

# Condensed Analyses of Proposed Constitutional Amendments

85th Regular Session

November 7, 2017, Election



Texas Legislative Council

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## **Proposition 1 (H.J.R. 21)**

The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of part of the market value of the residence homestead of a partially disabled veteran or the surviving spouse of a partially disabled veteran if the residence homestead was donated to the disabled veteran by a charitable organization for less than the market value of the residence homestead and harmonizing certain related provisions of the Texas Constitution.

### **Summary Analysis**

Section 1-b, Article VIII, Texas Constitution, provides for a number of residence homestead exemptions from property (or "ad valorem") taxation. Subsection (l) of Section 1-b authorizes the legislature to provide for an exemption from property taxation of a percentage of the market value of a partially disabled veteran's residence homestead equal to the percentage of the veteran's disability if the residence homestead was donated at "no cost" to the veteran by a charitable organization. The constitutional amendment proposed by H.J.R. 21 amends Subsection (l) to authorize the legislature to expand the exemption authorized by that subsection to include a residence homestead donated to a disabled veteran by a charitable organization "for less than the market value of the residence homestead, including at no cost" to the veteran, instead of only at "no cost" to the veteran.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- H.J.R. 21 would provide financial relief to disabled veterans receiving a partially donated home who may not otherwise be able to afford a home because of the tax burden on the home.
- Currently, a partially disabled veteran who pays part of the cost of a donated home receives no property tax exemption on the home's taxable value, unlike a partially disabled veteran whose home has been donated to the veteran in full. H.J.R. 21 would address this inconsistency in the law and avoid the risk that such a veteran might lose a home designed specifically for the individual's disabilities because of property tax bills that the veteran may not have the income to pay.
- The legislature has long recognized veterans for sacrifices they have made for this state and nation. H.J.R. 21 would continue this practice.

### **Comments by Opponents**

- While no witnesses opposing H.J.R. 21 appeared before the legislature, the HRO analysis reports that opponents say that the legislature should focus its efforts on reducing the property tax burden for everyone rather than granting exemptions for a specific category of people, regardless of how deserving, which results in higher taxes for others.

## **Proposition 2 (S.J.R. 60)**

The constitutional amendment to establish a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads.

### **Summary Analysis**

The constitutional amendment proposed by S.J.R. 60 amends certain provisions of Section 50, Article XVI, Texas Constitution, relating to home equity loans and home equity lines of credit. The proposed amendment lowers the cap on fees that a borrower may be charged for a home equity loan but excludes certain fees from the cap. It repeals the prohibition against home equity loans on agricultural homesteads and amends the list of approved home equity loan lenders. In addition, the proposed amendment allows a home equity loan to be refinanced as a non-home equity loan if certain conditions are met. Finally, the proposed amendment repeals the restriction on making debits or advances on a home equity line of credit if the principal amount outstanding exceeds 50 percent of the fair market value of the homestead.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

### **Comments by Supporters**

- The proposed amendment would modernize existing Texas law regarding home equity loans, which is based on 1997 legislation. This amendment represents the first major revision since 2003.
- S.J.R. 60 aims to improve access to home equity loans and allow home equity loans to be made on smaller-value properties.

- The amendment represents a consensus of the concerns of Realtor and lender associations, which include addressing limited access to home equity loans in rural areas, significantly increased costs at the time of origination, and high population growth from outside Texas that has created increased real estate activity.
- Home equity loans are used for home repairs, medical expenses, college tuition, and expenses for emergencies such as accidents and natural disasters. It is important to keep these loans available because other types of loans do not offer the same benefits and protections to homeowners.
- The amendment would keep the home equity market stable and lending responsible while improving consumers' access to credit.
- Regarding the changes to the fee cap:
  - S.J.R. 60 would balance consumer protection provided by the fee cap with a reasonable standard for lenders by lowering the ceiling on fees that can be charged and removing certain fees from the calculation of the cap.
  - Excluding certain third-party charges from the fee cap is to the consumer's advantage because it allows the consumer to shop for competitive options.
- Regarding agricultural homesteads:
  - S.J.R. 60 would provide increased consumer choice by allowing home equity loans to be made on agricultural homesteads.
  - Current law prohibits the use of homestead property designated for agriculture, other than dairy farming, to secure a home equity loan. An owner of such property who obtains this type of loan does so at the cost of losing the property's agricultural designation tax status. The current restrictions impose a hardship because they make transactions too complex and discourage new buyers.
- Regarding the refinancing changes:
  - S.J.R. 60 would provide increased consumer choice by allowing the refinancing of home equity loans into non-home equity loans.
  - Consumer protections for prospective refinance customers have been included in the form of a required statement of comparison between home equity loans and non-home equity loans.
- The proposed amendment would afford consumers greater access to funds for which they have been approved by repealing a restriction on home equity lines of credit that prohibits additional advances on a loan from being made under certain circumstances.
- The limitation of home equity loans to 80 percent of total equity is what saved the Texas market during the last recession. This rule has been retained.

**Comments by Opponents**

- S.J.R. 60 would erase constitutional protections for homeowners that were very carefully negotiated when home equity loans were first authorized.

- There are no significant issues with obtaining home equity loans in Texas under current law. The amendment would only make costs more onerous to borrowers.
- Regarding the changes to the fee cap:
  - Although this change appears to benefit the consumer, the proposed amendment disguises the potential for lender fee increases. Because the amendment excludes the items that generally represent the highest up-front costs - third-party appraisals, surveys, title insurance, and title examination reports - from the calculation of the fee cap, lenders would have greater incentive to increase their own origination fees despite the two percent limit.
  - Increasing the prospective profits from loan origination fees, regardless of the loan's expected performance, would encourage improvident lending. Lenders could later sell badly performing loans on the secondary market. Such behavior contributed to the 2007-2009 recession.
- Regarding the refinancing changes:
  - When home equity loans were initially authorized in Texas, it was expected that homeowners would be protected from forced sales by the requirement for judicial foreclosure and because these are nonrecourse loans, which means other assets are protected. The amendment would allow conversion of a home equity loan back to a purchase money loan, which lacks these protections.
  - Home equity loan borrowers already have the ability to refinance their loans with a new home equity loan that provides certain protections.

### **Proposition 3 (S.J.R. 34)**

The constitutional amendment limiting the service of certain officeholders appointed by the governor and confirmed by the senate after the expiration of the person's term of office.

#### **Summary Analysis**

Section 17, Article XVI, Texas Constitution, referred to as the "holdover" provision, requires that an officer within the state continue to perform the duties of office until the officer's successor is qualified for office, including after the officer's term expires. S.J.R. 34 proposes a constitutional amendment to end the requirement of continuous performance of duties for gubernatorial appointees to unpaid state offices on the last day of the first regular session of the legislature that begins after the expiration of the officer's term.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- S.J.R. 34 would address concerns that unpaid gubernatorial appointees on state boards and commissions hold over in office long after expiration of the appointees' terms and would ensure that unpaid volunteer positions are sufficiently rotated among qualified Texans.
- The senate prerogative for advice and consent would be preserved by placing term limits at the end of a regular legislative session on the service of appointees whose terms have expired, allowing the senate to hold confirmation hearings on replacement appointees.
- The amendment would provide the Office of the Governor ample time to find and appoint a willing and qualified successor after an officer's term expires.

#### **Comments by Opponents**

- S.J.R. 34 could result in unfilled vacancies in important state offices if successors are not duly qualified by the deadline proposed by the amendment.
- The existing constitutional provision providing for the continued service of officers until their successors are duly qualified affords the Office of the Governor flexibility in finding qualified replacements for appointive offices.

### **Proposition 4 (S.J.R. 6)**

The constitutional amendment authorizing the legislature to require a court to provide notice to the attorney general of a challenge to the constitutionality of a state statute and authorizing the legislature to prescribe a waiting period before the court may enter a judgment holding the statute unconstitutional.

#### **Summary Analysis**

S.J.R. 6 proposes an amendment to the Texas Constitution that authorizes the legislature to require a court to provide notice to the attorney general if a party to litigation challenges the constitutionality of a state statute and authorizes the legislature to prescribe a reasonable period after the notice has been provided, which may not exceed 45 days, during which the court may not enter a judgment holding the statute unconstitutional.

The resolution also proposes a temporary provision to validate an existing statute, which has been held unconstitutional, requiring a court to provide notice to the attorney general of challenges to the constitutionality of state statutes and prescribing a waiting period before the court may enter a judgment holding a statute unconstitutional.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- The proposed amendment would ensure that Texas laws could not be struck down through a constitutional challenge without the attorney general having a fair opportunity to defend the laws.
- S.J.R. 6 is needed to restore Section 402.010, Government Code, which protects the prerogative of the legislature by providing that if private litigants challenge the constitutionality of a state statute, the attorney general must be informed and therefore have the opportunity to intervene and defend the statute. The Texas Court of Criminal Appeals determined in 2013 that it was an unconstitutional violation of the separation of powers for a court to have to notify the attorney general that the constitutionality of a state statute is being challenged.
- The attorney general's office already has a system for receiving notices and deciding how the office should respond to civil challenges to Texas law that works well. Under the system for civil cases, intervention is not a typical course of response because the office usually can determine if there is an interested party other than the attorney general who can maintain a defense of the statute.
- S.J.R. 6 would not substantially alter the state's separation of powers doctrine, restrict the ability of courts to strike down laws on constitutional grounds, or change the authority of the attorney general's office over criminal matters.

#### **Comments by Opponents**

- The constitution should not be amended in a manner that may undermine the state's separation of powers doctrine.
- Texans should be able to pursue and receive relief from unconstitutional laws without delay due to a waiting period for the attorney general to consider intervening during which a court may not enter a judgment.
- The constitutional amendment proposed by S.J.R. 6 may create confusion regarding the attorney general's role in criminal cases by requiring notice to be provided to the attorney general in such cases. Under current law, the attorney general is not authorized to represent the state in criminal cases, subject to certain exceptions. Requiring notice to be provided serves little purpose unless the prosecutor requests the attorney general's assistance in a pending case.



## **Proposition 5 (H.J.R. 100)**

The constitutional amendment on professional sports team charitable foundations conducting charitable raffles.

### **Summary Analysis**

Section 47(d-1), Article III, Texas Constitution, currently authorizes the legislature to permit a professional sports team charitable foundation to conduct a charitable raffle at games hosted at the home venue of the professional sports team associated with the foundation, but only if the foundation existed on January 1, 2016. The constitutional amendment proposed by H.J.R. 100 removes this limitation and for purposes of Subsection (d-1) defines "professional sports team" to include a team organized in this state that is a member of one of the listed professional sports organizations, a person hosting a motorsports racing team event sanctioned by a nationally recognized motorsports racing association at certain venues, an organization hosting a professional golf association event, or any other professional sports team defined by law.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- By expanding the number of professional sports team charitable foundations eligible to hold charitable raffles at home games, H.J.R. 100 and its implementing legislation, H.B. 3125, would provide opportunities for charitable revenue to be brought to more areas of the state, such as rural and suburban communities.
- Charitable raffles help disadvantaged youth across Texas and also have the potential to help nonprofit and other charitable organizations that have programming geared toward helping cancer research and victims of domestic abuse.
- Charitable raffles held under the current authorization have been successful in raising large amounts of money for charitable purposes without abusing the process.
- The amendment would not remove existing safeguards that protect against improperly conducted raffles.

#### **Comments by Opponents**

- The existing constitutional limitation that allows only foundations in operation on January 1, 2016, to operate charitable raffles was established to protect against the creation of new entities solely to take advantage of charitable raffles.

- H.J.R. 100 would expand gambling in Texas by encouraging less well-established professional sports teams to set up charitable foundations to conduct raffles and may prompt other groups to seek similar authorization to conduct charitable gaming.

## **Proposition 6 (S.J.R. 1)**

The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a first responder who is killed or fatally injured in the line of duty.

### **Summary Analysis**

Section 1-b, Article VIII, Texas Constitution, governs residence homestead exemptions from property (or "ad valorem") taxation. The constitutional amendment proposed by S.J.R. 1 amends Section 1-b by adding Subsections (o) and (p). Proposed Subsection (o) authorizes the legislature to provide the surviving spouse of a first responder who is killed or fatally injured in the line of duty a property tax exemption for all or part of the market value of the surviving spouse's residence homestead if the surviving spouse has not remarried since the death of the first responder. Proposed Subsection (p) authorizes the legislature to provide for a surviving spouse who receives an exemption under proposed Subsection (o) to receive an exemption from property taxation on the surviving spouse's subsequently qualified residence homestead in an amount equal to the dollar amount of the exemption for the former homestead under proposed Subsection (o) in the last year in which the surviving spouse received the exemption for the former homestead, if the surviving spouse has not remarried. The proposed amendment applies only to property taxes imposed for a tax year beginning on or after January 1, 2018.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- S.J.R. 1 would help ensure that families of fallen first responders, who have already suffered devastating loss in service to their communities, do not face the loss of their home because of the property tax burden, particularly following the death of a first responder who is likely to have been a breadwinner for the family.

- The amendment would extend to surviving spouses of first responders the same well-deserved property tax exemption given to surviving spouses of disabled veterans and members of the armed services killed in action, and would continue the legislature's long-standing practice of addressing the hardships faced by families of fallen first responders.

#### **Comments by Opponents**

- While no witnesses opposing S.J.R. 1 appeared before the legislature, the HRO analysis reports that opponents say that the legislature should focus its efforts on reducing the property tax burden for everyone rather than granting exemptions for a specific category of people, regardless of how deserving, which results in higher taxes for others.

## **Proposition 7 (H.J.R.37)**

The constitutional amendment relating to legislative authority to permit credit unions and other financial institutions to award prizes by lot to promote savings.

#### **Summary Analysis**

The constitutional amendment proposed by H.J.R. 37 specifies that the constitutional provision requiring the legislature to pass laws prohibiting most lotteries and gift enterprises, which includes most forms of gambling, in Texas does not prohibit the legislature from authorizing credit unions and other financial institutions to promote savings by awarding prizes to one or more of the credit union's or financial institution's depositors selected by lot.

#### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- Savings incentives such as savings promotion raffles offering cash prizes to savers are needed in Texas because more than one-third of Texas households lack a savings account, and about half do not have a three-month emergency fund.
- H.J.R. 37 would provide an incentive for individuals, including low-income individuals, to open savings accounts with banks and credit unions instead of relying on more expensive alternative financial services such as consumer loans or on payday lenders and title lenders for which fewer regulations exist.

- Depositors' money is not at risk because prizes are paid from the bank's marketing fund.
- Prize-linked savings accounts are not gambling because there is no payment or consideration.
- A number of other states that have adopted legislation allowing prize-linked savings accounts have seen a substantial increase in consumer savings and new accounts as a result.
- Some banks that offer prize-linked savings accounts may have the opportunity to receive additional credit under the federal Community Reinvestment Act for providing services that encourage savings.
- Offering prize-linked savings accounts would be attractive to banks because it could encourage new business.
- The amendment would resolve any questions about the constitutionality of the enabling legislation, H.B. 471, authorizing savings promotion prizes.

#### **Comments by Opponents**

- H.J.R. 37 would provide unfair favoritism to traditional financial institutions by authorizing the only noncharitable raffle allowed in Texas for the benefit of only one industry.
- The amendment is not necessary under the Texas Constitution, which only prohibits lotteries that require a form of payment or consideration.