

PUBLIC COMMENTS

HB 3777

HOUSE COMMITTEE ON WAYS & MEANS

Hearing Date: April 12, 2021 10:00 AM - or upon final adjourn./recess or bill referral if permission granted

Pedro Martinez, Superintendent
San Antonio Independent School District
San Antonio, TX

Good Morning Chairman Meyer and Committee Members.

My name is Pedro Martinez, Superintendent of the San Antonio Independent School District. I am representing the San Antonio Independent School District testifying against HB 3777.

San Antonio ISD is the oldest school district in Bexar County. Many of our historic school campuses and facilities are in need of modernization and repairs to bring the schools up to par with current technology, accessibility, health standards and practicability.

In 2013 the state enacted a tax credit that provides owners of historic properties, including historic school buildings, a 25% tax credit for qualifying rehabilitation expenditures. San Antonio ISD is currently using this process to update one of our oldest and most historic schools, Thomas Jefferson High School in the historic Westside of San Antonio. This provision allows us to undertake costly rehabilitation work, that would otherwise become too fiscally onerous, while modernizing our campus to meet the needs of our students and staff. We are in the process of identifying other campuses and facilities that are in need of repair and preservation across the district that would qualify for this provision as well.

HB 3777 would undo this provision and limit our ability to prioritize historic preservation projects across the district. As the oldest school district in the county, it is important to San Antonio ISD to preserve our history, culture and past. The tax credit provision will provide us with the capital to continue our restoration, modernization, and preservation efforts. I implore the committee not to do away with this incredibly valuable tax credit provision.

Thank you.

Sister Mary Bordelon, General Councilor
Congregation of Divine Providence
SAN ANTONIO, TX

The Congregation of Divine Providence owns the historic Moye Retreat Center in Castroville, Texas. It was the original motherhouse of our Congregation in Texas being built between 1868 and 1873. Also on the property are the historic first Saint Louis Catholic Church, the first schoolhouse of Castroville, and the historic Rock House which was where the Oblate priests who served as chaplains resided in the early history of the place. All of these buildings need to be brought up to date from time and time. As a nonprofit entity, raising money for needed remodels is a difficult proposition in the beginning. We have relied on the promise of tax credits as part of our anticipated budget in doing remodels. In 2017, a fire destroyed what we now call the Retreat House (the first schoolhouse), which is used for housing retreatants. We were able to obtain tax credits as part of the remodel on that building. In 2020, a hail storm damaged the roofs on five of our buildings (the motherhouse, the schoolhouse, the Rock House, the garage and the laundry room). While not all of them were eligible for the tax credits, being able to anticipate some return enabled us the courage to go forward with replacing so many roofs at once. Each of them had their own particular kind of roofing and we had to maintain the materials consistent with the historic nature of the buildings. Suffice it to say that we would have been hard pressed to engage in projects to remodel these buildings. Currently, we are looking forward to the opportunity to remodel the first floor of the motherhouse. Without tax credits, this becomes for us a more expensive and less practical endeavor. Construction has already been delayed with the uncertainty due to Covid-19. We are just now at the point where we are confident that we can raise the necessary funds to do this project. Unfortunately, doing the whole building at this time is cost prohibitive.

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We need to be able to build an estimated cost of tax credits into our proposed budget in order to make this project conceivable. We ask the House to reject the proposed bill as written and to maintain the use of Texas credits for tax-exempt property owners as has been defended by Attorney General opinions and by the Texas Tax Code in the past. Thank you.

John Randolph HARIG, CEO

Texas Research and Technology Foundation

San Antonio, TX

In 2013 Texas enacted a tax credit that provides historic property owners a 25% tax credit for qualifying rehabilitation expenditures, which offset the margins tax and insurance premium tax liability beginning in 2015. Despite Attorney General's opinion No. GA-1045 (March 3, 2014) that the credit could be claimed by tax-exempt entities, the Texas Historical Commission (which administers the credit program) took the position that nonprofit property owners could not claim the credit. The legislature clarified its intent to permit nonprofits to utilize the credit the following legislative session, amending the statute to exclude certain federal requirements that property be depreciable and not be treated as tax-exempt use property to qualify for the Texas credit.

Summary of HB 3777

Introduced by Representative Candy Noble, HB No. 3777 would severely limit the ability of tax-exempt entities, including nonprofits, to benefit from the Texas tax credit for rehabilitation of historic buildings. These proposed changes add back the tax-exempt use property rules, with respect to nonprofits only, and would eliminate the ability of a tax-exempt entity to rehabilitate a historic property and lease that property to another tax-exempt entity if (i) that lease was for a term of longer than 20 years, (ii) the property was financed by tax-exempt bonds, (iii) the lease includes a purchase option, or (iv) the lessee was the original user of the property. This proposed language limits the ability of tax-exempt entities to engage in typical real estate leasing transactions and benefit from the credit by requiring compliance with certain federal historic tax credit rules. Given the free transferability of the Texas credit and the legislature's clear intent to permit nonprofits to benefit from the Texas credit, there is no reason to limit the use of the Texas credit by nonprofit organizations. They should have the same opportunity to use the credits as taxable entities and arguably need it more than for-profit taxpayers.

The Texas Tax Credit and Federal Tax Law.

Please stop this bill from moving forward as it would kill many projects that are re-imagining parts of Texas communities which desperately need it.

Patrick Kennedy

Kennedy Sutherland LLP,

san Antonio, TX

Written Testimony of Patrick J. Kennedy, Jr. Founding Partner of Kennedy Sutherland LLP

Before the Ways & Means Committee of the Texas House of Representatives

April 12, 2021

Chair Meyer, Vice Chair Thierry and Members of the Committee, thank you for the opportunity to submit written testimony at this hearing on HB 3777. I have been a practicing lawyer and a member of the State Bar of Texas since 1978. One of the important areas of practice in our firm is assisting clients in utilizing historic tax credits and other unique capital sources for reconstruction and renovation of historic building sites. Texas followed approximately 30 other states by adopting a state level historic tax credit in 2013. This statute was amended in 2015 to clarify the original statutory intent to include property owners who were not subject to federal income taxation as eligible to earn the state historic rehabilitation tax credit.

We have represented numerous for profit and not for profit historic property owners in Texas who have had historic restoration/renovation projects which have utilized this tax credit. This credit has been an important inducement for property owners to restore historic buildings and has created some very important new and productive uses for the historic fabric of our state. Structuring the financing of such projects frequently involves complex structures including leases. The Texas Historical Commission adopted rules permitting lessees of historic properties to qualify for the credit.

HB 3777 prohibits among other things, the opportunity for a property owner utilizing the Texas historic tax credit from utilizing the credit if it were leasing to a non profit entity. The prohibition also applies to a for profit property owner as well. The bill subjects users of the credit to a complex set of federal income tax rules which are not applicable to a user of the Texas credit and

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creates a complex set of compliances challenges for the Texas Comptroller's Office and Texas Historic Commission which are involved in the administration of the credit.

We do not believe there is any justifiable reason to provide such limits and indeed it would do significant damage to an important program which has successfully encouraged billions of dollars of private capital on important renovation and restoration projects throughout the state of Texas most of which have been in historic downtowns of our communities.

I attach a memorandum we prepared which provides much greater detail and analysis and examples of the bad results adoption of this bill would cause. We urge it be voted down by this Committee and withdrawn by its authors.

Thank you very much for the opportunity to appear today. Respectfully Submitted,

Patrick J. Kennedy, Jr.

Kennedy Sutherland LLP

Pkennedy@kslawllp.com 210 213 0279

Haley Wilcox

self, real estate investor

Austin, TX

If enacted, HB 3777 would virtually eliminate nonprofit participation in the Texas credits if a lease to another nonprofit were involved, including to its own affiliate. I am currently aware of several historic rehabilitation projects by nonprofit property owners that will no longer be eligible for the Texas credit. Over the past five years, the Texas credit has been an important tool for historic preservation and for the growth of nonprofit organizations and their ability to serve their communities in Texas and HB 3777 would eviscerate those success stories and stifle the ability of nonprofits to further their missions and serve their communities.

Thomas Mengler, President

St. Mary's University, San Antonio, Texas

San Antonio, TX

Dear Chair Meyer:

I am a resident of the State of Texas and President of St. Mary's University in San Antonio. St. Mary's was a strong supporter of the legislature's 2015 clarification that non-profit property owners, such as the University, could utilize the Texas Rehabilitation Tax Credit. We strongly oppose any attempt to limit the use of the Texas Historic Rehabilitation Tax Credit for non-profit entities which HB 3777 does. Use of the credit has been of great benefit to the University and many other historic property owners in this State.

Sincerely, President Thomas Mengler

Ann McGlone

Preservation Architect

San Antonio, TX

I am opposed to HB3777. This legislation would stop the ability of School Districts to use Historic Tax Credits to renovate older schools that qualify for the National Register. There are a limited number of schools that would qualify. San Antonio ISD did a survey of the 77 schools in their district and only 13 qualified for the National Register. The program would allow the schools to expand their dollars by 25%. Finding funds to assist school districts is important in this economy, and this is only a small assistance with great impact.

The original 2013 legislation for Historic Tax Credits originally was intended for non-profits, schools and churches. Over the years the Texas Historical Commission has added administrative changes to alter this intent. First through administration changes they eliminated non-profits. New legislation had to be introduced in 2015 and passed to affirm the original intent for use by non-profits. Now THC would like to remove schools. I do not understand this thinking on their part. Shouldn't they be advocating for saving old buildings?

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Ellis Mumford-Russell
Post Oak Preservation Solutions
Austin, TX

Post Oak Preservation Solutions, a historic preservation consulting firm in San Antonio & Austin, strongly objects to HB 3777, which will limit the ability of tax-exempt entities to benefit from the Texas Historic Tax Credit (HTC). This bill will eliminate the ability for entities, such as public school districts, to use the HTC to fund much-needed rehabilitation and maintenance projects. In our work consulting on the rehabilitation of historic buildings across the state, we have seen first-hand the value that this incentive has for the rehabilitation, maintenance, repair, and upgrades of our state's historic schools. Furthermore, students benefit from learning in our historic school buildings by gaining a first-hand understanding of the historic context of their development and construction. These school buildings are often built with large windows, broad hallways, soaring auditoriums, and spacious gymnasiums that facilitate a well-rounded educational atmosphere. They can be retrofitted to improve energy efficiency or modify functionality in a way that is generally less expensive than building a new school from scratch. Allowing them to deteriorate into a state of disrepair does a disservice not only to the students who will be unable to experience them but also to those who historically designed and built these structures with vision and a long-term commitment to investing in the education of our youth in grand structures befitting their importance.

Currently, there are several ongoing rehabilitation projects on historic schools across the state that would be jeopardized by the passage of HB 3777. This bill seems to overtly and unfairly target public school administrations who are utilizing the Historic Tax Credit to ensure the quality and longevity of their facilities. Over the past five years, the Texas credit has been an important tool for historic preservation and for the growth of nonprofit organizations and their ability to serve their communities in Texas and HB 3777 would eviscerate those success stories and stifle the ability of nonprofits to further their missions and serve their communities.

J. P. Bryan, Founder
The Bryan Museum
GALVESTON, TX

Dear Chairman Meyer: I am a long-time resident of the State of Texas and among other things founder of the JP & Mary John Bryan Museum in Galveston and the owner of The Gage Hotel and 26 related buildings in Marathon, Texas. Our Foundation is a nonprofit entity and was able to utilize the Texas historic tax credits to assist with the faithful restoration of the historic building which now houses our collection of Texas and Mexican Artifacts. We strongly oppose any attempt to limit the use of the Texas Historic Rehabilitation Tax Credit which HB 3777 does. Respectfully yours, J. P. Bryan.

Izabella Nuckels
Self
Austin, TX

I strongly support the continuation of historic tax credits for non-profit entities in the state of Texas. All historic buildings, including non-profits such as schools, will require maintenance and rehabilitation of features, large and small, over time. Extensive maintenance, such as routine roof replacement or window restoration, can be costly, but maintaining these features and these historic buildings allow for us to continue to honor and appreciate our past and to preserve the built heritage of our communities. Tax incentives help to prevent deferred maintenance and keep all of our historic buildings safe and in-use by our community members.

Kate Singleton
self--Preservation and Economic Development Consultant
Austin, TX

The state historic tax credit has been an invaluable tool for non-profit and for profit entities here in Texas. It has helped to spur millions of dollars in reinvestment in cities and towns--large and small across the state. Downtown revitalization--the Main Street Program--has been more successful because of this financial incentive. More importantly, the ability for non-profits to utilize this incentive has enabled numerous historic theaters and buildings to be saved and utilized, giving further life to downtowns across the state. These buildings often serve as the "anchors" for downtowns, adding life and vibrancy to communities. Historic churches that have been sold to non-profits for performance and art spaces now have been saved and have new life as public spaces for their communities BECAUSE of the ability of nonprofits to use the tax credit and sell it. This bill will deny nonprofits the ability to rehabilitate their--and the communities'--historic places meaning the physical loss of buildings that often represent the history of a community and the state of Texas. The loss of the history of our great state is unconscionable. This bill is incredibly misguided and should not move forward.

Charlotte Adams

Self/ Historic Preservation Consultant

Austin, TX

The state historic tax credit is indispensable to non-profits with historic buildings desperately needing repairs. For example, my clients are a non-profit theater group; the theater is in a historic ice house building. A recent flood destroyed parts of the theater, and without the state credit, my clients would not be able to afford these necessary repairs.

Non-profit cultural organizations like this are integral to arts and entertainment in Texas towns. Without the credit, these institutions will suffer.

Additionally, the state credit is essential to historic schools— in order to make these buildings safe and meet modern requirements for learning, historic school need updates, and the state credit is crucial in funding these much needed updates. Another client was a high school needing exterior structural repairs and interior updates to classrooms and the cafeteria. The state credit made the structural repairs and interior updates possible. Without the credit, historic school buildings could fall into disrepair.

The state credit is essential to nonprofit organizations. Do not take away this much-needed source of funding from organizations that are so important to arts, culture, education, and more. Oppose HB 3777.

Valerie Barrera, Intern Architect

Self

SAN ANTONIO, TX

Advocating for the continued use of older and historic neighborhood schools as an anchor for healthy communities is certain. School buildings are among the most character defining components within a community, they are and will continue to be a source of communal experience, pride and identity. While all buildings undergo a multitude of changes through their life cycle, the historic tax credit program takes this into consideration and allows for rehabilitation from the original to historic use, this allows established schools to remain in communities longer and serve to a societal structure as it encourages the preservation and adaptive reuse of historic and older buildings. In most cases historic tax credits are essential to projects where otherwise rehabilitation would not occur due to lack of funding. Collectively, older schools need to update or replace multiple systems or features in their buildings and failure to address them could pose health and safety problems for the occupants resulting in implications for a communities access to education within a reasonable distance.