

BILL ANALYSIS

H.B. 2879
By: Bonnen
Local Government Ways and Means
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Municipalities and counties have often targeted desirable inbound businesses by offering leases of publicly-owned land. Sometimes included are “high profile” properties, such as downtown convention hotels, metropolitan sports facilities, and others which provide entertainment and related benefits to the public at large. An often critical element to attracting target businesses has been a reduced *ad valorem* tax burden. Under the Texas Tax Code, only the leasehold is taxable and valued typically on one year’s lease payments.

A recent Austin Court of Appeals decision suggested that leases of governmentally-owned property for anything other than an unquestionably “public” (i.e. governmental) purpose makes not only the leasehold, but the entire fee simple ownership interest in the property, fully taxable. The decision would have a drastic impact on existing lessees and make it much harder for state and local governments to negotiate new leases with target businesses.

There are some types of taxable leaseholds in government-owned property which the legislature, based on perceived importance, expressly prohibited taxing, even on the leasehold. These protected interests include land owned by the permanent university fund and county public school funds, foreign trade zone, park, market, fairground or other public facility lands, a broad variety of airport support facilities, concert halls, skating facilities, and visitor or convention centers. Because the statutory prohibition against taxation of such leaseholds assumes the leasehold interest to be in “exempt property,” the court decision, by disputing the underlying exempt status of all such properties, might threaten even this last broad group of property uses.

HB 2879 amends the tax code to define “public purpose” as it is used to determine ad valorem tax exempt status of property owned by a political subdivision and leased by a private business.

RULEMAKING AUTHORITY

It is the committee’s opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1 adds subsection (a-1) to Section 11.11 of the Tax Code. This added subsection provides that property owned by a political subdivision that is rented or leased to a private business for at least one year with the purpose of supporting, aiding, assisting or complementing the duties and functions of the political subdivision is considered property used for public purpose and, therefore, qualifies for exemption of ad valorem taxes. It also provides that required notice per Section 25.19 must be sent to the political subdivision and shall appear in any appeal related to property taxation.

SECTION 2 states that this Act is effective January 1, 2004, and applies only to ad valorem tax imposed on or after this date. This Act only has effect if a constitutional amendment, HJR 90, is approved by voters.

EFFECTIVE DATE

January 1, 2004, if a constitutional amendment is approved by voters.