



STATEMENT OF F. SCOTT MCCOWN ON THE BOHAC-PATRICK PLAN

At a hearing of the Texas House of Representatives Select Committee on Property Tax Relief and Appraisal Reform, chaired by Representative John Otto, in Houston on August 18, Representative Dwayne Bohac and Senator Dan Patrick presented a plan that they say would allow the Legislature to create a 5 percent annual appraisal cap on residence homesteads rather than the present 10 percent cap without a constitutional amendment. But their plan is based upon a misunderstanding of what the constitution says after its most recent amendment in 2007. Lowering the cap does require a constitutional amendment.

What the Texas Constitution says:

The most important principle of state taxation is the very first principle expressed in the Texas Constitution, Article 8, Section 1, Subsection (a):

Taxation shall be equal and uniform.

As a general rule, therefore, taxes must apply equally and uniformly to all.

When it comes to property taxes, the Texas Constitution, Article 8, Section 1, Subsection (b) is very specific:

All real property and tangible personal property in this State, unless exempt as required or permitted by this Constitution, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law.

Thus, as a general rule, every parcel must be taxed in proportion to its value.

Texas Constitution, Article 8, Section 1, Subsection (i) provides a narrow exception to these principles:

(i) Notwithstanding Subsections (a) and (b) of this section, the Legislature by general law may limit the maximum appraised value of a residence homestead for ad valorem tax purposes in a tax year to the lesser of the most recent market value of the residence homestead as determined by the appraisal entity or 110 percent, or a greater percentage, of the appraised value of the residence homestead for the preceding tax year.

A limitation on appraised values authorized by this subsection:

(1) takes effect as to a residence homestead on the later of the effective date of the law imposing the limitation or January 1 of the tax year following the first tax year the owner qualifies the property for an exemption under Section 1-b of this article;

and

(2) expires on January 1 of the first tax year that neither the owner of the property when the limitation took effect nor the owner's spouse or surviving spouse qualifies for an exemption under Section 1-b of this article.

Under this provision, the Legislature can limit the appraised value for a given tax year to no more than the lesser of 1) the most recent market value or 2) at least 110 percent of the appraised value for the preceding tax year.

Searching for a way to change 110 percent (a 10 percent annual increase) to 105 percent (a 5 percent annual increase) without a constitutional amendment, Representative Bohac and Senator Patrick propose a plan. They say that since the constitution limits “the ability of appraisal districts to raise a homeowner’s appraisal by more than 10 percent from one appraisal period to the next,” then limiting homestead appraisals to every two years has “the practical effect of a 5 percent appraisal cap.”

But the constitution does not prohibit an appraisal district from raising an appraisal from one appraisal period to the next. Instead, the constitution prohibits an appraisal district from raising an appraisal for a tax year more than 110 percent of the appraised value for “the preceding tax year.” The Bohac-Patrick plan fails to account for the substitution of “the preceding tax year” for “the most recent tax appraisal” by constitutional amendment in 2007.¹

The Legislature simply cannot increase the size of this tax exemption.

“Exemptions are subject to strict construction since they are the antithesis of equality and uniformity.” *Hilltop Village, Inc. v. Kerrville Independent School District*, 426 S.W.2d 943, 948 (Tex. 1968). The legislature is without power to broaden exemptions beyond those permitted by the constitution. Tex. Const. art. VIII, section 2; *Leander Independent School District v. Cedar Park Water Supply Corporation*, 479 S.W.2d 908, 910 (Texas 1972).

Tx Atty. Gen. Op. JM-43 (1983).

An example of how the cap works:

Assume a home with a market value of \$100,000. Assume a 10 percent or greater increase in market value each year. As calculated under the constitution, here is how the appraisal cap would work if the property were appraised every year and how it would work if the property were appraised every two years:

| Year | Market value (increases 10% per year) | Appraised every year | | | Appraised every two years | | |
|------|--|----------------------|------------------|------------------------------------|---------------------------|------------------|------------------------------------|
| | | Appraised value | Taxable value | Increase in taxable value | Appraised value | Taxable value | Increase in taxable value |
| 1 | 100,000 | 100,000 | 100,000 | | 100,000 | 100,000 | |
| 2 | 110,000 | 110,000 | 110,000 | 10% | 100,000 | 100,000 | 0% |
| 3 | 121,000 | 121,000 | 121,000 | 10% | 121,000 | 110,000 | 10% |
| 4 | 133,100 | 133,100 | 133,100 | 10% | 121,000 | 121,000 | 10% |
| 5 | 146,410 | 146,410 | 146,410 | 10% | 146,410 | 133,100 | 10% |
| 6 | 161,051 | 161,051 | 161,051 | 10% | 146,410 | 146,410 | 10% |
| 7 | 177,156 | 177,156 | 177,156 | 10% | 177,156 | 161,051 | 10% |

¹ See the legislative history for HJR 40 at: <http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=80R&Bill=HJR40#>. The language change is specifically noted in the House Research Organization’s Bill Analysis on page 4. The change in language happened in CSHJR 40 by Representative Hochberg.