HOUSE RESEARCH ORGANIZATION bill analysis | 5/4/2005 | HB 2652 Krusee (CSHB 2652 by Phillips)

SUBJECT: Private activity bond program for highway infrastructure projects.

COMMITTEE: Transportation — committee substitute recommended

VOTE: 5 ayes — Krusee, Phillips, Casteel, Hamric, Hill

0 nays

4 absent — Callegari, Deshotel, Flores, West

WITNESSES: For — None

Against — None

On — James Bass, Texas Department of Transportation

BACKGROUND: Private activity bonds are private bonds used to finance projects that provide a public benefit. The interest earned on private activity bonds is exempt from federal taxation. The federal Tax Reform Act of 1986 restricts the types of privately-owned public purpose projects which can take advantage of tax exempt financing. Some examples of projects eligible to be funded through private activity bonds include:

- student loans;
- low-interest loans to first time home buyers;
- projects to process Texas agriculture projects;
- small rural industrial developments;
- multi-family housing projects;
- high-speed, inner-city rail facilities;
- mass commuting facilities;
- sewage facilities; and
- hazardous waste disposal facilities.

The Tax Reform Act of 1986 also imposes a volume ceiling on the aggregate principal amount of tax-exempt private activity bonds that may be issued in each state per year. State volume ceilings are based upon the state's population, and periodic adjustments are made to account for inflation. Texas' volume ceiling was an estimated $1.6 billion in 2004 --

the second largest ceiling in the nation.

Efforts have been under way recently in Congress to pass legislation allowing for the issuance of private activity bonds to finance transportation infrastructure projects. Proposed legislation would amend the Internal Revenue Code to include highway facilities and surface freight transfer facilities among the types of privately developed and operated projects that could use tax-exempt private activity bond financing.

Congress initially would allocate $15 million to be distributed among the states for tax-exempt bond financing of highway and freight transfer projects. Highway and freight transfer projects would not count toward a state's private activity bond volume cap. Eligible highway projects would include toll projects, among other transportation projects. Examples of eligible freight transfer projects would include; cranes, loading docks, and computer-controlled equipment used for freight transfers.

DIGEST: CSHB 2652 would direct TxDOT to administer a new private activity bond program that would authorize the issuance of tax-exempt bonds to finance highway and surface freight transfer projects. The new private activity bond program would be established in Texas pending enactment of federal legislation that would include such projects in the list of projects eligible for private activity bonds.

The attorney general would determine if Congress had enacted legislation amending the Internal Revenue Code to make highway and surface freight transfer projects eligible for tax-exempt bond financing, and the TxDOT program would take effect 30 days after the publication of that determination in the Texas Register.

The bill also would authorize TxDOT to establish the program's rules and would require that the program include an application process to evaluate projects for the issuance of tax-exempt bonds.

The bill would take immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS SAY: CSHB 2652 would end the longstanding, tax code discrimination against private developer/operators of toll roads, which involve only taxable toll revenue bonds while government agencies can finance comparable projects at tax-exempt rates. The fact that a state can issue tax-exempt bonds with lower interest rates places private toll road entrepreneurs at an estimated cost disadvantage of around 30 percent. Allowing private toll companies to issue tax-exempt bonds would encourage private sector investment into the state's highway infrastructure.

CSHB 2652 would promote the use of public-private partnerships in the construction of state highways. The two-tiered tax structure, involving private taxable bonding and public tax-exempt bonding, is a disincentive for public-private partnerships. Highway development costs are substantial and mostly incurred early in the life of a project, while revenue streams tend to develop slowly but come in over long periods of time. Thus, higher taxable rates impose an extra disincentive for public-private transportation projects.

Privately financed toll projects often are more cost-effective and time-efficient than publicly financed toll projects. CSHB 2652 would allow the private sector to bring highway projects on line faster and at lower cost, which would result in direct savings to users because of potentially lower tolls and a shorter toll project payment life. CSHB 2652 also would provide private toll road developers with an incentive aggressively to seek efficient cost-cutting approaches in design and construction methods, time savings in procurement, and the installation of efficient operation technology.

If Congress were to enact legislation that effectively would give out $15 billion in tax-exempt highway bonding authority to the states, it would be in Texas' best interest to participate in the program. The state's current congestion crisis necessitates the construction of numerous highway projects around the state in order to help relieve congestion. CSHB 2652 would prevent Texas from missing out on an opportunity to take advantage of an innovate federal incentive to help finance transportation projects.

OPPONENTS SAY:

The federal government could risk losing billions of dollars in tax revenue by exempting bonds issued by private toll road entities from taxation. The private sector should not have the same tax status on highway-related bonds as the public sector. Private entities that enter into agreements with the state to construct, maintain and operate toll roads are entitled to a portion of the toll revenue generated by the project. There is no lack of incentive for private investment in transportation because the private sector stands to gain sizable profits from toll projects – even given the taxable status of their bonds.

CSHB 2652 would promote the further proliferation of toll roads around the state at the expense of motorists who essentially pay a double tax — once at the pump and again at the tollbooth — yet have experienced scant relief from traffic congestion. The line between tolls as a source of financing and tolls as a source of revenue becomes more blurred with each toll-related proposal.

NOTES: The committee substitute removed a provision in the original bill that would have required TxDOT to approve projects that had been determined to be state priorities.