HOUSE
RESEARCH
ORGANIZATION bill analysis | 5/8/2007 | HB 3722
Krusee
(CSHB 3722 by Haggerty)

SUBJECT: Creating transportation reinvestment funds for pass-through financing

COMMITTEE: Transportation — committee substitute recommended

VOTE: 9 ayes — Krusee, Phillips, Harper-Brown, Deshotel, Haggerty, Harless, Hill, Macias, Murphy

0 nays

WITNESSES: For — Brian Cassidy, Pate Transportation Partners; (*Registered, but did not testify:* Shanna Igo, Texas Municipal League; Steve Stagner, Texas Council of Engineering Companies; Michael Vasquez, Texas Conference of Urban Counties)

Against — None

On — Amadeo Saenz, Texas Department of Transportation

BACKGROUND: In 2003, the 78th Legislature approved HB 3588 by Krusee, which established the pass-through financing system in Transportation Code 222.104. Pass-through financing allows public or private entities to construct state highway projects and receive payment from TxDOT following completion of the project. Pass-through tolls, also known as "shadow tolls," are negotiated payments made incrementally to the constructing entities based on traffic volume on the new road. The payments are made as if tolls were being collected from motorists by the operators upon project completion.

Pass-through financing agreements can be used on both tolled and non-tolled roadways. In some instances, the arrangement works in reverse, as a local government entity pays the "tolls" in exchange for TxDOT's financing the road construction.

Tax Code, ch. 311, the Tax Increment Financing Act, authorizes a municipality to create a reinvestment zone if its governing body determines development or redevelopment would not occur solely through private investment in the reasonably foreseeable future. It includes criteria, such as the presence of slums or unsanitary or unsafe conditions, that would make an area eligible for designation as a reinvestment zone.

Transportation Code, ch. 441 allows a district containing all or part of one or more counties to establish a road utility district to build, acquire, improve, and finance a road project.

DIGEST: CSHB 3722 would create a fund and a new process for pass-through financing projects. Cities and counties would be authorized to designate areas as transportation reinvestment zones (TRZs) to fund road projects. Cities would be authorized to capture a portion of property tax revenue that would result from increased property values associated with the development of the road. Counties could use the same concept through a different mechanism: abating taxes within a TRZ and creating a road district to capture future additional revenue equal to the abated county tax.

Transportation Reinvestment Fund (TRF). The comptroller would administer the TRF as a special fund within the state treasury and collect any interest earned. Revenue earned from municipal and county TRZs would be deposited into the fund. The fund would be exempt from provisions sweeping money from dedicated funds to certify the budget (Government Code, sec. 403.095).

Municipalities and counties would keep half of the revenue earned through their TRZs for use for any purpose with the zone. The remaining half would be:

- sent to the TRF;
- earmarked for use only in the specific county or municipality that was the source of the revenue; and
- spent on a future pass-through financing project in the municipality or county that was the source of the revenue for an eight-year period after the creation of the special zones and districts required by the bill.

For future pass-through financing projects, the fund would be used to reimburse up to half of the costs of a municipality or county.

Transportation reinvestment zones. Municipalities and counties that entered pass-through financing agreements would be eligible to create a TRZ. The governing body of a municipality or county would be required to hold a public hearing on the proposed zone at least one week prior to considering an ordinance to establish a TRZ. An ordinance would have to describe the zone's boundaries, provide that the zone would take immediate effect upon passage, and follow a prescribed naming formula. The designation of a TRZ would not be subject to additional hearings or procedural requirements for designation of a reinvestment zone under Tax Code, ch. 311 and 312.

For both a county and municipality establishing a TRZ:

- the amount of their tax increment would be the amount of ad valorem taxes they levied and collected on the captured appraised value of real property within the zone;
- the tax increment base would be the total appraised value of all taxable real property within the zone; and
- the captured appraised value of taxable real property would be the result of subtracting the tax increment base from the total appraised value of all taxable real property within the zone.

Municipality provisions. The governing body of a municipality could use criteria established under Tax Code, ch. 311 or other criteria it determined, in good faith, would demonstrate an area was unproductive, underdeveloped, or blighted and therefore eligible for a TRZ. If such a determination was made, the municipality's governing body would be authorized to designate, by ordinance, a contiguous geographic area as a TRZ.

The municipality would be required to establish an ad valorem tax increment fund (TIF) for its TRZ and would deposit taxes collected on property within its boundaries into the TIF equal to the tax increment produced by the municipality.

The TRZ would terminate on December 31 in the year in which the municipality's obligations to reimburse TxDOT had ended. The municipality would be allowed to use any surplus money in the fund upon termination of the zone for transportation projects inside or outside of the zone.

County provisions. A county commissioners court would be authorized to designate a contiguous geographic area as a TRZ to develop or redevelop an area. A portion of the ad valorem taxes the county imposed on real property within the zone would be abated, either through agreement with the property owners or through an order. In any tax year, the total amount of taxes abated would not be allowed to exceed the total tax increment in the zone.

The county would be authorized to form a road utility district with the same boundaries as the TRZ to comply with terms of a pass-through financing agreement. The district could impose taxes on the district property at a rate that would generate an equal amount of revenue as the amount of abated county taxes. Unless the county sought to impose a maintenance tax, an election would not be required to approve imposition of the road district taxes.

Any tax abatement agreements or orders made under this section would expire on December 31 in the year in which the county's obligations to reimburse TxDOT had ended.

Effective date. 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:

The response to the pass-through financing system has been so overwhelming that the program cannot sustain itself under the current configuration. CSHB 3722 would revise the current program to authorize cities and counties to create a dedicated source of funding for new road projects and ensure that local governments have the opportunity to ease congestion in their areas. TxDOT does not have the resources to meet demand for road projects, and this bill would create an optional program that would create a funding source for local transportation projects.

The pass-through financing system has been very successful, and a number of local governments have already begun planning and building new roads. TxDOT has reached agreements on more than $1.5 billion in pass-through financing agreements. However, the fund from which incremental reimbursements are made to local governments is close to its limit; of the $200 million annually allocated for these payments, $150 million has been obligated. Eventually, this fund will hit its limit, and it also is needed for any other pressing transportation needs.

Local governments have responded to the program because it allows them to start a project with little delay and receive reimbursement from the state based on the anticipated usage of the road. Most localities have opted to issue bonds to finance construction, and although an option exists for a local government to establish a toll road to recoup costs, no local government has used a pass-through financing agreement to do that. Under a typical agreement, a local government is reimbursed 80 percent of its costs.

CSHB 3722 would reconfigure the financing structure to afford the program a consistent funding source and a new revenue-generating procedure that would allow the program to continue. The agency still would have authority and ability to determine which projects would be good candidates for pass-through financing agreements, as provided under current law. This bill would create a way to finance existing and future transportation needs and would not preclude TxDOT from using state money to finance pass-through agreements.

Municipalities would be able to create the equivalent of a tax increment reinvestment zone, except the TRZ would focus on roads instead of blighted areas. By doing this, the municipality would be able to tap into the increased tax revenue that would be created by the increased property values that would be generated by the construction of a new highway. The city would be entitled to keep half of the money generated, and the rest of the money it would send to TxDOT would be required to be spent on municipality pass-through projects for an eight-year period.

Because of uncertainties over the legality of a county-created tax increment reinvestment zone, this bill would create a two-step process to achieve the same effect. Counties would create a TRZ and a road district in the same area. The road district would impose a tax to generate revenue for the pass-through projects. County property taxes would be abated so that the overall tax burden borne by a resident within the district would remain unchanged.

OPPONENTS SAY:

Although this bill provides a way for local governments to finance much-needed transportation projects, the state should be careful not to use a TIF as a cure-all for its financial problems. The economic development that these new roads would create comes with its own costs, such as new schools, sewer systems, and other infrastructure needed to handle the expected population growth. With few revenue streams and dedication of increased property value to the TIF, finding the money needed to meet these demands could be difficult. Additionally, a local government's priorities can change, and establishing a TIF essentially locks up its revenue for one purpose for an extended time.

NOTES:

The committee substitute limited the amount of money a municipality would pay into the TRF and allowed remaining money to be used for any purpose. It also added language governing how TxDOT could use reimbursed money, added definitions, created requirements for ordinances imposed under the bill, provided for termination of a TRZ, and allowed a county to reach a tax abatement agreement with a property owner.

The companion bill, SB 1266 by Brimer, passed the Senate on the Local and Uncontested Calendar on April 12 and was reported favorably, without amendment, by the House Transportation Committee on April 17, making it eligible for consideration in lieu of HB 3722.