

SUBJECT: Financing sports and community venues

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: *(After recommitted):*
6 ayes — Brimer, Rhodes, Corte, Elkins, Janek, Solomons

0 nays

2 present, not voting — Dukes, Giddings

1 absent — Woolley

WITNESSES: For — Ron Kirk, City of Dallas; Bob Lanier, City of Houston; Beth Rodgers Falkstein; George E. Block, Jr., Alamo Area Aquatics Association and San Antonio Sports Foundation; Jim Kollaer, Greater Houston Partnership; Bill Clayton, City of Irving; Greg Hartman, San Antonio Spurs; Jon Hockenyos, San Antonio Spurs and Texas Perspectives, Inc.; Robert M. Eury, Central Houston, Inc.; Janet Landay; David Biegler, Greater Dallas Chamber of Commerce; Gilberto Hinojosa, Cameron County; Susan Blackwood; Howard Jefferson; Pat Frost, San Antonio Sports Foundation; Brooke Leslie; Mary Nan West, San Antonio Stock Show and Rodeo; Louis M. Pearce, Jr., Houston Livestock Show and Rodeo; Tom Vandergriff, Tarrant County Commissioners Court; Robert Eckels, Harris County Commissioners Court; Richard Greene, City of Arlington; Arthur Wave, Potter County; Cherlyn Christensen, Amarillo Tri-State Exposition; Dianne Bosch, Citizens of Amarillo and Panhandle Area; Kenneth Barr, Fort Worth City Council

Against — John Shewmaker; Mark Thomas Wasiak, Greater Houston Hotel and Motel Association; Joseph E. Spinnato and Don Hansen, Texas Hotel and Motel Association; Mark S. Rosentraub, Texas Car and Truck Rental and Leasing Association; Robert Musgrove; John E. Grimes, Texans for Fair Play and Enterprise Rent a Car; Erik Leonard

On — Barry Klein, Houston Property Rights Association and No Blank Check PAC; Ron Hinkle, Texas Department of Commerce; Mike Reissig, Comptroller's Office

BACKGROUND : Municipalities and counties in Texas currently use a variety of options to build sports and community facilities. The 71st Legislature in 1989 enacted HB 1738 by Craddick, authorizing certain counties to form sports districts for the purpose of building new sports facilities. These sports districts can acquire land for a stadium through eminent domain and can issue bonds to finance a new facility. Sports districts do not have taxing authority.

The Development Corporation Act of 1979 (VACS, art. 5190.6) permits development corporations to issue bonds and levy taxes to service bond debt. Upon approval of voters, these corporations may levy a sales and use tax of up to one-half percent, so long as the municipality does not exceed the two-percent maximum on local sales taxes. The 72nd Legislature in 1991 expanded the scope of development corporations to include tourism, athletic and entertainment facilities when it approved SB 376 by C. Harris, which established 4B corporations in addition to existing 4A industrial and manufacturing corporations.

For additional information on current methods of financing sports and community facilities, see House Research Organization Report Session Focus Report Number 75-10, *On Deck: Financing Sports Facilities in Texas*, March 12, 1997.

DIGEST: CSHB 92 would allow cities and counties to build sports and community venue projects and related infrastructure. Two cities, two counties, or a city and a county could form a venue district to build a sports or community venue project. Entities could issue bonds to finance projects once they gained voter approval. Projects could tap a variety of funding mechanisms, including a half-cent sales tax, \$2 admissions tax, \$1 parking tax, 10 percent hotel occupancy tax, 5 percent car rental tax and a \$5,000 facility use tax. The bill would apply to Houston and Harris County only if the two jurisdictions jointly created a venue district.

A venue project, as defined in the bill, would include an arena, coliseum, stadium or other facility used for professional or amateur sports or community events and requiring admission fees. The term also could include a convention center, civic center, civic center hotel, auditorium,

theater, opera house, music hall, exhibition hall, museum, aquarium or plaza located near a convention center or other facility owned by a municipality or county, a tourist development area along an inland waterway, and any other economic development project authorized by other Texas law.

Financing mechanisms

CSHB 92 would allow municipalities, counties and venue districts to issue revenue bonds or other obligations to pay the costs of an approved venue project. The bonds would have to mature within 30 years from the date of issuance, be paid from and secured by revenue in the venue project fund, and approved by the attorney general.

Entities would establish a venue project fund for each revenue source used to finance the facility and deposit into it the proceeds from any taxes imposed and all revenue from the sale of bonds or other obligations. Money derived from other funding mechanisms, such as stadium rental payments and luxury box leases, also could be deposited into the fund.

Money in the fund could be used to reimburse the entity for or to pay the costs of planning, constructing or renovating a venue project; to pay principal, interest or other costs related to bonds or other obligations issued; or to pay operations and maintenance costs associated with an approved project. Entities also could acquire, sell, lease, convey or otherwise dispose of property or an interest in property.

Upon voter approval, entities could levy certain taxes for the purpose of financing an approved venue project. A ballot proposition would have to allow voters to vote for or against the tax and would have to specify the rate of the increase. Entities could not use property taxes to construct an approved venue project. Other taxes could be imposed only if bonds were issued to build the venue project and only while the bonds were outstanding and unpaid. Allowable funding options would include:

- **Sales and use tax** — Entities could impose a sales and use tax up to one-half cent in increments of one-eighth of one percent so long as the local sales tax rate did not exceed the total two percent maximum for local sales and use taxes. If the proposed tax would exceed the local cap,

the election would be treated as an election to reduce the tax rate of a rapid or regional transit authority, 4A or 4B economic development corporation, or a crime control district. If the entity was located within more than one special taxing authority, the election to increase or approve the tax would have to let voters choose which tax they desired to reduce. Municipalities creating a sports venue district could retain all municipal sales tax revenue from a business operating inside the venue project and earmark up to 25 percent of municipal sales taxes for use by the district upon approval by voters.

- **Car rental tax** — Entities could levy up to a 10 percent tax on most motor vehicles rented for periods of less than 30 days. Unless the owner of the rented vehicle was in compliance with exemptions from rental car taxes as provided in the Transportation Code, all gross receipts from the rental of a motor vehicle would be subject to the tax. Rental car receipts would have to include a statement that the additional tax was levied for the purpose of financing a venue project. Owners of a motor vehicle used for rental purposes would have to retain for four years records and supporting documents showing gross rental receipts received and the tax imposed and paid. Failure to keep records would be a misdemeanor, punishable by a fine between \$25 and \$100.
- **Facility use tax** — Entities could levy up to a \$5,000 facility use tax on each member of a major league team playing a professional sports game in an approved venue project. The tax could be levied on each member of the team for each professional game.
- **Other taxes** — Entities also could levy a flat admissions tax of up to \$2 for each ticket sold for an event at an approved venue project; an event parking tax of up to a \$1 on each vehicle parked at an approved venue during and up to three hours before and after an event; and a hotel occupancy tax of up to a five percent on each hotel room in the municipality, county or venue district.

Project approval

Comptroller approval. Entities seeking to build community and sports venues would have to send a copy of the resolution for planning and

constructing the venue to the comptroller for approval. The comptroller would have to respond within 15 days of receiving the resolution, determine if the proposed facility would have a significant negative fiscal impact on state revenue, and provide written notice of the results of the analysis. The resolution would be considered not to have a negative fiscal impact if the comptroller did not complete the analysis or provide notice within 15 days.

If the comptroller determined the project would have a significant negative fiscal impact on state revenue, the written analysis would have to include information on how the resolution could be changed to eliminate this impact. Entities also could contest the comptroller's finding by filing an appeal within 10 days. The comptroller would be required to respond within 11 days of receiving the appeal.

If building the venue would remove property from a school district's property tax rolls, a venue operator would be required to pay the school district annually an amount equal to the ad valorem taxes that would have been levied on the unimproved property. This provision would not apply if the operator of the venue was a city, county or other political subdivision; the venue project would be exempt from taxation under current public property exemptions in the Tax Code so long as it was owned by the municipality, county or venue district.

Voter approval. Voters would have to approve a community or sports venue project before a municipality, county or venue district could build it. The ballot proposition would have to allow voting for or against each project separately, on each method of financing, and on the maximum rate of each method. The Election Code would govern these elections.

Harris County would not have to hold another election to approve the construction of a sports venue project voters already have approved. However, it would be required to hold an election to approve imposition of a sales and use tax to finance the venue. Harris County also would not have to receive a comptroller's determination on a previously approved sports venue project.

Other provisions

Entities imposing a tax could prescribe penalties and interest charges for failure to keep required records or report or pay the tax. An attorney acting on behalf of the jurisdiction could bring suit against a person who failed to collect or pay the tax. In addition, entities could permit a person collecting back taxes to retain a percentage of the amount collected as reimbursement for collection costs.

Entities could contract with public or private persons, including a sports team, or enter into an interlocal agreement with a school district or junior or community college to plan, acquire, construct or renovate an approved venue project or perform other permitted duties. State competitive bidding laws would not apply to an approved venue project.

CSHB 92 would amend the Development Corporation Act of 1979 to prohibit sales and use taxes from being used for 4A and 4B sports venue projects or related infrastructure. It would delete professional and amateur sports facilities from the list of acceptable 4B projects and add amateur sports facilities only if a project also would qualify as a sports venue according to the definition in CSHB 92.

Effective date

CSHB 92 would take immediate effect if finally approved by a two-thirds record vote of the membership in each house, and would apply to tax revenue pledges to secure bonds on or after September 1, 1997. The car rental and hotel occupancy taxes within the boundaries of a sport and community venue district would be effective after September 30, 1997. The bill would not apply to a 4A or 4B economic development corporation or an industrial development corporation collecting a tax that was approved before September 1, 1997. If any part of this bill were found to be unconstitutional, the constitutionality of the rest of the law would not be affected.

SUPPORTERS SAY:

CSHB 92 would let the voters in each community decide whether or not they want to support local civic projects. It would allow localities to choose from a menu of financing options to build museums, professional and

amateur sports arenas, theaters and other projects. All municipalities and counties would have access to the same options and could employ them at varying rates, depending on the will of residents. Neither the state nor special interests should mandate how a locality spends its monies, and CSHB 92 would respect this by allowing voters to choose the appropriate funding, if any, for a local development project.

Civic facilities, such as museums and sports facilities, are a big boost to local economies and are a source of civic pride. These facilities contribute to the economic health of a city and can be an integral part of downtown revitalization efforts. Any public subsidy of community facilities would be repaid many times over from the sales taxes generated by the increased economic activity from the restaurants and shops around a new facility. In addition, any small increase in taxes chosen by a locality would not adversely impact the state or local economy. Besides, a municipality would be unlikely to charge the maximum rates of all the taxes because it would not need that much tax revenue to build a project. CSHB 92 would merely identify possible options for financing, and opposition to any particular option would be waged at the local level.

CSHB 92 would help Texas professional sports teams build new facilities or improve existing facilities in order to ensure that teams remain in Texas and continue to provide the economic benefits to the community and the state. The Houston Oilers will leave for Nashville after the 1997 football season because Houston could not afford to construct a new football stadium. Given the enormous economic and cultural boost sports teams contribute to the state and local economies, it is important that Texas cities have the ability to compete with other communities for major league sports teams.

CSHB 92 could help bring baseball spring training to Texas. The funding options identified in the bill could help the Rio Grande Valley persuade the Texas Rangers and other baseball teams training in Florida to relocate for future seasons. This would create jobs and be a boost to the south Texas economy.

CSHB 92 is a comprehensive economic development package that would be superior to options provided under current law. Sections 4A and 4B of the Development Corporation Act of 1979 are cumbersome and limited in

scope, and are continually amended to add special provisions. CSHB 92 would maintain the original intent and integrity of the act by eliminating the need for cities to seek special amending legislation in order to build sports facilities.

CSHB 92 would ensure only local money is used to finance local development projects. No state tax dollars would be available and local funding options could only be employed if the comptroller determined the local taxes would not have a significant negative impact on the state's economy.

The funding options identified in CSHB 92 would target the users and beneficiaries of these new facilities. All local residents benefit from a new community venue because of the increased property values, economic activity and tourist activity. If residents found sales taxes to be regressive, there would be other financing options available. These options, including hotel and car rental taxes, would be directly linked to projects that could be constructed under CSHB 92, such as civic and convention centers.

Cities with transit authorities and already at the state sales tax cap would not be placed at a competitive disadvantage because CSHB 92 would allow them to keep sales taxes generated by businesses at the facility and earmark up to 25 percent of receipts to pay off bond debt.

The language in CSHB 92 was carefully crafted to prevent any intrusion into future contract negotiations between cities and sports teams and other entities planning to use facilities built with the proposed financing methods. If a locality would like to be part owner of a facility it helped build, it would retain that option under the bill.

Entities also would retain flexibility with the facility use fee. CSHB 92 would establish a \$5,000 maximum facility use fee; cities would be able to determine the appropriate amount of the tax based upon the number of home games played by teams. If the \$5,000 fee were levied as a percentage of income, it could conceivably be considered an income tax; however, the flat fee would clearly be a user fee, just as the parking tax is a user fee. In addition, Texas would not be the first state to impose such a fee on

professional sports players. At least 20 other states levy a similar tax on professional sports players.

CSHB 92 would require that the comptroller approve venue project resolutions prior to an election to approve the project. Houston and Harris County would not have to seek comptroller approval because the voters have already approved the construction of a new sports facility.

The bill would provide a financing mechanism for much more than sports facilities — it would allow cities to build museums, theaters, civic centers, arenas for 4H shows and rodeos, and aquariums. It would empower localities to build local projects with local monies.

OPPONENTS
SAY:

Local taxpayers should not be forced to pay the cost of facilities that would otherwise be built by the private sector. Local governments are in dire need of revenue, and limited public resources should not be wasted on specialized and non-essential facilities. Rather than give away tax revenue to sports teams and other entities, local governments should use tax money to support public education and social services and protect the environment. Public money would be better used on reducing crime, creating well paying jobs, and providing health coverage for all Texans.

The funding mechanisms identified in CSHB 92 would unfairly impact all residents and visitors, whether or not they used any of the community or sports facilities built with the tax. Sales taxes are regressive and unfairly impact poorer residents who would be unlikely to use any of the facilities. Taxes would unfairly take money from poor and middle income residents and transfer it to build facilities for the rich.

In addition, any public funding of facilities should be tied to those who use the facilities. Rental car and hotel taxes have no connection whatsoever with community and sports facilities. In fact, studies have shown that relatively few car renters are from out of state. As a result, the majority of car rental taxes would fall upon local residents, not visitors. Taxes should be connected with beneficiaries of the new facilities or diffused across the entire population to decrease their effects.

Car and hotel taxes would hurt the state's tourism economy. Car rental taxes are already at 10 percent, and with the five percent option in CSHB 92, some municipalities could be charging 15 percent. Hotel taxes are also high in Texas, and increased taxes in cities with large convention businesses could discourage groups from coming to Texas. Even though these taxes are local options, they impact all of Texas.

CSHB 92 would not “level the playing field” because it would unjustly discriminate against cities with transit authority taxes. Dallas would be placed at a competitive disadvantage and would risk losing the Dallas Mavericks and the Dallas Stars to surrounding cities because it is already at the 8.25 percent sales tax cap.

The bill could place any community with an existing 4A or 4B economic development corporation at a disadvantage. The bill would unfairly prohibit existing corporations from undertaking any activity related to sports or athletic events although current law specifically allows for such activities. This provision could even be construed as prohibiting corporations from constructing public baseball fields or swimming pools requiring an admission fee.

The bill also could have unintended effects in requiring entities to put a resolution to the vote before conducting any kind of planning activities. Running an election can be a costly proposition; an entity should at least do some groundwork before bringing a concept to the public for a thumbs up or down.

The “facility use” fee that could be levied on major league players would be a form of income tax. Although taxing players at major league stadiums would target the users of these publicly funded facilities, the proposed \$5,000 tax on each game could exceed more than the annual salary of some players. Texas baseball players play 81 home games, and at \$5,000 per game, players could be forced to pay \$400,000 a year to play in their home facility. This outrageous and unprecedented tax could jeopardize the ability of Texas teams to attract free agents to play here.

Taxes should be used to provide public, not private, benefits to citizens. Sports teams, players and owners can afford to pay for their own facilities.

If professional sports franchises are such effective generators of wealth and economic development, then their owners and those who stand to benefit financially from these teams should be the ones to pay. Limited public resources should be spent on projects that benefit a broad range of people, not just a select few. Public subsidy of community venues is just another form of corporate welfare. If those at the bottom receiving public assistance are to be forced to pay their own way, so should those at the top.

OTHER
OPPONENTS
SAY:

The economic boosts touted by supporters of public subsidies are overstated. A sports facility actually adds relatively little money to a local economy. Economists have found that sporting events generally are attended by local residents who would spend their income on other local entertainment options if the stadium did not exist. This creates a negative multiplier effect where the increase in taxes results in less disposable income and causes a decrease in overall consumption. In addition, many jobs created by sports facilities are low-skill, low-wage and seasonal in nature.

Those who benefit the most from public subsidies of facilities are the owners of the facilities. At the very least, if the public pays for any part of a facility, the bill should require that the public be made part owner. Such a provision would ensure that taxpayers received some sort of local economic boost based upon the success of the facility.

The new sports facility proposed for Houston and Harris County should not be exempt from review by the Comptroller's Office and should not be built if it has a significant negative fiscal impact on the state's economy, even if residents have already approved it. Local voters might feel differently about a proposal if they knew it would hurt the state economy.

State legislation for community facilities is not needed. Municipalities already have a variety of funding options available to them, including raising a half-cent sales tax for 4A or 4B economic development projects as well as designating enterprise and reinvestment zones.

NOTES:

The committee substitute made several major changes to the original version of HB 92. The most significant include:

- expanding the definition of venue;

- stipulating that the bill would apply to Houston and Harris County only if the two entities formed a community venue district;
- raising the standard for state fiscal impact to a significant fiscal impact;
- requiring the comptroller's response to a resolution for a venue project to include a written analysis of how to change the resolution to prevent significant negative fiscal impact;
- allowing a municipality or county to enter into an interlocal agreement with a school district or junior or community college district;
- exempting planning, construction and renovation of an approved venue project from competitive bidding laws;
- prohibiting the use of ad valorem taxes for the planning, construction or renovation of an approved venue project;
- changing the maximum life of bonds issued from 20 to 30 years;
- requiring entities other than a political subdivisions to pay taxes on real property taken off of a school district's tax rolls;
- adding that an election to approve or increase the sales and use tax rate of a municipality would be treated as an election to reduce the tax rate of the special taxing authority in the area;
- changing the car rental tax from \$2 to 10 percent;
- allowing a hotel tax to be imposed in addition to a hotel tax already authorized by the Tax Code and changing the hotel tax from a maximum of \$5 to 5 percent;
- adding a facility use tax;
- allowing municipalities to hold an election on the issue of using sales and use taxes for a venue project; and
- grandfathering the Houston and Harris County election to approve the construction of a new sports arena and exempting that project from comptroller approval.

A number of bills have been filed this session on financing sports facilities:

- HB 1525 by Oliveira, which would expand the permissible uses of 4A sales taxes to include sports facilities, passed the House on April 8 and has been referred to the Senate Economic Development Committee.
- SB 935 by Madla, which would allow San Antonio and other cities in counties with populations of less than 1.5 million to build stadiums and

community venue projects, passed the Senate on March 26 and has been referred to the House Business and Industry Committee.

- SB 944 by Whitmire, which would allow Houston and Harris County to create a sports venue authority to issue bonds for stadium construction, passed the Senate on March 26 and has been referred to the House Business and Industry Committee.
- SB 1724 by West, which would allow the use of sales and use taxes to build sports facilities, has been referred to the Senate Finance Committee.
- SB 856 by Shapleigh, which would allow the use of car rental taxes for sports facilities, was reported favorably as substituted by the Senate State Affairs Committee on March 26.

As passed by the House on April 26, HB 4 by Craddick and Junell et al., the tax revision proposal, would allow voters in a municipality to decide whether to use the additional revenue generated by the city sales and use tax on the broader sales tax base established by the bill to reduce city property taxes or finance city projects, including sports facilities. Houston and Dallas would be required to hold an election for voters to decide whether to use the additional sales tax revenue to construct a sports facility. The facility would have to be owned and operated by the city; the city could not lease or sell any interest in it. Also, the city would have to receive at least 50 percent of the revenue generated from the facility, including parking and concession revenue.