

SUBJECT: Eliminating duplicate and obsolete provisions from the Texas Constitution

COMMITTEE: Select Committee on Constitutional Revision — committee substitute recommended

VOTE: 4 ayes — Driver, Bailey, G. Lewis, Mowery

0 nays

3 absent — Puente, Dutton, Solomons

WITNESSES: For — None

Against — None

On — Sue Glover, Texas Association of Counties; Leslie Pettijohn, Consumer Credit Commissioner

BACKGROUND: The Texas Constitution originally was adopted in 1876. Since then, the Texas Legislature has proposed 567 amendments, and Texas voters have approved 390 of those amendments.

The 75th Legislature proposed HJR 104 by Mowery, which revised certain portions of the Texas Constitution to reflect changes in federal law, delete moot provisions, and renumber provisions with duplicate numbering. Texas voters approved the amendment on November 4, 1997, by a vote of 865,397 to 458,791. The 76th Legislature proposed HJR 62 by Mowery, which also removed obsolete, duplicate, and ineffective provisions of the Texas Constitution, and Texas voters approved that amendment on November 2, 1999, by a vote of 720,085 to 217,856.

DIGEST: CSHJR 75 would remove or reword numerous obsolete, duplicate and ineffective provisions of the Texas Constitution. Some changes would include:

! deleting provisions dividing senatorial districts by the number of qualified electors, rather than by population, and prohibiting counties

- from having more than one senatorial district;
- ! deleting reference to repealed art. 3, sec. 26a regarding reapportionment of state representative and senatorial districts;
- ! empowering the Legislature to pass local fence laws and livestock regulations;
- ! making various references gender neutral;
- ! deleting several “incumbent protection” provisions for judges, including one that expired in 1891;
- ! repealing art. 7, sec. 9, which required the creation of permanent accounts for property set aside for the benefit of four state institutions, including the Insane Asylum, Institute for the Blind, Deaf and Dumb Institute, and Orphans’ Home.
- ! deleting provisions regarding the disposition of receipts from state ad valorem taxes.
- ! deleting a provision that only “property taxpayers” are qualified to vote, and adding provisions that prohibit persons convicted of bribery, perjury, forgery or other high crimes from voting or serving on juries;
- ! deleting duplicate “oath of office” provisions;
- ! adding a provision to allow counties to elect a tax assessor-collector or to designate the sheriff as assessor-collector in counties with populations of fewer than 10,000 people;
- ! removing provisions about the election to abolish the office of constable in Reagan and Roberts counties, and revising art. 5, sec. 18(e) to reflect that the constables’ offices are abolished in Mills, Reagan and Roberts counties, as previously approved.

Temporary provisions of CSHJR 75 would:

- ! provide that any land held for the benefit of the Insane Asylum, Institute for the Blind, Deaf and Dumb Institute, and Orphans’ Home be sold by the General Land Office and the money remaining in any permanent funds for those defunct institutions be transferred to the state general fund by January 1, 2005;
- ! provide that re-enactment of any provision for the purpose of enactment does not revive a provision that may have been impliedly repealed by adoption of a later amendment;
- ! ensure that the revision would not affected vested rights.

The proposal would be presented to the voters at an election on November 6, 2001. The ballot proposal would read: "The constitutional amendment to eliminate obsolete, archaic, redundant, and unnecessary provisions and to clarify, update, and harmonize certain provisions of the Texas Constitution."

SUPPORTERS
SAY:

CSHJR 75 would help streamline the Texas Constitution by deleting obsolete provisions and those inconsistent with federal law, removing moot provisions, and renumbering provisions with duplicate numbering. For example, it would delete provisions requiring the senatorial districts be redistricted on the basis of qualified electors rather than population and prohibiting counties from having more than one senatorial district that are unconstitutional based on the U.S. Supreme Court decision in *Reynolds v. Sims* 377 U.S. 533 (1964). The changes made by CSHJR 75 have been examined thoroughly to ensure that no change would be substantive.

A complete overhaul of the Constitution may result in an improved document, but would involve making many substantive changes that should be thoroughly examined. Rather than wait for a complete rewrite to be adopted, CSHJR 75 would allow the current constitution to be updated and remove more of the unnecessary provisions that make the current document difficult to use.

OPPONENTS
SAY:

Rather than amend and repeal sections of an out-of-date state constitution, it would make more sense to overhaul the document to make it a leaner, more responsive document that would serve Texas as a blueprint for government for the next millennium. The sheer volume of unnecessary provisions being removed by CSHJR 75 after two similar revisions in 1997 and 1999 shows the need for a complete overhaul of the Constitution.

NOTES:

HJR 69 by Junell, proposing a revision of the Texas Constitution, is scheduled for a public hearing on April 24 by the Select Committee on Constitution Revision. The committee also is scheduled to hold a public hearing the same day on HJR 91 by Driver, which would eliminate obsolete, duplicate, or unnecessary provisions and correct outdated provisions of the Texas Constitution.

CSHJR 75 differs from the filed version in that it would direct that funds from the sale of any land held for the benefit of the Insane Asylum, Institute

for the Blind, Deaf and Dumb Institute, and Orphans' Home be deposited in the state general fund rather than the permanent school fund. CSHJR 75 also would revise a change made in the filed version that would have made a substantive change in the Legislature's authority to define interest and fix maximum rates of interest.