

SUBJECT: Extending tax abatements to leaseholders of tax-exempt real property

COMMITTEE: Ways and Means — favorable, with amendment

VOTE: 8 ayes — Oliveira, McCall, Hartnett, Bonnen, Y. Davis, Heflin, Ramsay, Ritter

0 nays

3 absent — Craddick, Hilbert, Keffer

WITNESSES: For — Chave Gonzaba, Greater Kelly Development Authority; Debra Guerrero, City of San Antonio; Mario Hernandez, San Antonio Economic Development Foundation; Bennett Sandlin, Texas Municipal League; Keith Stretcher, City of Midland

Against — None

On — Dan Wilson, Office of the Comptroller of Public Accounts

BACKGROUND: In 1987, the 70th Legislature enacted the Tax Increment Financing Act (Tax Code, ch. 311) and (Tax Code, ch. 312).

Subchapter B of Tax Code, ch. 312, the Property Redevelopment and Tax Abatement Act, allows municipalities to create reinvestment zones in specific geographic areas or on pieces of real estate that meet certain economic or social conditions. Sec. 312.204(a) allows municipalities to abate taxes of owners of taxable real property in a reinvestment zone who make specific improvements or repairs to the property. Sec. 312.206 authorizes other taxing entities to enter into similar tax abatement agreements within 90 days of the municipal agreement. Sec. 312.402 specifies how counties may abate taxes of taxable real property owners in reinvestment zones.

Under sec. 311.0125 of the Tax Code, ch. 311, the Tax Increment Financing Act, a municipality may agree to a tax abatement for a reinvestment zone, which exempts a portion of the valuation of the property from taxation. Under a tax increment financing district, the difference between the original taxable value of the property and the increase due to improvements made by

the private developer — the increment — can be reserved to repay bonds issued for public improvements in the tax increment financing district.

Attorney General's Opinion No. JC-0300, issued October 27, 2000, determined with regard to sec. 312.206(a) that a commissioners court only may enter into a tax abatement agreement with the "owner of taxable real property." Because leaseholders located on tax-exempt real property do not own the property, they are not authorized to enter into tax abatement agreements with counties.

Education Code, sec. 41.002 sets the equalized wealth level of school districts at a rate of \$295,000 per student.

DIGEST: HB 1448, as amended, would allow cities and counties to abate taxes owed by leaseholders in reinvestment zones. The agreements would exempt a portion of the value of tangible personal property located on the real property for up to 10 years. It would not apply to projects financed by tax increment bonds. Owners of tangible personal property would be added to sec. 312.210(b), which covers joint tax abatement agreements by cities, counties and junior college districts that include property located in school districts that do not exceed the equalized wealth level of \$295,000 per student.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001. Existing tax abatement agreements with similarly situated leaseholders, or agreements made before the bill's effective date would remain valid.

SUPPORTERS SAY: HB 1448 would clarify existing law on tax abatements for leaseholders to conform it to policymakers' intent and local government officials' understanding and practice. Without these changes, some abatement agreements could be jeopardized, potentially damaging economic development.

The bill would remove ambiguity about whether tax abatements would apply to buildings and equipment owned by companies leasing real estate from government or quasi-government agencies or property that otherwise was tax-exempt, as long as they were located in a reinvestment zone. City and county

officials have made such agreements with business and industry based on that understanding. HB 1448 would correct an inadvertent oversight in the law.

This problem came to light in connection with the impending closure of Kelly AFB in San Antonio on July 1, 2001. The federal government conveyed the property to the Greater Kelly Development Authority. The city of San Antonio, in effect, has designated the area in which the base is located a reinvestment zone for tax abatement purposes. Boeing Aerospace Operations Inc. plans to lease facilities from the authority. Predicated on the city's tax abatement agreement with Boeing, Bexar County followed suit within the statutory 90-day deadline, contingent upon a favorable attorney general's opinion. However, the AG's office determined that Boeing's taxes on buildings and equipment could not be abated under current law because abatements of taxes on tangible personal property may be applied only to real property owners.

This ruling would have an adverse effect on local governments trying to diversify their economies or cope with the impact of military base closure. Cities and counties need the option of offering tax abatements to leaseholders to attract them to communities having publicly-owned property, including industrial parks, airports, arenas and stadiums. Otherwise, they may be limited in how they can develop blighted areas or convert military installations to commercial use. The law was not intended to exclude businesses who happen to lease tax-exempt land. If the owner pays no taxes, the benefit of any abatements should accrue to their tenants.

The bill would not create any new tax abatements. It would not expand local governments' authority beyond what the law originally envisioned. It would preserve existing agreements and new agreements signed before September 1, 2001.

OPPONENTS
SAY:

HB 1448 could be used to benefit a few large companies at the expense of municipal and county taxpayers. Tax abatements are not the urban panacea they are touted to be. Texas has an excellent business climate, and the Legislature should not be encouraging local governments to mortgage their economic futures for dubious short-term gains.

NOTES: The committee amendment added a validation clause upholding existing tax abatement agreements and any signed before September 1, 2001, that exempt part of the taxable value of tangible personal property owned by leaseholders.

A similar bill, SB 985 by Duncan, was reported favorably, without amendment, by the Senate Intergovernmental Relations Committee on April 17.

A related bill, HB 2965 by Longoria, which would treat leasehold owners as property owners for purposes of tax abatement agreements, is pending in the House Ways and Means Committee. The Senate companion to HB 2965, SB 1711 by Van de Putte, was reported favorably, as substituted, by the Senate Intergovernmental Relations Committee on April 17.