

## **BILL ANALYSIS**

H.J.R. 90  
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.

HJR 90 proposes a constitutional amendment to allow the legislature to amend 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 resolution does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

HJR 90 proposes a constitutional amendment to be approved or denied by voters at an election on November 4, 2003. If approved, it would amend Section 2 (a), Article VIII of the Texas Constitution to allow the legislature to define “public purposes” as it relates to public property ad valorem tax exemption. It would also amend Section 9, Article XI of the Texas Constitution to allow the legislature to define “public purposes” as it relates to the use of property of counties, cities and towns.

### **FOR ELECTION**

November 4, 2003

