constitution. This proposed amendment would permit districts located wholly or partly in counties with over 400,000 population according to the most recent federal census to increase the tax rate up to 6¢ with voter approval. Harris, Dallas, Bexar, Tarrant, El Paso and Travis counties now fall in that population bracket.

Implementing legislation spells out the procedures for calling an election to increase the tax rate. If an increase is disapproved, another rate-increase

election could not be held for one year.

### 13 Emergency-Service Districts

Special districts to provide emergency services (e.g., medical, ambulance, and rural fire prevention and control services) would be authorized by this amendment. With the approval of district voters, the commissioners courts would levy a property tax not to exceed 10¢ per \$100 valuation to support district operations.

Two implementing bills provide similar mechanisms to create emergency service districts. One has general application while the other applies only to counties with less than 125,000 population. Both bills are patterned after the existing rural fire prevention

statute and generally require the same procedure to create an emergency service district. Basically, the mandated process requires a voter petition, notice and a public hearing by the commissioners court, and an election both to approve the district's creation and to ratify a proposed property tax rate. The bill with general application also provides for the conversion of rural fire prevention districts to emergency service districts with district voter approval.

### 18 Jail Districts

Legislative authority to create jail districts and to provide for their operation and financing would be provided by this amendment. The legislature



could authorize bond issues and property tax levies (no limit) subject to voter approval.

Creation of jail districts to finance and effect the construction, acquisition, or improvement of jail facilities in the county or counties comprising the district is provided for in implementing legislation. A voter petition (10% of those registered), a public hearing held by the commissioners court, and a confirmation election would be required. A proposed district could include more than one county if the counties have contracted with one another for joint jail operation.

Districts would be governed by an elected board of directors who could hire a general manager to serve as chief administrative officer. With voter approval, the board could issue bonds and levy property taxes to finance jail construction. In addition to other powers necessary to acquire and construct facilities, the board would have emi-

nent domain authority. A completed jail facility would be turned over to the county for operation; the district's sole function is to construct, and not operate, county jails.

## 25 Hospital Districts

This amendment is proposed to accomplish two purposes:

1. Provide a general method to change the boundaries of constitutionally created hospital districts; and
2. Allow the Amarillo Hospital District to extend its services to certain residents of Randall County.

Prior to a 1962 amendment, hospital districts were created in specific constitutional provisions that spelled out the details of the district's operation, including its jurisdiction and bounda-

ries. Changes in such districts boundaries can be made only by amending the constitution. This amendment would allow these hospital districts to change their boundaries or jurisdiction on their own motion, so long as changes are approved by a majority of the district's voters.

One part of Randall County is now served by the Amarillo Hospital District (created by a 1958 constitutional amendment), another part by the South Randall County Hospital District (created by statute in 1971), and a third part is not served by any hospital district. This amendment would allow the Amarillo district to serve the Randall County residents not now covered by a hospital district, and, with voter approval, would authorize Randall County to levy a property tax to pay for such services at a rate not to exceed 75¢ per \$100 valuation on property located outside either of the two existing districts.

## Miscellaneous Amendments

### 12 Community Property

Separate and community property of a married couple are defined in the constitution (Art. XVI, Sec. 15). The Texas courts have held that a joint tenancy with right of survivorship cannot be created with community property unless the spouses first convert their community property into separate property by entering into a partition agreement.

In order for community property to pass to a surviving spouse under current law, the transfer must be provided for in a will. Otherwise, under the Texas Probate Code, the deceased spouse's community property will be divided equally between the surviving spouse and any surviving children or their descendants. The funds in a joint bank account, for example, do not automatically become the property of the surviving spouse.

This amendment would change this unique Texas provision and permit spouses to agree in writing that upon their death, all or part of their commu-

nity property becomes the property of the surviving spouse. The process now required—(1) a partition agreement and a joint tenancy agreement, or (2) a will—would be eliminated.

### 14 State Criminal Appeals

Any right of appeal by the state in criminal cases has been specifically denied since the constitution's adoption 111 years ago. This prohibition would be eliminated by this proposed amendment with the state's right to appeal left to legislative definition. A defendant's right to appeal would not be affected in any way by this proposal.

Implementing legislation was adopted to become effective if the amendment is approved. A prosecuting attorney would be allowed to appeal a specified list of interlocutory court orders (e.g., dismissal of an indictment or the granting of a new trial) in a criminal case. In addition, the state would be entitled to appeal a sentence that was considered illegal, and any question of law in a case where the de-

fendant appealed a final conviction. The constitutional protection against double jeopardy would remain; the state still would not be able to appeal if a defendant is acquitted.

The state would have 15 days after a court order is entered to file an appeal, and the state pays all appeal costs except the defendant's attorney fees. Courts of appeal are directed to give precedence on their dockets to such appeals. Pending resolution of the state's appeal, the defendant would be entitled to remain at large on existing bail, or to be released on reasonable bail if in custody.

### 17 Municipal Tort Liability

This proposed amendment, expanding the protection afforded cities from damages arising out of the negligent performance of a governmental function, is part of the tort reform package adopted by the last legislature. There is no limit on a city's liability for damages resulting from the performance of pro-

proprietary functions—defined by the courts to include those activities performed only for the benefit of city residents (e.g., recreation activities, utility service, and public transportation). In contrast, there are statutory limits on damages associated with the performance of governmental functions — those that generally benefit all citizens of the state (e.g., law enforcement and health care).

This proposal simply authorizes the

legislature to define which municipal functions are governmental and which are proprietary. A list of 33 governmental functions, many now classified as proprietary, was included as part of the 1987 tort reform act to implement this provision. The act also defines as proprietary (with unlimited liability) discretionary functions that a city performs in its resident's interest, including but not limited to amusements, public utility services and "ab-

normally dangerous or ultrahazardous" activities.

The tort reform act increases the maximum liability for bodily injury or death arising from the negligent performance of governmental functions to \$250,000 per person and \$500,000 per occurrence from the present limits of \$100,000 and \$300,000 respectively. The property damage limit remains unchanged at \$100,000 per occurrence.

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## Statewide Referenda

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### **1** Appointed or Elected Board of Education

For 20 years beginning about 1930, members of the State Board of Education were appointed. For the next 35 years, members were elected. One of the many changes mandated by HB 72, the 1984 public school education reform bill, was a temporary switch back to an appointed Board. Prior to HB 72, one board member was elected from each of Texas' 27 congressional districts.

The current board consists of 15 appointed members whose terms expire January 1, 1989. The Legislative Education Board (a panel of legislative leaders) selected three nominees for each position, and the governor appointed one of the three, subject to senate confirmation. Board members currently are scheduled to be elected to staggered four-year terms for each of the 15 state-board districts in the 1988 general election and subsequently to take office when the current appointed members' terms expire.

Proposition 1 proposes to retain an appointed board. If the referendum fails, the board will revert to elected status as scheduled. If it passes, members would continue to be appointed by the governor under the procedure used to select the current board. Members would serve staggered four-year terms beginning with the expiration of the current appointed terms. The legislature would be required to reapportion the 15 state-board districts after each decennial census.

### **2** Pari-Mutuel Wagering

The 1986 Texas Racing Act regulates horse and greyhound racing and pari-mutuel wagering on such races. The act requires that the legalization of pari-mutuel wagering be approved in a statewide referendum. If Proposition 2 is approved, betting will be legal; otherwise, it will not.

The Racing Act requires local voter approval before a racetrack could be licensed in any county. An election could be initiated either by the commissioners court or by a petition signed by 5% of the registered voters. If approved, a rescinding election could not be held for two years.

An eight-member (comptroller, Public Safety Commission chairman, and six governor's appointees) Texas Racing Commission would regulate all aspects of horse and greyhound racing in Texas, including licensing racetracks and all racing participants, approving racing officials, allocating racing days and regulating wagering.

Horse-racing tracks would be licensed in three classes depending on the number of racing days. Only class one tracks would be allowed to hold races on more than 45 days each year, and only four such tracks could be licensed—in, or adjacent to, a county with over 750,000 population (Harris, Dallas, Bexar and Tarrant). Only three greyhound-racing tracks could be licensed and their location would be limited to Galveston, Nueces and Cameron counties.

The state would receive a percentage of money wagered on races—5% on horses and 6% on greyhounds. Counties could charge a 15¢ admission fee to county tracks; another 15¢ admission fee could be collected and allocated (based on population) among the cities in the county.

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Thank you.



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 all    more than half  
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2. How many other people read your copy?  
0   1   2   3 or more

3. ANALYSIS has recently gone from monthly to a bimonthly publication. Would you like to see monthly issues return?  
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4. The average issue of ANALYSIS is 8 pages. The length should:  
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