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FOCUS *report*

Constitutional amendments proposed for November 2019 ballot

Texas voters have approved 498 amendments to the state Constitution since its adoption in 1876, according to the Legislative Reference Library. Ten more proposed amendments will be submitted for voter approval at the general election on Tuesday, November 5, 2019.

The following report contains an explanation of the process by which constitutional amendments are adopted and information on the proposed 2019 amendments, including a background, analysis, and arguments for and against each proposal.

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Amending the Texas Constitution

Article 17 of the Texas Constitution describes the process by which the Constitution may be amended and requires that amendments be approved by a majority of Texas voters to go into effect. For a proposition to appear on the ballot, the Legislature must adopt a proposed constitutional amendment in a joint resolution. Joint resolutions contain the ballot wording of the propositions to go before the voters, and some require "enabling" legislation to further specify how the amendment would operate.

Joint resolutions

The Texas Legislature proposes constitutional amendments in joint resolutions that originate in either the House of Representatives or the Senate. For example, Proposition 1 on the November 5, 2019, ballot was proposed by House Joint Resolution (HJR) 72, introduced by Rep. James White and sponsored in the Senate by Sen. Joan Huffman. Art. 17, sec. 1 of the Texas Constitution requires that a joint resolution be adopted by at least a two-thirds vote of the membership of each house of the Legislature (100 votes in the House, 21 votes in the Senate) to be presented to voters. The governor cannot veto a joint resolution.

Amendments may be proposed in either regular or special sessions. A joint resolution includes the text of the proposed constitutional amendment and specifies an election date. The ballot wording of a proposition is specified in the joint resolution, and the Legislature has broad discretion in the wording. The secretary of state conducts a random drawing to assign each proposition a ballot number if more than one proposition is being considered.

If voters reject an amendment proposal, the Legislature may resubmit it. For example, the voters rejected a proposition authorizing $300 million in general obligation bonds for college student loans at an August 10, 1991, election, then approved an identical proposition at the November 5, 1991, election after the Legislature readopted the proposal and resubmitted it in essentially the same form.

Election date

The Legislature may call an election for voter consideration of proposed constitutional amendments on any date, as long as election authorities have enough time to provide notice to the voters and print the ballots. In recent years, most proposals have been submitted at the November general election held in odd-numbered years.

Publication

Texas Constitution Art. 17, sec. 1 requires that a brief explanatory statement of the nature of each proposed amendment, along with the ballot wording for each, be published twice in each newspaper in the state that prints official notices. The first notice must be published 50 to 60 days before the election. The second notice must be published on the same day of the following week. Also, the secretary of state must send a complete copy of each amendment to each county clerk, who must post it in the courthouse at least 30 days before the election.

The secretary of state prepares the explanatory statement, which must be approved by the attorney general, and arranges for the required newspaper publication. For each proposition, the estimated total cost of publication twice in newspapers across the state for the November 5 election is $177,289, according to the Legislative Budget Board.

Enabling legislation

Some constitutional amendments are self-enacting and require no additional legislation to implement their provisions. Other amendments grant discretionary authority to the Legislature to enact legislation in a particular area or within certain guidelines. These amendments require "enabling" legislation to fill in the details of how the amendment would operate. The Legislature often adopts enabling legislation in advance, making the effective date of the legislation contingent on voter approval of a particular amendment. If voters reject the amendment, the legislation dependent on the constitutional change does not take effect.

Effective date

Constitutional amendments take effect when the official vote canvass confirms statewide majority approval, unless a later date is specified. Statewide election results are tabulated by the secretary of state and must be canvassed by the governor 15 to 30 days following the election.

Previous election results

Analyses of the seven proposals on the November 7, 2017, ballot appear in House Research Organization Focus Report No. 85-6, *Constitutional Amendments Proposed for November 2017 Ballot*, September 7, 2017.

Prop. 1: *Homestead exemption for partially donated homes of disabled veterans*

For	754,739	86.0%
Against	122,864	14.0%

Prop. 2: *Revising home equity loan provisions*

For	593,052	68.7%
Against	270,780	31.3%

Prop. 3: *Limiting terms for certain appointees of the governor*

For	722,753	83.2%
Against	146,390	16.8%

Prop. 4: *Court notice to attorney general of constitutional challenge to state laws*

For	554,040	64.9%
Against	300,096	35.1%

Prop. 5: *Amending eligibility requirements for sports team charitable raffles*

For	510,363	60.3%
Against	335,582	39.7%

Prop. 6: *Homestead exemption for surviving spouses of certain first responders*

For	739,452	84.6%
Against	134,167	15.4%

Prop. 7: *Authorizing Legislature to allow banks to hold raffles promoting savings*

For	511,806	59.7%
Against	345,556	40.3%

Source: Secretary of State's Office

Proposition 1: Allowing municipal court judges to hold office in more than one municipality

HJR 72 by White (Huffman)

Background

Texas Constitution Art. 16, sec. 40 generally prohibits a person from holding more than one paid public office at the same time. It also lists exceptions for certain offices.

Art. 16, sec. 40(c) allows persons to hold more than one appointed office if certain conditions are met. Under this exception, nonelective state officers may hold other nonelective state offices if the other office is of benefit to the state of Texas or is required by state or federal law and if there is no conflict with the original office for which the person receives salary or compensation.

Government Code sec. 574.001 allows a person to hold the office of municipal judge for more than one municipality at the same time if each office is filled by appointment. This section also states that the holding of these offices at the same time is of benefit to the state.

A 1996 attorney general's opinion (DM-428) held that a municipal court judge holds a public office and is thus subject to Art. 16, sec. 40, which prohibits someone from holding more than one such office. The opinion also stated that if a municipal court judge is appointed, the judge may hold more than one appointment as long as holding the additional office is of benefit to the state.

Digest

Proposition 1 would amend Texas Constitution Art. 3 to allow a person to hold office as municipal judge in more than one municipality at the same time, regardless of whether the person was elected or appointed to each office.

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

Supporters say

Proposition 1 would make it easier for all cities to have qualified municipal court judges. These judges play an important role in the state's judicial system, but many cities, especially smaller and rural ones, have trouble finding qualified candidates. Cities that have chosen to appoint their municipal court judges have the option to appoint individuals who also hold appointments as municipal judges in other cities. However, the Texas Constitution does not allow elected municipal court judges to hold either an elected or appointed judgeship in another city at the same time.

Proposition 1 would amend the Constitution so that both elected and appointed judges would be allowed to serve more than one city, giving all municipal courts the opportunity to have the best judge possible. The amendment would be a logical extension of current law that allows appointed municipal court judges, who make up more than 95 percent of the approximately 1,300 municipal court judges, to serve in more than one court.

Municipal court judges handle a range of issues, including city ordinance violations, certain misdemeanor offenses, and certain preliminary proceedings in felony criminal cases. When municipal courts lack qualified judges it can have a negative impact on public health and safety. Proposition 1 would prevent such impacts by allowing cities to appoint or elect municipal court judges who also serve in other cities, expanding the pool of qualified judges.

Proposition 1 also would allow judicial resources to be used more efficiently and effectively and would be especially beneficial to small or rural cities that do not need a full-time judge and might hold municipal court only occasionally. The state pays for judicial training, and the amendment would allow training resources used for

one judge to benefit more than one city. A judge serving in more than one city would gain valuable experience, and individuals would be more willing to run for an elected position and invest the time in training if they could work in more than one court.

Proposition 1 would be in line with the numerous exceptions to the Constitution's provision prohibiting dual office holding, including one for justices of the peace. Local voters and city governments could best determine whether they should hire or elect a municipal judge who is appointed or elected in another city and whether the judge could give adequate attention to a court. Judges serving in more than one city would continue to be accountable to each city, the voters, and others. Any requirements imposed by a city on its municipal judges, such as a residency requirement, would continue to apply.

Allowing elected municipal court judges to serve more than one city would not create conflicts of interest because each municipality is its own jurisdiction with no overlap in cases. Conflicts do not exist under current law when judges are appointed to sit on more than one municipal court bench and would not exist if elected municipal judges served on more than one court.

Critics say

Proposition 1 would create another exception to the long-standing constitutional prohibition against certain elected officials holding more than one paid public office. Amending this provision could set a precedent for further exceptions to the single-office rule. Issues could be raised about whether judges working in more than one court were able to give adequate focus to each court.

Notes

Proposition 1's enabling legislation, HB 1717 by White, will take effect January 1, 2020, if voters approve the proposed amendment. The bill would allow a person to hold the office of municipal judge for more than one municipality at the same time, regardless of whether the person was elected or appointed to each office.

Proposition 2: Allowing TWDB to issue more water development project bonds

SJR 79 by Lucio (M. González)

Background

Water Code ch. 17, subch. K establishes the Economically Distressed Areas Program (EDAP) governed by the Texas Water Development Board (TWDB).

EDAP provides financial assistance for projects to develop water and wastewater services in economically distressed areas where these services or facilities are inadequate to meet minimum state standards. An economically distressed area is a political subdivision in which the median household income level does not exceed 75 percent of the state's median income level.

The program is funded by proceeds from bonds sold by TWDB. EDAP received constitutional authority in both 1989 and 2007 to issue $250 million in bonds and has previously received federal funds. The 85th Legislature in 2017 authorized TWDB to issue the program's remaining constitutionally authorized bonding authority of about $53.5 million.

Digest

Proposition 2 would add sec. 49-d-14 to Art. 3 of the Texas Constitution to allow the Texas Water Development Board (TWDB) to issue additional general obligation bonds for the Economically Distressed Areas Program account. The bonds would be used to provide financial assistance for developing water supply and sewer service projects in economically distressed areas of the state. TWDB could issue the bonds in amounts such that the aggregate principal amount of the bonds issued under the amended section that were outstanding at any time did not exceed $200 million.

The bonds would be sold in forms and denominations, on terms, at times, in the manner, at places, and in installments as determined by TWDB. The board also would determine the rate or rates of interest the bonds would bear.

The ballot proposal reads: "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."

Supporters say

Proposition 2 would provide essential financing for necessary water and wastewater infrastructure projects in economically distressed areas of Texas. The Economically Distressed Areas Program (EDAP) needs to be replenished if it is to continue funding existing projects and support future projects for communities that otherwise could not afford access to safe water.

While the costs of water infrastructure are high, it is critical that Texans have access to water that meets state standards. Financing some of these costs through bond issues would allow for greater and more reliable funding over a longer period of time. Using general revenue to support EDAP and water infrastructure development would strain available resources without providing the long-term benefits of a bond issuance, which allow expenses to be funded in a more flexible manner.

Critics say

Proposition 2 would increase the size of the government and state bond debt by allowing the Texas Water Development Board (TWDB) to issue additional bonds, which would raise expenses for taxpayers. If TWDB needs additional funding for the Economically Distressed Areas Program, that money should come from general revenue during the regular budgeting process for state agencies.

Notes

Proposition 2's enabling legislation, SB 2452 by Lucio, will take effect on the date the proposition takes effect, if voters approve the proposed amendment. SB 2452 would allow the Texas Water Development Board to use certain general obligation bonds for the Economically Distressed Areas Program (EDAP), revise the administration of financial assistance through EDAP, and require an annual report on EDAP projects.

Proposition 3: Allowing temporary property tax exemptions after a disaster

HJR 34 by Shine (Bettencourt)

Background

Tax Code sec. 23.02 allows a taxing unit located partly or entirely in an area declared by the governor to be a disaster area to authorize the reappraisal of property damaged in the disaster at its market value immediately after the disaster. If the taxing unit authorizes a reappraisal, the appraisal office must complete it as soon as practicable and pay the appraisal district all the costs of the reappraisal. Property that is reappraised must be provided prorated taxes based on the date the disaster occurred.

Texas Constitution Art. 8, sec. 1 requires taxation to be equal and uniform and that all real and tangible personal property be taxed in proportion to its value unless otherwise exempt by the constitution. Sec. 2 allows the Legislature to exempt property from taxation in certain cases. Laws exempting property from taxes other than those listed are null and void.

Digest

Proposition 3 would amend Texas Constitution Art. 8, sec. 2 to allow the Legislature by general law to provide that a person who owned property in a governor-declared disaster area was entitled to a temporary exemption from property taxes by a political subdivision for a portion of the property's appraised value. The law could provide that if the disaster was declared on or after the date the political subdivision adopted a tax rate for the year, a person would be entitled to the exemption for that year only if the exemption was adopted by the governing body of the political subdivision. The Legislature could prescribe the method of determining the amount and duration of the exemption, as well as any other eligibility requirements.

The ballot proposal reads: "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."

Supporters say

Proposition 3 is necessary to enable the Legislature to pass laws entitling individuals to a temporary tax exemption for properties damaged by a disaster.

Under HB 492, the enabling legislation that would take effect if Proposition 3 was approved by the voters, such an exemption would give taxing units a less expensive, easier to administer, and more easily understood method for providing relief to taxpayers harmed by a disaster than does the current method of disaster reappraisal. Under current law, a taxing unit may, but is not required to, authorize property reappraisal after a disaster. Many choose not to allow reappraisals. If a taxing unit does allow reappraisals, appraisal districts must use extensive time and resources to personally examine damaged property and appraise its value. The current statute's language and unspecified timeline are vague and have led to confusion for taxing units, appraisers, and property owners.

Under the proposition and its enabling legislation, property owners would be entitled to a temporary exemption after a disaster if it occurred before the local tax rate was set. If the disaster occurred after rates were set, local governments would have the option to allow the exemption. The amount of the exemption would be based on damage assessments provided by the Federal Emergency Management Agency or another source the chief appraiser considered appropriate. This method would allow appraisers and taxing units to save time and money and avoid duplicative assessments or reappraisals at potentially hazardous properties. Taxpayers are more familiar with property tax exemptions than with reappraisals, and amending the Constitution to allow an exemption would provide taxpayers with more immediate relief. The enabling legislation also would provide a clear timeline to claim exemptions and give taxpayers the opportunity to protest the results of a damage assessment rate.

Critics say

Proposition 3 and its enabling legislation would replace the current property reappraisal process after a disaster with a mandatory property tax exemption, possibly depriving local governments of necessary funds and removing local discretion. When a city, county, or special district experiences a disaster, it must continue to provide essential services while recovering costs from disaster response, such as damaged equipment and employee overtime. By entitling property owners to a tax exemption following a disaster, Proposition 3 could prevent local governments from gaining adequate funds to provide services and could be especially harmful to governments with small budgets. If the Legislature would like to replace the disaster reappraisal process with a property tax exemption, it should allow rather than require the exemption to give communities the ability to make informed decisions based on their budgetary needs.

Other critics say

Proposition 3 would not go far enough to ensure property tax relief for all taxpayers harmed by a disaster, including disasters that occur after a tax rate is adopted. Under the enabling legislation, HB 492, individuals would not be entitled automatically to a property tax exemption if the disaster was declared after the tax rate had already been adopted. If the proposition were to pass and the enabling legislation took effect, taxing units could, but would not be required to, exempt property damaged by a disaster after the date the rate was adopted.

Current law requires taxing units to adopt rates on September 30 or 60 days after receiving the certified appraisal roll, but the Atlantic hurricane season lasts from June through November. Property damaged by storms in October or November may not be entitled to relief if the taxing unit decided not to adopt an exemption. While this proposition is a step in the right direction, it may not be a permanent solution. Rather than requiring exemptions only for properties damaged by disasters that occurred before the tax rate was set, all properties damaged by a disaster should receive an automatic property tax exemption, regardless of when the disaster occurred.

Notes

Proposition 3's enabling legislation, HB 492 by Shine, will take effect January 1, 2020, if voters approve the proposed amendment. HB 492 would repeal the current disaster reappraisal statute under Tax Code sec. 23.02 and instead would exempt a person from taxation of a portion of the appraised value of property damaged by a disaster. The bill would specify the amount of the exemption based on a damage assessment of the property, provide a timeline for exemption claims, and allow property owners to appeal damage assessments. If the governor declared a disaster on or after the date the taxing unit adopted a tax rate, a person would not be entitled to the exemption unless the taxing unit decided to adopt such an exemption.

Proposition 4: Prohibiting a state individual income tax

HJR 38 by Leach (Fallon)

Background

Texas Constitution Art. 8, sec. 1(a) requires all taxation in the state to be equal and uniform. Sec. 24 allows the Legislature to impose by general law a net income tax on individuals, including an individual's share of partnership and unincorporated association income, only if approved by a majority of registered voters voting in a statewide referendum. Art. 8, sec. 24(f) also requires that at least two-thirds of net revenue collected under an income tax be used to reduce the rate of maintenance and operation taxes levied to fund public education.

Digest

Proposition 4 would add sec. 24-a to Art. 8 of the Texas Constitution to prohibit the Legislature from imposing a net income tax on individuals, including on individuals' shares of partnership or unincorporated association income.

The ballot proposal reads: "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."

Supporters say

Proposition 4 would help keep the Texas economy strong by ensuring that the state could not impose an individual income tax, sending a message that Texas was committed to maintaining a business-friendly, low-tax economic environment.

The lack of an individual income tax in Texas is part of the low-tax, pro-growth approach that has fueled the state's robust economic expansion. It also helps attract families and businesses relocating from other parts of the country and seeking relief from burdensome taxes. Prohibiting an income tax would safeguard the state's continued prosperity, as income and capital accumulation are critical to economic growth. The introduction of an individual income tax would discourage savings, investment, productivity, job creation, and economic growth in the state. It also would increase the size of the state government at the expense of individual liberty and result in higher costs to the taxpayer. Constitutionally prohibiting an income tax would help prevent this growth in state bureaucracy.

Although the Texas Constitution already requires a proposed income tax be approved by voters in a referendum, it does not explicitly prohibit such a tax. This proposition would make it clear once and for all that the state could not impose an individual income tax, protecting both taxpayers and the state's economic expansion. Proposition 4 would not endanger the state's revenue stream, as Texas already generates enough revenue to fund public education and public health without imposing an individual income tax. In addition, the proposed constitutional amendment would not jeopardize the franchise tax or invite legal challenges regarding the definition of an "individual" because the legislative intent of the joint resolution is clearly to prohibit a state income tax on the incomes of natural persons.

Critics say

Proposition 4 is unnecessary because the Texas Constitution already includes a high bar for imposing a personal income tax by requiring that it be approved by a majority of voters in a statewide referendum.

Explicitly prohibiting an income tax in the Texas Constitution could eliminate a potentially valuable source of revenue for future Texans. Revenue from an individual income tax would increase with economic growth and in the future could help reduce the tax burden on Texas businesses, which currently pay a higher proportion of taxes in Texas than in other states. Constitutionally prohibiting an income tax could constrain the state's

ability to fund education and close off a potential avenue for property or sales tax relief. It also would reduce options for creating a less regressive tax system.

Because the proposition lacks a definition for the word "individual" and fails to specify that the income tax prohibition refers exclusively to natural persons, it could invite an interpretation that businesses should be legally considered individuals and therefore exempt from state taxation.

Proposition 5: Dedicating sporting goods sales tax revenue to TPWD and THC

SJR 24 by Kolkhorst (Cyrier)

Background

To support state parks funding, the 73rd Legislature in 1993 statutorily allocated the revenue generated by the sales tax on sporting goods to the Texas Parks and Wildlife Department (TPWD), up to $32 million annually. The 80th Legislature in 2007 eliminated the annual cap and required 94 percent of the revenue from the sale, storage, or use of sporting goods be credited to TPWD and 6 percent to the Texas Historical Commission (THC). The comptroller's biennial revenue estimate to the Legislature indicates the expected amount of sporting goods sales tax revenue available for appropriation. The Legislature, through the general appropriations act, allocates funds to those agencies from that revenue.

The Legislature has regularly appropriated less than the full amount of available revenue to TPWD and THC. For the 2018-19 biennium, 88.6 percent of the estimated sporting goods sales tax was appropriated to the agencies. Amounts not appropriated remain in general revenue and are available for other budgetary purposes, including certification by the comptroller that the state will have enough revenue to cover the approved spending.

HB 1422 by Paddie, enacted by the 86th Legislature, adjusted the percentages allocated to each entity so that effective September 1, 2019, TPWD will receive 93 percent and THC will receive 7 percent of sporting goods sales tax revenue.

Digest

Proposition 5 would add sec. 7-d to Art. 8 of the Texas Constitution, automatically appropriating the net revenue received each state fiscal year from the collection of the sporting goods sales tax to the Texas Parks and Wildlife Department (TPWD) and the Texas Historical Commission (THC). The Legislature could by general law limit the use of money appropriated under the proposition.

Proposition 5 would prohibit money automatically appropriated to TPWD and THC under the proposal from being considered available for certification of the budget by the comptroller as provided by Texas Constitution Art. 3, sec. 49a(b).

The Legislature could, by adoption of a resolution approved by a record vote of two-thirds of the membership of each house, direct the comptroller to reduce by up to 50 percent the amount that would otherwise be appropriated to TPWD and THC. The comptroller could make that reduction only in the state fiscal year in which the resolution was adopted or in either of the following two state fiscal years.

The proposition would define "sporting goods" as items 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. Excluded from the definition would be board games, electronic games and similar devices, aircraft and powered vehicles, and replacement parts and accessories for any excluded item.

If approved by voters, Proposition 5 would take effect September 1, 2021, and would apply only to state tax revenue collected on or after that date.

The ballot proposal reads: "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."

Supporters say

Proposition 5 would ensure that the statutory allocation of the sales tax on sporting goods was used as intended by automatically appropriating the money to the Texas Parks and Wildlife Department (TPWD) and Texas Historical Commission (THC). The state parks system deserves a constitutionally protected source of revenue to fulfill promises made when the Legislature allocated the existing sales tax on sporting goods to funding for state parks and historic sites. Since 2007, the Legislature has often diverted a significant portion of the sporting goods sales tax statutorily allocated for parks to other budgetary purposes.

The proposal would provide sustained and predictable funding to help TPWD plan for an estimated $800 million backlog of deferred maintenance priorities, including repairing damage to park facilities from flooding and other natural disasters. Consistent funding also would allow TPWD to meet demands for construction of new state parks and upgrades to existing parks to meet the demands of a growing population. Parks play an important role in wildlife habitat and conservation and have a large economic impact through outdoor sporting, hunting, fishing, and tourism. The Texas Historical Commission has a $40 million backlog of deferred maintenance and also needs a reliable source of revenue to maintain its historic sites.

Because constitutionally dedicated appropriations from the sporting goods sales tax could be temporarily reduced with a two-thirds vote of the House and Senate, the proposed amendment would accomplish these goals without unnecessarily tying the hands of the Legislature and compromising the state's ability to fund critical services. The Legislature also would maintain the power to determine the specific uses of the funds in accordance with existing statutory provisions.

Proposition 5 would be similar to a constitutional amendment approved by Texas voters in November 2015 to dedicate certain revenue from state sales and use taxes, including a percentage of motor vehicle sales, use, and rental taxes, to the State Highway Fund.

Critics say

By creating constitutionally dedicated accounts, Proposition 5 would diminish the Legislature's discretion to prioritize state needs when budgeting. Dedicated accounts give appropriators less flexibility in allocating funds and could lead to unnecessary growth of the state budget by requiring money to go to a particular area even if needs were greater in another. The proposal also could create a precedent for requesting constitutional amendments to create other general revenue dedicated accounts.

The proposed constitutional amendment is unnecessary because the Legislature already may spend all or nearly all of the revenue from the sporting goods sales tax on TPWD and THC, as it has done in recent budget cycles.

Notes

Proposition 5's enabling legislation, SB 26 by Kolkhorst, will take effect September 1, 2021, if voters approve the proposed amendment. The bill would require the Legislature to allocate money generated from the sporting goods sales tax and credited to TPWD accounts in amounts specified by the general appropriations act. Payment of debt service on park-related bonds issued by the department would be included in the authorized uses of the money credited to TPWD. The bill also would convert the Historic Site Account to a dedicated account in the general revenue fund effective January 1, 2020.

Proposition 6: Increasing CPRIT's bond authority from $3 billion to $6 billion

HJR 12 by Zerwas (Nelson)

Background

Texas voters in 2007 established by constitutional amendment the Cancer Prevention and Research Institute of Texas (CPRIT). CPRIT provides grants to support institutions of learning, advanced medical research facilities, and other entities in finding the causes of all types of human cancer and developing cures from lab research and clinical trials. CPRIT also supports programs to address challenges associated with access to advanced cancer treatment and to establish standards to ensure proper use of funds authorized for cancer research and prevention programs.

The 2007 constitutional amendment allowed the Legislature to authorize the Texas Public Finance Authority to provide for, issue, and sell up to $3 billion in general obligation bonds on behalf of CPRIT. Texas law limits the issuance of such authorized bonds to $300 million each fiscal year.

Under Health and Safety Code sec. 102.254, CPRIT's authority to grant awards expires after August 31, 2022. As of February 2019, CPRIT had awarded about 1,300 grants totaling $2.2 billion to about 100 academic institutions, nonprofits, and public companies.

Digest

Proposition 6 would amend Texas Constitution Art. 3, sec. 67(c) to increase from $3 billion to $6 billion the maximum amount of general obligation bonds the Texas Public Finance Authority could provide for, issue, and sell on behalf of the Cancer Prevention and Research Institute of Texas.

The ballot proposal reads: "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."

Supporters say

Reauthorizing funding and continuing taxpayer support of the Cancer Research and Prevention Institute of Texas (CPRIT) under Proposition 6 is important to maintain the agency's current level of activity and continue Texas' national leadership in cancer research and prevention. Since the creation of CPRIT, Texas has become the second-largest public funder of cancer research in the country, behind only the federal National Cancer Institute. CPRIT's support of cancer research has accelerated the development of potential cures and prevention strategies.

Although CPRIT has statutory authority to continue awarding grants through August 31, 2022, without additional funds it could issue its last awards by the end of fiscal year 2021. The 86th Legislature this year appropriated the remaining voter-approved funds for CPRIT to the institute for fiscal 2020-21, so its funding beyond 2021 is not guaranteed. The sustained funding proposed by Proposition 6 is necessary to plan and complete research and report on prevention successes and failures.

Funding CPRIT is an investment in the state economy. Annual grant funding under CPRIT has supported world-renowned scholars, including a 2018 Nobel Prize recipient, and has helped make Texas a biomedical center. The multiplier effects of CPRIT's programs have created thousands of jobs, generated billions of dollars in economic activity, and encouraged biotech companies to expand or relocate to the state.

By approving the original bond program in 2007, voters agreed that cancer research was worthy of public investment. CPRIT's efforts have been shown to reduce cancer costs and enhance patients' quality of life, productivity, and lifespans. The substantial benefits to the state's economy and to the health of Texans from the sustainable funding for CPRIT's programs in Proposition 6 would far outweigh the direct commitment of taxpayer resources and state debt.

Critics say

Funding cancer research is not an essential function of state government, and although CPRIT's mission is noble, the bonds that would be made possible by Proposition 6 would require interest and future appropriations that could be better spent on other priorities and more pressing needs.

Instead of doubling the size of the original bond package approved by voters for CPRIT, committing $3 billion more in taxpayer money and increasing state debt, the state should support critical cancer research in a more sustainable way that would reduce the debt burden that comes with taxpayer-backed bonds and that would allow the state to fund other priorities. The annual debt service on the previously issued CPRIT-related bonds is forecast to cost the state $120.6 million in the current fiscal year. According to the Legislative Budget Board, Proposition 6 would cost an additional $246 million combined from fiscal 2020 through 2024.

Proposition 6 is not necessary at this time because CPRIT has authority to issue the original bonds through the end of fiscal 2022. Instead of asking voters to commit more taxpayer money, the Legislature should use the next legislative session to discuss CPRIT's long-term future, including a plan for it to become financially self-sufficient with independent or additional funding streams.

Proposition 7: Allowing increased distributions to Available School Fund

HJR 151 by Huberty (Taylor)

Background

Established under Texas Constitution Art. 7, sec. 5, the Permanent School Fund (PSF) is an endowment trust that holds the fund's investment returns and the proceeds from state land and mineral rights dedicated to the support of public schools. The State Board of Education and the School Land Board, an independent entity of the General Land Office, share management and investment responsibilities for the PSF and make distributions from the PSF to the Available School Fund (ASF). The ASF pays for instructional materials and classroom technology and provides additional funding to school districts on a per-student basis.

The State Board of Education manages the PSF's securities portfolio, and the School Land Board manages the fund's real assets investment portfolio. The School Land Board also oversees the management, sale, and leasing of more than 13 million acres of PSF land. The PSF was valued at $44 billion at the end of fiscal 2018.

Sec. 5(g) permits the General Land Office or an entity other than the State Board of Education that has responsibility for the management of PSF land or other properties to distribute to the ASF up to $300 million each year in revenue derived during that year from the land or properties.

Digest

Proposition 7 would amend Texas Constitution Art. 7, sec. 5(g) to allow the State Board of Education, the General Land Office, or another entity that had responsibility for the management of revenues derived from Permanent School Fund land or other properties to distribute each year to the Available School Fund revenue derived during that year from the land or properties, up to $600 million by each entity each year.

The ballot proposal reads: "The constitutional amendment allowing increased distributions to the available school fund."

Supporters say

Proposition 7 would improve funding for public schools by doubling the constitutionally authorized annual distribution from the School Land Board to the Available School Fund. Recent investment returns realized by the land board would have allowed greater annual distributions were it not for the $300 million cap on distributions in the Texas Constitution. The land board would retain discretion to distribute revenue levels below the cap should investment returns be lower in a given year. The proposition would provide flexibility for the General Land Office and the State Board of Education to send additional funding derived from the Permanent School Fund to the Available School Fund.

As the Permanent School Fund's assets grow and improve in performance, the Legislature should take advantage of the opportunity to make more revenue available through the Available School Fund for public education. The use of the Available School Fund is an appropriate way to increase funding for public education without having to raise taxes.

Critics say

Proposition 7 would double the amount of revenue that the School Land Board could directly contribute to the Available School Fund without any assurances that the additional spending would improve education outcomes. Texas should be fiscally prudent by resisting continued growth in state spending.

Notes

Proposition 7's enabling legislation, HB 4611 by Huberty, will take effect January 1, 2020, if voters approve Proposition 7. HB 4611 would amend Education Code sec. 43.001(b) to include the distributions authorized under Proposition 7 with the funds distributed from the Permanent School Fund to the Available School Fund to be placed, subject to the general appropriations act, in the state instructional materials and technology fund.

A contingency rider in the appropriations bill, HB 1 by Zerwas, would allocate $600 million for school funding under HB 3 by Huberty, the school finance bill enacted by the 86th Legislature, contingent upon voter approval of Proposition 7 and the subsequent distribution of those funds from the State Board of Education or the General Land Office to the Available School Fund.

Proposition 8: Creating the Flood Infrastructure Fund

HJR 4 by Phelan (Creighton)

Background

Texas Constitution Art. 8, sec. 6 prohibits the withdrawal of money from the state treasury except in pursuance of a specific appropriation made by law. However, certain special funds in the treasury are held outside general revenue and may spend money without legislative appropriation. For example, Art. 3, sec. 49-d-12 created the State Water Implementation Fund for Texas, controlled by the Texas Water Development Board, as a special fund outside the general revenue fund.

Digest

Proposition 8 would add sec. 49-d-14 to Art. 3 of the Texas Constitution to create the Flood Infrastructure Fund as a special fund in the state treasury outside the general revenue fund. As provided by general law, the fund could be used by the Texas Water Development Board without further appropriation to provide financing for drainage, flood mitigation, or flood control projects, including:

- planning and design activities;
- work to obtain related regulatory approval to provide nonstructural and structural flood mitigation and drainage; or
- construction of flood mitigation and drainage infrastructure.

Separate accounts could be established in the Flood Infrastructure Fund.

The ballot proposal reads: "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."

Supporters say

By creating the Flood Infrastructure Fund, Proposition 8 would establish regional planning and coordination on flood mitigation projects to better provide for vital infrastructure in the state. A significant funding source is necessary to ensure cooperation among regions and affected stakeholders and to create a more resilient Texas in preparation for future flood events. Along with its enabling legislation, SB 7 by Creighton, the proposition would provide disbursement oversight for the fund. Under SB 7, a local government could access funds only if it had fully cooperated with other entities in the region, held public meetings to accept comments from stakeholders, and completed the project's technical requirements and compared it to others in the area.

The infrastructure fund created by Proposition 8 and SB 7 would provide grants or low-cost loans to assist local governments with basic flood project planning, grant applications, and engineering flood mitigation projects that were structural (*e.g.*, levees, dikes, and dams) and nonstructural (*e.g.*, education, mitigation plans, and engineering studies). Federal funds are available for flood projects after disastrous events, but counties and cities may not be able to put up the matching funds necessary to access that money. Providing financing options for such projects could give communities the opportunity to overcome cost hurdles and expedite access to necessary funding. Proposition 8 would create the Flood Infrastructure Fund outside of the general revenue fund to ensure that money in the fund was available to the Texas Water Development Board for the same purpose in future budget cycles.

Critics say

It is unnecessary to create another special fund in the Constitution through Proposition 8, as sufficient sources

of federal, state, and local funds are available to support flood mitigation projects.

Further, Proposition 8 and an appropriation in the supplemental budget contingent on its passage would improperly use the Economic Stabilization Fund (ESF) to provide $793 million to the Flood Infrastructure Fund. The ESF should be used only for disaster response or relief or for other one-time expenses. Because the infrastructure fund would be an ongoing state program, the money should come from general revenue during the normal budgeting process.

Notes

Proposition 8's enabling legislation, SB 7 by Creighton, generally took effect on June 13. Certain provisions that would create and regulate the use of the Flood Infrastructure Fund will take effect January 1, 2020, if voters approve the proposed amendment. Provisions of SB 7 that are contingent on voter approval of Proposition 8 state that the Flood Infrastructure Fund consists of legislative appropriations, proceeds from general obligation bonds, dedicated fees, loan repayments, interest, gifts, and money from revenue bonds. TWDB could use the fund only to make certain grants or loans at or below market interest for flood projects. Political subdivisions applying for financial assistance would have to demonstrate that they had met certain application requirements listed in the bill.

An appropriation in the supplemental budget bill, SB 500 by Nelson, is contingent on the voter approval of Proposition 8. If the proposed amendment is approved, $793 million would be appropriated from the Economic Stabilization Fund to the comptroller in fiscal 2019 for the purpose of immediately depositing the amount to the Flood Infrastructure Fund.

Proposition 9: Exempting precious metals held in Texas depositories from property taxes

HJR 95 by Capriglione (Fallon)

Background

Texas Constitution Art. 8, sec. 1 requires all real and tangible personal property in the state to be taxed in proportion to its value unless it is exempt. Under Tax Code sec. 11.14(a), individuals are entitled to an exemption from taxation of all tangible personal property, other than manufactured homes, that is not held or used for production of income. Under sec. 11.14(c), taxing jurisdictions may rescind this exemption through a resolution or order and tax the property.

In 2015, the Legislature created the Texas Bullion Depository, under Government Code ch. 2116, to serve as a custodian of deposits of precious metal from individuals and entities. The depository is administered as a division of the comptroller's office and operated by a private entity overseen and audited by the comptroller. It began accepting deposits in 2018 and is slated to open in its permanent location in 2020.

Under Tax Code sec. 151.336, the sale of gold, silver, or numismatic coins or of platinum, gold, or silver bullion is exempted from sales taxes.

Digest

Proposition 9 would amend Texas Constitution Art. 8 to authorize the Legislature to exempt from property taxes precious metal held in a precious metal depository in Texas. The Legislature could define "precious metal" and "precious metal depository" for purposes of the exemption.

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

Supporters say

Proposition 9 would allow the state's precious metal depositories to compete on an even footing with those in other states that do not tax deposits of precious metals. While Texas exempts certain precious metals from sales taxes, these metals currently could be subject to local ad valorem taxes if they are income-producing, and the potential exists for local governments to override the exemption for non-income-producing precious metals. Proposition 9 would help the Texas Bullion Depository and the state's other depositories succeed by allowing the Legislature to create an exemption for both income-producing and non-income-producing precious metals stored in a Texas depository.

Proposition 9 would remove uncertainty about whether local jurisdictions could tax non-income-producing precious metals deposited in commercial depositories. While current law exempts from property taxes personal property not held or used to produce income, local taxing jurisdictions have authority to rescind this exemption. No local jurisdictions are known to have done so to tax precious metal deposits, but the potential to rescind this exemption could discourage the use of Texas depositories by creating uncertainty for depositors.

Proposition 9 also would allow the Legislature to create a property tax exemption for deposits of precious metals held for the production of income so that they were treated appropriately and not potentially subject to ad valorem taxes. Precious metals held in depositories are similar to other types of wealth, such as cash, and should not be taxed as income-producing property. Because these deposits generally are not taxed now, Proposition 9 would not make a significant change to the system of property tax exemptions. With Proposition 9, the state would be making it possible for Texas depositories to compete

on equal footing with those in other states, not picking winners or losers in the market.

Proposition 9 would ensure that all Texas precious metal depositories operated under the same set of rules. The amendment would allow the Legislature to exempt precious metals held in the state-created Texas Bullion Depository as well as in private depositories.

Critics say

The state should not expand property tax exemptions when the property tax system as a whole is being examined and revised. Additional tax exemptions could reduce taxable property, and an evaluation of all exemptions should occur before more are added.

Exemptions to the property tax system should not be used to incentivize economic behavior, such as depositing precious metals in Texas depositories, or to pick winners or losers in the market.

Notes

Proposition 9's enabling legislation, HB 2859 by Capriglione, will take effect January 1, 2020, if voters approve the proposed amendment. HB 2859 would exempt from property taxes precious metal held in a precious metal depository in Texas, regardless of whether the metal was held or used for the production of income. The exemption would apply to depositories that are primarily engaged in the business of storing precious metals for the general public and that maintain sufficient insurance to cover their deposits. It would apply only to a tax year beginning on or after the effective date.

Proposition 10: Allowing retired law enforcement animal transfer without fee

SJR 32 by Birdwell (Tinderholt)

Background

Texas Constitution Art. 3, sec. 51 prohibits the Legislature from making or authorizing any grant of public moneys to any individual, association of individuals, or municipal or other corporations, except when granting aid in cases of public calamity.

Sec. 52(a) prohibits the Legislature from authorizing any county, city, town, or other political corporation or subdivision to lend its credit or to grant public money or thing of value in aid of or to any individual, association, or corporation.

Digest

Proposition 10 would add sec. 521 to Art. 3 of the Texas Constitution to allow the Legislature to authorize a state agency or a county, municipality, or other political subdivision to transfer without fee a law enforcement dog, horse, or other animal to the animal's handler or another qualified caretaker upon the animal's retirement or at another time if it was in the animal's best interest.

The ballot proposal reads: "The constitutional amendment to allow the transfer of a law enforcement animal to a qualified caretaker in certain circumstances."

Supporters say

Proposition 10 is necessary to allow the Legislature to clarify the authority of law enforcement agencies to retire law enforcement animals to their former handlers or other qualified caretakers for no fee. Many law enforcement agencies in Texas use dogs, horses, and other animals to help them perform their duties. The animals and handlers create a bond, especially in the case of K-9s that go home with their handlers every day while in service, which for some dogs can be around 10 years. When these animals retire, their former handlers often adopt them from the agencies for no fee. However, current law has caused confusion about this common and humane practice. Texas law classifies domestic animals as property, and sections of the Texas Constitution generally prohibit the state, a county, a city, or other political subdivision from transferring valuable property to an individual or private organization without payment. Approving this constitutional amendment would honor the bond between law enforcement animals and their handlers by ensuring that these animals could retire in the homes where they live and receive continued humane care.

Critics say

Because under current law the transfer of law enforcement animals may occur for a nominal fee, Proposition 10 is not necessary to achieve the transfer of such an animal to its handler's care upon the animal's retirement.

Notes

Proposition 10's enabling legislation, SB 2100 by Birdwell, took effect on May 14, 2019. The bill allows a governing body of a state agency or political subdivision to enter into a contract with a person for the transfer of a law enforcement dog, horse, or other animal if the head of a law enforcement agency, after consultation with the animal's veterinarian and caretakers, deems the animal suitable for transfer and surplus to the agency's needs. The animal is surplus to agency needs if the animal is at the end of its working life or subject to circumstances that justify its transfer before the end of its working life. A law enforcement animal may be transferred only to a person who is capable of humanely caring for it and selected by the head of the agency in a certain order of priority, beginning with the animal's former handler. If more than one person requests to receive the animal, the agency head

determines which of the transferees best serves the interest of the animal and the applicable agency or subdivision. A contract may provide the transfer without charge.

An entity that transfers an animal is not liable in a civil action for any damages arising from the transfer, including from the animal's law enforcement training. The bill does not require an animal to be transferred, affect an entity's authority to care for retired law enforcement animals, or waive sovereign or governmental immunity to suit and from liability of the entity transferring the animal. Laws governing the disposition of surplus or salvage property by the state or counties do not apply to the transfer.

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