HOUSE
RESEARCH
ORGANIZATION bill analysis 3/26/2001

HB 1370
Pickett, Hawley

SUBJECT: Allowing State Infrastructure Bank borrowing without issuing bonds

COMMITTEE: Transportation — favorable, without amendment

VOTE: 7 ayes — Alexander, Hawley, Y. Davis, Hamric, Noriega, Pickett, Swinford

0 nays

2 absent — Edwards, Hill

WITNESSES: For — Michael Plaster, Texas Transit Association; *Registered but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; Shanna Igo, Texas Municipal League; Bob Kamm, Travis County Commissioners Court; Judge Jim Lewis, McLennan County; Skipper Wheeless, West Texas County Judges and Commissioners Association

Against — None

On — Thomas Doebner, Texas Department of Transportation; *Registered but did not testify:* James Bass, Texas Department of Transportation

BACKGROUND: In 1997, the 75th Legislature created the State Infrastructure Bank (SIB) when it enacted SB 370 by Armbrister, the sunset legislation for the Texas Department of Transportation (TxDOT). Texas is one of about three dozen states participating in the federal-state SIB program and one of the 10 original pilot states under the National Highway System Designation Act. SIBs are self-sustaining, revolving loan funds offering below-market interest rates on direct loans, plus credit enhancements and other forms of financing designed to help communities leverage additional money for transportation projects. Almost $169 million remains available in the Texas SIB even though Congress cut off federal contributions to the SIB in 1999.

Several counties had obtained SIB assistance when Lavaca County applied for a loan to help finance a $420,000 right-of-way and bridge replacement project. The county also sought advice from the attorney general on whether it could borrow from the SIB and repay the loan with ad valorem taxes without issuing bonds or other obligations evidencing the loan. In Opinion JC-0139 (November 3, 1999), the attorney general determined that counties do not have statutory authority to borrow money directly for road and bridge construction without issuing bonds or other obligations evidencing the loan.

DIGEST: HB 1370 would amend the Transportation Code to authorize a county or any other public entity that builds, maintains, or finances qualified transportation projects to borrow funds directly from the SIB. Governmental bodies would not have to issue bonds or any other debt instruments to obtain a SIB loan. The borrowing entities would have to keep SIB proceeds in a separate account and avoid commingling them with other funds. The funds could be spent only for purposes related to the projects for which they were borrowed.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

SUPPORTERS SAY: Requiring governmental entities to issue debt obligations to take advantage of SIB assistance defeats the purpose of the program. The SIB was designed to make supplemental transportation funding available to local governments for short-term projects at low cost. Instead, the absence of explicit or implied borrowing authority is penalizing counties by forcing them to pay for bond issuance. HB 1370 would remedy this situation by authorizing governmental bodies to borrow directly from the SIB.

For example, Lavaca County has sold only $218,000 in tax notes to the SIB, instead of the $420,000 it has been approved to borrow, because the county could not afford to spend about $40,000 in attorneys’ fees and other charges to issue bond to cover the full amount. The SIB already has purchased $10 million in bonds at 4.5 percent interest from Denton County to widen State Highway 121. Without bonding, more of the loan proceeds could be used for construction and other projects. Comparing total project costs to loans and other assistance since its inception, the SIB’s leverage ratio has been about 13:1, according to TxDOT.

The bonding requirement has inhibited county participation in the SIB program. According to TxDOT, only two counties have applied recently, and four counties’ applications have been pending for two years. In calendar 2000, the SIB approved eight loans totaling $28 million for projects in seven of TxDOT’s 25 districts. Although applications are expected to increase if HB 1370 passes, concerns about creating too much debt are unfounded. The four county projects on hold range in cost from $29,000 to $102,000. The SIB has almost $169 million available and expects to receive about $4 million in repayments during fiscal 2001.

HB 1370 actually would result in less debt for local entities because it would make small loans available from the SIB at lower costs than bonding or other borrowing methods. Local entities must incur debt for these projects in any case; the SIB makes it easier and less expensive.

Removing the bonding requirement would not circumvent public approval of government spending. All transportation projects using state or federal money must be approved by a local or regional authority such as the metropolitan planning organization or council of governments.

HB 1370 would apply to all potential borrowers because the 1999 AG's opinion in regard to counties' borrowing authority might apply to cities and other entities as well. This would help smaller entities, especially because often they either cannot afford or do not need long-term bond financing.

OPPONENTS SAY:

Debt restrictions on governmental entities serve useful purposes and should not be circumvented as HB 1370 would allow. They hold public officials accountable to taxpayers who provide money for government spending. Bond elections are a meaningful check on government's ability to incur debt, balancing officials' priorities with the will of the people. Counties and other governmental entities should not be able to borrow money for public works or capital projects without voter approval. These safeguards help protect against unauthorized diversion of public funds and overcommitment of resources.

HB 1370 would extend an ongoing trend toward relaxing requirements for voter approval of public debt. This trend circumvents taxpayers' ability to exert control over government spending. Extending direct borrowing authority to any public entity dealing with transportation projects would be overly broad and could result in excessive layers of new debt.

Eliminating the need for a designated means of repayment other than local general revenue could encourage cities and counties (especially the larger ones) to overexpose their creditworthiness in their haste to meet pressing transportation needs. No bonding also would mean no need to submit the financing package to the attorney general for approval.

Current law does not prevent counties or any other public entity from borrowing from the SIB. Likewise, the law in no way inhibits the SIB from fulfilling its purpose, as evidenced by the millions of dollars it has loaned throughout the state. The SIB is not limited to direct loans in assisting local governments with transportation projects. Other options include letters of credit and bond security.

NOTES: The companion bill, SB 407 by Cain, passed the Senate on March 1 and reported favorably, without amendment, by the House Transportation Committee on the Local and Uncontested Calendar on March 20, making it eligible to be considered in lieu of HB 1370.