HOUSE RESEARCH ORGANIZATION bill analysis | 5/15/2007 | SB 1536 Fraser (Delisi)

SUBJECT: Authorizing municipalities to sell bonds for non-toll highway projects

COMMITTEE: Transportation — favorable, without amendment

VOTE: 8 ayes — Krusee, Phillips, Harper-Brown, Deshotel, Haggerty, Harless, Hill, Murphy

1 nay — Macias

SENATE VOTE: On final passage, April 12 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — Mayor William Jones III, City of Temple (*Registered, but did not testify:* David Blackburn, City of Temple)

Against — None

On — (*Registered, but did not testify:* James Bass, Texas Department of Transportation)

BACKGROUND: Transportation Code, sec. 222.104 allows public or private entities to construct state highway projects and receive payment from the Texas Department of Transportation (TxDOT) following completion of the project. Pass-through payments are made incrementally to the constructing entities based on traffic volume on the new road. Pass-through financing agreements can be used on both tolled and non-tolled roadways.

DIGEST: SB 1536 would create Government Code, ch. 1510, to allow a municipality to issue bonds to fund non-toll projects or facilities on the state highway system within its jurisdiction or in an adjacent area. The money could be used for design, development, financing, construction, maintenance, operation, extension, expansion, or improvement of a road included in the comprehensive system of state highways (Transportation Code, sec. 201.103).

A municipality could back the bonds by:

- pledging revenue from any available source, including payments received under a pass-through toll agreement with TxDOT (Transportation Code, sec. 222.104);
- pledging, levying, and collecting taxes, subject to any constitutional limitation; or
- pledging any combination of those two categories.

An election required to allow levying of new taxes would have to conform to Election Code provisions or other applicable laws governing the municipality.

A municipality that issued bonds under this program could use any rights or powers granted under statutes detailing specific authority for a local government to issue securities for certain improvements (Government Code, ch. 1371). A bond issued under this section could not mature later than 40 years after it was issued.

The bill would state that this statute would be sufficient to grant a municipality the powers needed to fulfill its goals, and to the extent there was any conflict with current law, this statute would prevail. A municipality could use other laws that did not conflict with this section to carry out any authority, expressed or implied, granted by this statute.

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:

Municipalities are greatly affected by the quality and capacity of the state highways that run through their jurisdictions. Although they have the ability to pursue pass-through financing, they do not have the express authority to issue bonds backed by promised revenue from TxDOT to fund projects. SB 1536 would grant municipalities this authority, a power the counties already have. Such an option would reduce costs for a municipality using pass-through financing because it would be able to enter into a bond agreement with more favorable financial terms by pledging a steady stream of revenue.

Local governments have responded favorably to pass-through financing 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. Issuing city bonds backed by pass-through funds would enable a road to be completed and used more quickly, and it would save money because every year a project is delayed, construction costs will likely rise, along with the rate of inflation. In Temple, for example, the cost of a project to expand the northwest section of Loop 363 was estimated at $10 million when plans were initiated in 1991. Because of TxDOT's project backlog, the project has been delayed and would cost about $100 million if built today.

Under a typical pass-through agreement, a local government is reimbursed 80 percent of its costs. Although an option exists for a local government using pass-through financing to establish a toll road to recoup costs, no local government has used a pass-through financing agreement to do that. This bill would prohibit a municipality from issuing bonds to pay for work on a toll project. It also would be an innovative way of reducing the proliferation of toll roads across the state.

Municipalities should be given the same ability to issue bonds and use anticipated revenue from pass-through financing to reduce costs as counties have under Government Code, ch. 1479. Cities only can issue bonds using expected revenue from ad valorem taxes, but such an action affects a city's debt rating and financial statements. Allowing pass-through revenue to be used in lieu of, or addition to, property tax revenue would allow the city to treat the financing as "self supporting" for rating purposes. The effect of these reduced costs would reduce the financial burden placed on taxpayers.

SB 1536 would allow a city to use its own money to fund a highway project even if it had not entered into a pass-through agreement with TxDOT by pledging its ad valorem tax revenue. If a city determined a project was enough of a priority to warrant using its own money but could not establish a pass-through agreement with the agency, it should have the flexibility and opportunity provided by this bill to do so.

OPPONENTS SAY:

Texas' system for funding construction projects already is confusing, and this bill would only add to the complexity. It would push TxDOT further away from its proper role of highway construction by placing the burden of undertaking a project on a municipality and forcing its taxpayers to foot the bill for any costs not covered by the agency.

Given the sheer number of projects and priorities in Texas, the state has in the past several years taken several different approaches in trying to carve out funding sources and allow more projects to move forward in a quicker fashion. This process has created a fragmented system that not only pulls money away from its intended use but also confuses the public and lawmakers. This bill would add yet another layer of intricacy to the system.

This bill would give TxDOT an opportunity to abdicate its responsibilities of road construction, making it less accountable for any problems that would occur through a system created by this bill. The agency only pays 80 percent of costs back to the municipality under the current system, meaning a city and its taxpayers are left to cover the remaining portion. Given the program's popularity, the agency could reduce that proportion, increasing the local burden.

Although a municipality might be loathe to raise taxes to build roads, if the demand was high enough or TxDOT either could not or would not endorse pass-through financing, such an option would be authorized. Given the agency's track record and a recent audit showing it had not accurately accounted for its available funding, creating a scenario under which TxDOT could plead poverty and pass duties and financial responsibility to local governments would be a step in the wrong direction.

OTHER OPPONENTS SAY:

This bill should be amended to address the availability of funds for pass-through financing. Because of its popularity, the system cannot sustain itself as currently configured. 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. Approval of this program would only increase the opportunity and demand for municipal participation in pass-through financing, and without addressing the available capital, such an option could be short-lived.

NOTES:

According to the fiscal note, SB 1536 would have no fiscal impact on the state, and its impact on a local government would be dependent on the projects a municipality pursued and the amount of bonds it issued.