

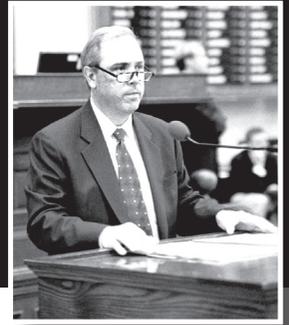


STATE REPRESENTATIVE



GARY ELKINS

District 135 ★ Harris (part)



Dear Friends:

During the past session the Legislature voted to put eleven constitutional amendments on the ballot for voter determination on November 3, 2009. The eleven propositions include diverse subjects ranging from **eminent domain** to creating a path for more **Tier One Universities** in Texas. This newsletter provides the pros and cons of each proposed amendment for your information and consideration. Please take a moment to review this newsletter and do not forget to exercise your right to vote on November 3. If you would like additional information on the proposed amendments, please visit <http://www.hro.house.state.tx.us/focus/amend81.pdf>.

Amendment 11 if passed would amend the state constitution to make it more difficult for governmental entities to condemn your private property. Since the U.S. Supreme Court trampled private property rights in June 2005 by issuing its ruling in *City of New London v. Kelo*, the Texas Legislature has been working to restore your private property rights. The 79th Legislature, in its second called session in 2005, enacted SB 7 which prohibited entities with eminent domain powers from condemning private property for economic development purposes. If passed, the Legislature could enact a general, local, or special law granting the power of eminent domain to an entity only by a two-thirds vote of all the members elected to each house.

Amendment 4 if passed would put in place the financing structure to allow more Texas Universities, including the University of Houston, to become Tier One Universities. Currently, Texas has only three Tier One Universities while California has twelve. Tier One Universities often serve as an economic boon for local communities as they attract the top faculty and students from across the country, jobs, and research dollars. Passing this Amendment would be a major step toward improving institutions of higher education in Texas.

Amendment 2 if passed would require that your residential homestead be appraised as residential real estate instead of the current methodology referred to as "highest and best use". Prior to the last legislative session, I served on the Select Committee on Property Tax Relief and Appraisal Reform and we traveled the state and found incidents where people were being forced from their homes because their residential homestead was in the path of progress or commercial development. In these instances, it was determined that the best use for their home was no longer residential but commercial. This Amendment, a recommendation from the select committee based on abuses we found across the state, will stop this unfair practice by appraisal districts.

As I look forward to the next legislative session in 2011, I welcome your input on issues affecting you and your family. My legislative agenda is built on your comments and suggestions, so do not hesitate to call or come by my district office. Working together, we can continue to deliver results for our community and improve our quality of life by keeping taxes low, improving public education, and promoting measures that create jobs and help the economy.

I am truly honored to serve you in the Texas Legislature and hope you will take time to read this newsletter and vote on November 3, 2009. Again, please feel free to contact my office if I may be of assistance. You can also follow me on Twitter and Facebook: <http://twitter.com/gwelkins> and www.facebook.com/gwelkins.

Sincerely,

Gary Elkins
Gary Elkins

PROPOSED CONSTITUTIONAL AMENDMENTS

Amendment No. 1 (H.J.R. 132)

The constitutional amendment authorizing the financing, including through tax increment financing, of the acquisition by municipalities and counties of buffer areas or open spaces adjacent to a military installation for the prevention of encroachment or for the construction of roadways, utilities, or other infrastructure to protect or promote the mission of the military installation.

Summary of Proposed Amendment: The proposed amendment would add Section 52k to Article III, Texas Constitution, to allow the legislature by general law to authorize a municipality or county to issue bonds or notes to finance the acquisition of buffer areas or open spaces adjacent to a military installation for the prevention of encroachment or for the construction of roadways, utilities, or other infrastructure to protect or promote the mission of the military installation. The amendment would allow a municipality or county to pledge increases in property tax revenues imposed in the

area by the municipality, county, or other political subdivisions for repayment of the bonds or notes.

Comments by Supporters: Military installations must be protected from encroaching development that could restrict training and operational missions and ultimately cause a military installation to close. Acquiring buffer areas or open spaces adjacent to a military installation to prevent encroachment also would facilitate the construction of infrastructure to protect or promote the mission of the military installation. Ensured-

ing the viability of military installations is a worthy investment in the economic stability and security of many local communities and the state.

Comments by Opponents: Authorizing municipalities and counties to issue bonds to build infrastructure to protect or promote the mission of a military installation and to pledge increases in property taxes to repay those bonds could result in a higher tax burden on already distressed property owners.

Amendment No. 2 (H.J.R. 36, Article 1)

The constitutional amendment authorizing the legislature to provide for the ad valorem taxation of a residence homestead solely on the basis of the property's value as a residence homestead.

Summary of Proposed Amendment: Section 1, Article VIII, Texas Constitution, requires taxation to be equal and uniform and provides that all real and tangible personal property in the state, unless exempt as constitutionally required or permitted, is to be taxed in proportion to its value. The proposed amendment would authorize the legislature, by general law, to provide for the taxation of a residence homestead solely on the basis of its value as a residence homestead, regardless of whether residential use by the owner is considered to be the highest and best use of the property.

Comments by Supporters: The legislative restriction on valuation allowed by the proposed amendment is not a radical departure from existing property tax practices, but rather resembles restrictions that already apply to agricultural and open-space land. Texas protects those types of properties from large appraisal increases resulting from consideration of the highest and best use. It does not similarly protect residence homesteads.

The proposed amendment and its enabling legislation, House Bill 3613, Acts of the 81st Legislature, Regular Session, 2009, which is contingent on voter approval of the proposed amendment, would extend such protection, particularly for homeowners whose neighborhoods are in transition from residential uses to commercial development. The amendment and legislation would apply only to residence homesteads and not to second homes or investment properties. The proposed change in law is narrowly tailored to address the problem identified by the Select Committee on Property Tax Relief and Appraisal Reform appointed by the speaker of the house of representatives in April 2008.

Comments by Opponents: Allowing a residence homestead to be valued based solely on its residential use, rather than on the highest and best use, could reduce aggregate values of taxable property and

thus reduce local government tax revenue. Moreover, when a school district's per-student taxable property value (commonly referred to as "wealth per student") is reduced, the state must provide additional funding to the district under the Foundation School Program's equalization formulas. Funding at the state level is already tight without increasing this Foundation School Program obligation.

Amendment No. 3 (H.J.R. 36, Article 3)

The constitutional amendment providing for uniform standards and procedures for the appraisal of property for ad valorem tax purposes.

Summary of Proposed Amendment: Section 23(b), Article VIII, Texas Constitution, requires that administrative and judicial enforcement of uniform standards and procedures for the appraisal of property for property tax purposes, as prescribed by general law, originate in the county where the tax is imposed. An exception is that the legislature may provide by general law for political subdivisions with boundaries extending outside the county. The proposed amendment would remove that requirement, as well as the exception. It would instead give the legislature full discretion to prescribe the manner of the enforcement of uniform appraisal standards and procedures.

Comments by Supporters: While the property tax system is primarily administered on the local level, the state retains an interest in property tax appraisal professionalism and competence. The state also has an interest in the consistent determination of property tax appraised values from one locality to the next, through the application of uniform appraisal practices, because the state allocates funding to public schools based on the per-student aggregate taxable property value in each school district. Property tax appraisal practices and procedures vary widely across the state. A property located in one county is sometimes appraised differently than a similar property located elsewhere in the state. There currently is no legal basis for direct oversight of appraisal districts by the state. Although the Texas Department of Licensing and Regulation and the comptroller of public accounts have related powers and responsibilities, neither can directly require an appraisal district to follow state law or apply a standard appraisal method.

Comments by Opponents: Reviews of the January 2009 report and record of the Senate Finance Subcommittee on Property Appraisal and Revenue Caps, the legislative history of House Joint Resolution 36, and other sources did not identify any opposition to the proposed amendment.

Amendment No. 4 (H.J.R. 14, Article 2)

The constitutional amendment establishing the national research university fund to enable emerging research universities in this state to achieve national prominence as major research universities and transferring the balance of the higher education fund to the national research university fund.

Summary of Proposed Amendment: The proposed amendment would amend Article VII, Texas Constitution, by adding Section 20 to create the national research university fund, consisting of money transferred or deposited to the credit of the fund and any interest or other return on the investment of fund assets, for the purpose of providing a dedicated, independent, and equitable source of funding to enable emerging state research universities in Texas to achieve national prominence as major research universities. A state university receiving a distribution from the fund would be allowed to use that money only to support and maintain educational and general activities promoting increased research capacity at the university.

The proposed amendment would allow the legislature to dedicate state revenue, such as that revenue presently allocated to the dormant permanent higher education fund (HEF), to the national research university fund's credit and to appropriate, in each state fiscal biennium, all or a portion of the total return on all investment assets of the fund to carry out the purposes for which the fund is established. The portion of the total return available for appropriation would be the amount determined by the legislature, or by an agency designated by statute, as necessary to provide as nearly as practicable a stable and predictable stream of annual distributions to eligible state universities and to maintain over time the purchasing power of the fund investment assets. The amount appropriated from the fund in any fiscal year would be capped at seven percent of the investment assets' average net fair market value, as determined by law.

The proposed amendment would require the legislature to provide for the fund's administration and to allocate, or provide for the allocation of, the appropriated amounts to eligible state universities on a biennial basis and would require the allocation to be based on an equitable formula established by the legislature or an agency designated by statute and reviewed and adjusted as necessary at the end of each state fiscal biennium.

The proposed amendment would require the legislature to establish eligibility criteria for a state university to share in the distributions from the fund and would provide that a university that becomes eligible remains eligible to receive additional distribu-

tions in subsequent state fiscal bienniums. The University of Texas at Austin and Texas A&M University would not be eligible to receive money from the fund.

The amendment also would repeal Section 17(i), Article VII, Texas Constitution, which authorized the creation of a dedicated endowment, the permanent higher education fund (HEF), which was intended to build a corpus of funds to support state universities eligible for annual general revenue appropriations under Section 17 in acquiring land, constructing and equipping buildings or other permanent improvements, performing major repair or rehabilitation of buildings or other permanent improvements, and acquiring capital equipment, library books, and library materials. The provision to be repealed requires the legislature to provide for the permanent HEF's administration, prescribes the manner in which the permanent fund is to be invested, requires the investment income to be credited to the permanent HEF until the fund totals \$2 billion, and prohibits any expenditure of the permanent HEF's principal. Once the permanent HEF reaches \$2 billion, Section 17(i) requires 10 percent of the interest, dividends, and other income accruing from the previous fiscal year's investments of the permanent HEF to be deposited and become part of its principal, and out of the remainder of the annual investment income an annual sum sufficient to pay the debt service on certain bonds and notes issued under Section 17 would be appropriated and the balance would be allocated, distributed, and expended as provided for the appropriations. When the permanent HEF reaches \$2 billion, the distributions from the fund would replace the annual appropriations of general revenue currently made under Section 17(a), Article VII, to certain universities for capital expenditures. The repeal of Section 17(i) would not affect the annual distribution of general revenue appropriations to eligible universities under Section 17(a).

A temporary provision applicable to the proposed amendment would provide for the amendment to take effect January 1, 2010, and would require any amount in or payable to the credit of the permanent HEF to be transferred on that date to the credit of the national research university fund. This temporary provision would expire January 1, 2011.

Comments by Supporters: Texas lags behind other major states in the number of nationally recognized research universities, with only two public research universities of national prominence--The University of Texas at Austin and Texas A&M University. Texas must continue strengthening these existing universities, and it also must focus resources on establishing additional nationally prominent research universities. The proposed amendment and its accompanying

enabling legislation, House Bill 51, Acts of the 81st Legislature, Regular Session, 2009, would in effect repurpose the permanent HEF and spur emerging state research universities in Texas in their efforts to achieve nationally recognized research status.

With far more qualified applicants than it can admit to its two public, nationally recognized, tier-one universities, Texas is losing thousands of its high school graduates to doctorate-granting universities in other states each year. Creating additional national research universities in Texas would better position the state to achieve its vision of a globally competitive workforce by providing greater educational opportunities within the state for its best and brightest students.

The University of Texas at Austin and Texas A&M University have prominence and tier-one status in large part because of the long-term, sustained funding they have received from the permanent university fund. The proposed amendment would make an excellent use of dormant permanent HEF funds, provide an established source of guaranteed funding for emerging research universities, put those universities on the pathway to tier-one status, and allow those universities to attract and retain top talent while generating important research in the state.

Comments by Opponents: While the amendment's goals are laudable, at a time of limited state resources Texas should focus more of those resources, including the higher education fund, on those universities that are the closest to attaining tier-one status. Given the urgency of developing more nationally competitive research universities, it would make more sense to target fewer universities that are further along the path to national status.

Amendment No. 5 (H.J.R. 36, Article 2)

The constitutional amendment authorizing the legislature to authorize a single board of equalization for two or more adjoining appraisal entities that elect to provide for consolidated equalizations.

Summary of Proposed Amendment: Section 18(b), Article VIII, Texas Constitution, requires the legislature to provide by law for a single appraisal within each county of all property subject to property taxation by the various taxing units located in that county. That subsection permits the legislature to authorize appraisals outside a county when political subdivisions are situated in more than one county or when two or more counties elect to consolidate appraisal services. Section 18(c), Article VIII, requires the legislature to provide for a single board of equalization for each appraisal entity consisting of qualified residents of the territory appraised by the appraisal entity. The

proposed amendment would allow the legislature by general law to authorize a single board of equalization for two or more adjoining appraisal entities that elect to provide for consolidated equalizations.

Comments by Supporters: The proposed constitutional amendment and its enabling legislation, House Bill 3611, Acts of the 81st Legislature, Regular Session, 2009, would allow two or more adjoining appraisal districts, if they so opt, to consolidate appraisal review board functions. Participation on an appraisal review board requires both the willingness to serve and the expertise to serve. The ability to consolidate appraisal review boards would benefit rural counties that have a relatively small pool of qualified persons from which to draw and have difficulty finding qualified appraisal review board members. The proposed amendment is permissive. Combining appraisal review boards would be allowed but not required, empowering appraisal districts to pursue whatever course on appraisal review board composition best fits local needs.

Comments by Opponents: The proposed amendment should go further to address consolidation issues. Wherever consolidation of property tax systems might prove beneficial to rural counties, it would be beneficial generally for all operations, both appraisal and review, enabling efficiencies and reducing not only appraisal review board recruitment requirements but also appraisal district staff requirements. If the legislature and Texas voters want to encourage consolidation, they should encourage both appraisal district consolidation and appraisal review board consolidation in tandem.

Amendment No. 6 (H.J.R. 116)

The constitutional amendment authorizing the Veterans' Land Board to issue general obligation bonds in amounts equal to or less than amounts previously authorized.

Summary of Proposed Amendment: Section 49-b(w), Article III, Texas Constitution, currently authorizes the Veterans' Land Board (VLB) to provide for, issue, and sell general obligation bonds of the state to provide home mortgage loans to Texas veterans, provides a cap of \$500 million on the principal amount of such bonds that may be outstanding at any one time, and requires bond proceeds to be deposited in or used to benefit and augment the Veterans' Housing Assistance Fund II and to be administered and invested as provided by law. This bonding authority is in addition to the bonding authority generally conferred on the VLB by Section 49-b(c) for the purpose of creating the Veterans' Land Fund, the Veterans' Housing Assistance Fund, and the Veterans' Housing Assistance Fund II.

The proposed amendment would amend Section 49-b(w) to authorize the VLB to

provide for, issue, and sell general obligation bonds of the state for the purpose of selling land to Texas veterans or providing them home or land mortgage loans. The proposed amendment would remove the \$500 million cap on the principal amount of bonds outstanding at any one time and instead require that the principal amount of outstanding VLB bonds provided, issued, or sold for those purposes at all times be equal to or less than the aggregate principal amount of state general obligation bonds previously authorized for those purposes by prior constitutional amendments. The proposed amendment also would prohibit bonds and other obligations issued or executed under this constitutional provision from being included in the computation required in determining the limit on state debt based on the amount of annual debt service payable from the general revenue fund. The proposed amendment would require bond proceeds to be deposited in or used to benefit and augment the Veterans' Land Fund and the Veterans' Housing Assistance Fund, in addition to the Veterans' Housing Assistance Fund II, as determined appropriate by the VLB.

Comments by Supporters: The proposed amendment would provide the secure and sufficient bonding authority needed by the VLB to continue the Veterans' Housing Assistance Program and Veterans' Land Program. Federal tax law prohibits the board from issuing more than \$250 million in qualified veterans mortgage bonds per year, and the board expects its current remaining authorization (approximately \$80 million of unused general obligation bonding authority) to last through the end of 2009. From that point forward the board will need new bonding authority to continue issuing qualified veterans mortgage bonds for housing assistance and to issue new bonds for the land program. Under the current constitutional provision, the board must return to the legislature and to the voters every four years to secure the needed bonding authority. The proposed amendment would allow the board to avoid having to seek new bonding authority every four years; instead, the amendment would allow the board to issue new bonds in place of those already issued and then retired or redeemed, as long as the amount of outstanding bonds does not exceed the total amount of bonds authorized by the legislature and the voters in previous constitutional amendments. Voters have never declined to approve such measures in any previous election and, to date, have approved \$4 billion in these types of bonds, about \$2 billion of which has already been issued and later retired or redeemed.

Comments by Opponents: No comments opposing the amendment were made during the house and senate committee hearings or during discussion of the amendment in the house and senate chambers. A review

of other sources also revealed no apparent opposition to the amendment.

Amendment No. 7 (H.J.R. 127)

The constitutional amendment to allow an officer or enlisted member of the Texas State Guard or other state militia or military force to hold other civil offices.

Summary of Proposed Amendment: The proposed amendment would amend Section 40(a), Article XVI, Texas Constitution, to exempt officers and enlisted members of the Texas State Guard and any other active militia or military force organized under Texas law from the prohibition against holding or exercising more than one civil office of emolument at the same time. The amendment would provide that nothing in the Texas Constitution is to be construed to prohibit an officer or enlisted member of the Texas State Guard and any other active militia or military force organized under Texas law, in addition to certain other officers or enlisted members, from holding at the same time any other office or position of honor, trust, or profit, under Texas or the United States, or from voting at any election in Texas when otherwise qualified.

Comments by Supporters: An office of emolument is an office for which the person who holds the office receives compensation, and the practice of holding more than one such office is known as dual office holding. Current exceptions to the dual office holding prohibition allow a civil official to also hold office in most branches of the military, including the National Guard. The Texas State Guard and other Texas military forces were not in existence or were overlooked when these exceptions were added. The amendment is needed to allow a civil official to become active in the Texas State Guard or other state militia or military force and to allow state military personnel to hold another civil office.

Comments by Opponents: No comments opposing the amendment were made during the house and senate committee hearings or during discussion of the amendment in the house and senate chambers. A review of other sources also revealed no apparent opposition to the amendment.

Amendment No. 8 (H.J.R. 7)

The constitutional amendment authorizing the state to contribute money, property, and other resources for the establishment, maintenance, and operation of veterans hospitals in this state.

Summary of Proposed Amendment: The proposed amendment would add Section 73, Article XVI, Texas Constitution, to authorize the state to contribute money, property, and other resources to establish, maintain, and operate veterans hospitals.

Comments by Supporters: With 1.7 million veterans living in the state, Texas ranks third in the nation in the number of veterans among its residents. In federal fiscal year 2007, veterans health care facilities in the state recorded more than 47,000 inpatient visits and more than 4.3 million outpatient visits. Texas currently has nine inpatient veterans hospitals located in Houston, Temple, Waco, Bonham, Dallas, Kerrville, San Antonio, Amarillo, and Big Spring, but the rising cost of traveling to these facilities can impede or delay necessary health care for some veterans. The state currently lacks authority to contribute to a veterans hospital. The amendment would encourage the United States Department of Veterans Affairs to partner with the state and with local communities to establish additional such facilities. The state has previously approved constitutional amendments for veterans homes such as the Alfredo Gonzales Texas State Veterans Home and veterans cemeteries such as the Rio Grande Valley State Veterans Cemetery, and the amendment would give Texans an opportunity to express their desire with respect to improving access to medical care for Texas veterans.

Comments by Opponents: While there has been no specific opposition to authorizing the state to contribute to the establishment, maintenance, and operation of veterans hospitals, some observers have questioned whether a constitutional amendment is the correct mechanism for achieving the desired result.

Amendment No. 9 (H.J.R. 102)

The constitutional amendment to protect the right of the public, individually and collectively, to access and use the public beaches bordering the seaward shore of the Gulf of Mexico.

Summary of Proposed Amendment: The proposed amendment would add Section 33, Article I, Texas Constitution, to establish that the public has an unrestricted right to access and use a public beach. "Public beach" would mean a state-owned beach bordering on the seaward shore of the Gulf of Mexico, extending from mean low tide to the landward boundary of state-owned submerged land, and any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired a right of use or easement by prescription or dedication or has established and retained a right by virtue of continuous right in the public under Texas common law. The proposed amendment also would establish that the right to unrestricted access and use is dedicated as a permanent easement in favor of the public and would authorize the legislature to enact laws to protect that right and to protect the public beach easement from interference and encroachments. In

dition, the proposed amendment would establish that its provisions do not create a private right of enforcement.

Comments by Supporters: For 50 years, the Texas open beaches act has served as one of the strongest coastal access laws in the nation. The proposed amendment would strengthen that law by clarifying its intent to protect the public's right to free and unrestricted access to public beaches and by placing the law in the Texas Constitution, thus protecting it from future tampering. Property owners who build or purchase homes on Texas beaches do so with full knowledge of the risks to their property because provisions in earnest money contracts, deeds, and title policies state that storms and rising sea levels may cause the line of vegetation to shift, thus causing the property to be located on a public beach. The open beaches act recognizes a "rolling" beachfront easement and authorizes the state to enforce the easement as natural changes occur in its location. Several recent lawsuits have challenged that law, and the proposed amendment would reduce such litigation by clarifying the law's intent to keep public beaches public. The proposed amendment would not hinder the legislature's ability to address issues relating to future natural events.

Comments by Opponents: Many homes along the Texas Gulf Coast stood for generations on private land until Hurricane Ike's winds and storm surge moved the line of vegetation, leaving the homes on the public beach. Under the current Texas open beaches act, the state is authorized to require private property owners whose houses now stand on a public beach because of erosion and storm damage to remove the structures from that land. The proposed amendment would entrench that law in the Texas Constitution, providing the state with excessive authority to restrict property owners' right to enjoy their property and compounding the problem for those owners by making the law more difficult to change in the future.

Amendment No. 10 (H.J.R. 85)

The constitutional amendment to provide that elected members of the governing boards of emergency services districts may serve terms not to exceed four years.

Summary of Proposed Amendment: Section 30, Article XVI, Texas Constitution, limits the term of office for all state offices to two years unless otherwise specifically indicated by the constitution. The proposed amendment would amend Section 30(c), Article XVI, Texas Constitution, to authorize the legislature to provide that members of the governing board of an emergency services district may serve terms not to exceed four years.

Comments by Supporters: The legislature is authorized to create emergency services districts governed by a board of commissioners to provide emergency medical services, emergency ambulance services, rural fire prevention and control services, or other emergency services. The services controlled by emergency services districts are important enough to local communities to justify longer terms for district commissioners to provide greater continuity and experience in district leadership. The proposed amendment would provide emergency services district commissioners time to gain such expertise. The Texas Constitution provides an exception to the two-year limitation for a number of political subdivisions, including hospital districts, with which emergency services districts share certain responsibilities and areas of concern. Furthermore, requiring commissioners to run for election and reelection every two years unnecessarily detracts from the work of the district and runs the risk of politicizing an otherwise nonpartisan office, increasing the likelihood that a candidate will be selected based on political savvy rather than qualifications for the position.

Comments by Opponents: Emergency services districts have authority over critical services and broad powers to exercise that authority, including the power to levy taxes. The proposed amendment would weaken emergency services district commissioners' accountability to the public by diluting the primary means by which voters exert influence over elected officials. Members of the Texas House of Representatives are elected every two years, and the voting public should expect the same amount of control in selecting the officials who serve in a strictly local capacity.

Amendment No. 11 (H.J.R. 14, Article 1)

The constitutional amendment to prohibit the taking, damaging, or destroying of private property for public use unless the action is for the ownership, use, and enjoyment of the property by the State, a political subdivision of the State, the public at large, or entities granted the power of eminent domain under law or for the elimination of urban blight on a particular parcel of property, but not for certain economic development or enhancement of tax revenue purposes, and to limit the legislature's authority to grant the power of eminent domain to an entity.

Summary of Proposed Amendment: The proposed amendment would amend Section 17, Article I, Texas Constitution, to restrict the taking, damaging, or destroying of a person's property for public use to circumstances in which the taking, damage, or destruction is necessary for the ownership, use, and enjoyment of the property by the State of Texas, a political subdivision of the state, or the public at large or an entity granted

the power of eminent domain, or for the elimination of urban blight on a particular parcel of property. The proposed amendment would also specify that in Section 17, Article I, the term "public use" does not include the taking of property for transfer to a private entity for the primary purpose of economic development or enhancement of tax revenues. Effective January 1, 2010, the proposed amendment would limit the legislature's ability to grant the power of eminent domain to an entity by requiring the grant to be approved by two-thirds of all the members elected to each house.

Comments by Supporters: The proposed amendment would enhance the property protections established statutorily in 2005 by placing in the Texas Constitution clear restrictions on the use of eminent domain and by specifying that "public use" excludes the taking of property for the primary purpose of economic development or enhancement of tax revenues.

The proposed language relating to the "ownership, use, and enjoyment" of condemned property would provide strong direction to courts that rule on eminent domain cases. The language would require a condemning authority to own, use, and enjoy condemned property and would prohibit an entity from acquiring property through eminent domain with no clear plans to put the property to public use. Contrary to what many opponents to the measure have suggested, that language would not interfere with the lease of property to a third party or other similar arrangements.

The proposed amendment would close a loophole that allows governmental entities to take well-maintained land on grounds of "blight," claiming that the taking is necessary because surrounding parcels are blighted, by allowing a government to condemn for blight only if the parcel being condemned is itself blighted. In addition, local governments would be unable to take large parcels of property and sell or lease them to a private developer to build new developments with the intent of increasing local tax revenues.

The proposed amendment would be an important first step in accomplishing the eminent domain reform that is needed in Texas, but it would not adequately protect property owners because it would not clearly define acceptable uses of eminent domain. Additional protections should be enacted, including compensation for lost access to property, the payment of a fair market price, and the right to repurchase land that is taken for one purpose and used for another.

Comments by Opponents: The proposed amendment attempts to address problems that largely were resolved statutorily. Allowing Texas courts more time to review and further define the state's current eminent



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PROPOSED CONSTITUTIONAL AMENDMENTS, NOVEMBER 3, 2009

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domain laws could resolve many lingering concerns about the extent of protections for property owners under the existing laws, while placing the proposed changes in the Texas Constitution would make them permanent, for all practical purposes, and any unintended effects could impede legitimate eminent domain actions that are necessary for state and local public projects.

The proposed language referring to the “ownership, use, and enjoyment” of condemned property is unclear and would leave to the courts the power to determine the legitimate scope of eminent domain in Texas. That language could lead to future litigation and give rise to varying court interpretations that might differ from the legislature’s intent, undermining decades of

judicial precedent and costing taxpayer dollars. Statutory law, not the constitution, is the proper forum for testing experimental terms with uncertain implications. In addition, that language would create ambiguity about the legitimate uses of eminent domain and could prevent local governments from entering into leases and other arrangements with third-party vendors to provide ancillary services at public facilities on property acquired through eminent domain—for example, airport hangars, hospitals, hotels, restaurants, and parking facilities—that would serve the general public and boost the local tax base. The language should have been amended to read “ownership, use, *or* enjoyment,” thus providing greater flexibility more appropriate for a constitutional provision.

Furthermore, the proposed amendment would allow the legislature, on a two-thirds vote of all the members, to grant any entity, including a private entity, the authority of eminent domain. While utilities and common carriers long have had this authority, which those enterprises need for their operations, the proposed amendment would potentially allow any party to obtain the authority of eminent domain and would not protect home or business owners from losing their property for a private development project.

09R1668(12)