Analysis of Proposed Constitutional Amendment

November 4, 2014, Election
(Revised)

Texas Legislative Council

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Prepared by the Staff
of the
Texas Legislative Council

Published by the
Texas Legislative Council
P. O. Box 12128
Austin, Texas 78711-2128

TEXAS LEGISLATIVE COUNCIL

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Note: This revised publication makes a correction to the chamber designations of the author and sponsor listed on page 8.

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General Information

In 2013, the 83rd Texas Legislature passed joint resolutions proposing 10 amendments to the state constitution. Nine of these proposed amendments were offered for ratification on the November 5, 2013, election ballot, and the final proposed amendment will be offered for approval by the voters of Texas on the November 4, 2014, election ballot.

The Texas Constitution provides that the legislature, by a two-thirds vote of all members of each house, may propose amendments revising the constitution and that proposed amendments must then be submitted for approval to the qualified voters of the state. A proposed amendment becomes a part of the constitution if a majority of the votes cast in an election on the proposition are cast in its favor. An amendment approved by the voters is effective on the date of the official canvass of returns showing adoption. The date of canvass, by law, is not earlier than the 15th or later than the 30th day after election day. An amendment may provide for a later effective date.

From the adoption of the current Texas Constitution in 1876 through November 2013, the legislature has proposed 666 amendments to the constitution, of which 662 have gone before Texas voters. Of the amendments on the ballot, 483 have been approved by the electorate and 179 have been defeated. Three amendments were never placed on the ballot for reasons that are historically obscure. See the online publication *Amendments to the Texas Constitution Since 1876* for more information.

The *Analysis of Proposed Constitutional Amendment* contains, for the proposed amendment that will appear on the November 4, 2014, ballot, the ballot language, an analysis, and the text of the joint resolution proposing the amendment. The analysis includes background information and a summary of comments made during the legislative process about the proposed constitutional amendment by supporters and by opponents.

Amendment No. 1 (S.J.R. 1)

Wording of Ballot Proposition

The constitutional amendment providing for the use and dedication of certain money transferred to the state highway fund to assist in the completion of transportation construction, maintenance, and rehabilitation projects, not to include toll roads.

Analysis of Proposed Amendment

S.J.R. 1, approved during the 83rd Texas Legislature, 3rd Called Session, 2013, proposes an amendment to the Texas Constitution to require the comptroller of public accounts to allocate to the state highway fund, for the sole purpose of constructing, maintaining, and acquiring rights-of-way for public roadways other than toll roads, up to half of the amount of oil and gas production tax revenue the comptroller currently is required to transfer each year to the economic stabilization fund. The proposed amendment requires the legislature to provide for a procedure by which the allocation of oil and gas production tax revenue may be adjusted to provide for a transfer of a greater amount to the economic stabilization fund, with the remainder, if any, allocated for transfer to the state highway fund.

Background

In 1988, voters approved a constitutional amendment establishing the economic stabilization fund, also known as the rainy day fund, to offset unforeseen shortfalls in state revenue. Money in the fund comes primarily from oil and gas production tax revenue. Each year, if the state's oil and gas production tax revenue exceeds the amount collected in fiscal year 1987, the comptroller transfers 75 percent of the excess into the fund, with the remaining 25 percent of the excess retained as general revenue. The fund also receives half of any unencumbered general revenue left over at the end of each biennial state budget cycle.

The legislature may appropriate money from the economic stabilization fund at any time and for any purpose with a two-thirds vote

of the members present in each house. The legislature also may make appropriations from the fund with a three-fifths vote of the members present in each house to address either an actual budget deficit in the current state biennium or a projected budget shortfall for the upcoming biennium based on the comptroller's estimates of anticipated revenue for that biennium, or for purposes for which general revenue appropriations have been made by a preceding legislature.

Enacted during the 83rd Texas Legislature, 3rd Called Session, in 2013, H.B. 1 is the enabling legislation intended to implement the constitutional amendment proposed by S.J.R. 1 if the amendment is approved by the voters. Among other provisions, the enabling legislation requires the lieutenant governor and the speaker of the house to appoint a select committee each even-numbered year through 2024 to determine and adopt for the next two-year state budget cycle a balance amount for the economic stabilization fund considered to be sufficient, based on specified factors. In addition, the enabling legislation provides for the legislature's subsequent approval or amendment and approval of the adopted sufficient balance. If a sufficient balance has not been adopted in this manner for a budget cycle, the enabling legislation requires the comptroller to adjust the respective allocations to the economic stabilization fund and the state highway fund so that all of the oil and gas production tax revenue subject to allocation for that budget cycle is transferred to the economic stabilization fund, subject to a constitutional limit on the amount of the fund. If a sufficient balance has been adopted and the comptroller determines that the balance of the economic stabilization fund, including any projected transfers to that fund, will be less than the adopted balance, the enabling legislation requires the comptroller to reduce the allocation to the state highway fund and increase the allocation to the economic stabilization fund as necessary to achieve that sufficient balance in the economic stabilization fund.

Summary of Comments

The following paragraphs are based on comments made about the amendment during the legislative process and generally summarize the main arguments supporting or opposing the amendment.

Comments by Supporters. A marked need for additional transportation funding has been created by a number of factors, including the growth of the state's population and economy and the attendant increase in the number of vehicle miles driven on public roadways; erosion in the relative value of the state gasoline tax as a result of inflation and improvements in vehicle fuel economy; maintenance requirements of an aging highway system; and the added strains placed on public roadways by increased oil and gas exploration and production. The funding mechanism set out by the proposed amendment and its enabling legislation will result in a steady stream of additional highway money that could be used for long-term planning by transportation administrators.

The funding mechanism affects only deposits to the economic stabilization fund; it does not raise taxes or fees and has no effect on money coming out of the fund. With the proposed amendment's passage, the economic stabilization fund will still have a robust balance despite recent appropriations from the fund and anticipated future appropriations. Furthermore, the funding mechanism gives legislators a voice in its operation and provides what is effectively a 10-year expiration date if the process does not meet expectations.

Comments by Opponents. Funding transportation is a key component of state government's complex appropriations process and, rather than being delegated to the voters through the proposed amendment, should be treated like any other part of that process.

While there may be widespread agreement that the state must find additional funding for its many current and future transportation needs, oil and gas production taxes are a volatile revenue stream that should not be considered as part of a long-term solution to transportation funding. In addition, the amount of funds that would be allocated to the state highway fund under the procedures contemplated by the proposed amendment and its enabling legislation constitute only approximately one-quarter of the funds that are needed to keep up with an increasing demand for transportation funding.

Text of S.J.R. 1

SENATE JOINT RESOLUTION

proposing a constitutional amendment to provide for the transfer of certain general revenue to the economic stabilization fund and to the state highway fund and for the dedication of the revenue transferred to the state highway fund.

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

SECTION 1. Section 49-g, Article III, Texas Constitution, is amended by amending Subsections (c), (d), and (e) and adding Subsections (c-1) and (c-2) to read as follows:

(c) Not later than the 90th day of each fiscal year, the comptroller of public accounts shall transfer from the general revenue fund to the economic stabilization fund and the state highway fund the sum of the amounts described [~~prescribed~~] by Subsections (d) and (e) of this section, to be allocated as provided by Subsections (c-1) and (c-2) of this section. However, if necessary and notwithstanding the allocations prescribed by Subsections (c-1) and (c-2) of this section, the comptroller shall reduce proportionately the amounts described by Subsections (d) and (e) of this section to be transferred and allocated to the economic stabilization fund to prevent the amount in that [~~the~~] fund from exceeding the limit in effect for that biennium under Subsection (g) of this section. Revenue transferred to the state highway fund under this subsection may be used only for constructing, maintaining, and acquiring rights-of-way for public roadways other than toll roads.

(c-1) Of the sum of the amounts described by Subsections (d) and (e) of this section and required to be transferred from the general revenue fund under Subsection (c) of this section, the comptroller shall allocate one-half to the economic stabilization fund and the remainder to the state highway fund, except as provided by Subsection (c-2) of this section.

(c-2) The legislature by general law shall provide for a procedure by which the allocation of the sum of the amounts described by Subsections (d) and (e) of this section may be adjusted to provide for a transfer to

the economic stabilization fund of an amount greater than the allocation provided for under Subsection (c-1) of this section with the remainder of that sum, if any, allocated for transfer to the state highway fund. The allocation made as provided by that general law is binding on the comptroller for the purposes of the transfers required by Subsection (c) of this section.

(d) If in the preceding year the state received from oil production taxes a net amount greater than the net amount of oil production taxes received by the state in the fiscal year ending August 31, 1987, the comptroller shall transfer under Subsection (c) of this section and allocate in accordance with Subsections (c-1) and (c-2) of this section [~~to the economic stabilization fund~~] an amount equal to 75 percent of the difference between those amounts. The comptroller shall retain the remaining 25 percent of the difference as general revenue. In computing the net amount of oil production taxes received, the comptroller may not consider refunds paid as a result of oil overcharge litigation.

(e) If in the preceding year the state received from gas production taxes a net amount greater than the net amount of gas production taxes received by the state in the fiscal year ending August 31, 1987, the comptroller shall transfer under Subsection (c) of this section and allocate in accordance with Subsections (c-1) and (c-2) of this section [~~to the economic stabilization fund~~] an amount equal to 75 percent of the difference between those amounts. The comptroller shall retain the remaining 25 percent of the difference as general revenue. For the purposes of this subsection, the comptroller shall adjust the [~~his~~] computation of revenues to reflect only 12 months of collection.

SECTION 2. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 83rd Legislature, 3rd Called Session, 2013, to provide for the transfer of certain general revenue to the economic stabilization fund and to the state highway fund and for the dedication of the revenue transferred to the state highway fund.

(b) The amendment to Section 49-g, Article III, of this constitution

takes effect immediately on the final canvass of the election on the amendment. If, between September 1, 2014, and the effective date of that constitutional amendment, the comptroller of public accounts has transferred from general revenue to the economic stabilization fund amounts in accordance with Subsections (c), (d), and (e) of that section, as those subsections existed at the time of the transfer, as soon as practicable after the effective date of the amendment, the comptroller shall return the transferred amounts from the economic stabilization fund to general revenue and transfer from general revenue to the economic stabilization fund and the state highway fund amounts in accordance with the amended provisions and in accordance with general law, notwithstanding the requirement of Subsection (c) of that section that the transfers for that fiscal year be made before the 90th day of the fiscal year beginning September 1, 2014.

(c) This temporary provision expires January 1, 2017.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 2014. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment providing for the use and dedication of certain money transferred to the state highway fund to assist in the completion of transportation construction, maintenance, and rehabilitation projects, not to include toll roads."

Senate Author: Robert Nichols et al.
House Sponsor: Joe Pickett et al.