HOUSE RESEARCH ORGANIZATION bill analysis | 4/23/2007 | HB 2641 Solomons (CSHB 2641 by W. Smith)

SUBJECT: Selection of depositories for county funds.

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 7 ayes — W. Smith, Naishtat, Farabee, Harless, Heflin, Leibowitz, T. Smith

0 nays

2 absent — Bolton, Coleman

WITNESSES: For — Donald Lee, Texas Conference of Urban Counties; David Smith, Bexar County Commissioners Court; (*Registered, but did not testify:* Paul Sugg, Texas Association of Counties)

Against — None

BACKGROUND: Local Government Code, ch. 262, subch. C requires counties to comply with competitive bidding procedures, use reverse auction procedures, or engage in an alternative multi-step competitive proposal procedures.

Local Government Code, ch. 116, subch. B requires a bank that is interested in being a county depository to submit an application, a statement of the bank's financial condition, and a certified or cashier's check for at least one-half of 1 percent of the county's revenue for the preceding year. Then, at 10 a.m. on the first day of each term at which banks are to be selected, the commissioners court must enter all applicants into the minutes, consider all applications, and select the best qualified applicants. If no applications are submitted or if all the applications are declined, the commissioners court may choose another bank in the county or adjoining counties to serve as the depository.

Local Government Code, sec. 116.023(a) requires applications to be submitted to the county judge on or before the first day of the term of the commissioners court at which depositories are to be selected.

Local Government Code, sec. 117.001 defines a "special account" as an account in a depository in which registry funds are placed. "Registry funds" are tendered to the clerk for deposit into the registry of the court.

DIGEST: CSHB 2461 no longer would require the commissioners court of a county to contract with banks for county depositories or consider applications at its May regular term immediately following each general election for state and county officers. Instead, the bill would require the commissioners court to consider applications before the existing depository contract expires and continue to require the commissioners court to provide 20 days of public notice before considering applications in court.

This bill would allow counties to use either the selection process detailed in Local Government Code, ch. 116, subch. B or Local Government Code, ch. 262, subch. C to choose a bank as a depository. The commissioners court would have to set a date for receipt of applications that was no later than 60 days before the date the existing depository contract expired. At that time, this bill would allow banks to submit applications not only to a county judge, but also to a representative of that judge.

If a bank depository contract was for a four-year term, this bill would require the contract to allow the county to negotiate with the bank for new interest rates to take effect for the final two years of the contract. Counties also could renew existing bank depository contracts for additional two-year terms and, at that time, could negotiate new interest rates and terms.

In the case of a county depository for a special account, the bill would allow counties to renew existing bank depository contracts only for one additional two-year term. If a depository contract for a special account expired, it would be effective until April 15 following the expiration of the contract.

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, 2007.

SUPPORTERS SAY: CSHB 2641 would allow counties to have more flexibility in selecting banks for depository accounts, with potentially positive results for taxpayers. It would modernize an antiquated contract negotiation statute. Current law gives counties only 20 days to consider all bank depository applications and requires the selection process to occur at the first meeting in May of the commissioners court after the regular election. This means that several county commissioners may have no prior experience with the selection process and have a short time in which to make a major decision affecting everyone in the jurisdiction. By contrast, CSHB 2641 would give the county more time to consider new bank applications and would allow it to move the consideration period to a time that better suited its needs.

In addition, the bill would allow counties, rather than banks, to drive negotiation of rates and terms. Counties could use taxpayer money more prudently by renewing favorable contracts for additional two-year terms. CSHB 2641 would not allow any specific bank to monopolize county fund stewardship. Rather, because several banks typically contract with a county at one time, the bill simply would allow counties to extend existing contracts in order to protect favorable terms and interest rates. In addition, the bill would not make the bank selection process more onerous — it simply would give counties more leverage in negotiations and give commissioners more time to consider major financial decisions.

OPPONENTS SAY:

This bill would make it more difficult for banks to apply for county depository contracts. Currently, counties have an established and standardized system for considering bank applications to become depositories. CSHB 2641 would change this system to allow counties to consider bank applications at random times of the year and use different methods of selection, including the standard application process or opening consideration to competitive bidding. In addition, by allowing counties to renew bank depository contracts for two-year terms, banks would not be subject to the same pressures of competition to ensure counties got the best interest rates and terms for these accounts. Further, requiring counties to determine contract rates and fees during renewals might cause counties that do not have the necessary resources or expertise to accept suboptimal contracts. While the bill is permissive and would not require counties to continue with existing contracts, it would allow counties to choose the path of least resistance and opt not to open a contract to a bidding or application process. In the end, counties likely would keep money with existing contractors, allowing certain banks to monopolize county funds for up to six years at a time.

NOTES:

Unlike the original bill, the committee substitute would allow counties to renew the original term of a contract for an additional two-year term and, upon renewal, negotiate new interest rates and terms. It would allow banks to submit applications to the representatives of county judges on a date set by the commissioners court that was no later than 60 days before the expiration of the existing depository contract. It further would allow the commissioners court to select a depository by a process described in Local Government Code, ch. 262, subch. C.