HOUSE
RESEARCH
ORGANIZATION bill analysis | 4/24/2003 | HJR 28
Pickett, et al.

SUBJECT: Amending the Constitution to allow short-term borrowing by TxDOT

COMMITTEE: Appropriations — favorable, with amendment

VOTE: 19 ayes — Heflin, Berman, B. Brown, F. Brown, Crownover, Deshotel, Eiland, Ellis, Gutierrez, Hamric, Hupp, Menendez, Pickett, Pitts, Raymond, Stick, Truitt, Turner, Wohlgemuth

0 nays

10 absent — Luna, Branch, J. Davis, Dukes, Hope, Isett, E. Jones, Kolkhorst, McClendon, Solis

WITNESSES: For — Tom Johnson, Associated General Contractors of Texas; Steve Stagner, Texas Council of Engineering Companies

Against — None

On — James Bass and Michael Behrens, Texas Department of Transportation

BACKGROUND: Texas Constitution, Art. 3, sec. 49 prohibits state debt, with certain exceptions. Art. 8, secs. 7-a and 7-b dedicate to the state highway fund three-fourths of net revenue from state motor-fuels taxes (MFTs), plus revenue from federal MFTs, state motor-vehicle registration fees, and sales taxes on lubricants. Fund monies may be spent only on acquiring right-of-way, constructing, maintaining, and policing public roadways, and enforcement of traffic and safety laws.

The Texas Transportation Commission (TTC) is appointed by the governor as the policymaking body of the Texas Department of Transportation (TxDOT).

DIGEST: (*The author plans to offer a floor substitute, which the Digest summarizes in lieu of HJR 28, as amended.*)

HJR 28 would add sec. 49-m to Art. 3 of the Constitution to allow the Legislature to authorize the TTC, or its successor, to authorize TxDOT, or its successor, to issue notes or borrow money from any source to carry out its functions. The terms of notes or loans so authorized could not exceed two years. The Legislature could repay the debts incurred by appropriating dedicated money from the State Highway Fund.

The proposal would be presented to voters at an election on Tuesday, November 4, 2003. The ballot proposal would read: "The constitutional amendment providing for authorization of the borrowing of money on a short-term basis by a state transportation agency for transportation-related projects."

SUPPORTERS SAY:

HJR 28, as amended, would help TxDOT deal with short-term cash flow problems. Transportation funding continues to lag behind demand. The vicissitudes of federal highway funding reimbursements and the seasonal nature of road building have contributed to cash-flow problems at TxDOT. Outstanding contracts totaling up to $7 billion and unpredictable weather make it difficult to forecast cash flows.

Sometimes, overabundant funds can cause shortfalls. In October 2001, for example, TxDOT paid out more than $300 million due to an unusually high volume of road work and right-of-way acquisition. On one day that month, the balance of the state highway fund dipped to $4 million. This situation delayed payments to some contractors and vendors, hurting small companies particularly, and led to a temporary suspension of many new projects. State agencies must be able to meet their obligations, and Texas motorists and business interests cannot afford unnecessary road work stoppages.

HJR 28 and its enabling legislation, HB 471 by Pickett, et al., if approved by voters and the Legislature, would implement the comptroller's recommendation to allow TxDOT to issue revenue-based notes or to borrow from public or private sources to meet short-term needs created by its unique cash-flow dynamics. Giving TxDOT the flexibility to obtain loans from private capital markets would inject competition into the process. With interest rates at historic lows, this could save the state significant interest costs. Regardless, the Legislature could appropriate repayment from dedicated revenue in the highway fund. These and other restrictions in the enabling legislation, plus the two-year time limit, would provide proper safeguards for taxpayers' money.

This borrowing authority would function much like a line of credit. It would be based on revenue that TxDOT needed at a particular time and might not have on hand but would have in the near future. Short-term borrowing would not generate new revenue or fund additional projects. Unlike bonds, it would be a cash management tool, not a funding mechanism. This cushion would enable TxDOT to manage its cash position more aggressively and focus less on managing to the lowest daily balance. This would reduce concerns about spending beyond day-to-day available cash balances.

Short-term borrowing also should improve project readiness and speed of delivery. Although it is difficult to quantify precisely, a tangible value is inherent in starting projects earlier and completing them sooner. Cost savings include lower prices due to the reduced impact of inflation, with the added benefit of interest earned on those savings. The result would be a net financial gain to TxDOT, according to the comptroller, and an economic boon to the state from lower opportunity costs due to quicker turnaround.

TxDOT realizes that it needs to improve its cash forecasting methods. It also has taken steps to reduce interest paid on late payments, noting that its total costs to date are less than 1 percent of the amount TxDOT spent on highway contracting.

OPPONENTS SAY:

With the state in a dire fiscal situation, this is the wrong time to be increasing debt, even if it is backed by dedicated revenue. Short-term borrowing would require appropriations the state cannot afford to be spending on interest, however low the rates. Borrowing would increase TxDOT's costs in terms of forgone interest earned on cash balances and in interest charges for new borrowing. Whether TxDOT actually could speed up projects and realize any savings is uncertain at best.

No other state agency in Texas engages in short-term borrowing to pay for its daily operations. While the Comptroller's Office issues tax and revenue anticipation notes, it does so not to cover its own expenses, but so it can pay other agencies' bills and fulfill state obligations on time.

Although TxDOT is a $6 billion-per-biennium agency with a constitutionally dedicated revenue source, it cannot manage its budget effectively. According to the state auditor's March 2003 report, TxDOT needs to improve the accuracy of its cash management methodology to maximize available funds. The audit of the State Highway Fund discovered that, between September 1999 and September 2002, TxDOT's three-month forecast of lowest daily balances was off by an average of 258 percent. A recent news report citing the comptroller identified TxDOT as having paid more interest on late payments to vendors than any other state agency — more than $900,000 since April 2000,when a state law requiring interest on late payments took effect. This kind of performance should not be rewarded with short-term borrowing authority or credit.

NOTES:

As filed, HJR 28 would have provided authority for TxDOT to borrow money from the state treasury or any other source to carry out its functions. A loan could not have had a term longer than five years. A debt created by the loan would not have been a general obligation of the state and would have been payable only as authorized by legislative appropriation. The committee amendment to the filed version would reduce the allowable term of a loan from five years to two years.

The author's floor amendment would specify that TxDOT could issue notes as well as borrow money; delete the statement that loan debt was not a general obligation of the state; and remove the reference to the state treasury as a lender.

HB 471 by Pickett, et al., the enabling legislation for HJR 28, is on today's General State Calendar.

The companion resolution, SJR 34 by Lucio, has been referred to the Senate Finance Committee.