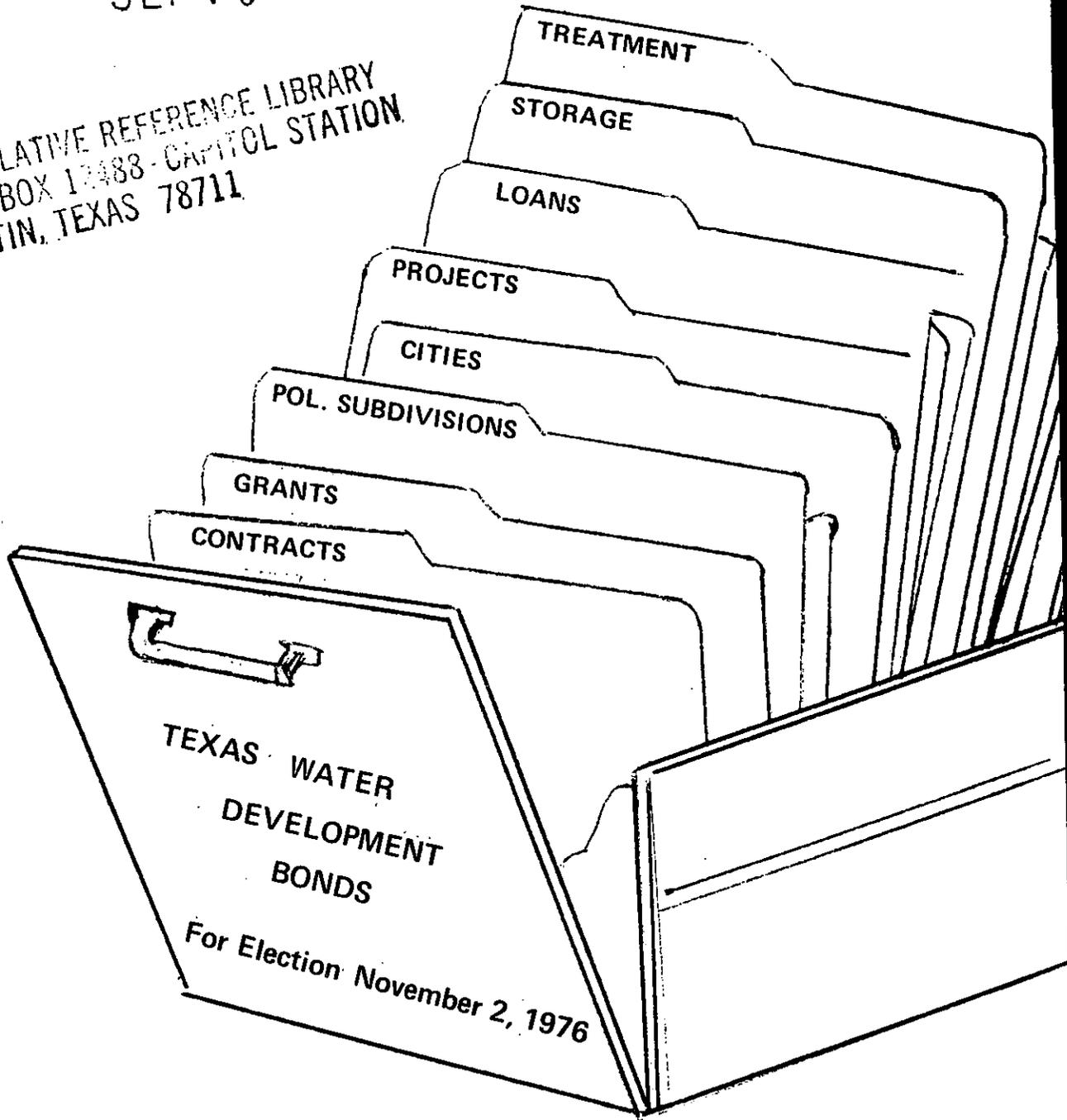


2

Proposed Constitutional Amendments Analyzed

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2 PROPOSED CONSTITUTIONAL AMENDMENTS ANALYZED

Analyses of Proposed Constitutional Amendments

For election--November 2, 1976

**Prepared by the Staff
of the
Texas Legislative Council**

TEXAS LEGISLATIVE COUNCIL

of the

64th Legislature of Texas

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TABLE OF CONTENTS

	Page
Introduction	9
Analyses of 2 Proposed Constitutional Amendments	13
Appendix--Resolutions Proposing Amendments	19

Proposed Amendments, Listed by Place on Ballot, Subject, and Resolution

Amendment No.	Subject	Analysis Page No.	Resolution	Appendix Page No.
1.	Authorizing Additional \$400 Million in Water Development Bonds	13	S.J.R. 49	21
2.	Authorizing Additional \$100 Million in Water Development Bonds for Quality Enhancement	17	H.J.R. 99	25

INTRODUCTION

Although submitting a proposed new constitution to Texas voters in 1975, the 64th Legislature also made provision for two proposed amendments to the existing Constitution of 1876 should the new constitution fail to receive approval of the Texas electorate. These proposals were on a subject always of great concern to citizens of Texas, water and water quality.

In this regard, S.J.R. 49 and H.J.R. 99 were proposed, with the resolution originating in the Texas Senate authorizing the issuance of an additional \$400 million in Texas Water Development Bonds by the Texas Water Development Board and the House of Representatives resolution authorizing an additional \$100 million in Texas Water Development Bonds for water quality enhancement purposes. These two proposed amendments will appear on the ballot at the general election on November 2, 1976.

The following table lists years in which proposed amendments have been submitted to Texas voters, the number of amendments proposed, and the number of those adopted. The amendments proposed for election on November 2, 1976, will bring the total of those proposed to 351, while 220 have been added during the years since the Constitution of 1876 was adopted. These totals do not, of course, include the proposal for an entire new constitution through eight proposed amendments, which were submitted to Texas voters on November 4, 1975, and which were soundly rejected by them.

1876 CONSTITUTION—AMENDMENTS PROPOSED
AND ADOPTED

Year	Proposed	Adopted	Year	Proposed	Adopted
1879	1	1	1929	72	5
1881	2	0	1931	9	9
1883	5	5	1933	12	4
1887	6	0	1935	13	10
1889	2	2	1937	7	6
1891	5	5	1939	4	3
1893	2	2	1941	5	1
1895	2	1	1943	3 ²	3
1897	5	1	1945	8	7
1899	1	0	1947	9	9
1901	1	1	1949	10	2
1903	3	3	1951	7	3
1905	3	2	1953	11	11
1907	9	1	1955	9	9
1909	4	4	1957	12	10
1911	5	4	1959	4	4
1913	8 ¹	0	1961	14	10
1915	7	0	1963	7	4
1917	3	3	1965	27	20
1919	13	3	1967	20	13
1921	5 ²	1	1969	16	9 ⁴
1923	2 ³	1	1971	18 ⁵	12 ⁵
1925	4	4	1973	9	6
1927	8 ²	4	1975	2	2
			1976	2 ⁶	—
			TOTALS	351 ⁷	220

¹Eight proposals approved by legislature, with one including two proposed amendments, but only six were actually submitted on ballot.

²Two amendments included in one proposal.

³Two proposals approved by legislature, but only one actually on ballot.

⁴Sixteen amendments proposed by legislature, and four adopted in election held in 1969, with nine proposals submitted; remaining seven proposals voted on November 3, 1970, and five adopted.

⁵Four amendments submitted on May 18, 1971, with one adopted. Remaining 14 proposals submitted on November 7, 1972, and 11 adopted.

⁶To be voted on November 2, 1976.

⁷Total does not include eight proposed amendments submitted to Texas voters on November 4, 1975, which would have provided for an entire new Texas Constitution.

AMENDMENT NO. 1 –S.J.R. NO. 49

[Authorizing the issuance of an additional \$400 million in Texas Water Development Bonds by the Texas Water Development Board; requiring legislative approval of certain projects; prohibiting the use of certain state funds for development of water resources from the Mississippi River; and amending and consolidating the provisions of Sections 49-c, 49-d, and 49-d-1, of the Texas Constitution]

The amendment proposed by S.J.R. No. 49 would do four things:

1. The Texas Water Development Board, with the approval of two-thirds of the membership of each house of the legislature, would be authorized to issue an additional \$400 million in Texas Water Development Bonds for use in continued financing of water development projects as provided by law.
2. No proceeds from the sale of Texas Water Development Bonds would be available for use in developing water resources from the Mississippi River.
3. Before more than \$35 million in proceeds from the sale of Texas Water Development Bonds could be spent on a single water development project, the expenditure would have to be approved through a concurrent resolution by majority vote of both houses of the legislature or the project would have to be a part of a statewide water development plan approved through a concurrent resolution by majority vote of both houses of the legislature.
4. Constitutional provisions relating to the operation of the Texas Water Development Board and the issuance of Texas Water Development Bonds would be consolidated and more detailed statutory-type language would be deleted.

[For full text of the resolution proposing this amendment, see appendix.]

Background

Section 49-c was added to Article III of the Texas Constitution in 1957. This section created the Texas Water Development Board as an agency of the state for the purpose of making loans to local governmental agencies which sponsored construction of projects to conserve and develop the water resources of the state. The section also authorized the Water Development Board to issue and sell \$100 million in bonds to provide for a Water Development Fund and authorized an additional \$100 million, subject to the approval of a two-thirds majority of the legislature.

In 1962 Section 49-d was added to Article III and authorized the Water Development Board to acquire conservation storage space in reservoirs to be constructed on Texas streams by federal or local governmental agencies. In 1966 Section 49-d was amended to permit the acquisition of a variety of water-resource projects in addition to reservoir storage space. The 1966 amendment also authorized an additional \$200 million in bonds subject to the approval of a two-thirds majority of the legislature.

Section 49-d-1 was added to Article III, of the Texas Constitution in 1971. This section authorized the Texas Water Development Board at the direction of the Water Quality Board to issue an additional \$100 million in Texas Water Development Bonds, the proceeds of which were to be used by the Water Quality Board to make loans and grants for water quality enhancement purposes.

ARGUMENTS

For:

1. Funds available in the Texas Water Development Fund for use in developing water projects have been almost depleted. Failure to provide additional funding authorizations to the Texas Water Development Board in the very near future would probably result in the inability of the state to provide adequate water supplies for its citizens in the future.
2. The escalating costs of construction for new water projects require that the state assure that the limited funds available for water development be used as effectively as possible. Requiring legislative approval of large single project expenditures that are not a part of a plan approved by the legislature would aid in providing some assurance that water development money would be most efficiently spent.
3. The present confusion created by the piecemeal adoption of constitutional provisions relating to state water development should be resolved so that the

legislature and state agencies may more effectively handle the state's water resources. Adoption of this amendment would clarify the constitutional requirements and, at the same time, place more detailed legislative-type policy decisions in the hands of the legislature.

Against:

1. The authorization provided for the Texas Water Development Board to issue an additional \$400 million in Texas Water Development Bonds would double the board's existing bond authorization and would further encourage the reliance of the state on bonded indebtedness to meet its future needs. The problems experienced by other governmental entities in this country relying too heavily on bonded indebtedness should serve as a lesson to this state that the use of bonds for financing purposes can lead to financial problems in the future.
2. Placing further restrictions on approval of the construction of single large water development projects could result in increased costs and delays in providing adequate water supplies for the citizens of the state.
3. Consolidating the water development provisions of the constitution would result in deleting certain detailed constitutional restrictions that should remain in the constitution for the protection of the public.

AMENDMENT NO. 2 -H.J.R. NO. 99

[Authorizing the issuance of an additional \$100 million in Texas Water Development Bonds for water quality enhancement purposes]

The proposed amendment to Article III, Section 49-d-1, of the Texas Constitution, authorizes an increase of \$100 million in the amount of Texas Water Development Bonds that may be issued to make funds available for grants and loans to local governments for use in providing treatment facilities.

[For full text of the resolution proposing this amendment, see appendix.]

Background In 1971, Section 49-d-1 was added to the constitution so that the state could assist local governments in qualifying for federal matching funds for waste water treatment facilities, sewer systems, and disposal systems. This section authorized the issuance of \$100 million in Texas Water Development Bonds to provide the necessary funds.

The adoption of Amendment No. 2 would double the amount of bonds that could be issued for water quality enhancement purposes to \$200 million.

ARGUMENTS

For:

1. The future of Texas depends on the quality and supply of its water. Passage of the proposed amendment would make more funds available to assist local governments in providing necessary facilities, thereby enhancing both the quality and quantity of the state's water.
2. Greater federal control and increasing costs have placed an even heavier burden on local governments in attempting to provide high quality water supplies. To assure that these local governments will be able to meet these burdens in the future, the state must take an active part by providing funds where needed.

Against:

1. The experience of other governmental entities in the United States in relying on bonded indebtedness as a source for financing has not been good. Texas should cease reliance on long-term bonded debt and seek other avenues for financing needed projects.
2. Adoption of this amendment would permit passing on to the state level another financial burden that is rightfully the responsibility of local governments.

APPENDIX

Amendment No. 1

By: Max Sherman

S.J.R. No. 49

SENATE JOINT RESOLUTION

Proposing a constitutional amendment authorizing an additional \$400 million in Texas water development bonds that may be issued on approval of two-thirds of the members of each house of the legislature; amending and consolidating the provisions of Sections 49-c, 49-d, and 49-d-1, and repealing Sections 49-d and 49-d-1; or, in the alternative, providing that approval of this resolution constitutes legislative approval of state debt as required by Article VIII of the Texas Constitution, as revised in 1976, providing for submission to the qualified voters of the question of whether to authorize the legislature to provide by law for an increase of \$400 million in the amount of Texas water development bonds that may be issued on approval of two-thirds of the members of each house of the legislature, and providing that approval of the question submitted by a majority of the qualified voters constitutes voter approval of state debt as required by Article VIII of the Texas Constitution, as revised in 1976.

Be it resolved by the Legislature of the State of Texas:

Section 1. That if the constitutional amendment proposed in Section 5 of Senate Joint Resolution No. 11, as passed in the regular session of the 64th Legislature, is not adopted by a majority of the qualified electors voting on the question on November 4, 1975:

(a) Section 49-c of Article III of the Texas Constitution is revised to read as follows:

“Sec. 49-c. Texas Water Development Bonds and Contracts

“(a) The issuance of Texas water development bonds is hereby authorized in an aggregate principal amount not to exceed \$400 million. The legislature by a record affirmative two-thirds vote of the membership of each house may authorize the issuance of all or any part of an additional aggregate principal amount of Texas water development bonds not to exceed \$400 million. Bonds authorized under this subsection may be issued only for such water development purposes as prescribed by law.

“(b) The issuance of Texas water development bonds is hereby authorized in an aggregate principal amount not to exceed \$100 million, which bonds may be issued only for such water quality enhancement purposes as prescribed by law.

“(c) Texas water development bonds are issued in such manner and installments and upon such terms and conditions, bear such rates of interest, and mature as prescribed by law. The legislature shall provide by law for such other implementation of this section as the legislature determines appropriate.

“(d) Texas water development bonds are secured by the full faith and credit of the state, and there is hereby appropriated out of the first money coming into the treasury in each fiscal year, not otherwise appropriated by this constitution, an amount which is sufficient to pay the principal and interest on such bonds that mature or become due during such fiscal year, less the amount in the sinking fund at the close of the prior fiscal year. No bonds authorized under this section may be issued without prior approval of the attorney general and registration by the comptroller of public accounts; after approval, registration, and delivery to the purchaser the bonds are incontestable.

“(e) The legislature by law may provide for the execution of contracts in excess of two years duration between the state or a state agency and the United States or any of its agencies to acquire or develop storage facilities in reservoirs constructed or to be constructed by the federal government. Contracts executed under this subsection are general obligations of the state and are part of the state debt authorized under Subsection (a) of this section.

“(f) No state fund established for purposes of water development, whether funded by the sale of Texas water development bonds or from other sources, may be used to finance a project that contemplates or results in removing surface water from the river basin of origin if the surface water is necessary to supply the reasonably foreseeable water requirements of the basin for the ensuing 50 years. This subsection does not apply to a removal of water on a temporary, interim basis. However, no such state fund may be used for the development of water resources from the Mississippi River.

“(g) The aggregate amount of bonds and contracts authorized by this section includes Texas water development bonds and contracts issued before the effective date of this amendment. Texas water development bonds or other evidences of indebtedness issued before the effective date of this amendment remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions. The state or a state agency shall continue to provide for a source or sources of payment in accordance with the terms of these bonds or other evidences of indebtedness until the obligations are paid in full.

“(h) No single water development project requiring an expenditure of proceeds of Texas water development bonds in an aggregate amount in excess of \$35 million may be undertaken unless:

“(1) the expenditure is approved by concurrent resolution adopted by a majority of the members of each house of the legislature; or

“(2) the project is a part of a statewide water development plan approved by concurrent resolution adopted by a majority of the members of each house of the legislature.”

(b) Subdivisions (1) and (3) of the constitutional amendment proposed by this section do not become effective until implemented by law.

(c) Sections 49-d and 49-d-1 of Article III of the Texas Constitution are repealed.

(d) The constitutional amendment proposed by this section is to be submitted to a vote of the qualified electors at an election to be held on the first Tuesday after the first Monday in November, 1976, at which election the ballots are to provide for voting for or against the proposition: "The constitutional amendment authorizing an increase of \$400 million in the amount of Texas Water Development Bonds that may be issued on approval of two-thirds of the legislature; amending and consolidating provisions of Sections 49-c, 49-d, and 49-d-1 of Article III of the Texas Constitution; and repealing Sections 49-d and 49-d-1 of Article III of the Texas Constitution."

Sec. 2. That if Section 49-c, 49-d, or 49-d-1 of Article III of the Texas Constitution is renumbered because of the adoption on November 4, 1975, of one or more amendments proposed by Senate Joint Resolution No. 11, as passed by the 64th Legislature in the 1975 regular session, the secretary of state with the approval of the attorney general shall appropriately renumber and change the cross-references of the amendment contained in Section 1 of this resolution to conform to the renumbered sections in Article III. The changes are to be made at least 90 days before the first Tuesday after the first Monday in November, 1976.

Sec. 3. That if the constitutional amendment proposed in Section 5 of Senate Joint Resolution No. 11, as passed in the regular session of the 64th Legislature, is adopted by a majority of the qualified electors voting on the question on November 4, 1975:

(a) Approval of this resolution by a record affirmative two-thirds vote of the membership of each house of the 64th Legislature in regular session is hereby declared to constitute legislative approval of state debt in conformity with Section 8 of Article VIII of the constitution.

(b) The ballot at an election to be held on the first Tuesday after the first Monday in November, 1976, is to provide for voting for or against the proposition: "Authorizing an increase of \$400 million in the amount of Texas Water Development Bonds that may be issued on approval of two-thirds of the legislature and in accordance with Senate Joint Resolution No. 49 as passed by the 64th Legislature in regular session." Approval of this proposition by a majority of the qualified voters voting on the question is hereby declared to constitute voter approval of state debt in conformity with Section 8 of Article VIII of the constitution.

(c) Approval of state debt in the manner provided by this section permits the legislature to authorize by law the issuance of Texas water development bonds in the amounts prescribed by and otherwise in accordance with Section 49-c

contained in Subdivision (a) of Section 1 of this resolution. However, an implementing law under this section must provide that no single water development project requiring an expenditure of proceeds of Texas water development bonds in an aggregate amount in excess of \$35 million may be undertaken unless:

(1) the expenditure is approved by concurrent resolution adopted by a majority of the members of each house of the legislature; or

(2) the project is a part of a statewide water development plan approved by concurrent resolution adopted by a majority of the members of each house of the legislature. An implementing law under this section must further provide that no state fund established for purposes of water development may be used for the development of water resources from the Mississippi River.

(a) Approval of state debt under this section becomes effective on the date of the final canvass of the returns.

Amendment No. 2

By: Tim Von Dohlen

H.J.R. No. 99

HOUSE JOINT RESOLUTION

Proposing an amendment to the Texas Constitution to increase from \$100 million to \$200 million the additional aggregate principal amount of Texas Water Development Bonds which may be issued and outstanding by the Texas Water Development Board for water quality enhancement purposes.

Be it resolved by the Legislature of the State of Texas:

Section 1. That if the constitutional amendment proposed in Section 5 of Senate Joint Resolution No. 11, as passed in the 1975 Regular Session of the 64th Legislature, is not adopted by a majority of the qualified electors voting on the question on November 4, 1975, and the constitutional amendment proposed in Section 1 of Senate Joint Resolution No. 49, as passed in the 1975 Regular Session of the 64th Legislature, is not adopted by a majority of the qualified electors voting on the question on November 2, 1976:

(1) Section 49-d-1 of Article III of the Texas Constitution is amended to read as follows:

“Sec. 49-d-1. Additional Texas Water Development Bonds

“(a) The Texas Water Development Board shall upon direction of the Texas Water Quality Board, or any successor agency designated by the Legislature, issue additional Texas Water Development Bonds up to an additional aggregate principal amount of \$200,000,000 to provide grants, loans, or any combination of grants and loans for water quality enhancement purposes as established by the Legislature. The Texas Water Quality Board or any successor agency designated by the Legislature may make such grants and loans to political subdivisions or bodies politic and corporate of the State of Texas, including municipal corporations, river authorities, conservation and reclamation districts, and districts created or organized or authorized to be created or organized under Article XVI, Section 59, or Article III, Section 52, of this Constitution, State agencies, and interstate agencies and compact commissions to which the State of Texas is a party, and upon such terms and conditions as the Legislature may authorize by general law. The bonds shall be issued for such terms, in such denominations, form and installments, and upon such conditions as the Legislature may authorize.

“(b) The proceeds from the sale of such bonds shall be deposited in the Texas Water Development Fund to be invested and administered as prescribed by law.

“(c) The bonds authorized in this Section 49-d-1 and all bonds authorized by Sections 49-c and 49-d of Article III shall bear interest at not more than 6% per annum and mature as the Texas Water Development Board shall prescribe, subject to the limitations as may be imposed by the Legislature.

“(d) The Texas Water Development Fund shall be used for the purposes heretofore permitted by, and subject to the limitations in Sections 49-c, 49-d and 49-d-1; provided, however, that the financial assistance may be made pursuant to the provisions of Sections 49-c, 49-d and 49-d-1 subject only to the availability of funds and without regard to the provisions in Section 49-c that such financial assistance shall terminate after December 31, 1982.

“(e) Texas Water Development Bonds are secured by the general credit of the State and shall after approval by the Attorney General, registration by the Comptroller of Public Accounts of the State of Texas, and delivery to the purchasers, be incontestable and shall constitute general obligations of the State of Texas under the Constitution of Texas.

“(f) Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such Acts shall not be void by reason of their anticipatory character.”

(2) The constitutional amendment proposed by this section becomes effective on January 1, 1977.

Sec. 2. That if the constitutional amendment proposed in Section 5 of Senate Joint Resolution No. 11, as passed in the 1975 Regular Session of the 64th Legislature, is not adopted by a majority of the qualified electors voting on the question on November 4, 1975, but the constitutional amendment proposed in Section 1 of Senate Joint Resolution No. 49, as passed by the 1975 Regular Session of the 64th Legislature, is adopted by a majority of the qualified electors voting on the question on November 2, 1976:

(1) Section 49-c of Article III of the Texas Constitution as proposed in Senate Joint Resolution No. 49 is amended to read as follows:

“Sec. 49-c. Texas Water Development Bonds and Contracts

“(a) The issuance of Texas Water Development Bonds is hereby authorized in an aggregate principal amount not to exceed \$400,000,000. The legislature by a record affirmative two-thirds vote of the membership of each house may authorize the issuance of all or any part of an additional aggregate principal amount of Texas Water Development Bonds not to exceed \$400,000,000. Bonds authorized under this subsection may be issued only for such water development purposes as prescribed by law.

“(b) The issuance of Texas Water Development Bonds is hereby authorized in an aggregate principal amount not to exceed \$200,000,000, which bonds may be issued only for such water quality enhancement purposes as prescribed by law.

“(c) Texas Water Development Bonds are issued in such manner and installments and upon such terms and conditions, bear such rates of interest, and mature as prescribed by law. The legislature shall provide by law for such other implementation of this section as the legislature determines appropriate.

"(d) Texas Water Development Bonds are secured by the full faith and credit of the state, and there is hereby appropriated out of the first moneys coming into the Treasury in each fiscal year, not otherwise appropriated by this Constitution, an amount which is sufficient to pay the principal and interest on such bonds that mature or become due during such fiscal year, less the amount in the sinking fund at the close of the prior fiscal year. No bonds authorized under this section may be issued without prior approval of the attorney general and registration by the comptroller of public accounts; after approval, registration, and delivery to the purchaser the bonds are incontestable.

"(e) The legislature by law may provide for the execution of contracts in excess of two years duration between the state or a state agency and the United States or any of its agencies to acquire or develop storage facilities in reservoirs constructed or to be constructed by the federal government. Contracts executed under this subsection are general obligations of the state and are part of the state debt authorized under Subsection (a) of this Section.

"(f) No state fund established for purposes of water development, whether funded by the sale of Texas Water Development Bonds or from other sources, may be used to finance a project that contemplates or results in removing surface water from the river basin of origin if the surface water is necessary to supply the reasonably foreseeable water requirements of the basin for the ensuing 50 years. This subsection does not apply to a removal of water on a temporary, interim basis. No such state fund may be used for the development of water resources from the Mississippi River.

"(g) The aggregate amount of bonds and contracts authorized by this section includes Texas Water Development Bonds and contracts issued before the effective date of this amendment. Texas Water Development Bonds or other evidences of indebtedness issued before the effective date of this amendment remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions. The state or a state agency shall continue to provide for a source or sources of payment in accordance with the terms of these bonds or other evidences of indebtedness until the obligations are paid in full.

"(h) No single water development project requiring an expenditure of proceeds of Texas Water Development Bonds in an aggregate amount in excess of \$35 million may be undertaken unless:

"(A) the expenditure is approved by concurrent resolution adopted by a majority of the members of each house of the Legislature; or

"(B) the project is a part of a statewide water development plan approved by concurrent resolution adopted by a majority of the members of each house of the Legislature."

(2) The constitutional amendment proposed by this section becomes effective on January 1, 1977.

Sec. 3. The constitutional amendment proposed by Sections 1 and 2 is to be submitted to a vote of the qualified electors at the election held on the first Tuesday after the first Monday in November, 1976, at which election the ballots

are to provide for voting for or against the proposition: "A constitutional amendment to increase from \$100 million to \$200 million the amount of Texas Water Development Bonds that may be issued for water quality enhancement purposes."

Sec. 4. If Sections 49-c, 49-d, or 49-d-1 of Article III of the Texas Constitution are renumbered because of the adoption on November 4, 1975, of one or more amendments proposed by Senate Joint Resolution No. 11, as passed by the 64th Legislature in the 1975 Regular Session, the secretary of state with the approval of the attorney general shall appropriately renumber and change the cross-references of the amendment contained in Sections 1 and 2 of this resolution to conform to the renumbered sections in Article III. The changes are to be made at least 90 days before the first Tuesday after the first Monday in November, 1976.

Sec. 5. That if the constitutional amendment proposed in Section 5 of Senate Joint Resolution No. 11, as passed in the 1975 Regular Session of the 64th Legislature, is adopted by a majority of the qualified electors voting on the question on November 4, 1975:

(1) Approval of this resolution by a record affirmative two-thirds vote of the membership of each house of the 64th Legislature in the 1975 Regular Session is hereby declared to constitute legislative approval of state debt in conformity with Section 8 of Article VIII of the constitution.

(2) The ballot at the general election held on the first Tuesday after the first Monday in November, 1976, is to provide for voting for or against the proposition: "Authorizing an increase of \$100 million in the amount of Texas Water Development Bonds that may be issued for water quality enhancement purposes in accordance with House Joint Resolution No. 99 as passed by the 64th Legislature in the 1975 Regular Session." Approval of this proposition by a majority of the qualified voters voting on the question is hereby declared to constitute voter approval of state debt in conformity with Section 8 of Article VIII of the constitution.

(3) Approval of state debt in the manner provided by this section permits the legislature to authorize by law the issuance of Texas Water Development Bonds in the amounts prescribed by and otherwise in accordance with Section 49-c contained in Subdivision (1) of Section 2 of this resolution. However, approval of state debt in the manner provided by this section does not mandate or require the continuation of the Texas Water Quality Board or the Texas Water Development Board as the state agency empowered to issue Texas Water Development Bonds and administer proceeds from the sale of bonds.

(4) Approval of state debt under this section becomes effective on January 1, 1977.

