

ANALYSES OF PROPOSED CONSTITUTIONAL AMENDMENTS

88th Texas Legislature November 7, 2023, Election

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SUMMARY ANALYSIS

S.J.R. 64, 88th Legislature, Regular Session, 2023, proposes to add Section 1-r to Article VIII, Texas Constitution, to authorize the governing body of a county or municipality to exempt from ad valorem taxation all or part of the appraised value of real property used to operate a child-care facility. The resolution authorizes the governing body of the county or municipality to adopt the exemption as a percentage of the appraised value of the property, provided that the percentage adopted by the governing body is not less than 50 percent. The resolution further authorizes the legislature by general law to define “child-care facility” for purposes of the exemption and to prescribe eligibility requirements for the exemption.

BACKGROUND AND DETAILED ANALYSIS

Section 1, Article VIII, Texas Constitution, requires that taxation be equal and uniform and that all real and tangible personal property be taxed in proportion to its value unless the property is exempt as required or permitted by the constitution. Any exception to that rule that is not authorized by the Texas Constitution is invalid. Neither the legislature nor a local government that imposes ad valorem taxes may exempt any property from ad valorem taxation without constitutional authority.

The Texas Constitution does not currently authorize a local government to provide an exemption from ad valorem taxation for real property on the basis of the property being used as a child-care facility. The constitutional amendment proposed by S.J.R. 64 amends Article VIII, Texas Constitution, by adding Section 1-r, which authorizes the governing body of a county or municipality to exempt from ad valorem taxation all or part of the appraised value of real property used to operate a child-care facility. The proposed amendment authorizes the governing body of a

The constitutional amendment authorizing a local option exemption from ad valorem taxation by a county or municipality of all or part of the appraised value of real property used to operate a child-care facility.

county or municipality to adopt the exemption as a percentage of the appraised value of the property, provided that the percentage adopted by the governing body is not less than 50 percent, and further authorizes the legislature by general law to define “child-care facility” and prescribe eligibility requirements for the exemption. The proposed amendment allows only counties and municipalities to adopt the exemption authorized by the resolution; school districts and other local governments that impose ad valorem taxes are not authorized to adopt the exemption.

S.B. 1145, 88th Legislature, Regular Session, 2023, is the enabling legislation for the proposed amendment. S.B. 1145 amends Subchapter B, Chapter 11, Tax Code, by adding Section 11.36, which

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governs the exemption authorized by the proposed amendment. Section 11.36 defines “child-care facility” and provides that a child-care facility qualifies for the exemption if the owner or operator of the facility participates in the Texas Rising Star Program for the facility and at least 20 percent of the children enrolled at the facility receive subsidized child-care services through a program administered by the Texas Workforce Commission. The Texas Rising Star Program certifies child care programs that have achieved certain levels of quality care. Section 11.36 provides that, if the exemption is adopted by a governing body of a county or municipality, a person is entitled to an exemption from ad valorem taxation by the county or the municipality of all or part of the appraised value of real property the person owns and uses to operate a qualifying child-care facility or leases to a person who uses the property to operate a qualifying child-care facility and authorizes the governing body to adopt the exemption as a percentage of the appraised value of the property, provided that the percentage adopted is not less than 50 percent. In addition, Section 11.36 prescribes the permissible uses of the property for purposes of receiving the exemption and provides that a person may not claim an exemption for property the person leases to another person for purposes of operating a child-care facility if the person claims the property as the person’s residence homestead or leases any part of the property to another person for use as a primary residence. Finally, Section 11.36 requires a person claiming the exemption for property the person leases to another person for purposes of operating a child-care facility to include with the application for the exemption an affidavit certifying that the person has notified the child-care facility of the tax savings the person has received as a result of the exemption, the rent charged for the property reflects the reduction in the amount of taxes on the property as a result of the exemption, and the rent charged for the property does not exceed rent charged for comparable properties.

S.B. 1145 also amends Section 11.43(c), Tax Code, to provide that a person who initially receives an exemption under Section 11.36 is not required to reapply for the exemption each year. The bill takes effect January 1, 2024, contingent on voter approval of the constitutional amendment proposed by S.J.R. 64.