
**HOUSE SELECT COMMITTEE ON CONSTITUTIONAL REVISION
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2000**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
77TH TEXAS LEGISLATURE**

**JOE DRIVER
CHAIRMAN**

**COMMITTEE CLERK
JAMES DeWITT**



Select Committee On
Constitutional Revision

October 4, 2000

Joe Driver
Chairman

P.O. Box 2910
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The Honorable James E. "Pete" Laney
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Select Committee on Constitutional Revision of the Seventy-Sixth Legislature hereby submits its interim report including recommendations for consideration by the Seventy-Seventh Legislature.

Respectfully submitted,

Joe Driver, Chairman

Robert Puente, Vice-Chairman

Ray Allen

Kevin Bailey

Harold Dutton

Glenn Lewis

Anna Mowery

Burt Solomons

Dale Tillery

Robert Puente
Vice-Chairman

Members: Ray Allen, Harold Dutton, Anna Mowery, Dale Tillery, Kevin Bailey, Glenn Lewis, Burt Solomons

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INTRODUCTION

At the beginning of the 76th Legislature, the Honorable James E. “Pete” Laney, Speaker of the Texas House of Representatives, appointed nine members to the Select Committee on Constitutional Revision. The committee membership included the following: Joe Driver, Chairman; Robert Puente, Vice-Chairman; Ray Allen; Kevin Bailey; Harold Dutton; Glenn Lewis; Anna Mowery; Burt Solomons; and Dale Tillery.

During the interim, the Committee was assigned the following charges by the Speaker: (1) Evaluate the public perception of the need for comprehensive revision of the Constitution. If appropriate, develop a plan for revision (such as an article-by-article review by a legislative committee over a prescribed period, establishment of a constitutional revision commission that includes scholars and members of the public, or a constitutional convention) including a proposed schedule. (2) Identify specific changes the public would support in Article 3 (Legislative Department), Article 5 (Judicial Department) and Article 16 (General Provisions). (3) Identify remaining obsolete, ineffective, executed or other irrelevant provisions of the Constitution.

The Committee decided to address these changes as a full committee rather than dividing into subcommittees.

HOUSE COMMITTEE ON CONSTITUTIONAL REVISION

INTERIM STUDY CHARGES

- CHARGE** Evaluate the public perception of the need for comprehensive revision of the Constitution. If appropriate, develop a plan for revision (such as an article-by-article review by a legislative committee over a prescribed period, establishment of a constitutional revision commission that includes scholars and members of the public, or a constitutional convention) including a proposed schedule.
- CHARGE** Identify specific changes the public would support in Article 3 (Legislative Department), Article 5 (Judicial Department) and Article 16 (General Provisions).
- CHARGE** Identify remaining obsolete, ineffective, executed or other irrelevant provisions of the Constitution.

CHARGE ON PUBLIC PERCEPTION OF NEED FOR REVISION

BACKGROUND AND ANALYSIS

The Select Committee held three public hearings during the interim period. The hearings were held in Austin on April 17, Dallas (Mesquite) on May 15, and San Antonio on June 2. Attendance at the Austin hearing was fairly heavy, but low at the other hearings, particularly among members of the public. If hearing attendance is indicative of public interest, it appears that revising the Constitution is not currently an issue of great concern to average Texans. The low attendance could, however, simply suggest a lack of public interest in the specific articles (3, 5, and 16) that the Committee was asked to examine during this interim. In any event, public participation in the review process was not as high as anticipated. That said, falling short of a Constitutional crisis (which does not currently exist), it would take a concerted effort on the part of the state to elicit significant public attention.

Among members of the Texas media, the issue received a fair amount of attention as the November 2nd constitutional amendment election approached. Among the 17 amendments on the ballot was Proposition 3 (H.J.R. 62) authored by committee members Anna Mowery (R-Fort Worth), Chairman Joe Driver (R-Garland) and Vice-Chairman Robert Puento (D-San Antonio). Although a certain degree of attention was given to Proposition 3 by the media, public interest regarding all 17 items was still moderate at best. This was illustrated by voter turnout on election day. Of the 11,405,562 registered voters in 1999, 8.38 percent voted in the November 2nd election. This is fairly consistent with voter turnout in the past two constitutional elections in 1997 (10.60 percent) and 1995 (7.86 percent.)¹

Early in the 76th Legislative Session a poll known as the Texas Poll (Scripps Howard News Service) was conducted which included a question to gauge Texans' attitudes towards the idea of adopting a new constitution. Of the 1001 respondents, 49 percent gave priority to consideration of a new constitution, 41 percent gave it little or no priority, and 10 percent were not sure.²

In cooperation with Texas A&M University, the Select Committee is currently designing a short survey (which will be accessible from the Texas A&M web page) to gauge public attitudes regarding specific aspects of our Constitution. Although the data collected from this survey will not be scientific in nature, it will function as yet another tool to aide the Committee in better understanding public sentiment and public expectations for the Committee and Legislature at large in dealing with this issue.

RECOMMENDATIONS

In dealing with this issue further, it is not necessary at this time to establish a constitutional revision commission or a constitutional convention. Rather, the Committee believes that further review by legislative committee is not only adequate, but also the most appropriate and effective means of determining the state's constitutional goals.

Having conducted public hearings regarding Articles 3, 5, and 16, the Committee recommends the following schedule (including proposed topics of study) for review of additional articles:

Interim: 77th Legislature

Article 4 (Executive)

- Offices of Governor, Lieutenant Governor, Secretary of State, Comptroller or Public Accounts, Commissioner of the General Land Office, and Attorney General.
- Board of Pardons and Paroles
- Terms of office
- Election/appointment process
- Impeachment
- Compensation
- Veto authority
- Eligibility
- Absence or vacancy

Article 7 (Education)

- Perpetual School Fund
- Permanent School Fund
- Available School Fund
- School lands
- State Board of Education
- Junior College Districts
- Independent School Districts
- District Boundaries
- University Administration
- Permanent University Fund
- Appropriations

Interim: 78th Legislature

Article 8 (Taxation and Revenue)

- Ad valorem taxation
- Exemptions
- Occupation taxes
- Maximum tax rates
- Local Tax Assessor-Collectors

Article 11 (Municipal Corporations)

- Debt provisions by state and local government
- Home rule charter authority
- Lending of credit
- Public property exemption
- Terms of Office

The Committee concluded that the following articles did not merit full review at this time: Articles 1 (Bill of Rights), 2 (Powers of Government), 6 (Suffrage), 9 (Counties), 15 (Impeachment), and 17 (Mode of Amending the Constitution of this State). Comments regarding the possible repeal of sections of Articles 10 (Railroads), 12 (Private Corporations), and 14 (Public Lands and Land Office) can be found on pages 11-12 of this report.

**CHARGE ON CHANGES TO ARTICLE 3 (LEGISLATIVE DEPARTMENT),
ARTICLE 5 (JUDICIAL DEPARTMENT),
AND ARTICLE 16 (GENERAL PROVISIONS)**

BACKGROUND AND ANALYSIS

Article 3 (Legislative Department)

State Representative Jim Keffer (R-Eastland) testified regarding changes to Article 3 at the Select Committee's May 15th hearing. He explained that the number of members in the Texas House of Representatives was set at a maximum of 150 by our current constitution when it was ratified in 1876. At that time, the membership of the house was only 93, but the maximum level was reached in 1923. Since that time, the state population has increased from 4,663,228 to an estimated 20,454,074 in the year 2001. In 1923, the ratio of Texas residents to representatives was 31,008 : 1. With the projected population in when the 77th Legislature comes to order, the ratio will have grown to 136,360 : 1.

Representative Keffer stated that for quality of representation and adequate accessibility to continue, the legislature should consider passing legislation to increase the size of the house. In the 76th Legislative Session, he introduced H.J.R. 70 which would increase the number of representatives by five after each ten year census until the total number reached 200 representatives. Supporting documents can be found in Appendix A.

Article 5 (Judicial Department)

Judicial selection was discussed more than any other issue during all three interim hearings. Of the 19 testimonies heard by the Committee, 11 were in regards to this issue. However, there was no clear consensus or majority opinion among the witnesses. Many argued to retain the current system, while others promoted a plethora of ideas for change. Suggested changes involving an election-based system included switching to non-partisan elections and/or retention elections, establishing term limits, electing high court judges by single-member districts, raising the requirements to serve, allowing cross-filing, eliminating straight-party voting, limiting campaign contributions, and creating a mandatory recusal standard. Suggested changes involving an appointment system included selection by an even numbered bi-partisan commission or by gubernatorial appointment with Senate confirmation.

There was, however, one point of agreement among most of the witnesses who testified. All agreed that there is a perception among the people of Texas (or at least by the media) that Texas judges are being influenced by campaign contributions. The consensus was that whether this perception was real or imagined, the state should do whatever possible to correct this image.

Article 16 (General Provisions)

Banking Commissioner Randall S. James proposed changes to the banking provisions of Article 16 to the Committee on April 17, 2000. His proposal, with supporting documents, appears in Appendix B of this document.

Agriculture Commissioner Susan Combs proposed changes to Article 16 in correspondence to Chairman Driver on April 25, 2000. The correspondence appears in full in Appendix C.

**CHARGE ON REMAINING OBSOLETE, INEFFECTIVE, EXECUTED, OR OTHER
IRRELEVANT PROVISIONS OF THE CONSTITUTION**

BACKGROUND AND ANALYSIS

The Select Committee's primary resource for answering this charge was Steve Collins, Director of the Legal Division of the Texas Legislative Council. Mr. Collins drafted H.J.R. 62 which was approved by the electorate in November 1999. The amendment removed duplicative, executed, obsolete, archaic and ineffective provisions from the State Constitution. It was approved by 76.77 percent of the voters who participated in the election.

Mr. Collin's advised the committee at the April 7, 1999 hearing that he believes the Constitution is, in general, a good document that is not in need of a major overhaul. He explained, however, that items do still exist that could be called "superfluous". There is a certain amount of disagreement regarding what merits this term. A discussion regarding superfluous articles was held in 1960 when, at the request of H.C.R. 13 passed by the 55th Legislature, the Texas Legislative Council completed a report entitled, "Constitutional Revision: A Study of the Texas Constitution with Recommended Changes" The study recommended that 52 sections be repealed. Many of these sections were repealed by H.J.R. 3 during the 61st Legislature (1969) and by H.J.R. 62 during the 76th Legislature (1999).

The following is a list of sections that were recommended for repeal in the 1960 report, but still remain in the Constitution:

Art. 10, Sec. 2. PUBLIC HIGHWAYS; COMMON CARRIERS; REGULATION OF TARIFFS, CORRECTION OF ABUSES, AND PREVENTION OF DISCRIMINATION AND EXTORTION; MEANS AND AGENCIES

Art. 12, Sec. 1. CREATION BY GENERAL LAWS.

Art. 12, Sec. 2. GENERAL LAWS TO BE ENACTED; PROTECTION OF PUBLIC AND STOCKHOLDERS.

Art. 14, Sec. 1. GENERAL LAND OFFICE.

Art. 16, Sec. 49. PROTECTION OF PERSONAL PROPERTY FROM FORCED SALE

An excerpt from Legislative Council's 1960 report which explains the grounds for repeal of the above articles can be found in Appendix D.

Under the federalist system of the United States' government, state constitutions grant plenary powers to their respective state legislature. Therefore, it has been argued that any provision in the State Constitution which grants a certain power to the state is intrinsically unnecessary. Based on this argument, the following are examples of provisions which could be considered for repeal:

Art. 16, Sec. 22. FENCE LAWS.

Art 16, Sec. 23. REGULATION OF LIVESTOCK; PROTECTION OF STOCK RAISERS; INSPECTIONS; BRANDS.

Art 3, Sec. 51 (g) SOCIAL SECURITY COVERAGE OF PROPRIETARY EMPLOYEES OF POLITICAL SUBDIVISIONS.

The Committee looks forward to handling any proposals involving the above cited repeals or additional items when the 77th Legislature convenes in January 2001.

ENDNOTES

1. Office of the Secretary of State. 8 March 2000. Elections Division, Office of the Secretary of State. 20 Aug. 2000. <<http://www.sos.state.tx.us>>
2. McCarthy, Osler. "Poll shows support for new constitution." Austin-American Statesman. 13 Feb. 1999, B3.

APPENDIX A

APPENDIX B



APPENDIX C



APPENDIX D
