

SUBJECT: Allowing property tax exemption for owners leasing to a school facility

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 8 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Ritter, Strama

0 nays

1 absent — Martinez Fischer

WITNESSES: For — (*Registered, but did not testify*: Rodrigo Carreon; Brent Connett, Texas Conservative Coalition; Eric Glenn, Texas Charter School Association; Joseph Riggs, Responsive Education Solutions; Addie Smith, Texas Charter Management Organizations; Justin Yancy, Texas Business Leadership Council)

Against — (*Registered, but did not testify*: Dick Lavine, Center for Public Policy Priorities)

BACKGROUND: Texas Constitution, Art. 8, sec. 2(a), requires all occupation taxes to be equal and uniform upon the same class of subjects within the limits of the authority levying the tax. The Constitution allows the Legislature to exempt certain uses of property from taxation, such as any public property used for a public purpose.

DIGEST: HJR 86 would propose an amendment to the Texas Constitution, Art 8., sec. 2(a), to allow the Legislature to exempt from ad valorem taxation any real property that was leased to a person for use as a qualified nonprofit school for educational purposes.

The proposal would be presented to the voters at an election on Tuesday, November 5, 2013. The ballot proposal would read: “The constitutional amendment authorizing the legislature to exempt from ad valorem taxation real property leased to certain schools organized and operated primarily for the purpose of engaging in educational functions.”

If approved at the election, the amendment would take effect January 1, 2014.

SUPPORTERS
SAY:

HJR 86 would provide the constitutional authorization necessary to fix an inequality in tax law that burdens small private and charter schools.

Under current law, charter and private nonprofit schools are exempt from having to pay property taxes. However, this exemption applies only if a school is able to purchase a property in its name. Many small charter and private schools that have a tax exemption are unable to finance the purchase of a property and are thus left with only the option of leasing space. Unfortunately, assuming a lease results in the school having to pay property taxes indirectly, as the property owner passes the cost of paying the taxes to the school.

HJR 86 would allow for the creation of a method to transfer, in effect, a property tax exemption to a charter or private school that leased space from an individual. Under HB 1360, the enabling legislation for the amendment, the owner would have to certify the market value of the property and then indicate the reduction in rent that the school enjoyed.

Following the certification, the owner would then receive a property tax exemption for the amount of the reduced rent. This would generate a savings to the property owner that would be passed on to the school. Money that schools must pay toward taxes is diverted from teacher salaries, improved technology, curriculum expansion, and other critical items.

Charter schools, in particular, are at a distinct disadvantage compared with public schools when it comes to facilities funding. They are not allowed to levy taxes to pay for their facilities and are not eligible for programs that provide state funding to help eligible school districts with facilities costs. HJR 86 would allow the Legislature to enact a measure to put small charter schools on a more level field in regard to property taxes.

Charter schools are small-scale actors that fill specific and unique needs in their respective communities. Charter schools educate only about 3 percent of all public students, and HJR 86 would impact only those that rent their facilities. As such, HJR 86 and HB 1360's fiscal impact on the state would be minimal, but the impact on these schools would be significant.

HJR 86 would not provide the constitutional grounds for a slippery slope

of similar leasing exemptions for other entities, as the issue it would be addressing is unique to schools in this particular situation. The bill would not grant an exemption for any use other than property needed for “educational purposes” that was “necessary for the operation of the school,” creating a narrow universe of applicability.

OPPONENTS
SAY:

HJR 86 would establish a constitutional precedent that would upend the long-standing practice of providing tax exemptions only to someone who owns land. The amendment would open the floodgates to similar measures, each seeking a tax exemption for discounting property for a noteworthy purpose.

Since time immemorial, tax exemptions have been tied to the owner of land. The scope and history of the rule is illustrated by the fact that public entities, including public schools, religious organizations, and nonprofits, all entities that have well-established tax exemptions under the law, do not receive or confer any tax exemption for leased property. If HJR 86 were enacted, it would give private schools, private universities, and potentially charter schools — depending on a still-unclear interpretation of Property Code, sec. 11.21(d) — a completely special and unique exemption that was unavailable to anyone else.

This would put the state on a slippery slope with regard to granting exemptions for leased, discounted space. If enacted, HJR 86 would invite similar legislation in future sessions creating similar leasing exemptions for public schools, churches, governmental entities, nonprofits, hospitals, etc. The Legislature would have trouble giving any of those groups a principled explanation for why they should not be granted the same allowance as private and charter schools.

In addition, the constitutional amendment and the enabling legislation would provide a fertile landscape for all manner of creative business arrangements and evasive practices to take root. It would be hard for an appraisal district to independently evaluate what a property owner claims to be fair market rent. There would be nothing keeping a property owner from using generous estimates of fair market rent to enjoy a larger tax exemption than is justified. Appraisal districts have little experience in evaluating the market value of such arrangements. They would not have an effective way to check abusive practices.

HJR 86 would allow legislation that encouraged practices that would end

up causing a significant loss of future revenue. This loss in revenue would represent a transfer of property taxes from the regular school district to the alternative school.

NOTES:

The enabling legislation for HJR 86, HB 1360 by Ritter, has been set for floor debate today on the House General State Calendar.

According to the Legislative Budget Board, the cost of publishing the proposed resolution would be \$108,921.