

Condensed Analyses of Proposed Constitutional Amendments

86th Regular Session
November 5, 2019, Election



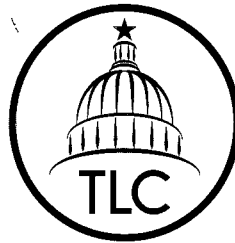
Texas Legislative Council

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Proposition 1 (H.J.R. 72)

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

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.

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.

Proposition 2 (S.J.R. 79)

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.

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.

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.

Proposition 3 (H.J.R. 34)

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.

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.

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.

Proposition 4 (H.J.R. 38)

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.

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.

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.

Proposition 5 (S.J.R. 24)

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.

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.

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.

Proposition 6 (H.J.R. 12)

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.

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.

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.

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

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

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.

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.

Proposition 8 (H.J.R. 4)

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.

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.

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.

Proposition 9 (H.J.R. 95)

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

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.

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.

Proposition 10 (S.J.R. 32)

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

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.

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.