HOUSE RESEARCH ORGANIZATION bill analysis — 5/10/95

HJR 107
Rusling, Averitt, et al.
(CSHJR 107 by Craddick)

SUBJECT: Broadening "freeport" tax exemptions for goods in transit

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 8 ayes — Craddick, Wolens, Finnell, Heflin, Holzheauser, Horn, Oliveira, Place

0 nays

3 absent — T. Hunter, Marchant, Romo

WITNESSES: For — Jon W. Spelman, Texas Association of Realtors; Curtis Cleveland, Texas Economic Development Council; Phyllis Coffin, MCI Telecommunications Corporation; Bob Vetters; Thomas A. Leiser, Trammell Crow Company and Texas Warehouseman's Association

Against — Maxie L. Paterson, City of Houston; Wally Hatch, Texas Municipal League

BACKGROUND: In 1989 the Texas Constitution was amended to add Article 8, sec. 1-j, allowing a "freeport" tax exemption from local property taxes for goods, wares, merchandise, tangible personal property and ores — except oil, gas and petroleum products — that were in transit to locations outside the state within 175 days. The governing boards of local government entities choose whether to allow the freeport tax exemption. About 12 percent of school districts in the state grant a freeport tax exemption.

Tax Code sec. 11.251 implements the "freeport" tax exemption. The exemption applies to eligible goods in transit to locations outside the state that remain in Texas for no more than 175 days.

DIGEST: CSHJR 107 would repeal Article 8, sec. 1-j, of the Texas Constitution and add a new sec. 1-m to specifically exempt from local property taxes goods, wares, merchandise, tangible personal property, and ores — except oil, gas and petroleum products — acquired in, or imported into, the state for the purpose of assembling, storing, manufacturing, processing or fabricating by the person who acquired or imported them. To be exempt, the property would have to be transported to another location inside or outside the state within 270 days of being acquired or imported.

School districts would be prohibited from granting the freeport tax exemption.

The governing body of a taxing unit could impose a property tax on freeport exempted property if a majority of the voters in the taxing unit voted before September 1, 1996, to impose the tax. The tax would be imposed beginning January 1, 1996. The amendment would allow the governing body subsequently to exempt the property from taxation and that decision would be irrevocable. The property would be exempted beginning January 1 after the exemption is adopted by the taxing entity.

The proposal would be submitted to voters on November 7, 1995. The ballot proposal would read: "The constitutional amendment related to the promotion of equal tax treatment for products produced, acquired, and distributed in the State of Texas by extending the exemption from ad valorem taxation of certain tangible personal property held at a location for not more than a specified period."

SUPPORTERS SAY:

CSHJR 107 would broaden a tax exemption that has proven to be a good incentive for economic development and would encourage more business to come to Texas. It would allow Texas to be competitive with other states, only four of which tax goods in transit, and better position the state to take advantage of business opportunities anticipated from the NAFTA and GATT (General Agreement on Tariffs and Trade) treaties. Broadening the freeport tax exemption to include more businesses storing goods in transit would encourage more business to relocate to Texas and would provide new jobs.

Increasing the number of days that property can remain in the state without being taxed from 175 to 270 would assure that the maximum number of companies could take advantage of the tax break. A recent Supreme Court decision requiring that all inventory be counted on January 1 has made it more difficult and expensive for companies that sell goods in the spring to store property in Texas. (Prior to the Supreme Court decision, taxing entities were allowed the option of counting property on September 1 or

January 1.) These companies have incentive to move their storage to another state that does not impose a tax on goods in transit.

Texas is losing business and jobs to other states because of the tax on goods in transit as warehousers and manufacturers locate or relocate to adjoining states to get out from underneath this tax burden. For example, there are major manufacturing and distribution centers located on the Oklahoma side of the Texas-Oklahoma border to avoid the Texas goods-in-transit tax.

Allowing the exemption to apply to all eligible goods and property, not just those destined to leave the state, would lift an unnecessary administrative burden on taxing units and businesses. Also, Texas consumers would not be paying a higher cost for property whose final destination was in-state. Texas consumers would not be indirectly subsidizing consumers in other states who get cheaper prices on goods that are taxed less.

School districts could not grant freeport exemptions and decrease their tax base. Only 12 percent of school districts offer a freeport tax exemption now.

OPPONENTS SAY:

Broadening the freeport tax exemption could deprive cities and counties of a substantial portion of their tax base. The lost revenue and increased costs for local entities would have to be made up with higher taxes on other property or reductions in municipal and county services. Those adversely affected by higher taxes or reduced services would be paying to subsidize those businesses that would benefit from the tax break, with no differentiation among those that need help and those that do not. Local governments would be pitted against each other and would forced to grant the exemption.

The proposal would require an election to be held to prevent the tax break. The Constitution now permits the governing body of taxing entity to opt-out of the freeport exemption. The local government governing body is in a better position than voters to know what the effect of the freeport exemption would be on the community and should determine its value.

Property taxes make up nearly 50 percent of taxes paid by Texas businesses. Local governments have many economic development tools at their disposal to provide business with tax breaks, such as tax abatements and economic development corporations, to help attract and keep business in their communities.

OTHER OPPONENTS SAY:

The "freeport" tax exemption is a necessary economic development tool to bring new business and jobs to Texas, and the constitutional amendment should eliminate the tax on goods in transit altogether.

NOTES:

The original amendment would have applied the "freeport" exemption to all property held in transit for 270 days or less regardless of its ultimate destination.

The implementing bill for the amendment, HB 2608, was placed on the General State Calendar for House consideration on Tuesday, May 9. The bill would extend the freeport tax exemption to eligible goods acquired or imported into the state that are detained in the state for purpose of assembling, storing, manufacturing, processing or fabricating and shipped to locations both in or out of the state within 270 days of being acquired or imported by the person who ships them.

The bill would prohibit school districts from granting the freeport tax exemption. A taxing entity would have to take into account property taxed in 1995 that was exempted in 1996 in calculating the 1996 rollback tax rate and the 1995 levy.