SUBJECT: Allowing Legislature to define public property not subject to property tax

COMMITTEE: Local Government Ways and Means — favorable, without amendment

VOTE: 5 ayes — Hill, Hegar, Laubenberg, Puente, Quintanilla

0 nays

2 absent — McReynolds, Mowery

WITNESSES: For — None

Against — None

On — Josh Cantrell, Texas Municipal League

BACKGROUND: Texas Constitution, Art 8, sec. 2 allows the Legislature by general law to exempt public property used for public purposes from taxation. Art. 11, sec. 9 also exempts property of counties, cities, and towns held for public purposes, such as public buildings, fire engines, and public grounds, from forced sale and taxation.

Tax Code, sec. 11.11 exempts property owned by the state or a political subdivision from taxation if the property is used for a public purpose. Sec. 23.13 requires that taxable leaseholds for property that is exempt from taxation be appraised at the market value of the leasehold, or not less than the total rental paid for the interest in the current tax year.

Sec. 25.07 requires that the leasehold of property that is exempt from taxation be listed in the name of the owner of the possessory interest if the lease is for at least one year, except if the interest involves only the right to use the property for grazing or other agricultural purposes, or when the property is:

- permanent university school land;
- county public school fund agricultural land;
- part of certain city-owned public transportation facilities, including airport support facilities, and facilities in foreign trade zones;

- part of a park, market, fairground, convention center or other similar facility;
- owned by the Texas National Research Laboratory Commission; or
- used for the development of a port or waterway.

In 2002, the Austin Court of Appeals ruled in *Gables Realty Ltd. Partnership v. Travis Central Appraisal District,* 81 S.W.3d 869 (Tex.App.-Austin 2002) that state-owned property no longer is tax exempt after it is leased "for compensation to a private business interest . . . for a purpose not related to the performance" of state duties and functions. Gables Realty constructed and operates apartment complexes on two leased tracts of land — one leased for 50 years from the University of Texas and the other leased for 70 years from the Austin State Hospital.

DIGEST:

HJR 90 would propose a constitutional amendment that would amend both Art. 8, sec. 2(a) and Art. 11, sec. 9 to provide that the Legislature could define the public purposes that would exempt property from taxation.

The proposal would be presented to the voters at an election on Tuesday, November 4, 2003. The ballot proposal would read: "The constitutional amendment to provide for the exemption from ad valorem taxation of public property used for a public purpose, as defined by the legislature."

SUPPORTERS SAY:

HJR 90 would help clarify the uses that could be declared for public purposes and exempt from property taxes. Cities and counties offer leases on publicly owned land to attract new businesses and industry to their communities. These leasing arrangements include high profile properties, such as downtown convention hotels, sports facilities and other developments that provide unquestioned public benefits. Economic programs must meet the standards of state law and are scrutinized carefully by local governments.

The *Gables* decision concluded that the leases of government-owned property for anything other than an unquestionable "governmental" purpose makes the entire fee simple ownership interest fully taxable, and not just the leasehold as provided in Tax Code, sec. 23.13. Imposing a property tax could negate the benefits of offering the favorable lease. The court's ruling also threatens the exemption for the broader group that the Legislature has expressly prohibited taxing, such as Permanent University Fund land, foreign trade zones, parks,

markets, fairgrounds, airport support facilities, concert halls, skating facilities and visitors and convention centers. A constitutional amendment is necessary to settle this issue.

OPPONENTS SAY:

HJR 90 is overly broad and would encourage every type of special interest to petition the Legislature in upcoming sessions to have their property designated as "public use," and thus exempt from taxation. The *Gables* case involved development of apartment complexes that clearly are not in the same category of public use as airport support facilities, convention centers, parks, markets, or fairgrounds. The concerns with *Gables* could be addressed appropriately through legislation without amending the constitution.

NOTES:

On April 16, the House Local Government Ways and Means Committee reported favorably, without amendment, HB 2879 by Bonnen, which would allow tax exemptions for property owned by a political subdivision that was rented or leased to a private business enterprise and was used to aid, assist, or otherwise complement the functions and duties of the political subdivision. The bill would take effect only if a constitutional amendment with the same provisions as HJR 90 were adopted by the Legislature and approved by the voters. Two companion bills, SB 1352 and SB 1752, both by Jackson, are pending in the Senate Intergovernmental Relations Committee.