

- SUBJECT:** Property tax exemption for owners leasing property to a charter school
- COMMITTEE:** Ways and Means — committee substitute recommended
- VOTE:** 8 ayes — Burrows, Guillen, Bohac, Martinez Fischer, Murphy, Noble, E. Rodriguez, Shaheen
- 0 nays
- 3 absent — Cole, Sanford, Wray
- WITNESSES:** For — Amanda List, ResponsiveEd; Thomas Fuller, Texas Charter Schools Association; (*Registered, but did not testify:* Julie Linn, Great Hearts Texas; Elizabeth Cross, Texas Charter Schools Association; Dustin Cox; Tom Sage)
- Against — (*Registered, but did not testify:* Adam Cahn, Cahnman's Musings; Charles Luke, Pastors for Texas Children; Dwight Harris, Texas American Federation of Teachers; Grover Campbell, Texas Association of School Boards; Mark Terry, Texas Elementary Principals and Supervisors Association; Alexis Tatum, Travis County Commissioners Court; Bill Kelberlau)
- DIGEST:** CSHB 388 would entitle a property owner to an exemption from taxation of the portion of real property that the person owned and leased to an open-enrollment charter school under certain conditions.
- A person would qualify for the exemption if the portion of the real property that was leased to the school was used exclusively by the school for the operation, administration, or performance of other educational functions and reasonably necessary for that purpose.
- The owner also would have to certify by affidavit to the school either that:
- if the lease required the school to pay the property taxes for the leased portion of the property as part of the total consideration paid

to the owner, the owner would provide a monthly or annual credit in the amount of the tax exemption; or

- if the lease required the school to pay the property taxes directly to the collector for the applicable taxing unit or to the owner or the property manager separately from the rent payment, the school would no longer be required to pay those taxes and the rent would not be affected unless a term of the lease specifically provided for a change in the amount of rent.

A property owner required to provide an affidavit to a charter school that paid the taxes for the leased property as part of the total consideration paid to the owner also would have to:

- provide the school with a disclosure document stating the amount by which the taxes on the leased property were reduced as a result of the exemption and the method the owner would implement to ensure that the lease fully reflected the total amount of that reduction; and
- reduce the total consideration for the lease through a monthly or annual credit to reflect the amount of the tax reduction that resulted from the exception.

The bill could not be construed as invalidating a property tax exemption granted to an open-enrollment charter school before January 1, 2020, for property purchased or leased with state funds.

Tax Code sec. 25.07 regarding leasehold and other possessory interests in exempt property would not apply to a leasehold interest in real property for which the owner received a property tax exemption under the bill.

The bill would apply to property taxes imposed for a tax year beginning on or after the bill's effective date.

The bill would take effect January 1, 2020, but only if voters approved a proposed constitutional amendment authorizing the Legislature to exempt from ad valorem taxation real property leased to certain schools.

**SUPPORTERS  
SAY:**

CSHB 388 would provide charter schools that operated in leased facilities with more money to use in the classroom by exempting them from having to pay property taxes. School districts, private nonprofit schools, and charter schools that own their facilities are exempt from property taxes, and the bill would level the playing field for charter schools that leased their facilities. The bill would allow charter schools to benefit from the exemption whether they paid their property taxes as a portion of their rent or directly to local taxing entities.

Unlike school districts, charter schools are unable to levy taxes to fund school facilities. Most charter schools start out in leased facilities and may later be able to afford their own buildings. The bill would help newer charter schools by preventing the needless expenditure of operational funds on local property taxes. While some have raised concerns about the cost of providing this tax break to charter schools operating in leased facilities, it is only fair to treat all public schools the same.

As the Legislature is working to increase funding for all public schools, the bill would ensure that charter schools could use their funding for teacher pay and instructional materials rather than on property taxes.

**OPPONENTS  
SAY:**

CSHB 388 would result in school districts and other local taxing entities subsidizing privately owned charter management organizations by making property leased by charter schools exempt from property taxes. The Legislative Budget Board estimates the bill would cost the Foundation School Fund \$16.4 million for the fiscal 2022-23 biennium.

State funding to charters has increased greatly over the past decade despite the fact that school districts still educate the vast majority of Texas students. The bill would add to the growing costs of running two parallel school systems.

Property tax exemptions could result in an increased tax burden on other property owners. Instead of creating new tax exemptions, the Legislature should focus its efforts on reducing the aggregate property tax burden.

NOTES:

According to the Legislative Budget Board, the bill would have a positive impact of \$192,000 to general revenue related funds through fiscal 2020-21, and the negative impact of about \$16.4 million for fiscal 2022-23.

HB 388 is the enabling legislation for HJR 31 by Murphy, the proposed constitutional amendment that would authorize the Legislature to exempt from ad valorem taxation real property leased to certain schools. HJR 31 was reported favorably by the Ways and Means Committee on April 24.