

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Corte, Hilderbran, Anderson, Paxton,  
Hughes, et al.

H.J.R. No. 14

## A JOINT RESOLUTION

1 proposing a constitutional amendment to limit the public taking of  
2 private property.

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

4 SECTION 1. Section 17, Article I, Texas Constitution, is  
5 amended to read as follows:

6 Sec. 17. (a) No person's property shall be taken, damaged,  
7 or destroyed for or applied to public use without adequate and just  
8 compensation being made, unless by the consent of such person, and  
9 only if the taking, damage, or destruction is necessary for the  
10 elimination of urban blight on a particular parcel of property or  
11 the possession, occupation, and enjoyment of the property by a  
12 common carrier, by an entity providing utility service, by an  
13 entity that provides telecommunications service, video service, or  
14 cable service to which the law grants eminent domain authority, by  
15 the public at large, by the State, or by a political subdivision of  
16 the State; and, when taken, except for the use of the State, such  
17 compensation shall be first made, or secured by a deposit of money;  
18 and no irrevocable or uncontrollable grant of special privileges or  
19 immunities[~~r~~] shall be made; but all privileges and franchises  
20 granted by the Legislature, or created under its authority, shall  
21 be subject to the control thereof.

22 (b) For the purposes of this section, adequate compensation  
23 for the taking of property that is a homestead or farm, if the  
24 taking makes relocation of the homestead or farm necessary,

1 includes the cost of relocation from the condemned property to  
2 another property that allows the property owner, without the  
3 necessity of incurring an amount of debt, debt service, or total  
4 projected interest obligation that is higher than the property  
5 owner was subject to immediately before the taking to:

6 (1) have a standard of living comparable to the  
7 property owner's standard of living immediately before the taking,  
8 if the property taken is a homestead; or

9 (2) operate a comparable farm, if the property taken  
10 is a farm.

11 SECTION 2. This proposed constitutional amendment shall be  
12 submitted to the voters at an election to be held November 3, 2009.  
13 The ballot shall be printed to permit voting for or against the  
14 proposition: "The constitutional amendment to prohibit the taking,  
15 damaging, or destroying of private property for public use unless  
16 the action is necessary for the elimination of urban blight on a  
17 particular parcel of property or the possession, occupation, and  
18 enjoyment of the property by a common carrier, an entity providing  
19 utility service, an entity that provides telecommunications  
20 service, video service, or cable service to which the law grants  
21 eminent domain authority, the public, the state, or a political  
22 subdivision, and to require compensation for homesteads and farms  
23 taken in certain circumstances where the use is public and  
24 necessary to include the cost of relocating to a comparable  
25 property."

**ADOPTED**

MAY 25 2009

*Atty. Gen. Spaw*  
Secretary of the Senate

By: Duncan

H J.R. No. 14

Substitute the following for H J.R. No. 14:

By: Robert Duncan

C.S. H J.R. No. 14

A JOINT RESOLUTION

1 proposing a constitutional amendment to prohibit the taking of  
2 property for transfer to a private entity for certain purposes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Section 17, Article I, Texas Constitution, is  
5 amended to read as follows:

6 Sec. 17. (a) No person's property shall be taken, damaged  
7 or destroyed for or applied to public use without adequate  
8 compensation being made, unless by the consent of such person;  
9 and, when taken, except for the use of the State, such  
10 compensation shall be first made, or secured by a deposit of  
11 money; and no irrevocable or uncontrollable grant of special  
12 privileges or immunities, shall be made; but all privileges and  
13 franchises granted by the Legislature, or created under its  
14 authority shall be subject to the control thereof.

15 (b) In this section, "public use" does not include the  
16 taking of property by the State or a political subdivision of  
17 the State for transfer to a private entity for the primary  
18 purpose of economic development or enhancement of tax revenues.

19 SECTION 2. This proposed constitutional amendment shall be

1 submitted to the voters at an election to be held November 3,  
2 2009. The ballot shall be printed to permit voting for or  
3 against the proposition: "The constitutional amendment to  
4 prohibit the taking of property for transfer to a private entity  
5 for the primary purpose of economic development or enhancement  
6 of tax revenues."

**ADOPTED**

*3rd Reading*

FLOOR AMENDMENT NO. 1

MAY 26 2009

BY: Robert Duncan

*Leta Spaw*  
Secretary of the Senate

1 Amend C.S.H.J.R. 14 (Senate Committee Printing) as follows:

2 (1) Designate the existing SECTIONS of the resolution as  
3 ARTICLE 1 and renumber its SECTIONS as SECTION 1.01 and 1.02.

4 (2) In renumbered SECTION 1.02, strike "This proposed  
5 constitutional amendment" and substitute "The constitutional  
6 amendment proposed by this article".

7 (3) Insert the following ARTICLE 2 to the resolution:

8 ARTICLE 2.

9 SECTION 2.01. Article VII, Texas Constitution, is amended  
10 by adding Section 20 to read as follows:

11 Sec. 20. (a) There is established the national research  
12 university fund for the purpose of providing a dedicated,  
13 independent, and equitable source of funding to enable emerging  
14 research universities in this state to achieve national  
15 prominence as major research universities.

16 (b) The fund consists of money transferred or deposited to  
17 the credit of the fund and any interest or other return on the  
18 investment assets of the fund. The legislature may dedicate  
19 state revenue to the credit of the fund.

20 (c) The legislature shall provide for administration of  
21 the fund, which shall be invested in the manner and according to  
22 the standards provided for investment of the permanent  
23 university fund. The expenses of managing the investments of  
24 the fund shall be paid from the fund.

25 (d) In each state fiscal biennium, the legislature may  
26 appropriate as provided by Subsection (f) of this section all or  
27 a portion of the total return on all investment assets of the  
28 fund to carry out the purposes for which the fund is  
29 established.

*5*  
*1*

1       (e) The legislature biennially shall allocate the amounts  
2 appropriated under this section, or shall provide for a biennial  
3 allocation of those amounts, to eligible state universities to  
4 carry out the purposes of the fund. The money shall be  
5 allocated based on an equitable formula established by the  
6 legislature or an agency designated by the legislature. The  
7 legislature shall review and as appropriate adjust, or provide  
8 for a review and adjustment, of the allocation formula at the  
9 end of each state fiscal biennium.

10       (f) The portion of the total return on investment assets  
11 of the fund that is available for appropriation in a state  
12 fiscal biennium under this section is the portion determined by  
13 the legislature, or an agency designated by the legislature, as  
14 necessary to provide as nearly as practicable a stable and  
15 predictable stream of annual distributions to eligible state  
16 universities and to maintain over time the purchasing power of  
17 fund investment assets. If the purchasing power of fund  
18 investment assets for any rolling 10-year period is not  
19 preserved, the distributions may not be increased until the  
20 purchasing power of the fund investment assets is restored. The  
21 amount appropriated from the fund in any fiscal year may not  
22 exceed an amount equal to seven percent of the average net fair  
23 market value of the investment assets of the fund, as determined  
24 by law. Until the fund has been invested for a period of time  
25 sufficient to determine the purchasing power over a 10-year  
26 period, the legislature may provide by law for means of  
27 preserving the purchasing power of the fund.

28       (g) The legislature shall establish criteria by which a  
29 state university may become eligible to receive a portion of the  
30 distributions from the fund. A state university that becomes  
31 eligible to receive a portion of the distributions from the fund

1 in a state fiscal biennium remains eligible to receive  
2 additional distributions from the fund in any subsequent state  
3 fiscal biennium. The University of Texas at Austin and Texas  
4 A&M University are not eligible to receive money from the fund.

5 (h) An eligible state university may use distributions  
6 from the fund only for the support and maintenance of  
7 educational and general activities that promote increased  
8 research capacity at the university.

9 SECTION 2.02. Subsection (i), Section 17, Article VII,  
10 Texas Constitution, is repealed.

11 SECTION 2.03. The following temporary provision is added  
12 to the Texas Constitution:

13 TEMPORARY PROVISION. (a) This temporary provision applies  
14 to the constitutional amendment proposed by the 81st  
15 Legislature, Regular Session, 2009, establishing the national  
16 research university fund to enable emerging research  
17 universities in this state to achieve national prominence as  
18 major research universities and transferring the balance of the  
19 higher education fund to the national research university fund.

20 (b) The amendment to add Section 20 to Article VII of this  
21 constitution and to repeal Section 17(i), Article VII, of this  
22 constitution takes effect January 1, 2010.

23 (c) On January 1, 2010, any amount in or payable to the  
24 credit of the higher education fund established by Section  
25 17(i), Article VII, Texas Constitution, shall be transferred to  
26 the credit of the national research university fund.

27 (d) This temporary provision expires January 1, 2011.

28 SECTION 2.04. The constitutional amendment proposed by  
29 this Article shall be submitted to the voters at an election to  
30 be held November 3, 2009. The ballot shall be printed to permit  
31 voting for or against the proposition: "The constitutional

1 amendment establishing the national research university fund to  
2 enable emerging research universities in this state to achieve  
3 national prominence as major research universities and  
4 transferring the balance of the higher education fund to the  
5 national research university fund."



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 28, 2009**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HJR14** by Corte (Proposing a constitutional amendment to prohibit the taking of property for transfer to a private entity for certain purposes.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated, other than the cost of publication.**

The cost to the state for publication of the resolution is \$90,882.

The resolution would propose an amendment to Article I of the Texas Constitution to specify that the term "public use" does not include the taking of property by the state or a political subdivision of the state for transfer to a private entity for the purpose of economic development or enhancement of tax revenues.

Additionally, the resolution propose an amendment to Article VII of the Texas Constitution to create a new source of funding to enhance research capacity at certain public general academic institutions using the investment earnings of an existing but rededicated fund corpus (i.e., the Permanent Higher Education Fund, which would become the corpus for the National Research University Fund).

The proposed constitutional amendment would be submitted to the voters at an election to be held November 3, 2009.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General

**LBB Staff:** JOB, KJG, SD, KK, MN, SZ, RT, TG, JM, JAW



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 23, 2009**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HJR14** by Corte (Proposing a constitutional amendment to prohibit the taking of property for transfer to a private entity for certain purposes.), **Committee Report 2nd House, Substituted**

**No significant fiscal implication to the State is anticipated, other than the cost of publication.**

The cost to the state for publication of the resolution is \$90,882.

The resolution would propose a constitutional amendment to Article I of the Texas Constitution to specify that the term "public use" does not include the taking of property by the state or a political subdivision of the state for transfer to a private entity for the purpose of economic development or enhancement of tax revenues.

The proposed constitutional amendment would be submitted to the voters at an election to be held November 3, 2009.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General

**LBB Staff:** JOB, KJG, SD, SZ, TG, JM



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 20, 2009**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HJR14** by Corte (Proposing a constitutional amendment to limit the public taking of private property.), **As Engrossed**

**No significant fiscal implication to the State is anticipated**, other than the cost of publication.

The cost to the state for publication of the resolution is \$90,882.

The resolution would propose an amendment to the Texas Constitution to specify that the taking of private property is authorized only if it is necessary for, the elimination of urban blight on a particular parcel of property or the possession, occupation, and enjoyment of the property by a common carrier by an entity providing utility service; telecommunications service, video service, or cable service to which the law grants eminent domain authority; the public at large; the state, or a political subdivision of the state.

For the taking of a homestead or farm, adequate compensation would include the cost of relocation to a location where the property owner would have a comparable standard of living without the property owner incurring debt.

Based on the analysis of the Texas Department of Transportation, it is assumed that the constitutional amendment would not result in a significant fiscal impact to the state.

The proposed constitutional amendment would take effect if approved by voters at an election to be held on November 3, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 601 Department of Transportation

**LBB Staff:** JOB, KJG, SZ, TG



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 1, 2009**

**TO:** Honorable Dennis Bonnen, Chair, House Committee on Land & Resource Management

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HJR14** by Corte (Proposing a constitutional amendment to limit the public taking of private property.), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated, other than the cost of publication.**

The cost to the state for publication of the resolution is \$90,882.

The resolution would propose an amendment to the Texas Constitution to specify that the taking of private property is authorized only if it is necessary for the possession, occupation, and enjoyment a common carrier, by an entity providing utility service, by the public at large, by the state, or by a political subdivision of the state.

Based on the analysis of the Texas Department of Transportation, it is assumed that the constitutional amendment would not result in a significant fiscal impact to the state.

The proposed constitutional amendment would take effect if approved by voters at an election to be held on November 3, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 601 Department of Transportation

**LBB Staff:** JOB, SZ, TG





**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**March 24, 2009**

**TO:** Honorable Dennis Bonnen, Chair, House Committee on Land & Resource Management

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HJR14** by Corte (Proposing a constitutional amendment to limit the public taking of private property.), **As Introduced**

Fiscal implications to the state, other than the cost of publication, cannot be determined.

The cost to the state for publication of the resolution is \$90,882.

The resolution would propose an amendment to the Texas Constitution to specify that the taking of private property is authorized only if it is necessary for the possession, occupation, and enjoyment of the public at large or by the state or a political subdivision of the state. The resolution would also amend the Texas Constitution to require the state or a political subdivision to provide clear and convincing evidence that the use of the property to be taken is public and necessary.

Based on the analysis of the Texas Department of Transportation, it is assumed that the constitutional amendment could affect the state's use of eminent domain for transportation-related purposes.

The proposed constitutional amendment would take effect if approved by voters at an election to be held on November 3, 2009.

**Local Government Impact**

If the voters were to approve the constitutional amendment, a political subdivision would incur legal costs associated with proving by clear and convincing evidence that the contemplated use of property to be taken is public and necessary. The annual costs would vary, depending on the number of parcels for which an entity seeks to exercise eminent domain. If there are a high number of proposed takings anticipated, the additional costs would include additional staff.

**Source Agencies:** 305 General Land Office and Veterans' Land Board, 601 Department of Transportation

**LBB Staff:** JOB, WK, MW, TG, ES, TP

