SUBJECT: Authorizing a continuing ad valorem tax for payment of school bonds

COMMITTEE: Local Government Ways and Means — favorable, without amendment

VOTE: 5 ayes — Hill, Hegar, Laubenberg, Mowery, Quintanilla

0 nays

2 absent — McReynolds, Puente

WITNESSES: For — Ben Coker, Highland Park ISD; George Williford

Against — None

BACKGROUND: Education Code, sec. 45.001 authorizes the issuance of voter-approved bonds with a maturity of 40 years or less, to be repaid with ad valorem tax revenue, for building, acquiring, and equipping buildings; acquiring or refinancing real or personal property; buying school building sites; and buying new school buses.

Ninety-six percent of school debt is issued in the form of general obligation bonds. Revenues from taxes that a district imposes to pay for bonded debt go into an interest and sinking (I&S) fund. However, when school districts need to make smaller capital purchases, such as for technology upgrades or maintenance projects, many use short-term maintenance tax notes, which are repaid with maintenance and operations (M&O) tax revenue.

State law generally limits a school district's M&O tax rate to $1.50 per $100 of valuation. (Under Art. 4784g, enacted before the creation of the Education Code in 1969, a district in a county with more than 700,000 residents may impose an M&O tax rate not to exceed $2.00.) A more flexible guideline exists for I&S (debt) taxes, called the "50-cent rule."

Before issuing bonds, a district must demonstrate to the attorney general that it can repay the principal and interest on the proposed bonds and on all other bonds issued since September 1, 1992, without exceeding an I&S tax rate of 50 cents per $100 of valuation (Education Code, sec. 45.0031). The attorney

general must count both local tax revenue and state aid for debt service when calculating a district's ability to pay for a bond. Once the attorney general approves a bond issue and local voters approve it, a district's I&S rate can rise above 50 cents if property values decrease. Thus, despite the $1.50 cap on M&O tax rates and the 50-cent test for I&S tax rates, a school district's total tax rate may exceed $2.00 per $100 valuation.

Texas Constitution, Art. 7, sec. 3(e) authorizes the Legislature to enact laws for assessment and collection of taxes in school districts and for management and control of public schools. The Legislature may authorize an additional school ad valorem tax for further maintenance of schools and for erection and equipment of school buildings, provided that a majority of qualified voters in the district approve the tax in an election. Education Code, sec. 45.003 requires that bonds be approved by a majority of voters and that the levy of a debt-service tax be approved specifically to support a particular bond issue for a specific project or projects.

In 1999, state lawmakers created the Existing Debt Allotment (EDA), an equalized funding program that helps qualified school districts pay "old debt," defined as debt for which a district made payments before September 1, 2001. The EDA provides a guaranteed yield of $35 per student per penny of debt tax effort up to 29 cents per $100 of valuation. No application is required for a district to receive an allotment. Districts with lower wealth per student have a greater share of their debt paid by the EDA (Education Code, ch. 46, subch. B). The 77th Legislature "rolled forward" the EDA eligibility cutoff date to cover two more years of debt. Proposals have arisen to roll the EDA eligibility date forward to cover debt payments made in the 2002-03 school year.

DIGEST:

HB 2826 would allow school districts to levy up to 10 cents in voter-approved ad valorem taxes to support continuing annual debt service. A school board could submit a proposition to voters to approve the tax to pay for principal and interest on bonds issued for facilities, buildings, land, or buses. Once the tax was approved, the school district could continue to issue bonds payable from the tax without another election. Authority to levy the tax would not expire when the bonds secured under the initial election finally matured or were paid off. A tax authorized under the bill could secure multiple bond issues, but the tax rate for all bonds could not exceed the rate approved by the voters. The rate could not exceed the amount needed to pay the principal and

interest on outstanding bonds secured by the tax. Approval of the tax would not restrict the school district's authority to issue other ad valorem taxes.

The ballot for approval of the tax would have to allow voting for or against the proposition and would read as follows: "The levy of a continuing, annual debt service tax at an initial rate not to exceed (the rate stated in the proposition, which may not exceed $0.10 on the $100 valuation of taxable property) on the $100 valuation of taxable property in the district to secure the payment of bonds." The bond election would not have to be held on one of the four uniform election dates each year.

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, 2003.

SUPPORTERS SAY:

HB 2826 would help school districts that had reached the $1.50 cap on M&O taxes to maintain facilities and make minor capital purchases without having to hold a new bond election each time. More than 400 districts have reached the M&O cap, and another 200 are fast approaching their limit. Many of these districts are deferring maintenance and delaying technology upgrades. Other districts have such tight budgets that they have been caught unprepared to fund emergency repairs arising from weather catastrophes, such as hailstorms or other unplanned emergencies. Allowing districts to levy a continuing debt-service tax for these purposes would allow them to divert M&O dollars away from debt service on maintenance tax notes and back toward such important M&O expenditures as salary and benefits.

HB 2826 essentially would create a flexible revolving credit account for school districts to fund ongoing repairs, such as replacing a roof or paving a parking lot, and for small capital updates such as updating technology systems. The tax would be limited to a voter-approved rate of 10 cents, which would be even smaller for districts with larger tax bases. This could create substantial breathing room for districts at or near their tax cap without the Legislature having to raise the $1.50 cap. For example, for a district with taxable value of $100 million, a 10-cent tax rate would produce $100,000 per year to support repairs and capital items totaling about $775,000, with 10-year repayment of the financing. With M&O tax rates capped at $1.50, school

districts need greater budgetary flexibility to work within the constraints of the school finance system.

The bill would preserve accountability in government by making the initial tax rate subject to voter approval and by holding the school board responsible for results. It would show support for and trust in the judgment of local school districts to manage their resources wisely, while enabling local taxpayers to vote for protecting their public investment in district-owned buildings and equipment. Local voters could monitor ongoing expenditures through school board meetings and through required publication of school district bid requests in excess of $25,000. Since school board members are elected by the public, they could be voted out of office if district residents grew unhappy with how their local tax dollars were being spent.

HB 2826 would not affect state expenditures nor lead to overspending by local districts. The bill is permissive and only would allow districts to leverage local tax dollars for bonds. The pennies leveraged on the ad valorem tax rate for continuing debt service would be counted toward the 50-cent test applied by the attorney general when approving future debt issuances. Also, rolling forward the eligibility date for the EDA by two years, as proposed in CSHB 3459 by Pitts, would create a biennial lag on when local debt became eligible for state assistance, so it would not affect state expenditures in the coming biennium. Finally, state assistance on EDA only applies to the first 29 cents of I&S debt, so if this bill resulted in a district's I&S rate exceeding 29 cents, the state would not have to equalize that amount.

OPPONENTS SAY:

HB 2826 would give a greater advantage to wealthy districts by creating a new way for them to raise unequalized local enrichment. A wealthy district such as Highland Park could raise more than $1,000 per student for a 10-cent tax levy, while the poorest district in the Rio Grande Valley could raise less than $20 per student on the same tax levy. This means that poor districts have to expend 50 times the effort to raise a similar amount of money on an ad valorem tax levy. Also, wealthier districts can bring in more dollars per penny on an unequalized ad valorem tax rate, because they are not required to return a portion of their debt-service revenue to the state. Wealthier districts already have found ways to shift maintenance costs to I&S as a way of avoiding revenue recapture. The bill would create one more way for wealthy districts to

shift ongoing maintenance costs to I&S, while leaving poorer districts and their students behind.

HB 2826 would reward districts for overspending and would encourage them to go further into debt. Since 1992, voter-approved debt for Texas schools has increased more than eightfold, to nearly $29 billion. School districts are taking longer to pay their long-term debt, and the state has assumed an ever-increasing portion of the debt service on school bonds since the Legislature created debt assistance programs in the late 1990s. As school districts issue more bonds, many are counting on the state to continue to help them pay their debt on facilities. If and when the EDA eligibility date is rolled forward in the future, this bill could add to a ballooning state commitment to subsidized debt service for school districts.

NOTES:

CSHB 3459 by Pitts would roll forward the eligibility date for EDA two more years, among other statutory changes affecting public education agencies in regard to appropriations. It would define eligible debt as debt on which the school district made payments during the 2002-03 school year. CSHB 3459 is on today's House Major State Calendar.