HOUSE RESEARCH ORGANIZATION bill analysis

5/8/97

SB 1706
Ratliff (Junell)
(CSSB 1706 by Delisi)

SUBJECT: Providing a loan to Amtrak for the Texas Eagle passenger service

COMMITTEE: Appropriations — committee substitute recommended

VOTE: (*After recommitted*):
21 ayes — Junell, Delisi, Averitt, Coleman, Cuellar, Eiland, Gallego, Glaze, Greenberg, Haggerty, Hochberg, Kubiak, Moreno, Mowery, Pitts, Price, Raymond, Tillery, S. Turner, Walker, West

3 nays — Davis, Finnell, Swinford

3 absent — Heflin, Hernandez, Hinojosa

SENATE VOTE: On final passage, March 25 — 24-5 (Haywood, Nelson, Ogden, Patterson and Shapiro)

WITNESSES: For — Mark Cane, Amy Elsbree, Deborah Hare, Amtrak; Anthony Hennes, City of Temple; Audrey Kariel, Tony Williams, Martha Robb, Edmund Robb, City of Marshall; Jim Slayton, City of Mineola; Bruce Todd, City of Austin

Against — None

On — William Burnett, Thomas Griebal, Texas Department of Transportation; Steve Collins, Texas Legislative Council

DIGEST: CSSB 1706 would amend the Transportation Code to authorize the Texas Transportation Commission to loan general revenue appropriations to Amtrak. The bill would authorize using state highway funds not dedicated by the Constitution as collateral for repayment, and the comptroller could transfer those funds to the general revenue fund to repay any unpaid balance on the loan, including interest.

The Texas Department of Transportation (TxDOT), on behalf of the commission and the comptroller, would have to enter into an agreement with Amtrak for the purposes of making a secured loan. The agreement would have to provide for collateralization and guaranties in a form and amount determined by the comptroller and the commission to be sufficient to repay the state highway fund any transferred funds.

The department also would have to secure agreements with municipalities served by Amtrak to further guarantee repayment of half of any unpaid balance on a loan, including interest.

The bill would take effect immediately if finally approved by a two-thirds record vote of the membership in each house.

SUPPORTERS SAY:

CSSB 1706 would help prevent the elimination of Amtrak's Texas Eagle service that now runs from San Antonio to Chicago but is slated for elimination. The Texas Eagle serves 19 Texas cities and about 200,000 passengers annually. Amtrak is asking for the loan because of cutbacks in federal funds, and Amtrak and other federal officials say more federal dollars are expected to become available in October 1997, at the start of the new federal fiscal year.

Amtrak is undergoing a reorganization and advocating necessary federal reforms to turn the railroad into a profitable venture and plans to improve the profitability of the Texas Eagle primarily through increased nonpassenger service business. Without a funding infusion, however, the Texas Eagle rail service will be discontinued on May 10, and it will be difficult if not impossible to restart the service due to high start-up costs of repairing unmaintained tracks, recruiting employees, and returning transferred equipment.

Amtrak is a key component of Texas' multimodal transportation system, and is especially important because of the growing amount of cargo traffic from Mexico. Rail service stimulates and supports intrastate and interstate commerce and helps alleviate traffic congestion and other problems on state roads and highways. In addition, many Texans are afraid of flying and rely on rail service for long-distance transportation, and many cities depend on Amtrak for tourist and business travel.

The loan would carry little risk because Amtrak is financially backed by the federal government and very highly rated by private financial lenders (an A-rating by Standard & Poor's). A $5.6 million loan would be very small compared to Amtrak's other routine financial transactions. Amtrak has pledged the state 20 rail cars as collateral, valued at about $300,000-$800,000 each, and the state would have legal standing for Amtrak's repaying loan and interest costs not paid by the rail car collateral. The comptroller would be authorized to shift nondedicated state highway funds into general revenue in case of default, so that the amount of general revenue available for fiscal 1998-99 budget certification would not be affected. The state's interests would also be protected by agreements from affected municipalities to help guarantee half of any unpaid loan balance.

The loan would be beneficial for both Texas and Amtrak. Texas would be investing in its own economy by lending funds that would maintain the Texas Eagle service until federal funds become available to help improve its profitability and expand its frequency of service. The loans would result in increased Amtrak investments in Texas, which may not happen if the rail carrier turned to private credit for help. Other states have simply granted Amtrak money to continue operations; for example, Illinois gave Amtrak $2.5 million in fiscal 1995, and is considering legislation which would grant Amtrak $8 million for fiscal 1998.

Sen. Kay Bailey Hutchinson and others endorse the loan as a small price to pay for state economic benefits and as a measure that would not divert a significant amount of funds from other state priorities. An emergency appropriation of $5.6 million has already been approved by both houses of the Legislature for the loan to Amtrak in SB 886 by Ratliff (Junell).

The loan to Amtrak would be authorized under the Constitution, art. 3, sec. 52-a, which includes broadly worded provisions that allow the Legislature to grant loans for the public purposes of economic development and diversification and the expansion of state transportation or commerce. It is highly unlikely that a court would find this loan unconstitutional. Since Amtrak is a federally chartered and subsidized enterprise, constitutional prohibitions against loans to corporations are not relevant because they were enacted to prevent the subsidization of highly speculative private ventures and enrichment of private businesses and individuals.

OPPONENTS SAY:

CSSB 1706 would be diverting limited state general revenue funds from state priorities, establishing a dangerous precedent that may not be fully authorized by the Constitution.

Lending money to a corporation normally dependent on federal subsidies would be using state funds for private purposes, and the state would have no control or oversight on the use of those funds or the development of the operations. The loan obviously contains risk because the bill would enact several safeguards and collateral agreements to ensure loan repayment. Amtrak should turn to private lenders instead of the state; it reported that a $150 million credit line is already available.

The loan would not guarantee that the Texas Eagle service will become self-supporting in the future. Financial reports show that Amtrak has never been entirely self-supporting and in recent years has mounted increasing debts. The Texas Eagle service alone costs Amtrak about $20 million annually. If the service fails to become viable despite the infusion of new funds, the Amtrak and affected municipalities could once again petition the state for more financial aid.

Texas should not assume federal responsibilities when it has so many pending state responsibilities that beg for funding. The appropriations “wish list” contains $4.2 billion of additional funding requests, not including new programs and expanded state operations now pending legislative consideration. A state agency in similar financial and operational shape to Amtrak would most likely never receive legislative approval for an additional $5.6 million.

CSSB 1706 would be lending state money to an “eligible corporation,” defined as Amtrak, which goes against at least two constitutional prohibitions. Art. 3, sec. 51 of the Constitution prohibits the Legislature from granting public funds to any individual, association or corporation whatsoever. Art. 3, sec. 50 prohibits lending state credit to “any person, association or corporation, whether municipal or other...” and has been interpreted to allow the use of state credit only for state purposes. The purpose of the loans also would not conform to the requirements under art.

3, sec. 52-a, in that Amtrak transportation would not be expanded in Texas, only continued, and no new economic development would be guaranteed.

NOTES: The committee substitute would require TxDOT to secure agreements with municipalities to further guarantee the repayment of half of any unpaid balance of the loan.

SB 886 by Ratliff, making emergency appropriations, would appropriate $5.6 million for the proposed loan to Amtrak, subject to enactment of SB 1706 and would require repayment of the loan, with interest, by August 31, 1999. The Senate concurred in House amendments to SB 886, which has been sent to the governor

CSSB 1706 was recommitted on a point of order on April 30, and the committee substitute reported after recommital is identical to the first committee report.