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FOCUS *report*

Constitutional amendments proposed for the November 2021 ballot

Texas voters have approved 507 amendments to the state Constitution since its adoption in 1876, according to the Legislative Reference Library. Eight more proposed amendments will be submitted for voter approval at the general election on Tuesday, November 2, 2021.

The following report contains an explanation of the process by which constitutional amendments are adopted and information on the proposed 2021 amendments, including a background, analysis, and arguments for and against each proposal.

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 2, 2021, ballot was proposed by House Joint Resolution (HJR) 143, introduced by Rep. Charlie Geren and sponsored in the Senate by Sen. Jane Nelson. 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. 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, at an August 10, 1991, election, the voters rejected a proposition authorizing $300 million in general obligation bonds for college student loans 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 specifies an election date for voter consideration of proposed constitutional amendments. 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. 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. The estimated total cost of publication twice in newspapers across the state for the November 2 election is $178,333, 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 sometimes 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 10 proposals on the November 5, 2019, ballot appear in House Research Organization Focus Report No. 86-3, *Constitutional Amendments Proposed for November 2019 Ballot*, August 27, 2019.

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

For	685,827	34.6%
Against	1,298,866	65.4%

Prop 2: *Allowing TWDB to issue more water development project bonds*

For	1,294,936	65.6%
Against	677,619	34.4%

Prop 3: *Allowing temporary property tax exemptions after a disaster*

For	1,679,049	85.1%
Against	294,235	14.9%

Prop 4: *Prohibiting a state individual income tax*

For	1,477,373	74.4%
Against	509,547	25.6%

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

For	1,745,353	88.0%
Against	237,656	12.0%

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

For	1,259,398	64.0%
Against	707,939	36.0%

Prop 7: *Creating the Flood Infrastructure Fund*

For	1,459,578	74.1%
Against	509,590	25.9%

Prop 8: *Allowing increased distributions to Available School Fund*

For	1,538,726	77.9%
Against	437,384	22.1%

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

For	982,881	51.3%
Against	932,885	48.7%

Prop 10: *Allowing retired law enforcement animal transfer without fee*

For	1,858,876	93.8%
Against	123,648	6.2%

Source: Secretary of State's Office

Proposition 1: Authorizing the Legislature to permit charitable raffles at rodeo events

HJR 143 by Geren (Nelson)

Background

Texas Constitution Art. 3, sec. 47(d-1) authorizes the Legislature by general law to permit professional sports team charitable foundations to conduct charitable raffles. Occupations Code ch. 2004, the Professional Sports Team Charitable Foundation Raffle Enabling Act, allows charitable foundations meeting certain requirements to conduct charitable raffles during each preseason, regular season, and postseason game hosted at the home venue of the professional sports team associated with the foundation. Under sec. 2004.007, for each raffle a foundation may deduct no more than 10 percent of the proceeds from ticket sales to pay reasonable operating costs of conducting the raffle, including promotion, advertisements, and other specified expenses.

Charitable raffles may be conducted by charitable foundations associated with a professional sports team organized in Texas that is one of the following: a member of Major League Baseball, the National Basketball Association, the National Football League, Major League Soccer, the American Hockey League, the East Coast Hockey League, Minor League Baseball, or certain other leagues; a person hosting a motorsports racing team event sanctioned by NASCAR, INDYCar, or another nationally recognized motorsports racing association in Texas with a permanent seating capacity of at least 75,000; or an organization hosting a Professional Golf Association event.

Digest

Proposition 1 would amend Texas Constitution Art. 3, sec. 47(d-1) to allow the Legislature by general law to permit the charitable foundation of an organization sanctioned by the Professional Rodeo Cowboys Association or the Women's Professional Rodeo Association to conduct charitable raffles at rodeo venues.

The ballot proposal reads: "The constitutional amendment authorizing the professional sports team charitable foundations of organizations sanctioned by the Professional Rodeo Cowboys Association or the Women's Professional Rodeo Association to conduct charitable raffles at rodeo venues."

Supporters say

Proposition 1 would grant authority to the Legislature to allow charitable raffles to be conducted at rodeo events, which is consistent with its current authority to allow such raffles at other professional sporting events. In 2015, voters by an overwhelming margin approved Proposition 4, which authorized the Legislature to permit charitable raffles by professional sports team charitable foundations. Since the approval of Proposition 4, charitable raffles have raised large amounts of money for worthy causes related to education, cancer research, and youth programs. Proposition 1 would not legalize a new form of gambling nor open the door to expanding gambling in the state. It simply would expand to rodeo events the current authorization for professional sports team charitable foundations to conduct raffles.

Critics say

Proposition 1, by permitting the expansion of charitable raffles, has the potential to contribute to future expansion of gambling in Texas. Although the Texas Constitution provides for charitable raffles at certain sporting events, the trend of expanding the list of parties

who may conduct such raffles should be approached with caution to avoid opening the door to legalizing more games of chance in Texas.

Notes

The enabling legislation for Proposition 1, HB 3012 by Geren, will take effect December 1, 2021, if voters approve the proposed amendment. The bill would allow charitable raffles to be conducted at rodeo events.

Proposition 2: Authorizing counties to issue debt backed by property tax increment

HJR 99 by Canales (Nichols)

Background

Texas Constitution Art. 8, sec. 1-g(a) allows the Legislature by law to authorize cities, towns, and other taxing units to grant exemptions or other relief from taxes on property located in a reinvestment zone to encourage development or redevelopment and improvement of the property. Sec. 1-g(b) allows the Legislature to authorize an incorporated city or town to issue bonds or notes to finance the development or redevelopment of an unproductive, underdeveloped, or blighted area and to pledge for repayment of those bonds any increases in revenue from property taxes imposed on property in the area.

Tax Code ch. 311, the Tax Increment Financing Act, establishes how a municipality or county may create a tax increment reinvestment zone (TIRZ) to promote development or redevelopment of an area if the governing body determines that development would not occur solely through private investment in the reasonably foreseeable future.

Transportation Code sec. 222.107 allows counties to designate a transportation reinvestment zone (TRZ) to promote transportation projects after an area is determined to be unproductive and underdeveloped and to promote public safety, facilitate property improvements or development, facilitate traffic movement, and enhance a local entity's ability to sponsor a transportation project.

A 2015 attorney general opinion (KP-0004) stated that, absent a constitutional amendment, it is likely a court would conclude that a county may not form a TIRZ or TRZ to the extent that doing so pledges the captured increment of property taxes to fund the zone.

Digest

Proposition 2 would amend Texas Constitution Art. 8, sec. 1-g(b) to authorize counties to issue bonds or notes to finance the development of unproductive, underdeveloped, or blighted areas and to pledge increases in property tax revenues for repayment.

A county that issued bonds or notes for transportation improvements could not:

- pledge for repayment more than 65 percent of the increases in property tax revenues each year; or
- use proceeds from the bonds or notes to finance the construction, operation, maintenance, or acquisition of rights-of-way of a toll road.

The ballot proposal reads: "The constitutional amendment authorizing a county to finance the development or redevelopment of transportation or infrastructure in unproductive, underdeveloped, or blighted areas in the county."

Supporters say

Proposition 2 would allow counties to use a vital financing tool to develop transportation projects and other infrastructure in unproductive, underdeveloped, or blighted areas. The Texas Constitution already allows cities to use this tool, called tax increment financing, and this proposition would extend that authority to counties. The amendment would be a logical extension of the constitutional authority to use tax increment financing. Current law already provides a means for both cities and counties to reinvest funds in blighted areas.

This innovative method of financing allows local governments to pledge a portion of the growth in property tax revenue over a base level, or "tax increment," to the repayment of bonds or notes issued to finance improvements in designated areas called reinvestment zones. The financed projects spur economic development in blighted areas with deteriorating structures or unsanitary conditions that otherwise would not attract private investment. This method is not a new tax, but as a zone is developed, property values increase and the growth in tax revenue can be captured and used to further benefit the zone for a period of time. Taxpayers both inside and outside a reinvestment zone continue to pay taxes at their normal tax rates, while increasing property values provide the additional revenue.

Current law establishes procedures for counties to designate tax increment reinvestment zones (TIRZs) to develop blighted areas and transportation reinvestment zones (TRZs) to promote transportation projects. However, an attorney general opinion from 2015 stated that courts may conclude that counties are unable to collect tax increments in a TIRZ or TRZ because the Texas Constitution expressly grants this authority to cities but not to counties. Proposition 2 would authorize counties, like cities, to fully use this tool by pledging the captured increment of property taxes to fund reinvestment zones.

This would empower counties to finance improvements that attracted private investment to develop unproductive areas and strengthen the entire tax base. It also would empower counties to build needed transportation projects. Texas is underinvesting in transportation infrastructure by billions of dollars each year, and the gap in funding grows as the state's population grows. To provide for future generations, the state needs tools to finance infrastructure projects.

While some have expressed concerns that the proposition would increase taxes, allowing counties to use tax increment financing would not increase local property tax rates. Financing transportation and infrastructure projects would allow counties to speed up development without increasing tax rates and in lieu of a large cash infusion. Reinvestment zones would benefit the entire county by providing vital services, generating economic development in deteriorating areas, reducing the need for expensive county services in those areas, and increasing overall property values and tax revenue. Further, because counties may designate a TIRZ or TRZ only after holding a public hearing according to current law, taxpayers would have an opportunity to become familiar with the county's financing plans. Proposition 2 also could further expand partnership opportunities for counties and cities.

Critics say

Proposition 2 could expand taxpayer-backed debt by allowing counties to use tax increment financing, contributing to a trend of local governments issuing more debt and potentially resulting in an increase in local taxes to cover increasing debt service payments. Texas' local debt per capita already is too high, ranking third among the 10 most populous states, according to a 2020 Bond Review Board report. Authorizing counties to further increase local debt could obligate future funds for debt service payments, invite higher taxes to cover the growing obligations, risk local credit rating downgrades, and have a chilling effect on economic growth and investments.

Expanding the use of tax increment financing could burden those outside of a reinvestment zone. Once a reinvestment zone is created, the growth in tax revenue from that zone — other than revenue used for projects in the zone — effectively is capped. If costs for other government services increased, counties could have to increase taxes across the entire county to make up for the lack of available funds. That could result in taxpayers outside a zone facing increases in property tax rates due to projects that did not directly benefit them.

It also is not clear how effective reinvestment zones are for developing an area or whether the zones simply redirect investment from one area to another. Proposition 2 could incentivize counties to invest in areas that may not need this kind of government support.

Cities and towns already may use tax increment financing, and it is unnecessary to expand it to county governments, which are not as close or well known to the taxpayers and should not have additional authority to expand local debt.

Proposition 3: Constitutionally prohibiting state limits on religious services

SJR 27 by Hancock (Leach)

Background

Texas Constitution Art. 1, sec. 6 establishes the freedom to worship according to the dictates of a person's own conscience. It states that no human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion. It also states that it is the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Digest

Proposition 3 would add sec. 6-a to Art. 1 of the Texas Constitution to prohibit the state or a political subdivision of the state from enacting, adopting, or issuing a statute, order, proclamation, decision, or rule that prohibited or limited religious services, including services conducted in churches, congregations, and places of worship, in the state by a religious organization established to support and serve the propagation of a sincerely held religious belief.

The ballot proposal reads: "The constitutional amendment to prohibit this state or a political subdivision of this state from prohibiting or limiting religious services of religious organizations."

Supporters say

Proposition 3, by prohibiting state or local officials from acting to prohibit or limit religious services, would help guarantee that Texans could freely exercise their religious beliefs. The proposition would address actions taken by some government officials during the COVID-19 pandemic that restricted Texans' ability to practice their faith in congregation with others at churches, mosques, and synagogues. It would help protect the ability to exercise the religious freedom enshrined in the First Amendment of the U.S. Constitution.

Churches and other religious organizations provide much-needed spiritual, mental, and physical support during times of crisis and stress. However, at a time when businesses, including liquor stores, were deemed essential and allowed to remain open, many churches were unable to serve their communities. While many churches and synagogues offered online worship services, others were not able to use technology to reach their congregations. Proposition 3 would help ensure that religious leaders were able to serve their congregations in the event of a future mandatory stay-at-home order — for example, through socially distanced worship services.

The amendment would prevent public officials from using a disaster declaration to close houses of worship as happened in 2020 during the COVID-19 pandemic when some city and county mandatory stay-at-home orders prohibited religious services except by video or teleconference. On March 31, 2020, the governor defined essential services to include "religious services conducted in churches, congregations, and houses of worship." At least two of the cities that had previously prohibited religious services updated their policies to allow in-person services that complied with the Centers for Disease Control and Prevention guidelines for social distancing.

While some say that public officials should retain the ability to include houses of worship in disaster-related orders to protect the common good, the churches themselves and their congregants can be trusted to make reasonable and appropriate decisions about whether they

should be open or closed to their congregations. Because religious rights are protected in the Texas and U.S. constitutions, church services should not be treated the same as secular gatherings. Proposition 3 is not intended to remove the ability of public officials to enforce laws, such as criminal statutes and fire and building safety codes, that affect a place of worship. The proposed amendment would not need to provide a narrow exception allowing certain government burdens on religious freedom, as some have proposed. Language providing for such an exception is already in the Texas religious freedom statute and does not need to be repeated in the Texas Constitution.

Critics say

By allowing places of worship to remain open to large gatherings during a pandemic or other disaster, Proposition 3 could increase the risks for all Texans. The amendment's broad language could restrict the ability of public officials to issue emergency orders limiting in-person religious services during a disaster, even if the orders were treating religious services the same as other gatherings.

Religious freedom is a fundamental American value, but that freedom should not require tying the hands of public officials who are trying to safeguard public health as they respond to unforeseen events, including pandemics, evacuations due to natural disasters, and other emergencies. For example, the balancing by state and local officials of public safety with religious freedom is recognized in the application to churches and other houses of worship of fire and building safety codes and criminal laws. Adding the overly broad language of Proposition 3 to the Texas Constitution could impede the ability of public officials to enforce these existing laws and ordinances. The amendment should include language similar to a provision in the Texas religious freedom statute, which provides an exception from the prohibition on a government agency substantially burdening a person's free exercise of religion if the government agency demonstrates that the application of the burden is the least restrictive means of furthering a compelling governmental interest.

By giving religious gatherings a pre-emptive exemption from future emergency orders, Proposition 3 also could undermine public confidence in the ability of religious communities to effectively partner with government officials to defeat a pandemic.

Proposition 4: Changing eligibility requirements for appellate and district judges

SJR 47 by Huffman (Landgraf)

Background

Texas Constitution Art. 5, sec. 2(b) establishes eligibility requirements to serve as chief justice or as a justice of the Texas Supreme Court. The nine justices must:

- be licensed to practice law in Texas;
- be a citizen of the United States and Texas at the time of the election;
- be at least 35 years old; and
- have been a practicing lawyer or a lawyer and judge of a court of record together for at least 10 years.

Sec. 4(a) applies the same qualifications to the presiding judge and eight other judges on the Court of Criminal Appeals and sec. 6(a) applies the same qualifications to justices on courts of appeals.

Sec. 7 establishes eligibility requirements for candidates for state district judges who must:

- be licensed to practice law in Texas;
- be a citizen of the United States and Texas;
- have been a practicing lawyer or a judge of a court in Texas, or both combined, for four years;
- have resided in the district in which the person was elected for two years; and
- reside in the district during the person's term in office.

Digest

Proposition 4 would amend Texas Constitution Art. 5, sec. 2(b) and sec. 7 to change the eligibility requirements to serve on the Texas Supreme Court, the Court of Criminal Appeals, and courts of appeals and on state district courts.

Supreme Court, Court of Criminal Appeals, courts of appeals. Under the revisions, to be eligible to serve as the chief justice or a justice on the Texas Supreme Court or a court of appeals or as a presiding judge or judge on the Court of Criminal Appeals, a person would have to be a resident of Texas at the time of the election. A candidate also would have to have been a lawyer licensed in Texas for at least 10 years or be a practicing lawyer licensed in Texas and a judge of a state court or county court established by the Legislature by statute for a combined total of at least 10 years.

The proposition also would require that during the 10 years the person was licensed and practicing, the person's license to practice law could not have been revoked, suspended, or subject to a probated suspension.

District judges. Proposition 4 would increase from four to eight the number of years preceding a district judge's election that the judge would have to have been a practicing lawyer, a judge of a Texas court, or both combined. The proposition would require that during that time, the judge's license to practice law not have been revoked, suspended, or subject to a probated suspension.

Applicability. Under a temporary provision in the proposition, the revisions to eligibility requirements for certain justices would take effect January 1, 2022, and would apply only to a chief justice or other justice of the Texas Supreme Court, a presiding judge or other judge of the Court of Criminal Appeals, or a chief justice or other justice of a court of appeals who was first elected for a term that began on or after January 1, 2025, or who was appointed on or after that date.

The revisions to eligibility requirements for district judges would take effect January 1, 2022, and would apply only to a district judge first elected for a term that began on or after January 1, 2025, or who was appointed on or after that date.

The ballot proposal reads: "The constitutional amendment changing the eligibility requirements for a justice of the supreme court, a judge of the court of criminal appeals, a justice of a court of appeals, and a district judge."

Supporters say

Proposition 4 would ensure a higher quality judiciary in Texas by adding to existing eligibility requirements for appellate and district court judges. There have long been bipartisan calls to revise qualifications for judges, an issue separate from the method of judicial selection. Strengthening judicial qualifications would benefit all Texans.

Requiring appellate court justices to have practiced law and to have been licensed in Texas for at least 10 years would ensure that they had the necessary experience. It also would avoid a situation in which a lawyer could move to Texas and within a few years win election to one of the state's highest courts without extensive knowledge of Texas law.

Increasing from four to eight years the time that a district judge must have practiced law in Texas would ensure that judges had sufficient legal experience to preside over trials and handle the important duties of a district judge.

The proposed constitutional amendment also would ensure that judicial candidates met ethics requirements by mandating that they not have been subject to disciplinary action for violating standards of ethical conduct for practicing law in Texas.

Proposition 4 would impact only judicial candidates for appellate courts and district courts for which certain experience and qualifications are crucial. The bill would set baseline qualifications for all candidates without excluding any potential candidates who met those qualifications. The resolution would apply only to those first elected for a term after January 2025, and the vast majority of current judges would meet the qualifications in the proposition if it were in effect today. Proposition 4 would not preclude anyone from a judicial appointment or election once the minimum qualifications had been achieved.

Critics say

It is unnecessary to revise qualifications for the judiciary because current constitutional provisions work to ensure voters can make choices among qualified judicial candidates. Voters are in the best position to assess candidates and should be trusted to choose from among judicial candidates that meet current qualifications without increasing barriers to public office.

More legal experience does not necessarily make a person a better judge, and requiring more experience could reduce voter choice and exclude groups of younger, more diverse lawyers from the judiciary.

Proposition 5: Permitting SCJC to accept complaints on all candidates for judicial office

HJR 165 by Jetton (Zaffirini)

Background

Texas Constitution Art. 5, sec. 1-a establishes the State Commission on Judicial Conduct, and sec. 1-a(7) empowers the commission to accept complaints or reports on state judicial officeholders and to conduct investigations. The commission may issue private or public admonitions, warnings, or reprimands and may require additional training of judicial officeholders.

Digest

Proposition 5 would amend Texas Constitution Art. 5, sec. 1-a to allow the State Commission on Judicial Conduct to accept complaints or reports, conduct investigations, and take any other authorized action with respect to a candidate for state judicial office in the same manner the commission may take those actions with respect to a person holding such office.

The ballot proposal reads: "The constitutional amendment providing additional powers to the State Commission on Judicial Conduct with respect to candidates for judicial office."

Supporters say

By expanding the authority of the State Commission on Judicial Conduct (SCJC) to receive complaints and conduct investigations, Proposition 5 would create a more evenhanded process for candidates for judicial office who were not current officeholders and those who were incumbents. Currently, elected judicial officers are held to high standards specified in the Code of Judicial Conduct, whereas their non-judge opponents are not. The proposition could help remedy this by fairly and consistently subjecting all candidates for judicial office to the SCJC complaint and investigation process.

Critics say

Proposition 5 could significantly increase the responsibilities of the State Commission on Judicial Conduct by expanding the list of individuals potentially subject to a complaint or investigation by the commission. If the scope of the commission's work were to be expanded, it could need more resources to compensate for the additional responsibilities.

Proposition 6: Creating right of long-term care residents to designate essential caregiver

SJR 19 by Kolkhorst (Frank)

Background

Texas Constitution Art. 1, the bill of rights of the state constitution, governs the right to worship, right of trial by jury, and protection against imprisonment for debt, among several other state constitutional rights.

During the COVID-19 pandemic, the Texas Health and Human Services Commission (HHSC) required nursing facilities to prevent non-essential visitors from entering the facilities to mitigate the spread of COVID-19. As the number of COVID-19-related infections, hospitalizations, and deaths decreased, HHSC expanded visitation statewide in nursing facilities and other long-term care settings.

Digest

Proposition 6 would add sec. 35 to Art. 1 of the Texas Constitution to grant residents of certain long-term care facilities the right to designate an essential caregiver with whom the facility could not prohibit in-person visitation. The proposition would apply to a resident in a nursing facility, assisted living facility, intermediate care facility for individuals with an intellectual disability, residence providing home and community-based services, or state supported living center.

The Legislature by general law could provide guidelines for a facility to follow in establishing essential caregiver visitation policies and procedures.

The ballot proposal reads: "The constitutional amendment establishing a right for residents of certain facilities to designate an essential caregiver for in-person visitation."

Supporters say

Proposition 6 would grant residents of long-term care facilities the right to designate an essential caregiver for in-person visitation, ensuring that residents had access to an essential caregiver at all times, with limited exceptions. Essential caregivers are vital in providing hands-on care and social and emotional support to residents, which supplements care provided by facility staff.

During the COVID-19 pandemic, visitation restrictions in long-term care facilities were difficult for residents and their families, as well as for facility staff. Many residents were isolated and lacked connection and physical touch from loved ones for several months, and as a result of these restrictions, some patients died alone. By allowing residents to designate an essential caregiver, Proposition 6 would ensure vulnerable Texans had access to loved ones, which could improve residents' physical and mental health.

Designating only one essential caregiver at a time would be an appropriate balance between ensuring residents received visits from a loved one and providing flexibility for facilities to respond to a future disease outbreak.

Critics say

Proposition 6 should allow a long-term care facility resident or the resident's guardian or representative to designate more than one person at a time as an essential caregiver for in-person visitation. Limiting the essential caregiver designation to only one person could prevent other family members and friends from seeing a loved one who was near or at the end of life.

Proposition 7: Property tax limitation for surviving spouse of person with disability

HJR 125 by Ellzey (Birdwell)

Background

Under Texas Constitution Art. 8, sec. 1-b(c), the Legislature by law may exempt from property taxation for public school purposes up to $10,000 of the value of the residence homestead of a person who is disabled or who is at least 65 years old. Under sec. 1-b(d), school property taxes may not be increased while the property remains the person's residence homestead. If a person who is at least 65 years old dies in a year in which the person received the exemption, school property taxes may not be increased while it remains the residence homestead of the person's surviving spouse if the spouse is at least 55.

Tax Code sec. 11.13 provides the statutory residence homestead exemption for individuals who are at least 65 or who have a disability. Sec. 11.26(a) prohibits a school district from increasing taxes above the amount imposed the first year the individual qualified for the exemption. Sec. 11.26(i) entitles the surviving spouse of an individual who is at least 65 to the limitation if the spouse is at least 55 and maintains the residence homestead.

In 2019, the 86th Legislature enacted HB 1313 by P. King, which expanded the tax limitation under sec. 11.26 to include the surviving spouse of an individual with a disability. The bill took effect January 1, 2020.

Digest

Proposition 7 would amend Texas Constitution Art. 8, sec. 1-b to provide that the surviving spouse of an individual who received a limitation on the school district property taxes on the individual's residence homestead on the basis of disability continued to receive it while the property remained the spouse's residence homestead if the spouse was at least 55 years old.

The proposition would validate the changes to law made by HB 1313, as enacted by the 86th Legislature, and an action taken by a tax official in reliance on that bill. A collector would have to calculate the taxes that should have been imposed for the 2020 and 2021 tax years according to that bill, and if the taxes collected exceeded those that should have been imposed, the collector would have to refund the difference to the surviving spouse. This provision would expire January 1, 2023.

The ballot proposal reads: "The constitutional amendment to allow the surviving spouse of a person who is disabled to receive a limitation on the school district ad valorem taxes on the spouse's residence homestead if the spouse is 55 years of age or older at the time of the person's death."

Supporters say

Proposition 7 is necessary to ensure that the surviving spouse of an individual with a disability who qualified for a homestead exemption could continue to receive the school district property tax limitation, or "freeze," on the surviving spouse's residence homestead. The spouses of deceased individuals over 65 already qualify for the property tax freeze, and the proposition would provide the same limitation to the surviving spouse of a person with a disability. This would deliver meaningful relief to surviving spouses on a fixed income and ensure they were not priced out of their homes.

The proposition also would validate HB 1313, which expanded in statute the limitation for the surviving spouse of an individual with a disability. The bill was enacted in 2019, but the legislative session ended before the accompanying joint resolution could be passed to amend the constitution. As a result, while state law currently extends the tax limitation to surviving spouses of individuals with a disability, it cannot be enforced because the Texas Constitution does not reflect the statutory change.

A temporary provision would refund any taxes paid in 2020 or 2021 over the limitation so that the change made by the proposition aligned with the January 1, 2020, effective date of HB 1313. Proposition 7 gives voters the opportunity to clarify the law so that surviving spouses could collect that refund and continue receiving the property tax limitation, ensuring they did not face an unexpected tax increase after the loss of a spouse.

Critics say

Texans should be wary of continuing the trend of homestead exemptions and limitations on property taxes that show preferential treatment to specific taxpayers. By extending the tax freeze for the surviving spouse of a person with a disability who qualifies for a homestead exemption, Proposition 7 could reduce school district revenues and increase costs to the state through the operation of school funding formulas. Such tax freezes also could shift more of the tax burden to those who do not qualify for the exemption, including businesses, renters, and younger homeowners.

Proposition 8: Expanding homestead exemption eligibility for surviving spouses of service members

SJR 35 by Campbell (Lopez)

Background

Texas Constitution Art. 8, sec. 1-b(m) allows the Legislature by law to provide that the surviving spouse of a member of the U.S. armed services who was killed in action is entitled to an exemption from property taxes of all or part of the market value of the spouse's residence homestead if the spouse has not remarried.

Tax Code sec. 11.133 provides the statutory property tax exemption on the total appraised value of the residence homestead of the surviving spouse of a member of the armed services killed in action if the spouse has not remarried. Under this statute, the surviving spouse who receives the exemption is entitled to receive an exemption of equal amount on another property that subsequently qualifies as the surviving spouse's residence homestead.

Digest

Proposition 8 would amend Texas Constitution Art. 8, sec. 1-b(m) to expand eligibility for the residence homestead tax exemption currently provided to the surviving spouse of a member of the U.S. armed services who was killed in action. With the amendment, the surviving spouse would be entitled to the exemption if the service member was killed or fatally injured in the line of duty.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a member of the armed services of the United States who is killed or fatally injured in the in the line of duty."

Supporters say

Proposition 8 and its enabling legislation would correct an oversight in current law by providing the residence homestead tax exemption to all surviving spouses of members of the U.S. armed services killed in the line of duty. In 2013, Texans voted to provide a full property tax exemption on the homestead of spouses of members killed in action. However, the term "killed in action" does not include acts of terrorism or non-hostile events or incidents, such as accidental vehicle crashes. As a result, surviving spouses of members who died in accidents or events that were not directly combat-related but that occurred in the line of duty are not eligible for the homestead exemption. By expanding the eligibility to include surviving spouses of members killed or fatally injured in the line of duty, rather than only those killed in action, the proposition would include more surviving spouses.

The proposition would apply to only a small number of individuals per year and would not have a large fiscal impact on local governments or the tax base. However, the impact of the homestead tax exemption for those individuals would be meaningful and provide relief in a time of need. Those who have been killed in tragic accidents have given their lives for their country, and their sacrifice is equally deserving of the exemption as the sacrifice of those who were killed in active combat. Proposition 8 would ensure they were treated with the same respect.

Critics say

By expanding the exemption on the total value of the homestead of surviving spouses of service members, Proposition 8 would continue a problematic trend of exemptions for certain individuals. This can lead to local

governments raising taxes on property that does not qualify for the exemption, such as businesses, to remain revenue neutral. The proposition also would expand an exemption that could be claimed by wealthy individuals capable of paying the taxes, since there is no value limit, and would continue it for an indefinite period of time until the spouse remarried. Instead of expanding this exemption, the Legislature should focus on other ways to reduce the property tax burden for all Texans.

Notes

The enabling legislation for Proposition 8, SB 611 by Campbell, would expand eligibility for the residence homestead exemption by specifying that the surviving spouse of a member of the U.S. armed services that was killed or fatally injured in the line of duty was entitled to the exemption.

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Toni Rose

John H. Reagan Building
Room 420
P.O. Box 2910
Austin, Texas 78768-2910
(512) 463-0752

www.hro.house.texas.gov

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