

VOTERS' GUIDE

TEXAS SENATOR

ROBERT DUNCAN



The Senate of The State of Texas
Senator Robert Duncan
District 28

Dear Friends and Neighbors,

At the conclusion of every regular session of the Texas Legislature, there are a number of issues that can only be resolved by a vote of the people of our great state.

During the 82nd Legislative Session we deliberated many critical issues, ranging from those that impact local policies, to decisions of statewide influence. Among these efforts, 10 proposals require your approval on November 8th before they can become law.

To assist your understanding of these issues, I am providing the following detailed analysis of each proposed amendment to the Texas Constitution. This analysis does not equate to an endorsement of these measures. It is drafted by the Texas Legislative Council as a non-partisan breakdown of the issues, and it includes comments from supporters and opponents of each proposal.

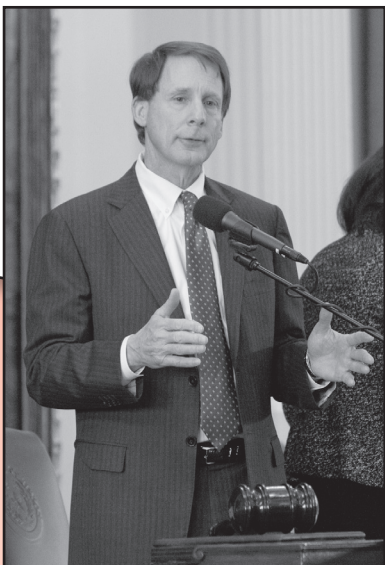
Please take some time to review these amendments. If you are an experienced veteran of the voting process, you are already familiar with the wide-ranging impact of a constitutional amendment. If you are new to the proceeding, you will see how each of the issues may have both broad implications and local meaning.

It is a pleasure to serve you in the Texas Senate, and I look forward to continuing this important work. Please feel free to contact me or my staff with any questions about these amendments or the election process.

Yours very truly,

A handwritten signature in black ink that reads "Robert Duncan".

Robert Duncan
Texas State Senate
District 28



CONSTITUTIONAL AMENDMENTS

★ **AMENDMENT NO. 1 (S.J.R. 14)** *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 100 percent or totally disabled veteran.*

SUMMARY OF PROPOSED AMENDMENT. Section 1-b(i), Article VIII, Texas Constitution, authorizes the legislature by general law to exempt from property (ad valorem) taxation all or part of the market value of the residence homestead of a disabled veteran who is certified as having a disability rating of 100 percent or totally disabled. The proposed amendment would add Subsections (j) and (k) to Section 1-b. Proposed Subsection (j) would authorize the legislature by general law to provide that the surviving spouse of a 100 percent or totally disabled veteran who qualified for an exemption in accordance with Subsection (i) from property taxation of all or part of the market value of the disabled veteran's residence homestead when the disabled veteran died is entitled to an exemption from property taxation of the same portion of the market value of the same property to which the disabled veteran's exemption applied if the surviving spouse has not remarried since the death of the disabled veteran and the property was the residence homestead of the surviving spouse when the disabled veteran died and remains the surviving spouse's residence homestead.

Proposed Subsection (k) would authorize the legislature by general law to provide that if a surviving spouse who qualifies for an exemption in accordance with Subsection (j) subsequently qualifies a different property as the surviving spouse's residence homestead, the surviving spouse is entitled to an exemption from property taxation of the subsequently qualified homestead in an amount equal to the dollar amount of the exemption of the former homestead in accordance with Subsection (j) in the last year in which the surviving spouse received an exemption in accordance with that subsection for the former homestead if the surviving spouse has not remarried since the death of the disabled veteran. The proposed amendment would apply only to a tax year beginning on or after January 1, 2012.

SUMMARY OF COMMENTS MADE ABOUT THE PROPOSED AMENDMENT. 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 SUPPORTER. The proposed amendment would recognize the sacrifices made by disabled veterans and their surviving spouses. The surviving spouses often forgo career opportunities and reduce their work hours, affecting their income and retirement benefits and thereby their ability to pay property taxes. The proposed amendment would provide disabled veterans the peace of mind of knowing that their surviving spouses will not be taxed out of their homes.

By allowing a surviving spouse to transfer the surviving spouse's exemption to a subsequent homestead, the proposed amendment would permit the surviving spouse to move to a different home, including a home closer to family, without losing the exemption. At the same time, the amendment would limit the cost to local governments of the exemption by limiting the amount of the exemption on the subsequent homestead to the value of the exemption on the former homestead.

Finally, the proposed amendment would be a sensible extension of existing state policy, as Texas already entitles certain surviving spouses to retain property tax relief previously granted to a deceased spouse, such as the freeze on school district property taxes granted to an owner of a residence homestead at age 65, which is transferred to a surviving spouse who is at least 55 years of age when the homeowner dies.

COMMENTS BY OPPONENTS. By allowing the surviving spouse of a disabled veteran to receive an exemption from property taxation of the surviving spouse's residence homestead, the proposed amendment would lengthen the period that the homestead is exempt from taxation, thereby decreasing property tax revenue to local governments. The state should not provide for new property tax exemptions at a time when essential services such as public education and health care are underfunded.

★ **AMENDMENT NO. 2 (S.J.R. 4)** *The constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board in an amount not to exceed \$6 billion at any time outstanding.*

SUMMARY OF PROPOSED AMENDMENT. The proposed

amendment would add Section 49-d-11, Article III, Texas Constitution, authorizing the Texas Water Development Board to issue general obligation bonds on a continuing basis for Texas Water Development Fund II accounts in amounts such that the aggregate principal amount of the outstanding bonds issued by the board under that section that are outstanding at any time does not exceed \$6 billion. The \$6 billion bonding authority would be in addition to the board's current bonding authority. The proposed amendment would make the proposed bonding authority subject to the general framework governing the Texas Water Development Fund II found in Section 49-d-8, Article III, Texas Constitution, except for the limitation in that section that the board may not issue bonds in excess of the aggregate principal amount of previously authorized bonds. In addition, the proposed amendment would exempt a project funded with the proceeds of bonds issued under Section 49-d-8 or 49-d-11 of Article III of the Texas Constitution from a limitation on the percentage of state participation in any single project imposed by that article.

SUMMARY OF COMMENTS MADE ABOUT THE PROPOSED AMENDMENT. 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. The increase in Texas' population and the persistent threat of severe drought highlight the need to update infrastructure to meet current water needs and to anticipate and plan for future water needs. Without the additional bonding authority, critical water planning and infrastructure upgrades will be greatly impeded or halted altogether, which will negatively impact local water development and conservation programs in many communities across Texas. Although this bonding authorization may finance only a small portion of state water plan implementation projects to meet the long-term water needs of Texas, the total estimated cost of which is \$30 billion, it will be used in support of implementation. The additional bonding authority is needed also to meet federal matching requirements to draw down capitalization grants through the federal Clean Water and Drinking Water State Revolving Fund programs.

The provision in the proposed amendment making the bonding authority continuous (also known as the evergreen provision) would give the Texas Water Development Board, which has been a good steward of the bonding authority granted to date, flexibility over a longer term in the board's financing options. However, even with the evergreen provision, the legislature would retain its ability to provide oversight through its statutory and constitutional authority to determine how the board administers its programs. These bonds, if approved, would be self-supporting and not a detriment to the state budget, would not cost the state any money from the general revenue fund, and would not count toward the state's constitutional debt limit.

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 did not reveal any apparent opposition to the amendment.

However, a witness at a committee hearing, while noting that the additional bonding authority is critical and the board has demonstrated the ability to effectively administer the additional bonding authority, recommended removing the evergreen provision, arguing that periodic review by the legislature and the voters increases the board's accountability for the administration of the funds. The witness also noted general concern that funding for implementation of the state water plan is inadequate and should be considered where possible.

★ **AMENDMENT NO. 3 (S.J.R. 50)** *The constitutional amendment providing for the issuance of general obligation bonds of the state to finance educational loans to students.*

SUMMARY OF PROPOSED AMENDMENT. The proposed amendment would add Section 50b-7, Article III, Texas Constitution, which would empower the legislature by general law to authorize the Texas Higher Education Coordinating Board or its successor to issue and sell state general obligation bonds for the purpose of financing student loans in the manner provided by law as long as the principal amount of outstanding bonds issued is at all times equal to or less than the aggregate principal amount of state general obligation bonds previously authorized for that purpose by any other constitutional provision or former constitutional provision.

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The proposed amendment would require the bonds to be executed in the form, on the terms, and in the denominations, bear interest, and be issued in installments as prescribed by the coordinating board and would prohibit the maximum net effective interest rate to be borne by bonds so issued from exceeding the maximum rate provided by law. The proposed amendment also would authorize the legislature to provide for the investment of bond proceeds and to establish and provide for the investment of an interest and sinking fund to pay the bonds. Investment income would be required to be used for legislatively prescribed purposes. The proposed amendment would have the effect of continuing the existing Hinson-Hazelwood Student Loan Program, for which similar bonds have previously been authorized. Unlike the previous bond authorizations, the proposed amendment would not limit the total amount of bonds issued.

SUMMARY OF COMMENTS MADE ABOUT THE PROPOSED AMENDMENT. 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. Recent cuts in federal financial aid and the elimination of certain federal financial aid programs, together with expected reductions in available state grant programs, likely will increase the demand for student loans, and low-interest, fixed-rate loans, such as those offered under the Hinson-Hazelwood program, are the best alternative loans a student can get when federally subsidized or federally insured loans are insufficient or are not available. The program boasts relatively low default rates, interest rates competitive on a national level, and a long-standing record of success. Students issued loans under the program tend both to graduate and to repay money owed. In addition, existing law requires that the program be self-sustaining; regardless of the default rate, the program is obligated to pay back its debt service payments, which it does through student loan repayments funneled into a statutorily required interest and sinking fund. The state has never had to contribute any general revenue for bonds issued under the program, and even though the program is backed by the state's general obligation rating, it does not affect the constitutional debt limit due to its self-supporting nature.

COMMENTS BY OPPONENTS. No comments opposing the amendment were made during the house and senate committee hearings or during debate on the amendment in the house and senate chambers.

However, during the house committee hearing, certain members observed that while the benefits of the Hinson-Hazelwood program generally are unquestioned, national student loan debt presently exceeds national credit card debt, and also that certain media sources have identified student loans as a potential catalyst for a widespread financial predicament similar to that relating to subprime mortgage loans. Ideally, one member suggested, state support of students pursuing higher education would be in the form of grant aid, not loans.

★ **AMENDMENT NO. 4 (H.J.R. 63)** *The constitutional amendment authorizing the legislature to permit a county to issue bonds or notes to finance the development or redevelopment of an unproductive, underdeveloped, or blighted area and to pledge for repayment of the bonds or notes increases in ad valorem taxes imposed by the county on property in the area. The amendment does not provide authority for increasing ad valorem tax rates.*

SUMMARY OF PROPOSED AMENDMENT. Section 1-g(b), Article VIII, Texas Constitution, currently allows the legislature by general law to authorize an incorporated city or town to issue bonds or notes to finance the development or redevelopment of an unproductive, underdeveloped, or blighted area within the city or town and to pledge for repayment of those bonds or notes increases in property tax revenues imposed on property in the area by the city or town and other political subdivisions, a mechanism referred to as tax increment financing. The proposed amendment would expand the authorization to include counties, allowing the legislature by general law to authorize a county to issue bonds or notes to finance the development or redevelopment of an unproductive, underdeveloped, or blighted area within the county and to pledge for repayment of those bonds or notes increases in property tax revenues imposed on property in the area by the county and other political subdivisions.

SUMMARY OF COMMENTS MADE ABOUT THE PROPOSED AMENDMENT. 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. Counties should have the same ability as cities and towns to finance needed public improvements in areas that are deteriorating or unproductive and designated as reinvestment zones. Without the amendment, county implementation of tax increment financing could be subject to a constitutional challenge. House Bill 563, Acts of the 82nd Legislature, Regular Session, 2011, which enhances the ability of local governments to designate and use transportation reinvestment zones for the purpose of tax increment financing, highlights the importance of adding counties to the constitutional provision that enables cities and towns to implement tax increment financing. Property in a tax increment financing reinvestment zone would not be taxed at a higher rate because of its inclusion in a zone because the proposed amendment would not provide a basis for increasing tax rates. Instead, the proposed amendment would provide a mechanism for financing structural improvements in a defined area without a tax increase.

COMMENTS BY OPPONENTS. Authorizing counties to implement tax increment financing to fund transportation or other projects in a reinvestment zone could create an incentive to appraise property in the zone at a higher value. Even if the tax rate were to remain the same, a higher appraised value would result in a greater tax burden on owners of property in the area. Furthermore, dedicating tax revenue generated in a reinvestment zone to pay the costs of transportation or other projects in the zone could have a negative effect on other pressing local needs.

★ **AMENDMENT NO. 5 (S.J.R. 26)** *The constitutional amendment authorizing the legislature to allow cities or counties to enter into interlocal contracts with other cities or counties without the imposition of a tax or the provision of a sinking fund.*

SUMMARY OF PROPOSED AMENDMENT. The proposed amendment would authorize the legislature, by general law and for the purpose of increasing efficiency and effectiveness to the greatest extent possible, to authorize a city or county to enter into interlocal contracts with other cities or counties without meeting the requirement that, before incurring any debt, the city or county provide for the assessment and collection of a sufficient tax to pay the interest on the debt and that it create a sinking fund of at least two percent.

SUMMARY OF COMMENTS MADE ABOUT THE PROPOSED AMENDMENT. 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. Current constitutional provisions requiring local governments to impose a tax and create a sinking fund when incurring any debt have been interpreted in a way that limits the ability of a city or county to enter into an interlocal contract with a term of more than one year by treating a longer term contract as a debt under certain circumstances, which would require a debt service tax and sinking fund. This limitation has impeded the ability of cities and counties to enter into contracts to consolidate long-term programs, services, and projects, including the construction of infrastructure. By allowing a local government to enter into a contract with a term of more than one year without having to impose a tax or create a sinking fund, the proposed amendment would increase government efficiency by allowing for the consolidation of more programs, services, and projects.

COMMENTS BY OPPONENTS. No comments opposing the amendment were made during the house and senate committee hearings on the amendment or during discussion of the amendment in the house and senate chambers. A review of other sources also did not reveal any apparent opposition to the amendment.

★ **AMENDMENT NO. 6 (H.J.R. 109)** *The constitutional amendment clarifying references to the permanent school fund, allowing the General Land Office to distribute revenue from permanent school fund land or other properties to the available school fund to provide additional funding for public education, and providing for an increase in the market value of the permanent school fund for the purpose of allowing increased distributions from the available school fund.*

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SUMMARY OF PROPOSED AMENDMENT. Section 5(a), Article VII, Texas Constitution, limits the amount that may be distributed from the permanent school fund to the available school fund in each year of a state fiscal biennium to an amount not greater than six percent of the average of the market value of the permanent school fund on the last day of each of the 16 state fiscal quarters preceding the regular session of the legislature that begins before that state fiscal biennium. The proposed amendment to Section 5(a) would change the manner of calculating the market value of the permanent school fund for purposes of the limitation on distributions, with the result of raising the market value and allowing increased distributions. Specifically, the amendment would provide for including in the calculation of market value discretionary real assets investments and cash in the state treasury derived from permanent school fund property. The proposed amendment includes a temporary provision addressing implementation of the change to the determination of market value.

The proposed amendment also would add Subsection (g) to Section 5, Article VII, Texas Constitution, authorizing the General Land Office or an entity other than the State Board of Education that has responsibility for the management of permanent school fund land or other properties, in its sole discretion, to distribute to the available school fund each year revenue derived during that year from the land or properties, not to exceed \$300 million each year.

The proposed amendment also would amend various provisions of the Texas Constitution to make consistent the terminology used in referring to the permanent school fund. The Texas Constitution variously refers to a permanent free public school fund, a perpetual public school fund, a public free school fund, and a permanent school fund, all of which, according to the attorney general, constitute a single fund now commonly referred to as the permanent school fund. See Op. Tex. Att’y Gen. No. GA-0617 (2008).

SUMMARY OF COMMENTS MADE ABOUT THE PROPOSED AMENDMENT. 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. The proposed amendment is necessary to clarify the constitutionality of the General Land Office’s authority to distribute revenue derived from permanent school fund land and property directly to the available school fund. The proposed amendment would expressly allow the General Land Office to distribute such revenue directly into the available school fund, providing a much-needed infusion of revenue into the available school fund for distribution in the next biennium to the state’s public schools and allowing the public schools to benefit directly from the investment returns earned by the General Land Office from its management of permanent school fund lands. Given the size of the permanent school fund (in excess of \$25 billion) and the maximum amount permitted to be distributed from it to the available school fund, such distributions would not significantly hamper the permanent school fund.

Supporters also note that the changes made by the proposed amendment to ensure the use of consistent terminology in referring to the permanent school fund do not substantively change the Texas Constitution and are appropriate to provide uniformity and prevent confusion.

COMMENTS BY OPPONENTS. The permanent school fund is meant to provide interest revenue from investment of the fund’s permanent assets for distribution through the available school fund to the public schools in this state, and it would be unwise to spend funds that otherwise would be invested. Protecting the corpus of the permanent school fund, adding to it whenever possible, and distributing only its interest and dividend income ensures not only the fund’s continued growth but also a permanent revenue stream that will allow lawmakers to help fund schools and, in turn, keep property taxes down. Diverting the revenue that otherwise would go into the fund and become part of that corpus and making it available for use would be tantamount to liquidating a permanent asset to satisfy a short-term need and would defeat the purpose of the investment fund.

★ **AMENDMENT NO. 7 (S.J.R. 28)** *The constitutional amendment authorizing the legislature to permit conservation and reclamation districts in El Paso County to issue bonds supported by ad valorem taxes to fund the development and maintenance of parks and recreational facilities.*

SUMMARY OF PROPOSED AMENDMENT. Section 59(c-1), Article XVI, Texas Constitution, authorizes the legislature, for development of certain parks and recreational facilities that were not authorized to be developed and financed with taxes before September 13, 2003, to authorize indebtedness payable from taxes as may be necessary to provide for improvements and maintenance only for a conservation and reclamation district all or part of which is located in any one of certain specified counties or for a certain water district. The proposed amendment would include among the conservation and reclamation districts for which such indebtedness is authorized a conservation and reclamation district all or part of which is located in El Paso County.

SUMMARY OF COMMENTS MADE ABOUT THE PROPOSED AMENDMENT. 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. Currently, the City of El Paso’s park system, used by both city and El Paso County residents, is underfunded. The proposed amendment would facilitate the creation and maintenance of a regional parks district in the county through certain bonding and taxing authority currently available in 10 other counties. The amendment would not raise taxes or automatically create a regional parks district, but rather would provide an opportunity for county voters to decide whether such a district should be created and be allowed to issue bonds payable from property taxes.

Parks play a role in the success of a community, enhancing the quality of life in an area, and the creation of a regional parks district with authority to issue bonds payable from property taxes would allow the city and county to work together to offer higher quality services than either could provide separately. The amendment would be just the start of the process toward the development in the county of a regional parks district with authority to issue bonds payable from property taxes. If approved, city and county officials will start working on enabling legislation for consideration by the 83rd Legislature.

COMMENTS BY OPPONENTS. The proposed amendment would provide an opportunity for further taxing authority in El Paso County, a property-poor county. In this current economic climate, government leaders should be focused on sustaining the local economy and generating revenue rather than on creating additional debt. While improving the regional quality of life is laudable, it is irresponsible at this time.

The proposed amendment has been characterized as a way for El Paso County residents to start a conversation regarding the creation of a regional parks district with authority to issue bonds payable from property taxes and the associated benefits, but there has been little study regarding the actual economic impact of such a district.

★ **AMENDMENT NO. 8 (S.J.R. 16)** *The constitutional amendment providing for the appraisal for ad valorem tax purposes of open-space land devoted to water-stewardship purposes on the basis of its productive capacity.*

SUMMARY OF PROPOSED AMENDMENT. Section 1(b), Article VIII, of the Texas Constitution generally requires real property to be taxed at its market value. Section 1-d-1, Article VIII, Texas Constitution, requires the legislature, for the purpose of promoting the preservation of open-space land, to provide by general law for taxation of open-space land devoted to farm, ranch, or wildlife management purposes on the basis of its productive capacity, rather than at full market value, and authorizes the legislature to provide, on the same basis and by general law, for taxation of open-space land devoted to timber production. The proposed amendment would require the legislature, by general law, to provide for taxation of open-space land devoted to water stewardship on the basis of its productive capacity.

SUMMARY OF COMMENTS MADE ABOUT THE PROPOSED AMENDMENT. 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. According to the state water plan, active conservation will account for 23 percent of the state’s future water supply, and the plan endorses voluntary water stewardship as a water conservation strategy. Promoting water stewardship is sound and sustainable water conservation

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policy. Voluntary water stewardship is a new tool to advance water conservation in a tough budget cycle and is revenue neutral because eligible landowners already would be receiving the agricultural-use property valuation (sometimes called the agricultural-use exemption). In a state where more than 90 percent of the land is privately owned, a water-stewardship tax incentive would encourage private landowners to conserve water without more regulation. Farmers and ranchers would have a financial incentive to run fewer cattle on their land, helping to preserve the land's habitat and native plant and animal species.

COMMENTS BY OPPONENTS. The proposed amendment and its enabling legislation could provide a way to undermine the agricultural-use property valuation, or have other unintended consequences. There already are several other tax breaks for Texas landowners, and providing for another one is excessive. The separate water-stewardship valuation is superfluous because landowners already practice voluntary water conservation. Furthermore, some options under the water-stewardship appraisal method already are available under the wildlife management appraisal method.

★ **AMENDMENT NO. 9 (S.J.R. 9) *The constitutional amendment authorizing the governor to grant a pardon to a person who successfully completes a term of deferred adjudication community supervision.***

SUMMARY OF PROPOSED AMENDMENT. Section 11(b), Article IV, Texas Constitution, authorizes the governor, in all criminal cases except treason and impeachment, after conviction and on the written signed recommendation and advice of the Board of Pardons and Paroles or of a majority of the board, to grant reprieves and commutations of punishment and pardons. The proposed amendment would authorize the governor, in all criminal cases except treason and impeachment, and on the board's written signed recommendation and advice, to grant a pardon also to a person who is not convicted but who successfully completes a term of deferred adjudication community supervision.

SUMMARY OF COMMENTS MADE ABOUT THE PROPOSED AMENDMENT. 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. The Texas Constitution currently authorizes the governor to pardon a person who has been convicted of a crime but not a person who has successfully completed a term of deferred adjudication community supervision, a procedure by which a person charged with certain crimes can avoid a conviction. This incongruity allows a situation in which a person who is convicted of a violent crime may receive a pardon while a person who is charged with a nonviolent crime and is placed on and successfully completes a term of deferred adjudication community supervision is not allowed even to seek a pardon. While certain criminal history record information of a person who is pardoned is eligible for expunction, criminal history record information reflecting the arrest and placement on deferred adjudication community supervision of a person who successfully completes deferred adjudication is not eligible for expunction because of the absence of a conviction. Although a person who is placed on deferred adjudication community supervision may petition for an order of nondisclosure to prevent the release of criminal history record information to the public, even if the order is granted, that information is still available to many entities, including criminal justice and non-criminal justice entities. The existence of a criminal history record negatively impacts persons applying for employment, housing, and professional licenses. There have been reported incidents involving employers releasing an employee on discovering the employee's criminal history record resulting from an offense that was dismissed by a judge after successful completion of a term of deferred adjudication community supervision.

The proposed amendment would address these issues by providing the means by which a person who successfully completes a term of deferred adjudication community supervision may receive a pardon and an expunction of certain related criminal history record information and would result in a more consistent policy on pardons in Texas.

COMMENTS BY OPPONENTS. Providing the means by which a person who successfully completes a term of deferred adjudication community supervision may be pardoned would not efficiently

achieve the goal of expunction of criminal history record information because the person still must proceed through the pardon process involving the Board of Pardons and Paroles and the governor, a process that historically has resulted in few pardons. The expunction of criminal history record information for these persons should be achieved through another appropriate legal avenue. Furthermore, it is unclear whether the proposed amendment will be sufficient to allow a person who completes a term of deferred adjudication community supervision and who is pardoned to subsequently obtain an expunction of criminal history record information because statutory law governing expunction does not allow expunction based on a pardon following successful completion of a term of deferred adjudication community supervision.

★ **AMENDMENT NO. 10 (S.J.R. 37) *The constitutional amendment to change the length of the unexpired term that causes the automatic resignation of certain elected county or district officeholders if they become candidates for another office.***

SUMMARY OF PROPOSED AMENDMENT. The proposed amendment would amend Section 65(b), Article XVI, Texas Constitution, (commonly known as the "resign-to-run" provision), to specify that an announcement by certain elected county or district officeholders of candidacy for another office, or such candidacy itself, constitutes an automatic resignation of the office then held if the announcement or candidacy occurs at any time when the officeholder's unexpired term exceeds one year and 30 days, rather than one year. Senate Joint Resolution 37 specifies that the proposed amendment shall be submitted to the voters only if the secretary of state certifies that an enactment of the 82nd Legislature, Regular Session, that became law provides for a filing deadline for an application for a place on the general primary ballot that occurs in the calendar year before the year in which the primary election is held. Senate Bill 100 (82nd Legislature, Regular Session, 2011), which changes the filing deadline, was enacted by the legislature and is effective on September 1, 2011.

SUMMARY OF COMMENTS MADE ABOUT THE PROPOSED AMENDMENT. 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. Under the current resign-to-run provision in the Texas Constitution, an officeholder could file an application for a place on the general primary election ballot as late as January 2 of the primary election year, the current filing deadline, at which time the officeholder would have less than one year remaining in that office and would not be affected by the resign-to-run provision. Because Senate Bill 100 changes that filing deadline from January 2 of the primary election year to the second Monday in December of the preceding year, a conforming change to the constitutional resign-to-run provision, is necessary to preserve the original intent of that provision. Without such change, any officeholder subject to the resign-to-run provision who files to run for another office on the general primary election ballot would automatically resign because that officeholder would have at least one year remaining before the officeholder's current term of office would expire. The unintentional effect of the new filing deadline is unfair to county and district officeholders, most of whom are financially unable to leave their post to seek another office before their current term expires. The acceleration of the automatic resignation requirement penalizes them for seeking to continue their public service through pursuit of another elected office and discourages them from such pursuit, which would adversely affect the field of candidates for those positions.

By extending by 30 days the length of the unexpired term that triggers automatic resignation, the proposed amendment would retain the provision's intended purpose and would provide for the continued public service of local officials by allowing those officeholders to remain in their current post until their current term expires if they have less than one year and 30 days left in the term and bring their experience in public office to other elected positions.

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.

SENATOR ROBERT DUNCAN

DISTRICT 28
P.O. BOX 12068
AUSTIN, TEXAS 78711

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CONSTITUTIONAL AMENDMENTS



Early voting begins

Monday, October 24th -

Friday, November 4th

VOTE

TUESDAY

NOVEMBER 8, 2011

SENATOR ROBERT DUNCAN

82nd Legislature

Senate District 28

HOW TO CONTACT SENATOR ROBERT DUNCAN

Austin Capitol Office:

Room 3E.10
P.O. Box 12068
Austin, Texas 78711
(512) 463-0128
(800) 322-9538
Fax (512) 463-2424
Dial 711 For Relay Calls

Lubbock District Office:

1500 Broadway
Suite 902
Lubbock, Texas 79401
(806) 762-1122
(800) 546-9928
Fax (806) 749-2828

Childress District Office:

119 Avenue B NW
Childress, Texas 79201
(940) 937-0909
(888) 887-7027
Fax (940) 937-6994



San Angelo District Office:

36 West Beauregard
Suite 510
San Angelo, Texas 76903
(325) 481-0028
(800) 558-9928
Fax (325) 655-2541

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