



Constitutional Amendment Election: November 2019

by James Quintero & Shelby Sterling

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Texas Public Policy
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Executive Summary

On November 5th, 2019, Texans will consider 10 constitutional amendments submitted for voter approval by the state Legislature. The proposed amendments cover a wide range of different subject matter areas, including tax policy, infrastructure funding, restrictions on officeholders, and more.

An amendment only becomes part of the Texas Constitution if it receives a simple majority of the votes in favor of the proposition. The effective date for voter-approved amendments is the date of the official canvass of returns showing its adoption, unless another date is clearly specified. By law, the date of canvass cannot be earlier than the 15th or later than the 30th day after Election Day.

- **Proposition 1:** Permitting a person to hold more than one office as a municipal judge at the same time.
- **Proposition 2:** Allowing the Texas Water Development Board to issue additional general obligation bonds for water development projects.
- **Proposition 3:** Allowing the Legislature to offer temporary property tax exemptions for persons owning property in an area that was declared a disaster area by the governor.
- **Proposition 4:** Prohibiting the state from imposing or collecting an individual income tax.
- **Proposition 5:** Dedicating state tax revenue from the sporting goods sales tax to the Texas Parks and Wildlife Department and the Texas Historical Commission.
- **Proposition 6:** Increasing the Cancer Prevention and Research Institute of Texas' maximum bonding authority.
- **Proposition 7:** Allowing increased distributions to the Available School Fund.
- **Proposition 8:** Creating a flood infrastructure fund, using appropriations from the economic stabilization fund.
- **Proposition 9:** Authorizing the Legislature to create a property tax exemption for precious metals held in Texas depositories.
- **Proposition 10:** Allowing a state agency or political subdivision to transfer a retired law enforcement animal to a qualified caretaker under certain circumstances.

The following report contains additional information on each of the proposed amendments.

KEY POINTS

- Voters will consider 10 constitutional amendments on November 5, 2019.
- The proposed amendments cover a wide range of different subject matter areas, including tax policy, infrastructure funding, restrictions on officeholders, and more.
- An amendment only becomes part of the Texas Constitution if it receives a simple majority of the votes in favor of the proposition.

DID YOU KNOW...

The 86th Texas Legislature filed more than 7,300 separate pieces of legislation during its 140-day regular session, which began on Tuesday, January 8, 2019, and concluded on Monday, May 27, 2019. Approximately 1,400 of those bills became law. In addition, the Legislature also passed 10 constitutional amendments as joint resolutions, 7 of which originated in the House and 3 in the Senate.

86th Regular Session – 2019										
Status	HB	HCR	HJR	HR	SB	SCR	SJR	SR	Total HB & SB	Total
Introduced	4765	186	147	2217	2559	68	70	865	7324	10877
Passed	969	102	7	2155	460	23	3	862	1429	4581
Vetoed	41	2	n/a	n/a	15	0	n/a	n/a	56	58

Source: [Legislative Reference Library of Texas](#)

PROPOSITION #1 (HJR 72):

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

PLAIN LANGUAGE DESCRIPTION:

Prop. 1 allows a municipal judge to hold office in more than one city at the same time, regardless of whether that person is elected or appointed to office.

WHAT TO KNOW:

[Article 16, Section 40 of the Texas Constitution](#) expressly forbids a person from holding more than one paid public office at the same time, with certain exceptions.

Appointed and elected municipal court judges are held to different standards. The former may serve in a judgeship position in multiple cities at the same time, but the latter is prohibited.

Small and rural cities sometimes have difficulty filling judicial vacancies with qualified candidates, who are necessary for the day-to-day administration of justice.

PRO ARGUMENTS

- Under current law, an appointed municipal judge can serve in multiple cities simultaneously. This type of judge “make[s] up more than about 95 percent of the approximately 1,300 municipal judges” ([HRO, 5](#)). However, an elected municipal court judge may not hold an elected or appointed judgeship in another city.
- This restriction on elected judges limits the pool of available candidates, potentially causing harm to public health and safety.
- There are already exceptions to the Constitution’s one-office rule, including for justice of the peace.

CON ARGUMENTS

- This amendment would create another exception to the one-office rule, further eroding its application and inviting future challenges to the long-standing precedent.
- Permitting a municipal court judge who holds an elected office to serve in more than one jurisdiction may mean that the person is not devoting their full attention to the cases before their court.

PROPOSITION #2 (SJR 79):

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

PLAIN LANGUAGE DESCRIPTION:

Prop. 2 lets the Texas Water Development Board (TWDB) go further into debt to fund water development projects in economically distressed areas.

WHAT TO KNOW:

The TWDB operates the Economically Distressed Areas Program (EDAP), which “provides financial assistance for the development of water supply and sewer service projects in economically distressed areas where water supply or sewer services are inadequate to meet minimal needs of residential users” ([TLC, 7](#)). TWDB uses the proceeds from bonds that it sells to fund EDAP.

The constitutional amendment submitted to voters would authorize the TWDB to issue additional general obligation bonds in an amount not to exceed \$200 million.

PRO ARGUMENTS

- If approved, this funding will provide the financing necessary to complete water and wastewater projects in economically distressed areas.
- Without this funding, some Texans’ access to safe water might be limited.
- Water infrastructure projects are best financed through the issuance of bonds because the costs can be spread out over time.
- Using general revenue to finance EDAP projects could put a strain on the state’s available resources.

CON ARGUMENTS

- This amendment proposes to increase the size and cost of state government and increase the already substantial debt of the state of Texas.
- This creates another constitutionally dedicated fund.
- If the amendment is approved by voters, the Legislative Budget Board estimates that the issuance of new state debt will “have a negative impact of about \$3.5 million to general revenue related funds through fiscal 2020-21” ([SJR 79 Bill Analysis, 3](#)).

PROPOSITION #3 (HJR 34):

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

PLAIN LANGUAGE DESCRIPTION:

Prop. 3 allows local officials to adopt a temporary property tax exemption for persons owning property in an area declared to be a disaster by the governor.

WHAT TO KNOW:

[Article 8, Section 1 of the Texas Constitution](#) states: “Taxation shall be equal and uniform.” However, the Constitution also allows the Legislature to exempt property from taxation in limited instances.

The proposed constitutional amendment would allow a political subdivision to create a temporary tax exemption for persons owning property in an area declared a disaster by the governor.

The state Legislature would retain the right to determine the amount and duration of the exemption.

PRO ARGUMENTS

- If approved, the constitutional amendment would give property taxing units a more efficient and understandable way to provide Texans with some tax relief following a natural disaster.
- The proposed exemption is a superior approach because it is a more familiar concept, and it would provide more immediate relief.
- Property owners would be automatically entitled to the temporary exemption after a disaster if it occurred before the local tax rate was adopted.

CON ARGUMENTS

- Temporary property tax exemptions could deprive local governments of necessary funds in the aftermath of a natural disaster.
- Entitling property owners to an exemption following a disaster would usurp a measure of local control that potentially interferes with an entity’s ability to make informed budgetary decisions.
- It’s a good step, but Proposition 3 doesn’t go far enough. For instance, if a disaster is declared after the local taxing unit has adopted its tax rate, then immediate tax relief may not be forthcoming to property owners.

PROPOSITION #4 (HJR 38):

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

PLAIN LANGUAGE DESCRIPTION:

Prop. 4 prohibits the state from imposing an individual income tax.

WHAT TO KNOW:

[Article 8, Section 24 of the Texas Constitution](#) requires the imposition of any income tax to be approved by a majority of registered voters.

While an income tax could be theoretically imposed on Texas taxpayers, the proposed constitutional amendment, if approved, would expressly prohibit it altogether.

Research has proven that states without an income tax economically outperform states that impose an income tax.

PRO ARGUMENTS

- An income tax would harm the Texas economy. An explicit ban would strengthen Texas economic prospects and boost its reputation as a business-friendly state.
- A poll by the University of Texas at Austin and the *Texas Tribune* found that 71 percent oppose an individual state income tax.
- The state already has a robust revenue stream without imposing an income tax.
- An individual income tax would increase the size of state government by requiring the creation of a new administrative agency.

CON ARGUMENTS

- The Constitution already sets a high bar for imposing an income tax by requiring a majority of voters to approve.
- Making it impossible to levy an income tax takes away a potential revenue stream from future Texas governments to fund increased spending.
- The amendment's use of the term "individual" rather than the Constitution's use of the term "natural persons" could create a loophole for corporations to exploit.

PROPOSITION #5 (SJR 24):

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

PLAIN LANGUAGE DESCRIPTION:

Prop. 5 dedicates the full value of the sporting goods sales tax to the Texas Parks and Wildlife Department (TPWD) and the Texas Historical Commission (THC).

WHAT TO KNOW:

In the past, the Legislature statutorily dedicated revenue generated by the sales tax on sporting goods to the TPWD and the THC. However, the money collected from the tax often exceeds the amount given to the state agencies.

The Legislature has regularly appropriated less than the full amount available to the TPWD and the THC. According to the HRO, “For the 2018-19 biennium, 88.6 percent of the estimated sporting goods sales tax was appropriated to the agencies” ([HRO, 13](#)).

Proposition 5 proposes to constitutionally protect this source of revenue and guarantee that the money generated goes to fund state parks and historic sites.

PRO ARGUMENTS

- As a result of Texas' growing tourism industry and booming population, more people are visiting state parks and historical sites. However, both suffer from a lack of funding, as evidenced by inadequate staffing and deferred maintenance.
- Dedicating these funds would provide the TPWD and the THC with a sustainable and predictable revenue stream to assist with backlogged maintenance, maintaining historical sites, and improving facilities.
- This will help the TPWD and the THC create and implement long-term plans that will benefit all Texans.

CON ARGUMENTS

- Constitutionally dedicating these funds harms the Legislature's ability to remain flexible and use taxpayer funds at its discretion.
- Dedicated accounts can exacerbate the unnecessary growth of government by requiring public money to be spent on lesser priorities.
- Continuously creating dedicated funding streams—prior to this, funding was constitutionally dedicated for roads—can incentivize other state agencies to also seek their own protected revenue sources.

PROPOSITION #6 (HJR 12):

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

PLAIN LANGUAGE DESCRIPTION:

Prop. 6 allows the Cancer Prevention and Research Institute of Texas (CPRIT) to spend additional taxpayer money.

WHAT TO KNOW:

In 2007, Texas voters approved the creation of the Cancer Prevention and Research Institute of Texas and authorized the state to issue \$3 billion in bonds “to expedite innovation in cancer research and product development, and to enhance access to evidence-based prevention programs throughout the state” ([CPRIT](#)).

Additional funding provided in Proposition 6 will allow CPRIT to continue awarding grants for cancer research. Without the additional funds, existing funds authorized in 2007 will likely cause CPRIT to award its last grant by the end of fiscal year 2021.

Since CPRIT’s creation, Texas has become the 2nd largest public funder of cancer research in the country.

PRO ARGUMENTS

- More funding will ensure that Texas maintains its reputation as a national leader in cancer research and prevention.
- Initial and continued funding for cancer research might be beneficial the state economy.
- The programs and advancement in cancer research made possible by the grants awarded through CPRIT have:
 - Brought world-renowned scholars to Texas;
 - Made the state a biomedical center that encourages biotech companies to come here;
 - Created thousands of jobs; and
 - Generated billions of dollars of economic activity for the state economy.

CON ARGUMENTS

- The funding of cancer research is not generally considered an essential function of state government.
- This proposition will increase the debt burden and require the payment of interest and divert future appropriations that could be better spent elsewhere.
- The estimated two-year net impact to general revenue related funds is estimated at \$12.5 million through August 31, 2021.
- The agency still has unused capacity. According to the Legislative Budget Board, “Currently, CPRIT has \$150.0 million in unappropriated bond authority and \$286.0 million in unexpended previously appropriated authority that has gone unencumbered available for the 2020-21 biennium” ([HJR 12 Fiscal Note, 2](#)).

PROPOSITION #7 (HJR 151):

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

PLAIN LANGUAGE DESCRIPTION:

Prop. 7 would make more money available to public education through the Available School Fund.

WHAT TO KNOW:

The State Board of Education (SBOE) and the General Land Office (GLO) manage the Permanent School Fund (PSF), “an endowment fund established by the Texas Constitution that consists of fixed income and equity holdings, state lands, mineral rights, and royalty earnings” ([LBB, 1](#)). The PSF is intended to be a permanent revenue source for Texas public education through transfers to the Available School Fund (ASF).

The PSF primarily generates revenue through the management, sale, and leasing of land. The PSF may transfer as much as \$300 million annually to the ASF, which “pays for instructional materials and classroom technology and provides additional funding to school districts on a per-student basis” ([HRO, 17](#)).

Proposition 7 allows the entities responsible for managing the PSF to distribute as much as \$600 million annually to the ASF.

PRO ARGUMENTS

- With voter approval of Proposition 7, state support of public education could see an important boost.
- Were the \$300 million annual cap on distributions not in place, recent investment returns could have benefitted public education greatly.
- Proposition 7 gives the SBOE and the GLO more discretion on how to allocate additional revenues.
- Increased funding from state sources should mean that school districts are less reliant on property taxes.

CON ARGUMENTS

- While funding for public education may increase, there is no guarantee that student outcomes will improve.
- Some argue that “Raising the cap on PSF transfers to the ASF could ultimately result in lower school funding because of the manner in which the GLO and the SBOE share responsibility for managing the PSF” ([TLC, 35](#)).

PROPOSITION #8 (HJR 4):

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

PLAIN LANGUAGE DESCRIPTION:

Prop. 8 would create the Flood Infrastructure Fund (FIF) to help finance flood infrastructure projects around the state.

WHAT TO KNOW:

If approved by voters, the infrastructure fund would create a special fund outside the regular appropriations process to be used by the Texas Water Development Board to finance drainage, flood mitigation, and flood control projects.

FIF 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 non-structural (*e.g.*, education, mitigation plans, and engineering studies)” ([HRO, 19](#)).

PRO ARGUMENTS

- Natural disasters have been devastating Texas for several decades, with the nation’s most destructive storm in 2017 hitting the southern border of the state. A regional funding mechanism will help Texas become more resilient.
- The state currently lacks a financing mechanism to aid local jurisdictions with flood preparation. Federal funding often, if not always, requires local jurisdictions to put up matching funds, which may sometimes be unrealistic.
- The enabling legislation provides new layers of accountability, including the requirement that local governments hold public hearings and cooperate with other entities in the region.

CON ARGUMENTS

- FIF is another special permanent fund created outside the regular appropriations process.
- Sufficient funding sources—federal, state, and local—already exist and are available to support flood mitigation efforts.
- The infrastructure fund is an ongoing state program that would receive \$793 million in funding through the Economic Stabilization Fund, a fund generally reserved for one-time expenses. Money for this effort should come from general revenue, not a one-time source.

PROPOSITION #9 (HJR 95):

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

PLAIN LANGUAGE DESCRIPTION:

Prop. 9 would exempt precious metals held in Texas depositories from property taxes.

WHAT TO KNOW:

In 2015, the state Legislature passed a new law ([HB 483](#)) creating the Texas Bullion Depository. Upon its creation, Gov. Greg Abbott said of it: "...the Texas Bullion Depository will become the first state-level facility of its kind in the nation, increasing the security and stability of our gold reserves and keeping taxpayer funds from leaving Texas to pay for fees to store gold in facilities outside our state" ([Texas Bullion Depository](#)).

Proposition 9 would amend the Texas Constitution to create a property tax exemption for income-producing and non-income-producing precious metals stored in the Texas Bullion Depository and other depositories in the state.

PRO ARGUMENTS

- The passage of Proposition 9 would protect precious metals held in depositories from being taxed. Such precious metals are similar to other currency, like cash.
- Other states do not tax precious metal depositories. A ban on this type of tax would allow Texas depositories to compete with those depositories in other states.
- Precious metals held in depositories are generally not taxed now, so Proposition 9 would explicitly prohibit such a tax while making very little impact on the system of property taxes.

CON ARGUMENTS

- Texas' property tax system is already under examination and in the process of revision. All exemptions should go through a thorough review before any more are added.
- Adding another exemption to an already extensive property tax exemption list could further erode the integrity of Texas' tax system.
- Granting a tax exemption of this nature seeks to influence market behavior. State government should not pick winners and losers in the marketplace.

PROPOSITION #10 (SJR 32):

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

PLAIN LANGUAGE DESCRIPTION:

Prop. 10 allows a state or local government to transfer a retired law enforcement animal to the animal's handler or another qualified person, without a fee.

WHAT TO KNOW:

The Texas Constitution currently prevents the transfer of certain public property—like law enforcement animals—to private citizens or organizations at no cost.

Proposition 10 proposes to allow a state agency or a 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” ([HRO, 23](#)).

PRO ARGUMENTS

- Currently, retired law enforcement animals are often adopted by their former handlers, but current law on the transfer of public property has created confusion in this area.
- Explicitly allowing the transfer of a retired law enforcement animal to its handler respects and honors the bond between the two partners.
- Many law enforcement animals live with their handlers during their time of service. Thus, the transfer of the animal after retirement to the handler is most often the best for the animal.

CON ARGUMENTS

- Domestic animals are classified as property under Texas law. Law enforcement animals are the property of the agency, and therefore, the state. Transfer of such property without a fee could cost the agency money.
- There could be potential discrepancies with ownership if the law enforcement animal has had more than one handler during its time of service.

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About the Authors



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Since joining the Foundation in 2008, Quintero has focused extensively on: state & local government spending, taxes, debt, public pension reform, annexation, and local regulations. His work has been featured in *The New York Times*, *Forbes*, *The Huffington Post*, *Fox News* and *Breitbart*. He is currently a bi-weekly contributor to the *Austin American-Statesman*.



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About the Texas Public Policy Foundation

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