HOUSE
RESEARCH
ORGANIZATION bill analysis 5/21/2003

SJR 44
Ogden, Lucio
(Krusee)

SUBJECT: Authorizing bonds paid by the State Highway Fund

COMMITTEE: Transportation — favorable, without amendment

VOTE: 6 ayes — Krusee, Phillips, Hamric, Edwards, Harper-Brown, Mercer

1 nay — Laney

2 absent — Garza, Hill

SENATE VOTE: On final passage, April 9 — 28-3 (Averitt, Fraser, Staples)

WITNESSES: For — None

Against — None

On — James Bass and Amadeo Saenz, Texas Department of Transportation

BACKGROUND: Texas Constitution, Art. 3, sec. 49 prohibits state debt, generally requiring that voters approve bonded indebtedness before the state may incur it. Sec. 49-j limits annual state debt payable from state general revenue to 5 percent of the average annual amount of nondedicated general revenue for the three preceding fiscal years.

In 2001, the 77th Legislature created the Texas Mobility Fund (TMF), a revolving bond fund for transportation projects, by enacting SB 4 by Shapiro. Art. 3, sec. 49-k of the Constitution, approved by Texas voters in November 2001, contains provisions governing the TMF, which is administered by the Texas Transportation Commission (TTC). The Legislature may dedicate previously nondedicated revenue sources or amounts to the TMF. The TTC must authorize bonds pledged against the TMF. Payments are secured by a pledge of and a lien against the fund balance. The Legislature has yet to designate a revenue source for the TMF or to deposit any money into it, and no bonds have been issued to date

The State Highway Fund (also known as Fund 6) has constitutionally dedicated revenue sources and spending purposes (Art. 8, sec. 7-a). Fund 6 contains state motor-fuel and lubricant tax revenue and motor-vehicle registration fee collections, plus federal motor-fuel tax revenue allocated to Texas for reimbursement of state highway expenditures. Three-fourths of state revenue deposited into Fund 6 must be spent on acquiring, building, maintaining, and policing the state highway system and administering traffic and safety laws. One-fourth of state motor-fuel tax revenue is allocated to the Available School Fund. More than $5.9 billion was deposited into Fund 6 during fiscal 2002. The net cash balance at the end of fiscal 2002 was almost $523 million, according to the comptroller.

Bond enhancement agreements typically are forms of insurance that function like a reserve fund account or a means to improve credit ratings. Other public securities include interim financing mechanisms (for example, commercial paper) or private placement of debt with banks or insurance companies.

DIGEST:

SJR 44 would propose amending the Constitution to add Art. 3, sec. 49-m, which would allow the Legislature to authorize TTC to issue up to $5 billion in debt payable from Fund 6 revenue. Debt could take the form of bonds and other public securities, as well as bond enhancement agreements.

The amendment would appropriate each year sufficient amounts to pay principal and interest on bonds or securities maturing during that fiscal year, plus any other debt-related costs such as bond enhancement agreement payments that became due. Fund 6 dedications or appropriations could not be modified in such a way as to impair any debt instruments pledged against Fund 6, unless provisions had been made to pay the debts in full.

The proposal would be presented to the voters at an election on Tuesday, November 4, 2003. The ballot proposal would read: "The constitutional amendment authorizing the legislature to provide for the issuance of up to $5 billion of bonds and other public securities secured by the state highway fund for improvements to the state highway system."

SUPPORTERS SAY:

SJR 44 would establish a mechanism for stretching state highway-funding dollars to build badly needed highways sooner. Texas' traditional "pay-as-you-go" approach to highway finance no longer is viable, and the state began weaning itself away from that approach in 2001 with creation of the TMF. The state's phenomenal population growth has led to more vehicle-miles traveled, greater traffic congestion, clogged border crossings, deficient rural roads, and many unsafe bridges. Demand has far outstripped capacity while spending has lagged. Texas never will catch up with demand if it does not avail itself of new financing mechanisms, such as using the bonding authority that SJR 44 would authorize.

Highways are the only major capital projects for which the state does not borrow money by issuing bonds. That policy no longer is defensible in the face of spiraling needs, lost economic opportunities, and reduced quality of life. Cities and counties routinely finance street and road projects with bonds. There is no good reason why the state should not avail itself of this financing tool as well, subject to appropriate constraints.

The TMF was intended to allow the state to supplement Fund 6 spending by issuing bonds against state revenue without jeopardizing federal highway funds. Unfortunately, as the state's transportation problems have worsened, the economic downturn that led to the current fiscal crisis has precluded activation of the TMF. Rather than prolong this delay, which is exacerbated by cash-flow problems at the Texas Department of Transportation (TxDOT), the state should extend the same bonding authority to Fund 6.

With interest rates at historic lows and the state's credit ratings relatively high, debt costs should break even with, if not fall below, construction inflation. Bonding speeds up highway projects, thus alleviating traffic congestion, enhancing productivity, improving safety, and reducing opportunity costs (economic and social gains forgone because of lack of transportation infrastructure).

Improving mobility sooner rather than later would aid economic development, and specifically job creation. Two successive annual bond issues of $1 billion each could create more than 41,000 new jobs per year, according to the comptroller, including about 17,600 supply jobs, 7,000 construction jobs, more than 3,500 permanent jobs, and almost 13,000 jobs resulting from spending of construction payroll dollars.

Debt financing is appropriate for fixed assets such as highways. To date, 28 states have issued highway revenue bonds. Because better transportation infrastructure benefits future generations of taxpayers, they should share the costs as well.

Highway revenue bonds would be based on both state and federal revenue. This would make them more flexible than grant anticipation notes (also known as grant anticipation revenue vehicles, or GARVEE bonds),which are restricted to future federal funding. Also, unlike general obligation bonds, revenue bonds are not subject to the constitutional debt limit. Temporary bonded indebtedness is preferable to permanent tax or fee increases, most of which would be regressive. Bonds represent the best solution available in view of the state's current fiscal situation.

The aggregate and annual limits on bond amounts would safeguard Fund 6 against excessive debt that might interfere with other spending priorities. The amounts would give TTC enough discretion and flexibility for bonding to have a significant impact on highway funding. Highway construction contractors maintain that they have resources sufficient to handle an additional $1 billion worth of work per year. Issuing that amount of debt would cost TxDOT about $100 million a year in interest and other costs. Issuing highway bonds would not be "robbing Peter to pay Paul." Most of Fund 6 is spent on highways; bonds merely would accelerate the process. Spending more than $1 billion a year could overload the industry and negate the benefits of acceleration.

The provision regarding modifying dedications or appropriations would assure investors that bond obligations would have top priority among Fund 6 expenditures.

OPPONENTS SAY:

Despite recent legislative decisions to the contrary, it is not a good idea to go into debt to pay for highways. Borrowing money for construction increases costs and passes them along to future taxpayers and legislators. Texas should continue to pay for the amount of highway construction it can afford, rather than encumber scant resources and add to state debt.

Fund 6 already is spread too thin, and bonding would generate no new revenue. Along with public education, revenue deposited into Fund 6 is spent on the Department of Public Safety and other agencies. Rather than using strained resources to incur more debt, the state should put more money into Fund 6 by raising motor-fuel taxes, vehicle registration fees, or both, or by dedicating other revenue streams to Fund 6, such as motor-vehicle sales taxes or vehicle inspection fees.

Highway bond ratings are based on individual projects, not on the state's overall credit ratings. Interest rates conceivably could be higher for some projects than others, reducing any savings to the state.

OTHER OPPONENTS SAY:

Texas already has a state highway bond fund, the TMF. Rather than siphon money from Fund 6, the Legislature should follow through on its commitment to voters and find a revenue source or funding for the TMF.

Allocating one-sixth of Fund 6 to pay for debt financing could overcommit TxDOT and limit its ability to meet unforeseen needs. The bond limits should be lowered to a more reasonable level until TxDOT and TTC gain more experience with this type of funding.

The state's transportation system is approaching a crisis level that demands a massive and immediate cash infusion. There should be no limits on bond amounts. The 10 percent rule of thumb dictates having $10 available for debt service for every $100 of debt issued. Conservatively, Fund 6 could be leveraged to issue $36 billion in highway bonds based on the 6:1 ratio often applied to TMF bonding. TTC, with input from the governor and the Legislature, should be given more discretion to set TxDOT's spending priorities.

The state would assume less risk, yet still benefit from a reliable revenue source, by issuing GARVEE bonds against its federal highway fund allocations.

NOTES:

The enabling legislation, SB 1083 by Ogden and Lucio, passed the Senate on April 14 and has been referred to the House Transportation Committee.

A related joint resolution, SJR 21 by Lucio, which would authorize TTC to issue grant anticipation notes (GARVEE bonds), was considered in a public hearing by the Senate Infrastructure Development and Security Committee on March 31 and left pending.