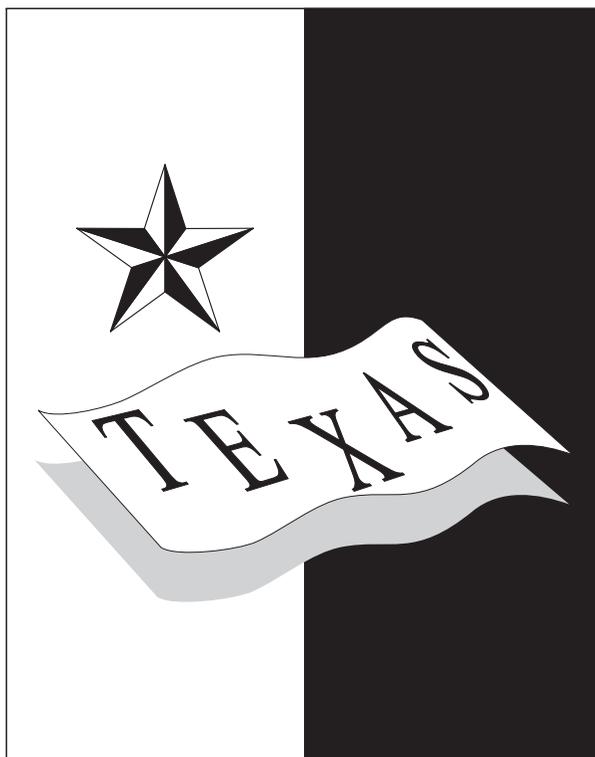


# Analysis of Proposed Constitutional Amendment

May 12, 2007, Election



Texas Legislative Council  
April 2007



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Authorizing the legislature to provide for a reduction of the limitation on the total amount of ad valorem taxes that may be imposed for public school purposes on the residence homesteads of the elderly or disabled to reflect any reduction in the rate of those taxes for the 2006 and 2007 tax years.



# **Introduction**



## **General Information**

At the beginning of the 2007 regular session, the 80th Texas Legislature passed a joint resolution proposing a constitutional amendment that will be offered for ratification on the May 12, 2007, 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 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.

Since adoption in 1876 and through April 2007, the state's constitution has been amended 439 times, from a total of 618 proposed amendments, 615 of which were submitted to the voters for their approval. The proposed amendment approved by the 80th Legislature as of April 2007 brings the total number of amendments passed by the legislature to 619. 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. The year of the vote is not reflected in the table.

The remaining section of this publication contains the ballot language, an analysis of the proposition, and the text of the joint resolution proposing the constitutional amendment that will appear on the May 12, 2007, ballot. The analysis includes background information and arguments for and against the proposed constitutional amendment.

**Table**  
**1876 Constitution Amendments Proposed and Adopted**

year proposed	number proposed	number adopted	year proposed	number proposed	number adopted
1879	1	1	1949	10	2
1881	2	0	1951	7	3
1883	5**	5	1953	11	11
1887	6	0	1955	9	9
1889	2	2	1957	12	10
1891	5	5	1959	4	4
1893	2	2	1961	14	10
1895	2	1	1963	7	4
1897	5	1	1965	27	20
1899	1	0	1967	20	13
1901	1	1	1969	16	9
1903	3	3	1971	18	12
1905	3	2	1973	9	6
1907	9	1	1975	12 <sup>†</sup>	3
1909	4	4	1977	15	11
1911	5	4	1978	1	1
1913	8*	0	1979	12	9
1915	7	0	1981	10	8
1917	3	3	1982	3	3
1919	13	3	1983	19	16
1921	5**	1	1985	17**	17
1923	2***	1	1986	1	1
1925	4	4	1987	28**	20
1927	8**	4	1989	21**	19
1929	7**	5	1990	1	1
1931	9	9	1991	15	12
1933	12	4	1993	19**	14
1935	13	10	1995	14	11
1937	7	6	1997	15	13
1939	4	3	1999	17	13
1941	5	1	2001	20	20 <sup>‡</sup>
1943	3**	3	2003	22**	22
1945	8	7	2005	9	7
1947	9	9			

Total Proposed 618 — Total Adopted 439

## Notes

- \* There were eight joint resolutions, but one of them was a U.S. constitutional amendment ratification. Seven joint resolutions proposing amendments were approved by the legislature, but only six proposals were actually submitted on the ballot. The unsubmitted proposal included two amendments.
- \*\* Total reflects two amendments that were included in one joint resolution.
- \*\*\* Two joint resolutions were approved by the legislature, but only one proposal was actually submitted on the ballot.
- † Total reflects eight amendments that would have provided for an entire new Texas Constitution and that were included in one joint resolution.
- ‡ Nineteen of the amendments approved by the 77th Legislature during the 2001 regular session appeared on the November 6, 2001, ballot and were adopted. The remaining amendment appeared on the November 5, 2002, ballot and also was adopted.



## **Proposed Amendment**



# **Amendment No. 1 (S.J.R. No. 13)**

## **Wording of Ballot Proposition:**

The constitutional amendment authorizing the legislature to provide for a reduction of the limitation on the total amount of ad valorem taxes that may be imposed for public school purposes on the residence homesteads of the elderly or disabled to reflect any reduction in the rate of those taxes for the 2006 and 2007 tax years.

## **Analysis of Proposed Amendment:**

Subsection (d), Section 1-b, Article VIII, Texas Constitution, provides that the total amount of ad valorem taxes imposed for general elementary and secondary public school purposes on the residence homestead of a person who is 65 or older or is disabled may not be increased. The constitutional amendment proposed by Senate Joint Resolution No. 13 amends Section 1-b of Article VIII by adding a new Subsection (d-1). The proposed Subsection (d-1) authorizes the legislature by general law to provide for the reduction of the amount of a tax limitation for an elderly or disabled person provided by Subsection (d) applicable to a residence homestead for the 2007 tax year to reflect any reduction from the 2006 tax year in the tax rate for general elementary and secondary public school purposes applicable to the homestead. In addition, a general law enacted under the proposed Subsection (d-1) may also take into account any reduction in the tax rate for those purposes from the 2005 tax year to the 2006 tax year if the homestead was subject to the tax limitation in the 2006 tax year. Finally, the proposed Subsection (d-1) would authorize a general law enacted to provide for a reduction in the tax limitation to apply the reduced tax limitation to the residence homestead in subsequent tax years until the limitation expires.

## **Background**

Section 1, Article VIII, Texas Constitution, provides that taxation shall be equal and uniform and that all real property and tangible personal property, unless exempt as required or permitted by the constitution, shall be taxed in proportion to its value. Any exception to these fundamental constitutional rules that is not granted or authorized by the Texas Constitution is void. Accordingly, unless authorized by the constitution, neither the legislature nor a school district may limit the amount of school district ad valorem taxes that a property owner is required to pay to an amount less than the amount computed by applying the school district's tax rate to the current value of the person's property.

Subsection (d), Section 1-b, Article VIII, Texas Constitution, is an exception to the general principles that ad valorem taxes must be equal and uniform and must be imposed in proportion to value. Subsection (d) provides that the total amount of ad valorem taxes imposed for general elementary and secondary public school purposes on the residence homestead of a person who is 65 or older or is disabled may not be increased. However, Subsection (d) does not authorize or require a reduction in ad valorem taxes for school purposes based solely on a reduction in the ad valorem tax rate for those purposes. The taxes for school purposes imposed on the homestead of an elderly or disabled person are equal to the lesser of the amount computed by applying the current tax rate to the current value of the property or the amount as limited by Subsection (d) of Section 1-b, Article VIII. If any reduction in the school district tax rate since the year in which an elderly or disabled homeowner qualified for the limitation is offset by an increase in the value of the property since that year, an elderly or disabled homeowner does not receive a tax reduction.

Major legislation enacted by the 79th Legislature, 3rd Called Session, 2006, provides new state aid to school districts for tax rate reduction, in addition to the state aid already provided to school districts each year, and requires a corresponding reduction in the rollback tax rate of each school district. House Bill No. 1 provides a mechanism for reducing each school district's ad valorem tax rate from the tax rate for the 2005 tax year by

11.33 percent in 2006 and 33.33 percent in 2007 and includes provisions permitting additional reductions in later years.

House Bill No. 1 also proposed to amend Section 11.26, Tax Code, which is the enabling legislation for Subsection (d), Section 1-b, Article VIII, Texas Constitution, to provide for the reduction of the limitation on tax increases on the residence homestead of an elderly or disabled person in proportion to the reduction in the school district ad valorem tax rate. Because such a reduction is not currently authorized by Subsection (d) of Section 1-b, the proposed amendment to Section 11.26 was contingent on a constitutional amendment proposed by House Joint Resolution No. 26, 79th Legislature, 3rd Called Session, 2006. However, the amendment to Section 11.26 did not take effect because the legislature did not adopt the joint resolution proposing the constitutional amendment. As a result, although school district tax rates were reduced under H.B. No. 1 in 2006 and are scheduled to be reduced further in 2007, many elderly and disabled homeowners, particularly those who qualified for the limitation on school district ad valorem taxes many years ago when their homes were appraised at values much lower than current values, did not see a reduction in their 2006 school district taxes and probably would not receive a reduction in 2007 either.

Senate Joint Resolution No. 13 proposes to amend Section 1-b, Article VIII, Texas Constitution, by adding Subsection (d-1). The proposed Subsection (d-1) authorizes the legislature by general law to provide for the reduction of the amount of the school district tax limitation for the elderly and disabled provided by Subsection (d) of Section 1-b and applicable to a residence homestead for the 2007 tax year to reflect any reduction from the 2006 tax year in the applicable school district ad valorem tax rate. In reducing the school district tax limitation for 2007 on a homestead, the general law may also take into account any reduction in the applicable school district tax rate from the 2005 tax year to the 2006 tax year if the homestead was also subject to the school district tax limitation in the 2006 tax year. The general law may also provide that, except to the extent the taxes are increased because of improvements, a limitation as reduced continues to apply to the residence homestead in subsequent tax years until

the limitation expires because the property is no longer the homestead of a person eligible for the limitation. Under the constitutional amendment proposed by S.J.R. No. 13, if a school district adopted a tax rate in 2006 or adopts a tax rate in 2007 that is lower than the district's tax rate in 2005, elderly and disabled homeowners in the district will receive a reduction in their 2007 school district taxes regardless of any changes in the value of their homes that have occurred since they first qualified for the limitation on school district taxes.

House Bill No. 5, which is currently pending in the 80th Legislature, Regular Session, 2007, would if enacted implement the reduction authorized by S.J.R. No. 13 in the limitation on school district taxes on the residence homesteads of the elderly and disabled. House Bill No. 5 is contingent on the approval by the voters of the constitutional amendment proposed by S.J.R. No. 13 and, if that amendment is approved, the bill will take effect beginning with the current (2007) tax year. House Bill No. 5 amends Section 11.26, Tax Code, to implement the reduction in the limitation on school district taxes authorized by S.J.R. No. 13. House Bill No. 5 also makes conforming amendments to the Education and Government Codes that are necessary to protect school districts against any resulting loss in ad valorem tax revenue.

### **Arguments For:**

1. Under H.B. No. 1 enacted by the 79th Legislature, 3rd Called Session, 2006, most homeowners received a reduction in the school district ad valorem taxes imposed on their homes in the 2006 tax year and are likely to receive a further reduction in those taxes in the 2007 and subsequent tax years. However, many elderly and disabled homeowners, particularly those who have occupied their homes for many years, did not receive a reduction in the 2006 school district taxes on their homes. Senate Joint Resolution No. 13 and its enabling legislation promote fairness in taxation by ensuring that all homeowners benefit from the reduction in school district ad valorem taxes provided by H.B. No. 1. In fact, unless the amendment is approved, elderly and disabled homeowners would probably find that their total tax burden has increased because the school district tax relief legislation enacted by the 79th Legislature, 3rd Called

Session, 2006, funded the reduction in school district ad valorem taxes in H.B. No. 1 by increasing certain state taxes, and a portion of those increased state taxes will be directly or indirectly passed on to elderly and disabled homeowners. The amendment is necessary to ensure that all homeowners receive the same proportionate reduction in the school district taxes on their homes.

Under S.J.R. No. 13 and the enabling legislation, elderly and disabled homeowners would continue to receive a reduction in their taxes in future years even if tax rates subsequently increase. Protecting elderly and disabled homeowners from future school district tax increases is essential because many such persons live on fixed incomes and face medical and other expenses that exceed those of other homeowners. Subjecting elderly and disabled homeowners to school district tax increases, even if only to the level at which those taxes were originally limited, could make it difficult for them to continue to afford to live in their homes.

2. The added tax relief for the elderly and disabled proposed by S.J.R. No. 13 will not harm school districts because the Texas Constitution in Subsection (c), Section 1-b, Article VIII, requires the legislature to provide for formulas to protect school districts against all or part of the revenue loss incurred by the implementation of the limitation on school district ad valorem taxes on the residence homesteads of the elderly and disabled, and H.B. No. 5, if enacted, will protect school districts against any loss in ad valorem tax revenue resulting from the reduction in the limitation on those taxes. Compared to the amount of state funds being directed to provide school district ad valorem tax relief to other taxpayers, the amount of state funds to be used to implement tax relief for elderly and disabled homeowners under the proposed amendment is modest.

### **Arguments Against:**

1. House Bill No. 1 was intended in part to provide school district tax relief to homeowners whose taxes have increased in recent years as a result of increasing valuations and tax rates. Elderly and disabled homeowners whose taxes were already limited under current law were protected from those tax increases. Elderly and disabled homeowners

who would not receive a reduction under H.B. No. 1 in the school district taxes on their homes are already receiving such a substantial tax benefit by virtue of the tax limitation provided by current law that they would not receive any benefit from a reduction over a two-year period in school district maintenance and operations tax rates of 33 percent. It is difficult to justify additional tax relief for homeowners who are already receiving substantial tax savings and who are not necessarily needy.

If such a reduction were justified, it should be based on the reduction authorized by H.B. No. 1 in the school district maintenance and operations ad valorem tax rate. However, because the reduction in the school district tax limitation under S.J.R. No. 13 is based on the reduction in the total school district tax rate, not just the maintenance and operations tax rate, elderly and disabled homeowners would also benefit from any reduction in the tax rate for bonds and other debt, which might decline for reasons totally unrelated to H.B. No. 1.

Furthermore, the primary justification that has been offered for reducing the limitation on school district ad valorem taxes on the homes of the elderly and disabled is that they should enjoy the same tax relief as other homeowners. However, if school district tax rates subsequently increase, the taxes on the homes of the elderly and disabled will remain frozen at the level to which they have been reduced under the proposed amendment while the taxes on other homeowners increase. The taxes on the homes of the elderly and disabled will not even increase back to the level at which they were formerly frozen. Elderly and disabled homeowners, who already enjoy a limitation on the school district taxes on their homes regardless of their incomes, should not receive a permanent additional reduction in those taxes regardless of the reason for the reduction in the tax rate and regardless of whether the taxes on the homes of other taxpayers continue to be reduced.

2. The Legislative Budget Board estimates that the cost to the state's general revenue fund for the next five state fiscal years of implementing H.B. No. 5, the enabling legislation for S.J.R. No. 13, is almost \$750 million. Elderly and disabled homeowners already receive a substantial tax benefit by virtue of the limitation on school district ad valorem taxes

on their homes provided by current law. Although the state government is currently enjoying a surplus, that may not continue and Texas has many other pressing needs for its limited tax resources. Spending such a large amount to provide additional tax relief to all elderly and disabled homeowners, including those who are not needy, is not the most appropriate use of state funds.

**Text of S.J.R. No. 13:**

**Senate Author:** Kip Averitt et al.

**House Sponsor:** Leo Berman et al.

### **SENATE JOINT RESOLUTION**

proposing a constitutional amendment authorizing the legislature to provide for a reduction of the limitation on the total amount of ad valorem taxes that may be imposed for public school purposes on the residence homesteads of the elderly or disabled to reflect any reduction in the rate of those taxes for the 2006 and 2007 tax years.

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

SECTION 1. Section 1-b, Article VIII, Texas Constitution, is amended by adding Subsection (d-1) to read as follows:

(d-1) Notwithstanding Subsection (d) of this section, the legislature by general law may provide for the reduction of the amount of a limitation provided by that subsection and applicable to a residence homestead for the 2007 tax year to reflect any reduction from the 2006 tax year in the tax rate for general elementary and secondary public school purposes applicable to the homestead. A general law enacted under this subsection may also take into account any reduction in the tax rate for those purposes from the 2005 tax year to the 2006 tax year if the homestead was subject to the limitation in the 2006 tax year. A general law enacted under this subsection may provide that, except as otherwise provided by Subsection (d) of this section, a limitation provided by that subsection that is reduced under the general law continues to apply to the residence homestead in subsequent tax years until the limitation expires.

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 80th Legislature, Regular Session, 2007, authorizing the legislature to provide for a reduction of the limitation on the total amount of ad valorem taxes that may be imposed for public school purposes on the residence homesteads of the elderly or

disabled to reflect any reduction in the rate of those taxes for the 2006 and 2007 tax years. This temporary provision expires January 1, 2009.

(b) The amendment to Section 1-b, Article VIII, of this constitution takes effect on the date of the official canvass of returns showing adoption of the amendment and applies beginning with the tax year that begins January 1, 2007. The legislature may enact a general law authorized by the constitutional amendment that applies to the entire 2007 tax year, notwithstanding that the constitutional amendment was adopted after the beginning of that tax year, and a general law applicable to the entire 2007 tax year is not considered to be a retroactive law.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held May 12, 2007. The ballot shall be printed to permit voting for or against the proposition: “The constitutional amendment authorizing the legislature to provide for a reduction of the limitation on the total amount of ad valorem taxes that may be imposed for public school purposes on the residence homesteads of the elderly or disabled to reflect any reduction in the rate of those taxes for the 2006 and 2007 tax years.”

