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**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** Texas Legislative Update III - Proposed Constitutional Amendments SJR 35 and HJR 125

In the 2021 Regular Legislative Session, the Texas Legislature proposed the eight constitutional amendments described below to be submitted to the voters at an election to be held November 2, 2021.

1. [House Joint Resolution 143](#) 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.
2. [House Joint Resolution 99](#) authorizing a county to finance the development or redevelopment of transportation or infrastructure in unproductive, underdeveloped, or blighted areas in the county.
3. [Senate Joint Resolution 27](#) prohibiting Texas or a political subdivision of Texas from prohibiting or limiting religious services of religious organizations.
4. [Senate Joint Resolution 47](#) 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.
5. [House Joint Resolution 165](#) providing additional powers to the State Commission on Judicial Conduct with respect to candidates for judicial office.
6. [Senate Joint Resolution 19](#) establishing a right for residents of certain facilities to designate an essential care giver for in-person visitation.
7. [House Joint Resolution 125](#) allowing 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.
8. [Senate Joint Resolution 35](#) 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 line of duty.

This legislative update addresses proposed constitutional amendments in Senate Joint Resolution 35 and House Joint Resolution 125 that we consider may be of interest to our clients. Prior to this legislative update, we issued Legislative Update I, summarizing bills effective immediately; and Legislative Update II, summarizing bills effective September 1, 2021. Legislative Updates I and II may be found on the Resources page of the firm's website [www.bmandg.com](http://www.bmandg.com).

(4 pages)

1. [SENATE JOINT RESOLUTION 35](#) PROPOSES A CONSTITUTIONAL AMENDMENT TO SECTION 1-B(M), ARTICLE VIII, TEXAS CONSTITUTION, 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 LINE OF DUTY

Current Section 1-b(m), Article VIII, Texas Constitution, does not include the surviving spouse of members of the military who die during their service due to injuries sustained that are not combat-related. Senate Joint Resolution 35 proposes to correct that oversight by deleting the words “in action” and adding the phrase “or fatally injured in the line of duty” so that it reads:

The legislature by general law may provide that the surviving spouse of a member of the armed services of the United States who is killed or fatally injured in the line of duty is entitled to an exemption from ad valorem taxation of all or part of the market value of the surviving spouse’s residence homestead if the surviving spouse has not remarried since the death of the member of the armed services.

Senate Joint Resolution 35 proposes to add a temporary provision that states: (1) the temporary provision applies to the proposed amendment to Section 1-b(m), Article VIII, Texas Constitution; (2) the proposed amendment, if approved by the voters at an election to be held November 2, 2021, takes effect January 1, 2022, and applies only to a tax year beginning on or after that date; and (3) the temporary provision expires January 1, 2023.

[Senate Bill 611](#) is the enabling legislation for Senate Joint Resolution 35 and proposes to amend the heading of Section 11.133 and the text of Section 11.133(b) of the Tax Code to conform them to the proposed amendment to Section 1-b(m), Article VIII, Texas Constitution, made by Senate Joint Resolution 35 by deleting the words “in action” and adding the phrase “or fatally injured in the line of duty”.

Senate Bill 611 also makes the following amendments to Chapter 11 of the Tax Code:

Section 11.431(a) is amended by adding “Except as provided by Section 11.439,” and deleting “including an exemption under Section 11.131 or 11.132 for the residence homestead of a disabled veteran or the surviving spouse of a disabled veteran, an exemption under Section 11.133 for the residence homestead of the surviving spouse of a member of the armed services of the United States who is killed in action, or an exemption under Section 11.134 for the residence homestead of the surviving spouse of a first responder who is killed or fatally injured in the line of duty,” so that Section 11.431(a) reads:

Except as provided by Section 11.439, the chief appraiser shall accept and approve or deny an application for a residence homestead exemption after the deadline for filing it has passed if it is filed not later than two years after the delinquency date for the taxes on the homestead.

Section 11.439(a) is amended to require the chief appraiser to accept and approve or deny an application for an exemption under Section 11.131 or 11.132 for the residence homestead of a disabled veteran but not the surviving spouse of the disabled veteran or Section 11.22 after the filing deadline provided by Section 11.43 if the application is filed not later than five years after the delinquency date for the taxes on the property.

Senate Bill 611 states: (1) except for amended Section 11.133, Senate Bill 611 takes effect January 1, 2022; (2) amended Section 11.133 applies only to a tax year beginning on or after January 1, 2022; (3) amended Sections 11.431 and 11.439 apply only to an application for an exemption filed for a tax year that begins on or after January 1, 2022; and (4) amended Section 11.133 takes effect January 1, 2022, but only if the constitutional amendment proposed by Senate Joint Resolution 35 is approved by the voters and if it is not approved by the voters, amended Section 11.133 has no effect.

2. HOUSE JOINT RESOLUTION 125 PROPOSES A CONSTITUTIONAL AMENDMENT TO SECTION 1-B(D), ARTICLE VIII, TEXAS CONSTITUTION, 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

Section 1-b(c), Article VIII, Texas Constitution, provides that the legislature by general law may exempt an amount not to exceed \$10,000 of the market value of the residence homestead of a person who is disabled and of a person 65 years of age or older from ad valorem taxation for general elementary and secondary public school purposes.

Section 1-b(d), Article VIII, Texas Constitution, provides that if a person receives the above residence homestead exemption prescribed by Section 1-b(c) for persons who are 65 years of age or older or who are disabled, the total amount of ad valorem taxes imposed on that homestead for general elementary and secondary public school purposes may not be increased while it remains the residence homestead of that person or that person's spouse who receives the exemption. Section 1-b(d) also provides that if a person 65 years of age or older dies in a year in which the person received that Section 1-b(c) exemption, the total amount of ad valorem taxes imposed on the homestead for general elementary and secondary public school purposes may not be increased while it remains the residence homestead of that person's surviving spouse if the spouse is 55 years of age or older at the time of the person's death, subject to any exceptions provided by general law. In 2019, the 86th Legislature enacted [House Bill 1313](#) amending Section 11.26(i) of the Tax Code to expand the exemption in Section 11.26(i) to include the surviving spouse of an individual who is disabled. However, no proposed constitutional amendment to Section 1-b(d) was submitted to the voters for approval. Thus, House Joint Resolution 125 proposes correct this discrepancy between Section 1-b(d) and amended Section 11.26(i) and to validate the changes made by House Bill 1313 to Section 11.26 of the Tax Code.

House Joint Resolution 125 proposes to add a temporary provision that states: (1) the 2019 amendments to Section 11.26 of the Tax Code made by House Bill 1313 are validated; (2) an action taken by a tax official in reliance on the 2019 amendments to Section 11.26 of the Tax

Code made by House Bill 1313 are also validated; (3) the proposed constitutional amendment must be submitted to the voters at an election to be held November 2, 2021; (4) the temporary provision expires January 1, 2023; and (5) a collector who collected school district ad valorem taxes from a surviving spouse who, under the 2019 amendments to Section 11.26 of the Tax Code made by House Bill 1313, was entitled to receive a limitation on school district taxes on the spouse's residence homestead must calculate the school district taxes that should have been imposed for the 2020 and 2021 tax years taking into account the amendments to Section 11.26 of the Tax Code made by House Bill 1313 and, if the taxes collected for those tax years exceed the taxes that should have been imposed as calculated under this section of the temporary provision, the collector shall refund to the surviving spouse the difference between the taxes collected and the taxes that should have been imposed as calculated under this section of the temporary provision.

This legislative update does not contain complete descriptions of the proposed constitutional amendments in SJR 35 and HJR 125, and you are advised to read these proposed constitutional amendments if you believe they affect your business. You may request copies from us, or you may click on the hyperlink in the title to each.

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