

SUBJECT: Amending the Constitution to grant a goods-in-transit tax exemption

COMMITTEE: Ways and Means — favorable, with amendment

VOTE: 8 ayes — Oliveira, Craddick, Hartnett, Bonnen, Heflin, Keffer, Ramsay, Ritter
0 nays
3 absent — McCall, Y. Davis, Hilbert

SENATE VOTE: On final passage, May 8 — 26-2 (Bernsen, Truan)

WITNESSES: *(On House companion proposal, HJR 25:)*
For — Ben Boerner, Texas Grain and Feed Association; Stephen W. Dougherty, International Distribution; A.K. Frasier, Network Distribution; Larry Kelley and Bob Vettters, Texas Warehouse Association; H.A. “Bob” Poteet, Texas Cotton Association

Against — Dick Lavine, Center for Public Policy Priorities; Jim Gill, City of Houston

On — John Heleman, Comptroller’s Office

BACKGROUND: The Texas Constitution, Art. 8, sec. 1-j, and Tax Code, sec. 11.251 exempt from ad valorem taxation goods, wares, merchandise and other tangible personal property (including aircraft and aircraft parts used for repairs by certificated air carriers), and ores other than oil, natural gas, and other petroleum products that are in the state temporarily, known as “freeport” property. To be eligible for the freeport exemption, property must be acquired in or imported into the state for export; detained for assembly, storage, manufacturing, processing, or fabrication; and shipped out of state no later than 175 days after acquisition or importation.

Local governments were allowed to elect to overrule the exemption and tax eligible property before April 1, 1990, subject to permanent rescission.

DIGEST: SJR 6, as amended, would propose amending the Constitution to authorize the Legislature to exempt the same type of property enumerated in Art. 8, sec. 1-j from ad valorem taxation. The property would have to be detained at a location not owned or controlled by the property owner for not more than 270 days after acquisition or importation. It would not have to be shipped out of state to qualify for the exemption.

Governing bodies of taxing jurisdictions could provide for taxation of this property if another law did not exempt it. Before acting to tax the property, a governing body would have to hold a public hearing.

Owners of property eligible for the freeport exemption under sec. 1-j could apply for the new exemption if authorized by the Legislature, subject to the decisions of their local taxing entities. A property owner who received the new exemption could not claim the freeport exemption for the same property.

The proposal would be presented to Texas voters at an election on November 6, 2001. The ballot proposal would read: "The constitutional amendment to promote equal tax treatment for products produced, acquired, and distributed in the State of Texas by authorizing the legislature to exempt from ad valorem taxation tangible personal property held at certain locations only temporarily for assembling, manufacturing, processing, or other commercial purposes." If voters approved the amendment, its provisions would take effect January 1, 2002.

SUPPORTERS SAY: Since 1989, the "freeport amendment" has offered only limited tax relief. It applies only to interstate freight, discriminating against Texas goods bound for Texas destinations. As of 1999, only 219 taxing units offered the exemption on taxable values totaling \$19 billion, according to the comptroller. This patchwork of taxation also has led to a lack of uniformity in tax appraisal and administration, exacerbated by different tax treatments for agricultural products.

Although some taxing entities have used the freeport exemption to attract out-of-state business, the exemption has penalized the Texas warehouse industry. Developers have persuaded rural areas with cheaper costs that were not receiving any inventory tax revenue to build warehouses. This has forced existing warehouses to lower their prices. Surrounding states realized

Texas was at a competitive disadvantage and began enacting laws and launching promotions to help their warehousemen attract new business. In the process, Texas has lost an estimated 27,000 jobs.

SJR 6 would be an important first step in helping Texas regain its share of the lucrative warehousing and distribution markets. Voter approval would allow the Legislature to act to stem the loss of customers and jobs to other states.

The predicted losses in state revenue from increased reimbursement to school districts are exaggerated and should not exceed \$11 million. Many districts may opt not to grant the exemption. The fiscal note projections do not take into account the greater sales-tax revenue that would accrue from increased warehousing activity. Dynamic modeling performed by The Perryman Group in 2000 projected a potential annual income gain of \$540 million and almost 14,000 new permanent jobs.

This amendment should be put to the voters now. If it is approved, the enabling legislation can be offered when the state's revenue picture improves.

**OPPONENTS
SAY:**

Any measure that further erodes local tax bases, especially at a time of revenue shortfall, would be imprudent. Since 1994, state and local tax revenues have declined as a percentage of personal income. The looming crisis in school finance makes SJR 6 all the more ill-advised, given the inexorable march of many school districts toward the statutory cap of \$1.50 per \$100 of assessed valuation for maintenance and operations taxes.

Creating a new exemption would result in substantial costs to the state as well as local governments. If all taxing entities granted the exemption, the LBB estimates that state reimbursements to school districts for losses in fiscal 2003 would be almost \$36 million in fiscal 2004 under the current school finance system. The state also might have to reimburse school districts for declines in taxable property value, depending on the wording of the enabling legislation. Losses to cities and counties in fiscal 2003 would be \$7.8 million and \$11.2 million, respectively, according to LBB. Losses would continue to escalate through 2006 and beyond.

Dynamic analysis may project more economic activity, but that would not necessarily translate into significant state or local revenue. The state's tax structure needs to be addressed, and there should be a moratorium on exemptions until the efficiency of the existing exemptions is determined.

Texas has an attractive business climate. This bill would show favoritism to a single industry with little ripple effect. The state should not be lured into a tax-break war with other states for dubious returns.

OTHER
OPPONENTS
SAY:

SJR 6 would mislead voters. Because no enabling legislation is eligible for consideration, the warehouse industry could not receive the proposed exemption even if voters approved it. Voters would be in the same quandary as they were in 1999 about the personal-use car lease exemption amendment they approved, which had no effect. It would be better to wait two years and adopt the amendment and the enabling legislation at the same time.

NOTES:

The House committee amendment to the Senate engrossed version would specify that property owners eligible for the freeport exemption could apply for the new goods-in-transit exemption, subject to the decisions of their local taxing entities to grant the new exemption.

The enabling legislation for SJR 6, SB 174 by Duncan, was reported favorably as amended by the House Ways and Means Committee on May 16 and sent to the House Calendars Committee on May 20. The companion proposal, HJR 25 by Gallego, and its enabling legislation, HB 438 by Gallego, were considered in a public hearing March 7 before the Ways and Means Committee and left pending.

Similar bills have been introduced in recent past sessions. In 1999, HB 1218 by Craddick died in the House Calendars Committee and SB 1490 by Duncan died in the Senate Finance Committee. In 1995, the House approved a similar proposal, HJR 107/HB 2608 by Rusling, which died in the Senate Finance Committee.