



April 8, 2011

Contact: F. Scott McCown, [mccown@cphp.org](mailto:mccown@cphp.org)

## SJR 12 BY PATRICK—PULLING THE PLUG ON TEXAS

Yesterday, [Senate Joint Resolution 12](#) by Patrick, proposing a constitutional amendment requiring a two-thirds vote for any tax increase was set for Senate deliberation as soon as Monday. SJR 12 is bad governance and bad tax policy.

### How SJR 12 Would Work

SJR 12 proposes to amend the constitution to require a record vote of two-thirds of all the members elected to each house of the Legislature to create a new state tax or to increase the rate of an existing state tax. The amendment has three exceptions, things that can increase taxes but are still decided by a majority: 1) how a tax is computed; 2) how a tax is enforced; and 3) who is subject to a tax. The amendment also has four exclusions, or things to which it does not apply: 1) local taxes; 2) fines, penalties, or interest; 3) service charges; and 4) fees.

### Why SJR 12 Is Bad Governance

- In a democracy, the majority should decide ordinary questions of governance. Only extraordinary questions such as amending the constitution should require more than majority support. While critically important, tax questions are ordinary questions of governance. If a two-thirds vote is required, it would be difficult if not impossible to raise taxes. The recent difficulty in securing a “soft” three-fifths *of those present and voting* in the House to spend the Rainy Day Fund—90 or fewer votes—illustrates the problem. The “hard” two-thirds *of elected members* required by SJR 12—a minimum of 100 votes in the House—is too high a hurdle.
- A “hard” two-thirds constitutional requirement and the Senate’s “soft” two-thirds internal rule to suspend the regular order of business are not remotely the same. Customarily, at the beginning of each session, *by a simple majority*, the Senate adopts an internal rule requiring two-thirds of those presenting and voting to suspend the regular order of business. The majority chooses each session whether to adopt this rule, and the majority can and has adopted exceptions. The House could operate similarly should it so desire. SJR 12, however, would create a constitutional requirement that the majority could never change.

### Why SJR 12 Is Bad Tax Policy

- Because Texas will need new revenue, the Legislature would be forced to rely on the exceptions and exclusions in SJR 12, even though better tax options are available. For example, the Legislature would be more likely to change the manner in which a tax is computed (which would require only a majority vote), rather than create a new tax or raise an existing tax (which would require a two-thirds vote). Redefining the “cost of goods sold” in the margins tax is an example of changing the manner in which a tax is computed. Even though creating a new tax or increasing an existing tax rate might be better tax policy than redefining a tax base, under SJR 12, the more likely choice is what can be accomplished by majority vote rather than what requires a two-thirds vote. For this reason, the Texas Taxpayer and Research Association testified against SJR 12. Likewise, because SJR 12 makes exceptions for fines, penalties, or interest, service charges, and fees, reliance on these very narrow and regressive forms of revenue would likely increase. In short, the Legislature’s ability to enact the best tax policy would be severely hampered.
- Because SJR 12 doesn’t apply to local taxes, the Legislature would be forced to pass more responsibility down to political subdivisions, requiring local taxpayers to pay more taxes, and creating even greater disparities in public services than we have now. Increasingly pushing down responsibilities to political subdivisions would require greater reliance on local sales and local property taxes. It would also mean that different areas of the state would have vastly different public services because low- and moderate-income communities have less capacity to pay for services such as public schools, community colleges, or transportation systems.

SJR 12 would be a disaster for Texas and should be rejected.