



# **Analyses of Proposed Constitutional Amendments**

**86th Regular Session  
November 5, 2019, Election**

Texas Legislative Council

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November 5, 2019, Election**

Published by the  
Texas Legislative Council

August 2019



Lieutenant Governor Dan Patrick, Joint Chair  
Speaker Dennis Bonnen, Joint Chair  
Jeff Archer, Executive Director

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## General Information

In 2019, the 86th Texas Legislature passed 10 joint resolutions proposing amendments to the state constitution, and these proposed amendments will be offered for approval by the voters of Texas on the November 5, 2019, election ballot.

The Texas Constitution provides that the legislature, by a two-thirds vote of all members of each house, may propose amendments revising the constitution and that proposed amendments must then be submitted for approval to the qualified voters of the state. A proposed amendment becomes a part of the constitution if a majority of the votes cast in an election on the proposition are cast in its favor. An amendment approved by the voters is effective on the date of the official canvass of returns showing adoption. The date of canvass, by law, is not earlier than the 15th or later than the 30th day after election day. An amendment may provide for a later effective date.

From the adoption of the current Texas Constitution in 1876 through November 2017, the legislature has proposed 680 amendments to the constitution, of which 677 have gone before Texas voters. Of the amendments on the ballot, 498 have been approved by the electorate and 179 have been defeated. Three amendments were never placed on the ballot for reasons that are historically obscure. See the online publication [\*Amendments to the Texas Constitution Since 1876\*](#) for more information.

For each proposed amendment that will appear on the November 5, 2019, ballot, *Analyses of Proposed Constitutional Amendments* contains the ballot language, an analysis, and the text of the joint resolution proposing the amendment. The analysis includes background information and a summary of comments made during the legislative process about the proposed constitutional amendment by supporters and by opponents.

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# **Proposition 1 (H.J.R. 72)**

## **Wording of Ballot Proposition**

The constitutional amendment permitting a person to hold more than one office as a municipal judge at the same time.

## **Analysis of Proposed Amendment**

### **Summary Analysis**

The constitutional amendment proposed by H.J.R. 72 would amend the Texas Constitution to authorize a person to hold more than one office as an elected or appointed municipal judge in more than one municipality at the same time.

### **Background and Detailed Analysis**

Section 40, Article XVI, Texas Constitution, generally prohibits a person from holding more than one paid public office at the same time. Subsection (c) of Section 40 provides an exception to the general rule by authorizing a person to hold more than one public office at the same time if doing so benefits the state and each public office held by the person is nonelective. Section 574.001(b), Government Code, authorizes a person to hold the office of municipal judge for more than one municipality at the same time if each office held by the person is filled by appointment. Section 574.001(b) goes on to say that the holding of these offices by a person at the same time benefits the state. Because the office of municipal judge is often part-time, some individuals currently serve as appointed judges in more than one municipality. However, municipal judges are elected in many municipalities, so such a judge may hold only one office as judge.

The constitutional amendment proposed by H.J.R. 72 would amend the Texas Constitution by adding Subsection (e) to Section 40, Article XVI, to authorize a person to hold more than one office as an elected or an appointed municipal judge in more than one municipality at the same time.



The legislature in 2019 enacted H.B. 1717 in conjunction with the constitutional amendment proposed by H.J.R. 72. The bill takes effect January 1, 2020, only if the constitutional amendment proposed by H.J.R. 72 is approved by the voters. The bill amends Section 574.001(b), Government Code, to conform to the constitutional amendment by expressly authorizing a person to hold the office of municipal judge for more than one municipality at the same time regardless of whether the offices are filled by an election or by appointment.

### **Summary of Comments**

The following comments supporting or opposing the proposed constitutional amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- A number of smaller municipalities lack individuals willing or qualified to serve as a municipal judge, which impedes the ability of these municipalities to deal with cases such as ordinance violations and fine-only misdemeanors. Although current law allows appointed municipal judges to serve more than one municipality, this authority does not extend to elected judges. Allowing a person to hold elected office as a municipal judge in more than one municipality would make it easier to fill that office in smaller municipalities. This would help improve public safety and produce a fairer and more efficient judicial system.

#### **Comments by Opponents**

- Allowing a person to hold elected office as a municipal judge in multiple municipalities could lead to judges not being able to dedicate an adequate amount of time or attention to local concerns in a given municipality.

## Text of H.J.R. 72

### A JOINT RESOLUTION

proposing a constitutional amendment permitting a person to hold more than one office as a municipal judge at the same time.

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

SECTION 1. Section 40, Article XVI, Texas Constitution, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding Subsections (a) and (c) of this section, a person may hold more than one office as an elected or appointed municipal judge in more than one municipality at the same time.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2019. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment permitting a person to hold more than one office as a municipal judge at the same time."

House Author: James White

Senate Sponsor: Joan Huffman

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# **Proposition 2 (S.J.R. 79)**

## **Wording of Ballot Proposition**

The constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board in an amount not to exceed \$200 million to provide financial assistance for the development of certain projects in economically distressed areas.

## **Analysis of Proposed Amendment**

### **Summary Analysis**

The constitutional amendment proposed by S.J.R. 79 would add Section 49-d-14 to Article III, Texas Constitution, to allow the Texas Water Development Board to issue additional general obligation bonds for the economically distressed areas program account. The board would be authorized to issue the bonds in amounts such that the aggregate principal amount of the bonds outstanding at any time issued under the added section would not exceed \$200 million. The bonds would be used to provide financial assistance for the development of water supply and sewer service projects in economically distressed areas of the state.

### **Background and Detailed Analysis**

The 71st Legislature created the economically distressed areas program (EDAP) in 1989. Subchapter K, Chapter 17, Water Code, provides for the Texas Water Development Board to administer the EDAP using the economically distressed areas program account in the Texas Water Development Fund II. Through the EDAP, the Texas Water Development Board provides financial assistance for the development of water supply and sewer service projects in economically distressed areas where water supply or sewer services are inadequate to meet minimal needs of residential users. A county, municipality, or nonprofit water supply corporation or a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, may receive financial assistance from the EDAP. Among other criteria, an area is eligible to be

served by an EDAP project only if the area has a median household income that is not greater than 75 percent of the median state household income.

Constitutional bond authorizations and appropriated funds provide funding for the EDAP. In 1989 and 2007, voters approved constitutional amendments to authorize the issuance of general obligation bonds to fund the EDAP. To date, the Texas Water Development Board has used the EDAP, in conjunction with other associated programs, to provide over \$1 billion in grants and loans. In 2019, there is no remaining unissued EDAP bonding authority. The constitutional amendment proposed by S.J.R. 79 would provide additional general obligation bonding authority in an amount not to exceed \$200 million to the Texas Water Development Board to provide financial assistance through the EDAP.

S.B. 2452, enacted by the 86th Legislature and contingent on voter approval of the constitutional amendment, is the enabling legislation for the proposed amendment. S.B. 2452 authorizes the use of the additional bond proceeds to fund the EDAP and makes additional changes to the program to maximize the effectiveness of the program, including provisions for prioritizing projects, authorizing public-private partnerships, and providing greater transparency and reporting.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- The EDAP administered by the Texas Water Development Board is an essential program that needs additional funding. Without this additional funding, the ability of the board to continue funding existing projects and support future projects for communities that could not otherwise afford secure access to safe water will be jeopardized.

- The high costs associated with maintaining and expanding water infrastructure in Texas are best financed through the issuance of bonds as this will allow for greater and more reliable long-term funding. Funding the EDAP through general revenue appropriations would strain existing revenue sources and force lawmakers to choose between meeting the state's water infrastructure needs and providing other important public services.
- In certain areas of the state, a lack of adequate sewer services has led to raw sewage runoff, overflowing septic systems, and public health problems. The EDAP is a key tool for the state to attempt to address these issues and ensure that all Texans have basic water and sewer services.
- A reliable, sustained funding source for the EDAP incentivizes economic development, investment, and job growth.

#### **Comments by Opponents**

- The state should not constitutionally dedicate funds to specific programs. Any necessary infrastructure improvements should be funded using general revenue.

## Text of S.J.R. 79

### SENATE JOINT RESOLUTION

proposing a constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board to provide financial assistance for the development of certain projects in economically distressed areas.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Section 49-d-14 to read as follows:

Sec. 49-d-14. (a) In addition to the bonds authorized by the other provisions of this article, the Texas Water Development Board may issue general obligation bonds, at its determination and on a continuing basis, for the economically distressed areas program account of the Texas Water Development Fund II in amounts such that the aggregate principal amount of the bonds issued by the board under this section that are outstanding at any time does not exceed \$200 million. The bonds shall be used to provide financial assistance for the development of water supply and sewer service projects in economically distressed areas of the state as defined by law.

(b) The additional general obligation bonds authorized by this section may be issued as bonds, notes, or other obligations as permitted by law and shall be sold in forms and denominations, on terms, at times, in the manner, at places, and in installments, as determined by the Texas Water Development Board. The bonds shall bear a rate or rates of interest the Texas Water Development Board determines. The bonds shall be incontestable after execution by the Texas Water Development Board, approval by the attorney general, and delivery to the purchaser or purchasers of the bonds.

(c) Section 49-d-8(e) of this article applies to the additional general obligation bonds authorized by this section. The limitation in Section 49-d-8 of this article that the Texas Water Development Board may not issue bonds in excess of the aggregate principal amount of general obligation bonds previously authorized for the economically distressed areas program does not apply to the bonds authorized by and issued under this section.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2019. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board in an amount not to exceed \$200 million to provide financial assistance for the development of certain projects in economically distressed areas."

Senate Author: Eddie Lucio Jr. et al.

House Sponsor: Mary E. González et al.



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# **Proposition 3 (H.J.R. 34)**

## **Wording of Ballot Proposition**

The constitutional amendment authorizing the legislature to provide for a temporary exemption from ad valorem taxation of a portion of the appraised value of certain property damaged by a disaster.

## **Analysis of Proposed Amendment**

### **Summary Analysis**

Section 2, Article VIII, Texas Constitution, provides for a number of exemptions from property (or "ad valorem") taxation. The constitutional amendment proposed by H.J.R. 34 amends Section 2 by adding Subsection (e) to authorize the legislature to provide for a temporary exemption from ad valorem taxation by a political subdivision of a portion of the appraised value of property located in an area declared by the governor to be a disaster area following a disaster. If the governor first declares territory in the political subdivision to be a disaster area on or after the date the political subdivision adopts a tax rate for the tax year in which the declaration is issued, a person is entitled to the exemption for that tax year only if the exemption is adopted by the governing body of the political subdivision.

### **Background and Detailed Analysis**

Section 1, Article VIII, Texas Constitution, requires that taxation be equal and uniform and that all real and tangible personal property be taxed in proportion to its value unless the property is exempt as required or permitted by the constitution. Accordingly, the legislature may not exempt real or tangible personal property from property taxation unless the exemption is required or authorized by the constitution.

Section 2, Article VIII, Texas Constitution, provides for exemptions from property taxation for various classes of property owned by various classes of persons. The constitutional amendment proposed by H.J.R. 34 adds Subsection (e) to Section 2, authorizing the legislature to provide

for a temporary exemption from ad valorem taxation by a political subdivision of a portion of the appraised value of property located in an area declared by the governor to be a disaster area following a disaster. Proposed Subsection (e) also authorizes the legislature to provide that, if the governor first declares territory in the political subdivision to be a disaster area as a result of a disaster on or after the date the political subdivision adopts a tax rate for the tax year in which the declaration is issued, a person is entitled to the exemption authorized by that subsection for that tax year only if the exemption is adopted by the governing body of the political subdivision. Finally, proposed Subsection (e) authorizes the legislature to prescribe the method of determining the amount and the duration of the exemption and to provide additional eligibility requirements for the exemption.

Enacted in 2019 by the Texas Legislature, H.B. 492 is the enabling legislation for the proposed amendment. The bill amends Subchapter B, Chapter 11, Tax Code, by adding Section 11.35, which would implement the tax exemption authorized by the constitutional amendment if the amendment is approved by the voters. That section defines "qualified property" as tangible personal property used for the production of income, an improvement to real property, or a manufactured home that is located in an area declared by the governor to be a disaster area and is at least 15 percent damaged by the disaster.

Section 11.35 entitles the owner of qualified property to an exemption from taxation of a portion of the appraised value of the property in an amount calculated by multiplying the appraised value of the property by 15, 30, 60, or 100 percent. The percentage is determined by the damage assessment rating assigned to the property by the chief appraiser of the applicable appraisal district, which is based on the level of damage to the property.

Section 11.35 also provides that, if the governor first declares territory in a taxing unit to be a disaster area as a result of a disaster on or after the date a taxing unit adopts a tax rate for the tax year in which the declaration is issued, a person is entitled to the exemption only if the governing body of the taxing unit adopts the exemption.

The exemption authorized by Section 11.35 expires as to an item of qualified property on January 1 of the first tax year in which the property is reappraised under Section 25.18, Tax Code, which provides for the periodic reappraisal of property. That reappraisal will reflect any reduction in value attributable to the disaster. The bill also makes various conforming changes to provisions of the Tax Code and Government Code relating to the administration of the exemption and the effect of the exemption on school finance and repeals Section 23.02, Tax Code, which permits the governing body of a taxing unit that is located in a disaster area to authorize the reappraisal of property damaged in the disaster. The bill applies only to a tax year beginning on or after January 1, 2020, and takes effect only if the constitutional amendment proposed by H.J.R. 34 is approved by the voters.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- Providing a temporary tax exemption for property damaged by a disaster is a cheaper, simpler, and more easily administrable method of providing property tax relief to those suffering the aftereffects of a disaster than the current method of reappraisal.
- A tax exemption will provide property tax relief in a more expeditious manner than reappraisal of the property.
- The current method of reappraisal is optional. The proposed tax exemption will provide tax relief that homeowners and businesses can count on and will afford those suffering after a disaster much-needed peace of mind.

### **Comments by Opponents**

- Introducing yet another property tax exemption into state law could end up depriving local governments of adequate levels of funding.
- Amending the constitution to provide for a tax exemption for damaged property is unnecessary, as the existing method of reappraisal of damaged property following a disaster provides a sufficient mechanism to address the need of disaster victims for temporary property tax relief.

## Text of H.J.R. 34

### A JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to provide for a temporary exemption from ad valorem taxation of a portion of the appraised value of certain property damaged by a disaster.

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

SECTION 1. Section 2, Article VIII, Texas Constitution, is amended by adding Subsection (e) to read as follows:

(e) The Legislature by general law may provide that a person who owns property located in an area declared by the governor to be a disaster area following a disaster is entitled to a temporary exemption from ad valorem taxation by a political subdivision of a portion of the appraised value of that property. The general law may provide that if the governor first declares territory in the political subdivision to be a disaster area as a result of a disaster on or after the date the political subdivision adopts a tax rate for the tax year in which the declaration is issued, a person is entitled to the exemption authorized by this subsection for that tax year only if the exemption is adopted by the governing body of the political subdivision. The Legislature by general law may prescribe the method of determining the amount of the exemption authorized by this subsection and the duration of the exemption and may provide additional eligibility requirements for the exemption.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2019. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing the legislature to provide for a temporary exemption from ad valorem taxation of a portion of the appraised value of certain property damaged by a disaster."

House Author: Hugh Shine et al.

Senate Sponsor: Paul Bettencourt et al.

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# **Proposition 4 (H.J.R. 38)**

## **Wording of Ballot Proposition**

The constitutional amendment prohibiting the imposition of an individual income tax, including a tax on an individual's share of partnership and unincorporated association income.

## **Analysis of Proposed Amendment**

### **Summary Analysis**

H.J.R. 38 would amend the Texas Constitution to prohibit the legislature from imposing a net income tax on individuals, including on an individual's share of partnership or unincorporated association income.

### **Background and Detailed Analysis**

Texas does not currently impose a state personal income tax. However, Section 1(c), Article VIII, Texas Constitution, authorizes the legislature to impose a tax on the incomes of natural persons if the requirements of Section 24, Article VIII, Texas Constitution, are met. Among other things, Section 24, Article VIII, requires that an income tax on natural persons be approved by a majority of voters in a statewide referendum and that the revenue from the tax be used for property tax reduction and to fund education.

H.J.R. 38 amends Section 1(c), Article VIII, by repealing the language that authorizes the legislature to impose a tax on the net income of natural persons, including on a natural person's share of partnership or unincorporated association income, and repeals Section 24, Article VIII, which provides requirements, including voter approval, for such a tax. H.J.R. 38 amends Article VIII, Texas Constitution, by adding Section 24-a, which prohibits the imposition of a tax on the net income of individuals, including on an individual's share of partnership or unincorporated association income.



## **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

### **Comments by Supporters**

- Many voters believe that the Texas Constitution already prohibits a state personal income tax, but the constitution only imposes certain restrictions, including voter approval, on any potential personal income tax. H.J.R. 38 would provide a clear prohibition.
- The absence of a state personal income tax is part of the business-friendly climate that attracts people and businesses to Texas and is a contributing factor to the state's recent economic success.
- The experience of other states suggests that a personal income tax tends to hinder economic development, wage growth, and prosperity while creating a large governmental bureaucracy to administer the tax.
- H.J.R. 38 would make it more difficult to impose a state personal income tax in the future because a two-thirds vote of each chamber of the legislature is required to amend the constitution.

### **Comments by Opponents**

- Constitutionally prohibiting a state personal income tax would unnecessarily block a future revenue option that is less regressive than current taxes. Revenue from a personal income tax could be used to help alleviate the state's property tax and school finance problems and could reduce the tax burden on Texas businesses.

- The existing constitutional restrictions, including voter approval, already make it difficult to impose a personal income tax. Those restrictions combined with the standard legislative process provide an adequate safeguard against a potential tax that is not supported by Texas voters.
- The proposed amendment's reference to a tax on "individuals" rather than on "natural persons" could have unintended consequences by being interpreted to limit the application of the state franchise tax to certain business entities.

## Text of H.J.R. 38

### A JOINT RESOLUTION

proposing a constitutional amendment prohibiting the imposition of an individual income tax.

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

SECTION 1. Section 1(c), Article VIII, Texas Constitution, is amended to read as follows:

(c) The Legislature may provide for the taxation of intangible property and may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State. The Legislature ~~[Subject to the restrictions of Section 24 of this article, it]~~ may also tax incomes of ~~[both natural persons and]~~ corporations other than municipal. Persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax.

SECTION 2. Article VIII, Texas Constitution, is amended by adding Section 24-a to read as follows:

Sec. 24-a. The legislature may not impose a tax on the net incomes of individuals, including an individual's share of partnership and unincorporated association income.

SECTION 3. Section 24, Article VIII, Texas Constitution, is repealed.

SECTION 4. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2019. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment prohibiting the imposition of an individual income tax, including a tax on an individual's share of partnership and unincorporated association income."

House Author: Jeff Leach et al.

Senate Sponsor: Pat Fallon et al.

# **Proposition 5 (S.J.R. 24)**

## **Wording of Ballot Proposition**

The constitutional amendment dedicating the revenue received from the existing state sales and use taxes that are imposed on sporting goods to the Texas Parks and Wildlife Department and the Texas Historical Commission to protect Texas' natural areas, water quality, and history by acquiring, managing, and improving state and local parks and historic sites while not increasing the rate of the state sales and use taxes.

## **Analysis of Proposed Amendment**

### **Summary Analysis**

S.J.R. 24 proposes an amendment to the Texas Constitution to automatically appropriate all state revenue attributable to state sales and use taxes imposed on sporting goods to the Parks and Wildlife Department and the Texas Historical Commission. The proposed amendment provides that the money is to be allocated between the agencies in the manner provided by general law and authorizes the legislature to impose limitations on the agencies' use of the money. The proposed amendment allows the legislature by a two-thirds vote to temporarily reduce by up to 50 percent the amount of the money appropriated to the Parks and Wildlife Department and the Texas Historical Commission and provides that the money appropriated to the agencies may not be used by the comptroller of public accounts for purposes of certifying the biennial state budget.

### **Background and Detailed Analysis**

The Texas Legislature has for years discussed the need to provide adequate funding for state parks and historic sites, many of which are experiencing an increase in visitors while also suffering from deferred maintenance and inadequate staffing. Current statutes dedicate state sales and use taxes collected on sporting goods to the Parks and Wildlife Department and the Texas Historical Commission to help fund their

activities, but how much of that revenue those agencies receive depends on legislative appropriations. The proposed amendment would add Section 7-d, Article VIII, to the Texas Constitution to constitutionally dedicate that sporting goods tax revenue and ensure that the full amount collected is appropriated. That section defines "sporting goods" for purposes of the section, and provides for the automatic appropriation of all revenue derived from the imposition of state taxes on the sale, use, storage, or other consumption of sporting goods collected by the state after September 1, 2021, to the Parks and Wildlife Department and the Texas Historical Commission. The proposed amendment provides that the money automatically appropriated to the Parks and Wildlife Department and the Texas Historical Commission is to be allocated between the agencies as provided by general law.

The proposed amendment also authorizes the imposition of limitations on the receipt and use of the money that is automatically appropriated to the Parks and Wildlife Department and the Texas Historical Commission. First, the proposed amendment authorizes the legislature to enact laws to impose limits on the agencies' use of the money. Second, the proposed amendment allows the legislature, by adoption of a resolution approved by a record vote of two-thirds of the members of each house of the legislature, to reduce the amount of money automatically appropriated to the Parks and Wildlife Department and the Texas Historical Commission in the state fiscal year in which the resolution is adopted, or in either of the following two state fiscal years, by an amount that does not result in a reduction of more than 50 percent of the amount of money that would otherwise be automatically appropriated to the agencies. Third, the proposed amendment provides that the money automatically appropriated to the Parks and Wildlife Department and the Texas Historical Commission may not be considered available for purposes of the certification required of the comptroller of public accounts under Section 49a(b), Article III, Texas Constitution.

S.B. 26, enacted in 2019 by the Texas Legislature, makes several conforming changes to statutory provisions contained in the Government Code, the Parks and Wildlife Code, and the Tax Code for purposes of administering the automatic appropriation of sporting goods sales tax

revenue to the Parks and Wildlife Department and the Texas Historical Commission as provided in the proposed amendment. The bill takes effect only if the constitutional amendment proposed by S.J.R. 24 is approved by the voters.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters:**

- State parks in Texas received a record 9.7 million visits in fiscal year 2017. Chronic underfunding of the state park system, however, has left many parks unable to safely and adequately accommodate visitors. The constitutional amendment will help to ensure that our parks have the resources they need to adequately fund deferred maintenance projects, maintain appropriate staff levels, ensure visitor safety, and expand to meet the needs of a growing population.
- Ensuring that the Texas Historical Commission continues to receive appropriate sporting goods sales tax revenue will afford the commission the ability to properly manage and maintain the many historic sites under the commission's control.
- Although current law provides for the allocation of sporting goods sales tax revenue to the Parks and Wildlife Department and the Texas Historical Commission, the amount of that revenue actually appropriated by the legislature to the agencies is often substantially less than the total amount of revenue derived from that tax. This discrepancy leaves the agencies underfunded and unable to engage in long-term planning due to ever-changing funding levels. Providing for the automatic appropriation of sporting goods sales tax revenue will ensure that there is a

sustained and predictable funding mechanism for the state park system and the state's historic sites.

- State parks generate hundreds of millions of dollars annually in economic benefits for the state's rural communities. Ensuring that the state park system is properly funded will allow local communities in and around state parks to continue to thrive.

**Comments by Opponents:**

- Providing for the automatic appropriation of sporting goods sales tax revenue to the Parks and Wildlife Department and the Texas Historical Commission in the state constitution deprives the legislature of the ability to elect to use a portion of that revenue for other purposes determined by the legislature to be as important to the state as parks and historic sites, such as balancing the state's budget or responding to an emergency.
- Amending the constitution to address this issue is unnecessary. The legislature has the ability to fund state agencies and programs at levels the legislature determines are appropriate through the biennial appropriations process, which is how the vast majority of state agencies and programs are funded. There is no need to treat the Parks and Wildlife Department and the Texas Historical Commission differently from other state agencies in this regard.

## Text of S.J.R. 24

### SENATE JOINT RESOLUTION

proposing a constitutional amendment relating to the appropriation of the net revenue received from the imposition of state sales and use taxes on sporting goods.

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

SECTION 1. Article VIII, Texas Constitution, is amended by adding Section 7-d to read as follows:

Sec. 7-d. (a) Subject to Subsection (b) of this section, for each state fiscal year, the net revenue received from the collection of any state taxes imposed on the sale, storage, use, or other consumption in this state of sporting goods that were subject to taxation on January 1, 2019, under Chapter 151, Tax Code, is automatically appropriated when received to the Parks and Wildlife Department and the Texas Historical Commission, or their successors in function, and is allocated between those agencies as provided by general law. The legislature by general law may provide limitations on the use of money appropriated under this subsection.

(b) The legislature by adoption of a resolution approved by a record vote of two-thirds of the members of each house of the legislature may direct the comptroller of public accounts to reduce the amount of money appropriated to the Parks and Wildlife Department and the Texas Historical Commission, or their successors in function, under Subsection (a) of this section. The comptroller may be directed to make that reduction only:

(1) in the state fiscal year in which the resolution is adopted, or in either of the following two state fiscal years; and

(2) by an amount that does not result in a reduction of more than 50 percent of the amount that would otherwise be appropriated to the Parks and Wildlife Department and the Texas Historical Commission, or their successors in function, in the affected state fiscal year under Subsection (a) of this section.

(c) Money appropriated to the Parks and Wildlife Department and the Texas Historical Commission, or their successors in function, under Subsection (a) of this section may not be considered available for



certification by the comptroller of public accounts under Section 49a(b), Article III, of this constitution.

(d) In this section, "sporting goods" means an item of tangible personal property designed and sold for use in a sport or sporting activity, excluding apparel and footwear except that which is suitable only for use in a sport or sporting activity, and excluding board games, electronic games and similar devices, aircraft and powered vehicles, and replacement parts and accessories for any excluded item.

SECTION 2. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 86th Legislature, Regular Session, 2019, dedicating the revenue received from the existing state sales and use taxes that are imposed on sporting goods to the Texas Parks and Wildlife Department and the Texas Historical Commission to protect Texas' natural areas, water quality, and history by acquiring, managing, and improving state and local parks and historic sites while not increasing the rate of the state sales and use taxes.

(b) Section 7-d, Article VIII, of this constitution takes effect September 1, 2021, and applies only to state tax revenue collected on or after that date.

(c) This temporary provision expires January 1, 2022.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2019. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment dedicating the revenue received from the existing state sales and use taxes that are imposed on sporting goods to the Texas Parks and Wildlife Department and the Texas Historical Commission to protect Texas' natural areas, water quality, and history by acquiring, managing, and improving state and local parks and historic sites while not increasing the rate of the state sales and use taxes."

Senate Author: Lois W. Kolkhorst et al.  
House Sponsor: John Cyrier et al.

# **Proposition 6 (H.J.R. 12)**

## **Wording of Ballot Proposition**

The constitutional amendment authorizing the legislature to increase by \$3 billion the maximum bond amount authorized for the Cancer Prevention and Research Institute of Texas.

## **Analysis of Proposed Amendment**

### **Summary Analysis**

Section 67, Article III, Texas Constitution, governs the Cancer Prevention and Research Institute of Texas. The constitutional amendment proposed by H.J.R. 12 would amend Section 67(c), Article III, Texas Constitution, to increase from \$3 billion to \$6 billion the maximum amount of general obligation bonds the legislature by general law may authorize the Texas Public Finance Authority to provide for, issue, and sell on behalf of the institute.

### **Background and Detailed Analysis**

Section 67, Article III, Texas Constitution, approved by the voters in 2007, required the legislature to establish the Cancer Prevention and Research Institute of Texas to provide grants and support to persons in implementing the Texas Cancer Plan and to institutions of learning and advanced medical research facilities and collaborations for use in researching the causes of all forms of human cancer and developing cancer cures, from laboratory research, clinical trials, and treatment access programs. Section 67(c) allows the legislature to authorize the Texas Public Finance Authority to provide for, issue, and sell general obligation bonds on behalf of the institute in an amount not to exceed \$3 billion, but limits the amount the authority may issue during any single year to \$300 million. Proceeds from the sale of the bonds are used to

fund the institute's grants and other programs. The bonds are repaid by the state from general revenue.

According to the bill analysis on H.J.R. 12 published by the House Research Organization, the institute has awarded approximately 1,300 grants in amounts totaling \$2.2 billion to approximately 100 academic institutions, nonprofits, and public companies. According to the 2018 Annual Report of the Cancer Prevention and Research Institute of Texas, the institute will exhaust its current \$3 billion in bond funding authority by August 31, 2023. The constitutional amendment proposed by H.J.R. 12 would amend Section 67(c), Article III, Texas Constitution, to increase from \$3 billion to \$6 billion the maximum bond amount of general obligation bonds the legislature by general law may authorize the authority to provide for, issue, and sell on behalf of the institute.

### **Summary of Comments**

The following comments supporting or opposing the proposed constitutional amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- Increasing the amount of bond funding available for the institute is essential to ensuring the institute maintains its status as a national leader in cancer research and prevention.
- Without an increase in the amount of bond funding, the institute runs the risk of exhausting its available pool of money from which to make grants before the statutory authority to make the grants expires in state fiscal year 2022.
- A sustainable and predictable level of funding is essential for the institute to effectively plan for the future and complete necessary research.

- The institute is a noble cause worthy of increased state funding. The institute supports world-renowned scholars and cancer researchers, including a 2018 Nobel Prize recipient, who have produced meaningful and measurable positive results from institute funding.
- The benefits of increased funding for the institute outweigh the costs. The institute programs have helped improve health outcomes, produced numerous positive economic benefits, and generated billions of dollars in state economic activity, including by encouraging biotech companies to expand in or relocate to Texas and increasing job creation in this state.

### **Comments by Opponents**

- Doubling the size of the original commitment of taxpayer money for the institute unduly increases state debt.
- Although cancer research is honorable and necessary, funding such research is not a necessary state function. An increased bond commitment will necessitate interest payments and future appropriations, and that money could be better spent on other state priorities.
- The institute does not need an additional \$3 billion in taxpayer money at this time because the institute has not yet exhausted its original funding amount of \$3 billion.
- Instead of giving the institute more state money, the state should assist in crafting a plan to ensure the institute is financially self-sufficient and able to achieve long-term success without reliance on increased taxpayer assistance.

## Text of H.J.R. 12

### A JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to increase the maximum bond amount authorized for the Cancer Prevention and Research Institute of Texas.

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

SECTION 1. Section 67(c), Article III, Texas Constitution, is amended to read as follows:

(c) The legislature by general law may authorize the Texas Public Finance Authority to provide for, issue, and sell general obligation bonds of the State of Texas on behalf of the Cancer Prevention and Research Institute of Texas in an amount not to exceed \$6 [~~\$3~~] billion and to enter into related credit agreements. The Texas Public Finance Authority may not issue more than \$300 million in bonds authorized by this subsection in a year. The bonds shall be executed in the form, on the terms, and in the denominations, bear interest, and be issued in installments as prescribed by the Texas Public Finance Authority.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2019. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing the legislature to increase by \$3 billion the maximum bond amount authorized for the Cancer Prevention and Research Institute of Texas."

House Author: John Zerwas et al.  
Senate Sponsor: Jane Nelson et al.

# **Proposition No. 7 (H.J.R. 151)**

## **Wording of Ballot Proposition**

The constitutional amendment allowing increased distributions to the available school fund.

## **Analysis of Proposed Amendment**

### **Summary Analysis**

H.J.R. 151 proposes an amendment to the Texas Constitution to extend the authority to distribute revenues derived from the permanent school fund land or properties to the State Board of Education. The General Land Office or another entity with responsibility for the management of revenues from the permanent school fund land or properties continues to have authority for the management of those revenues.

The proposed amendment clarifies that distributions made under Section 5(g), Article VII, Texas Constitution, are in addition to distributions authorized by any other provision of the Texas Constitution or statute and increases the limit that may be distributed to \$600 million by each entity each year.

### **Background and Detailed Analysis**

The permanent school fund is a perpetual endowment established under Section 2, Article VII, Texas Constitution, for the support of public schools in this state. The fund consists of all land set aside ("appropriated") for the public schools by the Texas Constitution and laws of this state, other properties belonging to the fund, and all revenue derived from the land or other property of the fund. Management of the fund is divided between the State Board of Education, which manages the fund's financial investment portfolio as authorized by law, and the General Land Office, which through the School Land Board manages the fund's real estate portfolio and is responsible for the sale, trade, lease, and improvement of that real estate and for the administration of associated contracts, mineral

royalty rates, and other transactions. Both entities are responsible for generating income and otherwise increasing the value of the permanent school fund.

Distributions are made periodically from the permanent school fund to the available school fund by the General Land Office and State Board of Education within certain constitutional limits. The State Board of Education distributes a portion of the returns on its permanent school fund securities portfolio to the available school fund as provided by Section 5(a), Article VII, Texas Constitution. Section 5(g), Article VII, Texas Constitution, currently authorizes the General Land Office, or an entity other than the State Board of Education that has responsibility for managing permanent school fund land or property, to distribute revenue derived from permanent school fund land or properties directly to the available school fund in an amount not to exceed \$300 million each year. Amounts deposited to the available school fund are apportioned annually to each county according to student population and are also used to fund instructional materials in classrooms.

In the 86th Legislative Session, the legislature made state funding for public education a top priority. Significant increases to state spending on public education were included in the budget enacted by the General Appropriations Act, H.B. 1, Acts of the 86th Legislature, Regular Session, 2019, and through amendments to the Education Code made by H.B. 3, Acts of the 86th Legislature, Regular Session, 2019, relating to public school finance and public education.

H.J.R. 151 seeks to increase available state funding for public education by doubling the permissible amount of annual distribution by the General Land Office from the permanent school fund to the available school fund under Section 5(g), Article VII, Texas Constitution, from \$300 million to \$600 million, and by authorizing the State Board of Education to also make a distribution of up to \$600 million under that section.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee

proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

### **Comments by Supporters**

- Doubling the current \$300 million cap on the annual distribution by the General Land Office (GLO) from the Permanent School Fund (PSF) to the available school fund (ASF) and authorizing an additional annual \$600 million distribution to the ASF by the State Board of Education (SBOE) would improve funding for public schools when sufficient revenues are available. In recent years the performance of the GLO's PSF land investments could have supported annual transfers to the ASF in amounts greater than the current constitutional cap.
- The amendment would give the GLO and the SBOE the flexibility to distribute more of the proceeds of the PSF investments they respectively administer to the ASF in a given year.
- Under the amendment, the GLO and the SBOE would be expected to collaborate to maximize funding for schools. This collaboration should ease concerns about how raising the cap will affect the SBOE's portion of the PSF.

### **Comments by Opponents**

- Raising the cap on PSF transfers to the ASF could ultimately result in lower school funding because of the manner in which the GLO and the SBOE share responsibility for managing the PSF. If the GLO sends more proceeds directly to the ASF, that will mean it transfers less to the investment portfolio portion of the PSF overseen by the SBOE. The SBOE transfers money from the PSF to the ASF within limits set by the constitution, so less money in the SBOE's portion of the PSF would impact the amount of the SBOE's distribution to the ASF.



## Text of H.J.R. 151

### A JOINT RESOLUTION

proposing a constitutional amendment allowing increased distributions to the available school fund.

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

SECTION 1. Section 5(g), Article VII, Texas Constitution, is amended to read as follows:

(g) Notwithstanding any other provision of this constitution or of a statute, the State Board of Education, the General Land Office, or another [an] entity [~~other than the State Board of Education~~] that has responsibility for the management of revenues derived from permanent school fund land or other properties may, in its sole discretion and in addition to other distributions authorized under this constitution or a statute, distribute to the available school fund each year revenue derived during that year from the land or properties, not to exceed \$600 [~~\$300~~] million by each entity each year.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2019. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment allowing increased distributions to the available school fund."

House Author: Dan Huberty  
Senate Sponsor: Larry Taylor et al.

# **Proposition 8 (H.J.R. 4)**

## **Wording of Ballot Proposition**

The constitutional amendment providing for the creation of the flood infrastructure fund to assist in the financing of drainage, flood mitigation, and flood control projects.

## **Analysis of Proposed Amendment**

### **Summary Analysis**

H.J.R. 4 proposes an amendment to the Texas Constitution to create the flood infrastructure fund as a special fund in the state treasury outside the general revenue fund. The resolution authorizes money in the fund, as provided by general law, to be administered and used, without further appropriation, by the Texas Water Development Board or that board's successor in function to provide financing for a drainage, flood mitigation, or flood control project, including planning and design activities, work to obtain regulatory approval to provide nonstructural and structural flood mitigation and drainage, or construction of structural flood mitigation and drainage infrastructure. The resolution authorizes separate accounts to be established in the fund as necessary to administer the fund or authorized projects.

### **Background and Detailed Analysis**

The impact of flooding events such as Hurricane Harvey continues to increase as the state's population grows and spreads across Texas, without regard to political subdivision boundaries. Existing funding resources for flood control and flood infrastructure projects are inadequate to protect the state from future disasters. There is no statewide funding mechanism under current state law to assist local jurisdictions to prepare for flooding on a local or regional basis, and federal disaster recovery funds may not be available for preventative flood mitigation projects or may require

local matching funds. H.J.R. 4, in combination with S.B. 7, enacted by the 86th Legislature in 2019, seeks to address these concerns by establishing a flood infrastructure fund to provide assistance for flood prevention and mitigation projects. H.J.R. 4 adds Section 49-d-14 to Article III, Texas Constitution, to create the fund. S.B. 7 includes provisions, contingent on approval of the constitutional amendment, governing administration of the flood infrastructure fund by the Texas Water Development Board, including procedures for the award of grants and loans from the fund to political subdivisions for eligible projects and expenditures.

S.B. 500, also enacted by the 86th Legislature, provides initial funding for the flood infrastructure fund. If the constitutional amendment is approved, \$793 million in appropriations from the state's economic stabilization fund ("rainy day fund") will be deposited to the flood infrastructure fund under S.B. 500.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- Significant funding for flood control and mitigation projects is necessary to ensure that the state is able to prepare for and recover from natural disasters like Hurricane Harvey.
- Creating the flood infrastructure fund outside the general revenue fund will better protect money needed for flood projects from being redirected for other purposes.
- By providing both grants and loans, the fund will facilitate access to flood project financing for communities that are too small or have insufficient resources to raise the local matching funds required for federal programs.

- The fund will enable political subdivisions to pursue projects that may not fit the criteria imposed by other funding sources, such as federal agencies.
- Administration by the Texas Water Development Board will provide a more consistent statewide approach to flood mitigation.

### **Comments by Opponents**

- Federal funding and other state financing sources are sufficient to support the necessary flood projects without establishing another special fund in the constitution.
- State funding efforts should be restricted to loans so that applicants will be required to demonstrate local commitment to proposed projects.
- Proposed initial funding from the state's rainy day fund is inappropriate because the flood infrastructure fund is intended for continuing purposes, not a one-time expenditure.

## Text of H.J.R. 4

### A JOINT RESOLUTION

proposing a constitutional amendment providing for the creation of the flood infrastructure fund to assist in the financing of drainage, flood mitigation, and flood control projects.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Section 49-d-14 to read as follows:

Sec. 49-d-14. (a) The flood infrastructure fund is created as a special fund in the state treasury outside the general revenue fund.

(b) As provided by general law, money in the flood infrastructure fund may be administered and used, without further appropriation, by the Texas Water Development Board or that board's successor in function to provide financing for a drainage, flood mitigation, or flood control project, including:

(1) planning and design activities;

(2) work to obtain regulatory approval to provide nonstructural and structural flood mitigation and drainage; or

(3) construction of structural flood mitigation and drainage infrastructure.

(c) Separate accounts may be established in the flood infrastructure fund as necessary to administer the fund or authorized projects.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2019. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment providing for the creation of the flood infrastructure fund to assist in the financing of drainage, flood mitigation, and flood control projects."

House Author: Dade Phelan et al.

Senate Sponsor: Brandon Creighton et al.

# **Proposition 9 (H.J.R. 95)**

## **Wording of Ballot Proposition**

The constitutional amendment authorizing the legislature to exempt from ad valorem taxation precious metal held in a precious metal depository located in this state.

## **Analysis of Proposed Amendment**

### **Summary Analysis**

H.J.R. 95 would allow the legislature by general law to exempt from ad valorem taxation by a political subdivision precious metal held in a precious metal depository in the state. The resolution further authorizes the legislature by general law to define "precious metal" and "precious metal depository" for purposes of the exemption.

### **Background and Detailed Analysis**

Texas is home to several commercial precious metal depositories, including one overseen by the state. Whether gold and other precious metals stored in a depository are subject to local property taxes ("ad valorem taxes") is somewhat unclear under current law. Under Section 1, Article VIII, Texas Constitution, the legislature may not exempt tangible personal property such as precious metals from ad valorem taxation unless the exemption is required or authorized by the constitution. Section 1, Article VIII, provides for the exemption of certain tangible personal property from ad valorem taxation, subject to the power of the governing body of a political subdivision to tax such property. That section does not generally authorize an exemption for tangible personal property held or used for the production of income. Accordingly, under current law, if precious metals are not held for the production of income, a political subdivision may choose to tax them. If they are held to produce income, the metals are taxable.

H.J.R. 95 amends Article VIII of the Texas Constitution by adding Section 1-p, which authorizes the legislature to exempt from ad valorem taxation precious metal held in a precious metal depository located in this state and which further authorizes the legislature to define "precious metal" and "precious metal depository" for purposes of that section.

The legislature in 2019 enacted H.B. 2859 as the enabling legislation for the proposed amendment. Section 11.14(a), Tax Code, entitles a person to an exemption from ad valorem taxation of tangible personal property not held or used for the production of income, but Section 11.14(c) provides that the governing body of a taxing unit (political subdivision) may opt to tax such property. Section 11.14 does not exempt tangible personal property held or used for the production of income such as gold or other precious metal held as an investment. H.B. 2859 amends Subchapter B, Chapter 11, Tax Code, by adding Section 11.141. That section entitles a person to an exemption from ad valorem taxation of the precious metal that the person owns and holds in a precious metal depository located in this state, regardless of whether the precious metal is held or used by the person for the production of income. Section 11.141 also prohibits the governing body of a taxing unit from opting to tax precious metal exempted from taxation by that section. The bill also makes various conforming changes to the Tax Code related to the administration of the exemption. The bill takes effect January 1, 2020, contingent on voter approval of the constitutional amendment proposed by H.J.R. 95.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- Precious metal held in a depository is considered personal property under the Tax Code. Personal property that is not held for the purpose of producing income is exempt from property

taxation, but a local taxing unit can bypass the exemption and opt to tax such property. The amendment would eliminate any uncertainty about the taxable status of precious metal held in commercial depositories.

- Subjecting precious metal to property taxation puts Texas depositories and precious metal owners at a competitive disadvantage, since other states do not do so.
- Providing an explicit exemption for precious metal held in a Texas depository, regardless of whether the precious metal is held for the production of income, would encourage owners of such metal to keep their holdings in the state, making Texas depositories more competitive.
- The amount of lost property tax revenue would be negligible.

#### **Comments by Opponents**

- If the amendment passes, a business may be able to escape taxation of its income-producing precious metal inventory by holding it in a depository, which could reduce taxable property values and create a cost to local taxing units and the state.
- Using the tax system to encourage the purchase and holding of precious metal puts the government in the position of picking winners and losers in the economy.



## Text of H.J.R. 95

### A JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to exempt from ad valorem taxation precious metal held in a precious metal depository located in this state.

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

SECTION 1. Article VIII, Texas Constitution, is amended by adding Section 1-p to read as follows:

Sec. 1-p. The legislature by general law may exempt from ad valorem taxation precious metal held in a precious metal depository located in this state. The legislature by general law may define "precious metal" and "precious metal depository" for purposes of this section.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2019. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment authorizing the legislature to exempt from ad valorem taxation precious metal held in a precious metal depository located in this state."

House Author: Giovanni Capriglione  
Senate Sponsor: Pat Fallon

# **Proposition 10 (S.J.R. 32)**

## **Wording of Ballot Proposition**

The constitutional amendment to allow the transfer of a law enforcement animal to a qualified caretaker in certain circumstances.

## **Analysis of Proposed Amendment**

### **Summary Analysis**

The proposed amendment adds Section 52I, Article III, Texas Constitution, allowing the legislature to authorize the transfer of a law enforcement animal without charge to a caretaker. Legislation authorized by the amendment would allow the simple transfer of a law enforcement animal, avoiding constitutional and statutory requirements that currently can make the transfer more burdensome.

### **Background and Detailed Analysis**

Law enforcement agencies wishing to transfer a police dog or other animal used in law enforcement to a caretaker such as the animal's handler due to the animal's retirement or other circumstances may face constitutional and statutory requirements that pose potential impediments to a simple donation of the animal.

Sections 51 and 52, Article III, Texas Constitution, generally prohibit the grant of public property for a private purpose. Although grants of public property are permissible if certain requirements are met, one requirement in particular complicates the transfer: a requirement that the public entity retain control over the property to ensure that the public purpose of the property is accomplished and to protect the public's investment.

In addition to the constitutional restrictions on the donation of a law enforcement animal, certain statutory requirements governing the disposition of surplus and salvage property by a governmental entity further complicate the donation. For example, Subchapter D,

Chapter 2175, Government Code, and Subchapter D, Chapter 263, Local Government Code, may require a law enforcement agency to engage in a competitive bidding process for the disposition of the animal rather than allow the agency to simply transfer the animal to a caretaker.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- Law enforcement agencies would like to be able to transfer retired law enforcement animals into their handlers' care free of charge, and the preference of law enforcement agencies in this matter should be honored.
- Law enforcement animals generally live with their handlers while in service. Making it easier for such an animal to retire to the home where it has lived its entire life is in the best interest of the animal.

#### **Comments by Opponents**

- No opposition to the proposed constitutional amendment was expressed during legislative consideration of the proposal.

## Text of S.J.R. 32

### SENATE JOINT RESOLUTION

proposing a constitutional amendment to allow the transfer of a law enforcement animal to a qualified caretaker in certain circumstances.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Section 52I to read as follows:

Sec. 52I. The legislature may authorize a state agency or a county, a municipality, or other political subdivision to transfer a law enforcement dog, horse, or other animal to the animal's handler or another qualified caretaker for no consideration on the animal's retirement or at another time if the transfer is in the animal's best interest.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2019. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to allow the transfer of a law enforcement animal to a qualified caretaker in certain circumstances."

Senate Author: Brian Birdwell et al.

House Sponsor: Tony Tinderholt