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XAS LEGISLATIVE COUNCIL

STIN, TEXAS

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For Election -- November *6, 1979*

PROPOSED
ONSTITUTIONAL
MENDMENTS-ANALYZED

PROPOSED CONSTITUTIONAL AMENDMENTS ANALYZED

Analyses of Three Proposed Constitutional Amendments

For Election November 6, 1979

Prepared by the Staff

of the

Texas Legislative Council

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INTRODUCTION

In the 1979 regular session, the Texas Legislature proposed 12 constitutional amendments for voter consideration. Three of the proposals, concerning (1) appointments of notaries public, (2) legislative review of state agency rulemaking, and (3) a farm and ranch guaranteed loan program, will be submitted to the voters at an election on November 6, 1979. The provisions of these amendments are discussed in detail in the following pages.

The remaining nine proposed amendments will appear on the general election ballot on November 4, 1980. They include:

House Joint Resolution 54

The constitutional amendment allowing spouses to agree that income or property arising from separate property is to be separate property.

House Joint Resolution 86

The constitutional amendment to grant the governor power to exercise fiscal control over the expenditure of appropriated funds as provided by law.

House Joint Resolution 97

The constitutional amendment authorizing appeal of certain pretrial rulings of a trial court in a criminal case by either the state or the accused.

House Joint Resolution 98

The constitutional amendment requiring a single appraisal and a single board of equalization within each county for ad valorem tax purposes.

House Joint Resolution 121

The constitutional amendment authorizing counties with a population of 5,000 or less to perform private road work.

Senate Joint Resolution 8

The constitutional amendment to authorize the governor to remove appointed officers with the advice and consent of the senate.

Senate Joint Resolution 18

The constitutional amendment to authorize bingo games on a local option election basis if the games are conducted by a church, synagogue, religious society, volunteer fire department, nonprofit veterans' organization, fraternal organization, or nonprofit organization supporting medical research or treatment programs and if the proceeds are to be spent in Texas for charitable purposes of the organizations.

Senate Joint Resolution 35

The constitutional amendment permitting the legislature to authorize banks to use unmanned teller machines within the county or the city of their domicile on a shared basis to serve the public convenience.

Senate Joint Resolution 36

The constitutional amendment to change the name of the Courts of Civil Appeals and the names and qualifications of the justices of the Supreme Court and to prescribe the jurisdiction and authority of the appellate courts.

A booklet containing an analysis of each of these nine amendments will be published by the Texas Legislative Council in 1980.

Since adoption of the present Texas Constitution in 1876, the document has been amended 233 times while 375 proposed amendments have been submitted to voters. The 12 proposals approved by the 66th Legislature for vote in 1979 and 1980 bring the total number of amendments submitted to 387.

The following table lists the years in which constitutional amendments have been proposed by the Texas Legislature, the number of amendments proposed, and the number of those adopted.

1876 CONSTITUTION --

AMENDMENTS PROPOSED AND ADOPTED

year proposed	number proposed	number adopted	year proposed	number proposed	number adopted
1879	1	1	1931	9	9
1881	2	0	1933	12	4
1883	5	5	1935	13	10
1887	6	0	1937	7	6
1889	2	2	1939	4	3
1891	5	5	1941	5	1
1893	2	2	1943	3**	3
1895	2	1	1945	8	7
1897	5	1	1947	9	9
1899	1	0	1949	10	2
1901	1	1	1951	7	3
1903	3	3	1953	11	11
1905	3	2	1955	9	9
1907	9	1	1957	12	10
1909	4	4	1959	4	4
1911	5	4	1961	14	10
1913	8*	0	1963	7	4
1915	7	0	1965	27	20
1917	3	3	1967	20	13
1919	13	3	1969	16	9
1921	5**	1	1971	18	12
1923	2+	1	1973	9	6
1925	4	4	1975	12++	3
1927	8**	4	1977	15	11
1929	7**	5	1978	1	1

TOTAL PROPOSED 375 ++ TOTAL ADOPTED 233

Notes:

* Eight resolutions were approved by the legislature, but only six were actually submitted on the ballot; one proposal which included two amendments was not submitted to the voters.

** Total reflects two amendments which were included in one joint resolution.

+ Two resolutions were approved by the legislature, but only one was actually submitted on the ballot.

++ Total reflects eight amendments which would have provided for an entire new Texas Constitution and which were included in one joint resolution.

AMENDMENT NO. 1–H.J.R. NO. 108

[Proposing an amendment to Article IV, Section 26, of the Texas Constitution to authorize the legislature to provide terms of office of notaries public and to specify the appointment of notaries public for the state instead of for each county.]

The proposed amendment to Article IV, Section 26, of the Texas Constitution would authorize the legislature to provide terms of office of notaries public that are not less than the current terms of two years and not more than four years. The amendment also would provide that the secretary of state shall appoint a convenient number of notaries public for the state instead of the present appointment of a convenient number of notaries public for each county. It would add temporary provisions to the Texas Constitution to establish January 1, 1980, as the date on which the amendment would take effect and to provide that each person appointed a notary public before that date would continue to serve as a notary public for the term for which the person was appointed.

BACKGROUND

The office of notary public is an ancient institution that originated in Roman jurisprudence and has been in existence in England since the earliest days of English history. A notary public is an officer with authority to administer oaths, take acknowledgments to documents, and certify the validity of instruments by affixing the person's signature and a notary seal to the instrument.

Notaries public existed in Texas to authenticate documents before and during the existence of the Republic of Texas, and the appointment of a convenient number of notaries public has been authorized by the Texas Constitution since Texas became a state. Originally, notaries public in the State of Texas were appointed by the governor with the consent of the senate, but since 1940 the constitution has provided for their appointment by the secretary of state. Prior to a 1977 amendment of Texas statutory law, a notary public's jurisdiction was limited to the county for which the notary public was appointed. Present statutory law provides that the jurisdiction of each notary public is coextensive with the boundaries of the state, irrespective of the county for which the notary public was appointed, but a notary public who does not maintain a residence or principal place of business or employment in the county for which

the notary was appointed vacates the office of notary public. By providing that notaries public will be appointed for the state instead of for each county, the proposed constitutional amendment–and the legislation enacted by the legislature to take effect if the voters approve the proposed amendment–will remove the requirement that a notary public be a resident of or maintain a place of business or employment in a specific county. A notary public will still be required to be a resident citizen of the United States and of this state.

The legislation that takes effect on January 1, 1980, if this proposed amendment is adopted, also provides that the term of appointment for each notary public will be four years instead of the present two years and provides that application for appointment as a notary public will be made directly to the secretary of state. Currently, an application for appointment as a notary public is made to the county clerk of the applicant's county of residence or place of business or employment and forwarded to the secretary of state for processing and official appointment.

In addition to notaries public appointed by the secretary of state, the Texas Constitution provides that justices of the peace are ex officio notaries public. This proposed amendment relates only to notaries public that are appointed by the secretary of state, and its adoption would not change the provisions applicable to justices of the peace.

ARGUMENTS

FOR:

1. Extending the term of office of notaries public from two years to four years and appointing notaries public for the state instead of for each county will reduce government personnel and will reduce costs to both government and notaries public by decreasing the number of renewals and reappointments to be made.

2. Processing notary public applications and renewals is time-consuming and costly for county clerks' offices. The personnel in those offices could better spend their time performing other duties, and many county clerks favor the change. Currently, all applications must be forwarded from the county clerks to the secretary of state for approval, and applying directly to a centralized office for appointment as a notary public would be more efficient and would avoid the middleman step.

AGAINST:

1. The convenience and personal contact that is found in county clerks' offices, especially in rural counties, would be lost if the secretary of state took over all responsibility for appointing and reappointing notaries public.

2. This proposed amendment would increase state control over a function that has been handled successfully at the local level. It would add to the growing state government bureaucracy and would be an instance of centralization of state government down to and through the office of notary public.

AMENDMENT NO. 2–H.J.R. NO. 133

[Proposing a constitutional amendment to provide for legislative review of the process of rulemaking by agencies in the executive department.]

The proposed amendment would authorize the legislature to enact law establishing procedures for "legislative review" of state-agency rulemaking. The law could prescribe conditions for agency rules to take effect and could provide for suspension, repeal, or expiration of existing rules. The law could provide for implementation of this authority by delegating powers to one or both houses of the legislature or to committees of either or both houses. The proposed amendment expressly recognizes that this scheme would be an exception to the separation of powers doctrine.

BACKGROUND

Legislative delegation of rulemaking power to agencies in the executive branch can be described as a 20th century phenomenon, as the practice was relatively unknown in this country until the early 1900's. Under the American doctrine of "separation of powers," it is the responsibility of the legislative branch to make laws, the executive to carry them out, and the judiciary to resolve controversies under those laws. When an administrative agency is delegated power to make "rules and regulations" that govern the conduct of individuals or businesses engaged in a particular pursuit, the agency has power that is legislative in nature.

Early attempts to delegate legislative rulemaking power to executive agencies were met by strong challenges based on the separation of powers doctrine. Although the courts struggled for a time with the concept and never seemed to discover a completely rational justification, the practice of delegating rulemaking power is now generally accepted. An agency rule is regarded as valid and binding if it is made pursuant to an express or implied statutory grant of rulemaking authority, if it is consistent with the standards or policies announced by the statute, if proper procedures are used in promulgating it, and if it does not violate federal or state constitutional provisions.

The congress and state legislatures have relied more and more on agency rulemaking as the complexity of our society has increased. The legislative branch, in facing difficult regulatory problems, inclines now to focus on the major policy questions and leave what it considers the "details" to the administrators. The way an agency handles the details, however, is never

beyond scrutiny, and the legislature at any time retains power to change the substance or effect of any agency rule.

In recent years a feeling has grown among citizens and their legislators that "rule by bureaucracy" has gotten out of hand and that the legislature needs some effective means of restoring the balance by establishing a procedure for overseeing each agency's performance on a day-to-day, rule-by-rule basis to assure that the agency does not lose sight of original legislative intent. This feeling has provoked legislatures of most states to seek new methods for legislative review of agency rulemaking. Various methods have been considered, ranging from a requirement that legislative committees be given the opportunity to comment on proposed rules to a requirement that, for a rule to take effect, some sort of legislative approval must be obtained.

Each method of legislative review that has been conceived, other than the obvious legislative power by law to modify or repeal an agency rule, has been challenged on constitutional grounds--principally, again, separation of powers. It is argued that the power of an executive agency to make rules, once properly delegated by law, is an executive power, and that any form of legislative interference with this process violates the separation of powers doctrine. It is further asserted that the legislature may not grant to a part of itself--to one house or to a committee--a power that only the house and the senate, acting jointly, may exercise. To overcome these arguments is the purpose of the proposed constitutional amendment.

Under current Texas law (V.T.C.S. Art. 6252-13a, Sec. 5(g)), every proposed agency rule is referred to the appropriate standing committee of each house, and the committee is authorized to transmit to the agency a statement supporting or opposing adoption of the rule. This practice is thought to have very little effect, primarily because committees meet so rarely during the interim between sessions.

It is noted that earlier this year the legislature passed House Bill 1382, which would have created a joint house and senate committee on administrative rules review with power to review proposed and existing agency rules and to suspend rules under certain circumstances. The governor vetoed H.B. 1382 on grounds of separation of powers and because the bill was not made contingent on adoption of this proposed constitutional amendment.

ARGUMENTS

FOR:

1. The proposed amendment would provide for the close and continuing supervision needed by the state bureaucracy in order to make it more responsive to the people and to the public policies expressed by their legislature.

2. If legislative committees are given the responsibility of continuing review of agency rulemaking, it is likely that the legislature will learn to be more careful and precise in the way it delegates this power to state agencies.

3. The legislature should review state agency rules because it delegated the specific rulemaking authority to the agencies in the first place, and the rules have the effect of laws.

4. Just as the governor's veto is a necessary check on the powers of the legislature, legislative review of agency rules can serve as an important check on the powers of the executive branch.

AGAINST:

1. The proposed amendment clearly would infringe upon one of the fundamental principles of American government–separation of powers. Under this principle the legislature makes law, the executive branch carries it out, and the courts resolve disputes under the law. Legislative review of agency rulemaking is an obvious encroachment of executive power.

2. If legislative committees get involved in the day-to-day process of agency rulemaking, then special interest groups will have one more chance to impose their will on the public. In many cases four or five sympathetic legislators might be able to block administrative actions that are needed to carry out policies set by the legislature.

3. The people have consistently rejected attempts to expand the time the legislature is in session. If this amendment is adopted, legislative committees may be "in session" on a year-round basis.

4. The legislative committee and staff members who would review agency rules do not have the same level of expertise and understanding as do agency officials who deal with the problems daily. Furthermore, the length of time that the legislative committee would take to review and make decisions could postpone the effectiveness of important and immediately needed regulations.

AMENDMENT NO. 3–S.J.R. NO. 13

[Proposing a constitutional amendment authorizing the legislature to provide for the guarantee of loans for purchase of farm and ranch real estate for qualified borrowers by the sale of general obligation bonds of the State of Texas.]

This proposed constitutional amendment would add Section 50c to Article III of the Texas Constitution, authorizing the legislature to establish a program of state guaranteed loans to be used for the purchase of farm or ranch land.

The amendment would authorize $10 million in general obligation bonds, the proceeds of which would be administered by the commissioner of agriculture without appropriation for the purpose of:

(1) guaranteeing loans made by private lenders to individuals for the purchase of farm or ranch land;

(2) acquiring mortgages or deeds of trust on lands purchased under a guaranteed loan; and

(3) advancing to the borrower a percentage of the principal and interest due on a guaranteed loan.

The amendment would require that any advances made to a borrower bear interest at the rate of six percent. The amendment would also provide for investment of the bond proceeds and would place a first call on the treasury for repayment of the bonds.

BACKGROUND

The constitution's prohibition on pledging the credit of the state prevents the state from establishing a guaranteed loan program or issuing bonds for that purpose without constitutional amendment.

The proposed amendment would authorize the program established under House Bill 304 enacted by the 66th Legislature, which takes effect only on adoption of the amendment. Under that program, loans made by private lenders to eligible borrowers for the purchase of farm or ranch land would be guaranteed by the state. If the borrower defaults, the state would purchase the mortgage or deed of trust from the lender for an amount equal to 90 percent of all sums

due at the time of default. Following all appeals, the state would sell the property in a manner similar to foreclosure.

Eligibility for a guaranteed loan would be limited to Texas residents who:

(1) have the necessary education in the type of farming or ranching they wish to pursue;

(2) have, with spouse and dependents, a net worth of less than $100,000, excluding the value of a residential homestead; and

(3) intend to purchase the land for use by the applicant and family for farming or ranching purposes.

A nine-member advisory council, composed of persons representing the finance and agriculture industries and appointed by the governor, would review all applications for loan guarantees and make recommendations to the commissioner of agriculture on those applications.

In each year of a loan that does not exceed a 20-year term, the commissioner of agriculture would be authorized to pay to the lender on behalf of the borrower an amount equal to four percent of the outstanding balance of the loan. This "payment adjustment" would have the effect of reducing the payments made by the borrower to the lender and would be, in effect, a loan to the borrower from the state. At the end of 10 years, or, if approved for additional payment adjustments, at the end of the term of the loan, the borrower would begin to repay the state the amount paid to the lender in his or her behalf plus six percent simple interest. All applications for payment adjustments would be approved by the advisory council.

The $10 million in bond proceeds, authorized under the amendment and House Bill 304, is estimated to be sufficient to guarantee loans totaling $100 million. The loan guarantee program is patterned after a program established in Minnesota in 1976. Through February 8, 1979, the Minnesota program had guaranteed 109 loans with no defaults. A bill to establish the program in Texas was first introduced in the 65th Legislature in 1977 but failed to be enacted.

ARGUMENTS

FOR:

1. The family farm makes an important contribution to the health and economic well-being of the state, but the average age of Texas farmers is reaching 55. This proposed amendment would aid young men and women who have been unable to begin in the farm and ranch business because of the high price of land and the extremely high down payment required on the land (now averaging 20 percent) by making affordable loans available.

2. Because of safeguards concerning who is eligible for loans, the risks to the state from defaults are minimal and land speculators and large corporations will not benefit. Furthermore, in case of a default, the state would be able to resell the land with the possibility of making a profit because of the initial requirement for a fair appraisal before a loan is approved and because of increasing land values.

3. The proposal has been modeled after a successful Minnesota program, and that state's experience shows that the loan security program is a viable way to encourage young farmers and ranchers.

4. Large corporations are gaining control of more and more agricultural land in the state, and this loan program enables individuals to begin to operate economically efficient and competitive farms or ranches.

AGAINST:

1. A state guaranteed loan program financed by bonds means that the state is, with borrowed money, assuming the risk of default for loans made by private lenders. Not only is this government interference with the traditionally free marketplace, but it is also an unreasonable assumption of risk without tangible benefit to the state as a whole. If the presently unstable economic conditions were to worsen, the taxpayers would bear the cost of the defaulted loans. The potential for that default is reflected in current interest rates and down payment requirements; without that potential, state guarantees would not be needed to encourage private lenders to make loans.

2. Even with no or few defaults, the program is not without cost to the taxpayer. Under the enabling legislation, the costs of administering the program through the commissioner of agriculture are paid from appropriated funds. In addition, the guarantees may tend to create higher land prices and add to the inflation rate.

3. Although the number of individual farms and ranches has dropped by 50 percent since 1940, there are no proven ill effects from the decline which justify a guaranteed loan program. Farms have become fewer, larger, and more expensive to operate, but have also become far more productive.

4. The "payment adjustments" provided for under the proposed amendment and the enabling legislation are, in effect, loans to the individual borrowers. The state, therefore, is not only assuming the risk of a private lender on the purchase money loan, but it is also assuming the risk of making an indirect loan to the borrower.

APPENDIX

AMENDMENT NO. 1

H.J.R. No. 108

A JOINT RESOLUTION proposing a constitutional amendment relating to the appointment and terms of notaries public.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. That Article IV, Section 26, of the Texas Constitution be amended to read as follows:

Sec. 26. (a) The Secretary of State shall appoint a convenient number of Notaries Public for the state [~~each--county~~] who shall perform such duties as now are or may be prescribed by law. The qualifications of Notaries Public shall be prescribed by law.

(b) The [~~Nothing--herein--shall--affect-the~~] terms of office of Notaries Public shall be not less than two years nor more than four years as provided by law. [~~who--have-qualified-for-the-present-term prior-to-the-taking-effect-of-this-amendment.~~

[~~(c)--Should-the-Legislature-enact-an-enabling law-hereto-in-anticipation-of-the-adoption--of--this amendment,--such--law-shall-not-be-invalid-by-reason of-its-anticipatory-character.~~]

SECTION 2. That a temporary provision be added to the Texas Constitution to read as follows:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment

proposed by H.J.R. No. 108, 66th Legislature, Regular Session, 1979.

(b) The constitutional amendment takes effect January 1, 1980.

(c) Each person who was appointed a notary public before January 1, 1980, continues to serve as a notary public for the term for which the person was appointed.

(d) This temporary provision expires January 1, 1982.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 6, 1979. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to provide for the appointment of notaries public for the state and for a term of not less than two years nor more than four years as provided by law."

AMENDMENT NO. 2

H.J.R. No. 133

A JOINT RESOLUTION proposing a constitutional amendment to provide for legislative review of the process of rulemaking by agencies in the executive department.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. That Article III of the Texas Constitution be amended by adding Section 66 to read as follows:

Sec. 66. Regardless of any provision of Article II or of this article, the legislature by law may provide for legislative review of the process of rulemaking by agencies in the executive department. The law may prescribe conditions for rules to take effect and may provide for suspension, repeal, or expiration of rules. The law may prescribe procedures and may delegate powers to either or both houses or to committees of either or both houses.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 6, 1979. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to provide for legislative review of the process of rulemaking by agencies in the executive department."

AMENDMENT NO. 3

S.J.R. No. 13

A JOINT RESOLUTION proposing a constitutional amendment authorizing the legislature to provide for the guarantee of loans used to purchase farm and ranch real estate for qualified borrowers.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. That Article III of the Texas Constitution be amended by adding Section 50c to read as follows:

"Section 50c. (a) The legislature may provide that the commissioner of agriculture shall have the authority to provide for, issue, and sell general obligation bonds of the State of Texas in an amount not to exceed $10 million. The bonds shall be called 'Farm and Ranch Loan Security Bonds' and shall be executed in such form, denominations, and on such terms as may be prescribed by law. The bonds shall bear interest rates fixed by the Legislature of the State of Texas.

"(b) All money received from the sale of Farm and Ranch Loan Security Bonds shall be deposited in a fund hereby created with the State Treasurer to be known as the 'Farm and Ranch Loan Security Fund.' This fund shall be administered without further appropriation by the commissioner of agriculture in the manner prescribed by law.

"(c) The Farm and Ranch Loan Security Fund shall be used by the commissioner of agriculture under provisions prescribed by the legislature for the purpose of guaranteeing loans used for the purchase of farm and ranch real estate, for acquiring real estate mortgages or deeds of trust on lands purchased with guaranteed loans, and to advance to the borrower a percentage of the principal and interest due on those loans; provided that the commissioner shall require at least six percent interest be paid by the borrower on any advance of principal and interest. The legislature may authorize the commissioner to sell at foreclosure any land acquired in this manner, and proceeds from that sale shall be deposited in the Farm and Ranch Loan Security Fund.

"(d) The legislature may provide for the investment of money available in the Farm and Ranch Loan Security Fund and the interest and sinking fund established for the payment of bonds issued by the commissioner of agriculture. Income from the investment shall be used for purposes prescribed by the legislature.

"(e) While any of the bonds authorized by this section or any interest on those bonds is outstanding and unpaid, 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 that is sufficient to pay the principal and interest on the bonds that mature or become due during the fiscal year less the amount in the interest and sinking fund at the close of the prior fiscal year."

SECTION 2. The foregoing constitutional amendment shall be submitted to a vote of the qualified electors of this state at an election to be held on November 6, 1979, at which election the ballots shall be printed to provide for voting for

or against the proposition: "The constitutional amendment authorizing the legislature to provide for the guarantee of loans for purchase of farm and ranch real estate for qualified borrowers by the sale of general obligation bonds of the State of Texas."