

BILL ANALYSIS

C.S.S.B. 310
By: Campbell
Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are concerns regarding the increased reliance of Texas municipalities, counties, and certain hospital districts on the issuance of debt in the form of certificates of obligation to finance construction of public works, to purchase supplies and materials, or to fulfill contracts for professional services. Interested parties contend that certificates of obligation may be issued without sufficient citizen input and have become a contributing factor in Texas' high level of local government indebtedness. C.S.S.B. 310 seeks to make the issuance of certificates of obligation more transparent.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 310 amends the Local Government Code to prohibit the governing body of a municipality, county, or certain hospital districts issuing certificates of obligation under the Certificate of Obligation Act of 1971 from authorizing a certificate to pay a contractual obligation to be incurred if a bond proposition to authorize the issuance of bonds for the same purpose was submitted to the voters during the preceding three years and failed to be approved except in a case of grave public necessity to meet an unusual and unforeseen condition or if necessary to comply with an order of a state or federal court or a final decision or order of a state or federal administrative body.

C.S.S.B. 310 changes the deadline by which a notice of intention to issue certificates of obligation is required to be first published in a newspaper from the 30th day before the date tentatively set for the passage of the order or ordinance authorizing the issuance of the certificates to the 45th day before that tentatively set date. The bill requires such notice to be published continuously on the issuer's website for at least 45 days before the date tentatively set for the passage of the order or ordinance authorizing the issuance of the certificates. The bill removes the requirement for the notice to state the maximum amount of the certificates to be authorized and instead requires the notice to include specified principal and interest information regarding all outstanding debt obligations of the issuer and regarding the certificates to be authorized, stated as a total amount and as a per capita amount. The bill also requires the notice to state the estimated rate of interest for and maturity date of the certificates to be authorized and, in a specified form, the process by which a petition may be submitted requesting an election on the issuance of the certificates.

C.S.S.B. 310 specifies that a petition protesting the issuance of certificates that is filed with a municipal secretary or clerk or a county clerk must be signed by at least five percent of the registered, rather than qualified, voters of the issuer in order for the petition to trigger a prohibition on the issuance of the certificates unless the issuance is approved at an election.

C.S.S.B. 310 removes certificates issued for a contract for personal or professional services from the certificates that are exempt from the notice, petition, and election requirements and requires an issuer of certificates to maintain a website to comply with the notice, petition, and election requirements.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 310 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Section 271.047, Local Government Code, is amended by adding Subsection (d) to read as follows:

(d) Except in a case of grave public necessity to meet an unusual and unforeseen condition, the governing body of an issuer may not authorize a certificate to pay a contractual obligation to be incurred if a bond proposition to authorize the issuance of bonds for the same purpose was submitted to the voters during the preceding three years and failed to be approved.

SECTION 2. Section 271.049, Local Government Code, is amended to read as follows:

Sec. 271.049. NOTICE OF INTENTION TO ISSUE CERTIFICATES; PETITION AND ELECTION. (a) Regardless of the sources of payment of certificates, certificates may not be issued unless the issuer publishes notice of its intention to issue the certificates. The notice must be published:

(1) once a week for two consecutive weeks in a newspaper, as defined by Subchapter C, Chapter 2051, Government Code, that is of

HOUSE COMMITTEE SUBSTITUTE

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(d) The governing body of an issuer may not authorize a certificate to pay a contractual obligation to be incurred if a bond proposition to authorize the issuance of bonds for the same purpose was submitted to the voters during the preceding three years and failed to be approved except: (1) in a case of grave public necessity to meet an unusual and unforeseen condition; or (2) if necessary to comply with: (A) an order of a state or federal court; or (B) a final decision or order of a state or federal administrative body.

SECTION 2. Section 271.049, Local Government Code, is amended to read as follows:

Sec. 271.049. NOTICE OF INTENTION TO ISSUE CERTIFICATES; PETITION AND ELECTION. (a) Regardless of the sources of payment of certificates, certificates may not be issued unless the issuer publishes notice of its intention to issue the certificates. The notice must be published:

(1) once a week for two consecutive weeks in a newspaper, as defined by Subchapter C, Chapter 2051, Government Code, that is of

general circulation in the area of the issuer, with the date of the first publication to be before the 45th [~~30th~~] day before the date tentatively set for the passage of the order or ordinance authorizing the issuance of the certificates; and

(2) continuously on the issuer's Internet website for at least 45 days before the date tentatively set for the passage of the order or ordinance authorizing the issuance of the certificates.

(b) The notice must state:

(1) the time and place tentatively set for the passage of the order or ordinance authorizing the issuance of the certificates;

(2) the [~~maximum amount and~~] purpose of the certificates to be authorized; [~~and~~]

(3) the manner in which the certificates will be paid for, whether by taxes, revenues, or a combination of the two;

(4) the following, stated as a total amount and as a per capita amount:

(A) the then-current principal of all outstanding debt obligations of the issuer;

(B) the then-current combined principal and interest required to pay all outstanding debt obligations of the issuer on time and in full;

(C) the principal of the certificates to be authorized; and

(D) the estimated combined principal and interest required to pay the certificates to be authorized on time and in full;

(5) the estimated rate of interest for the certificates to be authorized;

(6) the maturity date of the certificates to be authorized; and

(7) the process by which a petition may be submitted requesting an election on the issuance of the certificates, in the following form:

"Five percent of the **total number of voters** of (name of issuer) that voted in the most recent gubernatorial general election may petition to require an election to be held authorizing the issuance of certificates of obligation by delivering a signed petition to the (insert "secretary or clerk" if the issuer is a municipality, or "county clerk" if the issuer is a county) of (name of issuer) before the date the governing body has set for the authorization of the certificates of obligation. Information about the requirements of the petition may be obtained from the (insert "secretary or clerk"

general circulation in the area of the issuer, with the date of the first publication to be before the 45th [~~30th~~] day before the date tentatively set for the passage of the order or ordinance authorizing the issuance of the certificates; and

(2) continuously on the issuer's Internet website for at least 45 days before the date tentatively set for the passage of the order or ordinance authorizing the issuance of the certificates.

(b) The notice must state:

(1) the time and place tentatively set for the passage of the order or ordinance authorizing the issuance of the certificates;

(2) the [~~maximum amount and~~] purpose of the certificates to be authorized; [~~and~~]

(3) the manner in which the certificates will be paid for, whether by taxes, revenues, or a combination of the two;

(4) the following, stated as a total amount and as a per capita amount:

(A) the then-current principal of all outstanding debt obligations of the issuer;

(B) the then-current combined principal and interest required to pay all outstanding debt obligations of the issuer on time and in full;

(C) the principal of the certificates to be authorized; and

(D) the estimated combined principal and interest required to pay the certificates to be authorized on time and in full;

(5) the estimated rate of interest for the certificates to be authorized;

(6) the maturity date of the certificates to be authorized; and

(7) the process by which a petition may be submitted requesting an election on the issuance of the certificates, in the following form:

"Five percent of the **registered voters** of (name of issuer) may petition to require an election to be held authorizing the issuance of certificates of obligation by delivering a signed petition to the (insert "secretary or clerk" if the issuer is a municipality, or "county clerk" if the issuer is a county) of (name of issuer) before the date the governing body has set for the authorization of the certificates of obligation. Information about the requirements of the petition may be obtained from the (insert "secretary or clerk" if the issuer is a municipality, or "county clerk" if the issuer is a county) of

if the issuer is a municipality, or "county clerk" if the issuer is a county) of (name of issuer)."[.]

(c) If before the date tentatively set for the authorization of the issuance of the certificates or if before the authorization, the municipal secretary or clerk if the issuer is a municipality, or the county clerk if the issuer is a county, receives a petition signed by a number of qualified voters of the issuer equal to five percent or more of the number of votes cast in the municipality or county, as applicable, in the most recent gubernatorial general election ~~[at least five percent of the qualified voters of the issuer]~~ protesting the issuance of the certificates, the issuer may not authorize the issuance of the certificates unless the issuance is approved at an election ordered, held, and conducted in the manner provided for bond elections under Chapter 1251, Government Code.

(d) This section does not apply to certificates issued for the purposes described by Sections 271.056(1)-(3) ~~[271.056(1)-(4)]~~.

(e) An issuer shall maintain an Internet website to comply with this section.

(f) In this section, "debt obligation" means an issued public security, as defined by Section 1201.002, Government Code.

SECTION 3. The changes in law made by this Act to Section 271.049, Local Government Code, apply only to a certificate of obligation for which the first notice of intention to issue the certificate is made on or after the effective date of this Act. A certificate of obligation for which the first notice of intention to issue the certificate is made before the effective date of this Act is governed by the law in effect when the notice of intention is made, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2015.

(name of issuer)."[.]

(c) If before the date tentatively set for the authorization of the issuance of the certificates or if before the authorization, the municipal secretary or clerk if the issuer is a municipality, or the county clerk if the issuer is a county, receives a petition signed by at least five percent of the registered ~~[qualified]~~ voters of the issuer protesting the issuance of the certificates, the issuer may not authorize the issuance of the certificates unless the issuance is approved at an election ordered, held, and conducted in the manner provided for bond elections under Chapter 1251, Government Code.

(d) This section does not apply to certificates issued for the purposes described by Sections 271.056(1)-(3) ~~[271.056(1)-(4)]~~.

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SECTION 3. Same as engrossed version.

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