HOUSE
RESEARCH
ORGANIZATION bill analysis 5/7/2013

HB 1289
Hilderbran

SUBJECT: Franchise tax revenue exclusion for certain transportation services

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 7 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Martinez Fischer

1 nay — Strama

1 absent — Ritter

WITNESSES: For — Matt Woodruff, Texas Waterway Operators Association; (*Registered, but did not testify:* Brent Connett, Texas Conservative Coalition; Robert Flores, Texas Association of Mexican-American Chambers of Commerce; Delbert Fore, Enterprise Products)

Against — None

On — (*Registered, but did not testify*: Teresa Bostick and Ed Warren, Comptroller of Public Accounts)

BACKGROUND: The Texas franchise tax, or "margins" tax, applies to each taxable entity that does business or is organized in the state. An entity's taxable margin is the lesser of 70 percent of the entity's total revenue, or an amount computed by either determining the entity's total business revenue using a specific method or subtracting either cost of goods sold or compensation.

DIGEST: Under HB 1289, an entity engaged primarily in transporting commodities by waterways that did not subtract cost of goods sold would exclude from total revenue the cost of providing inbound or outbound transportation services by waterways to the extent that the entity would be able to subtract the costs of goods sold.

The bill would take effect January 1, 2014, and would apply to a franchise tax report due after that date.

SUPPORTERS SAY: HB 1289 would allow entities engaged in the business of transporting commodities by waterways to exclude from their total revenue the cost of goods sold. This would allow them to deduct costs of goods sold without barring them from claiming the standard deduction on the margins base or deducting costs for compensation.

Independent waterway operators provide docking tugs and fueling services for ships in Texas ports and deliver raw materials and commodities safely and efficiently. Commodities transportation is a capital-intensive industry with high costs from goods sold, but since waterway operators do not own the products they are transporting, they are unable to deduct the full range of the costs of providing these services as they could if they owned the products they were transporting.

The inland barge-and-tow industry is a vital transportation link that keeps the oil and chemical industries in Texas competitive in world markets. Allowing waterway operators to deduct these costs that they must assume as a matter of doing business would help them remain competitive with similar entities that enjoy a greater share of deductions.

OPPONENTS SAY:

HB 1289 would have an indirect negative impact on general revenue funds of $4.7 million in fiscal 2014-15 and beyond by reducing franchise tax funds flowing to the Property Tax Relief Fund, which was established by the Legislature in 2006 to offset reductions of school property taxes. Because revenue in the Property Tax Relief Fund is dedicated to public education, any reduction of revenue in the fund must be offset with general revenue funds.

The Legislature should not contemplate measures that reduce funds available for public education without first restoring the deep cuts it made to schools in 2011. Until these cuts are restored, any proposal to reduce revenue for the state that is not absolutely necessary should be cast aside.

OTHER OPPONENTS SAY:

HB 1289 would continue the state's piecemeal approach to the seemingly endless issues that plague the franchise tax. Under the current tax, many businesses are taxed on expenses that should be exempt, others pay unequal rates for similar activities, and still others have to pay taxes for years in which they actually report a net loss of income. The Legislature should embrace comprehensive reform or elimination of the deeply flawed franchise tax and move toward enduring solutions to its various problems.

NOTES:

The Legislative Budget Board estimates HB 1289 would result in a reduction of about $4.7 million to the Property Tax Relief Fund. Any loss to this fund must be made up with an equal amount of general revenue to fund the Foundation School Program.