

- SUBJECT:** Revising provisions governing transportation reinvestment zones
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 7 ayes — Pickett, Phillips, Y. Davis, Harper-Brown, Merritt, T. Smith, W. Smith
- 0 nays
- 4 absent — Callegari, Dunnam, Guillen, McClendon
- WITNESSES:** For — Shanna Igo, Texas Municipal League; (*Registered, but did not testify*: Brian Cassidy, Pate Transportation Partners; Tris Castaneda, Zachary Group; Donald Lee, Texas Conference of Urban Counties; Lawrence Olsen, Texas Good Roads Association)
- Against — Terri Hall, Texans Uniting for Reform and Freedom; Beki Halpin
- On — (*Registered, but did not testify*: James Bass, Texas Department of Transportation)
- BACKGROUND:** In 2003, the 78th Legislature approved HB 3588 by Krusee, which established the pass-through financing system. Pass-through financing 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 tolls are negotiated payments made incrementally to the entities building a road and are 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.
- The 80th Legislature in 2007 enacted SB 1266 by Brimer, which established transportation reinvestment zones for counties and municipalities that enter into a pass-through tolling agreement with TxDOT.
- DIGEST:** CSHB 1810 would allow a municipality or county to establish a transportation reinvestment zone for any transportation project. If any part of the project was subject to TxDOT oversight, the municipality or county

could request that the agency delegate to it full responsibility for the development of the project. If the project was on the state highway system, it would have to comply with state design criteria unless TxDOT made a specific exception. The bill would make conforming changes to state law to reflect the expanded range of transportation projects eligible for reinvestment zones.

A municipality or county could contract with a public or private entity to develop or otherwise improve a road in a reinvestment zone and could pledge funds from the zone to the entity. A municipality or county could not rescind a contract to pay an entity that owed a debt on bonds or other securities until those debts were satisfied. The boundaries of a zone could be adjusted as needed, but the area of the zone could not be reduced if the change might affect any outstanding bonds or other obligations used to fund the project.

An ordinance or other law designating a transportation reinvestment zone would have to designate the base year used to establish a tax increment in the municipality or county. The bill would restrict the portion of the increment the municipality specified to be used in funding the transportation project associated with the zone. Remaining funds from the increment could be used for other purposes.

A county could assess the cost of a road development project against property within the zone. An assessment of property in the zone could be paid in installments following established procedures, but an installment could not exceed the value of a tax abatement authorized under existing law. A county could apply procedures in current law governing designated improvement districts for the purposes of assessing value and issuing bonds for the cost of the transportation project in a reinvestment zone.

A municipality or county could not be penalized with a reduction in traditional transportation funds due to the establishment of a transportation reinvestment zone. Funds that TxDOT designated for a project prior to the establishment of a reinvestment zone could not be reduced due solely to the designation of the zone. Funds for TxDOT districts could similarly not be reduced due to the establishment of a reinvestment zone by a county or municipality in the district.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 1810 would be a logical progression in the use of transportation reinvestment zones to fund road developments and improvements. Under current law, transportation reinvestment zones — which allow a local entity to dedicate contractually additional tax revenue generated by an increase in property values around a transportation project to pay for the costs associated with developing the project — are confined to transportation projects funded in a pass-through tolling agreement with TxDOT. A pass-through tolling agreement allows a local entity to pay the development costs of a road project and then seek reimbursement from TxDOT based on the estimated number of vehicles that travel on the road.

CSHB 1810 would broaden local governments' ability to establish transportation reinvestment zones for transportation projects. The bill also would clarify and update existing laws on reinvestment zones and would make assurances that a government could not rescind certain agreements attached to a zone and could not modify a zone if the proposed change had an impact on pre-committed revenue. These changes would help ensure the viability of transportation zones and reassure parties seeking to develop a highway project in such a zone.

The bill would take important steps toward another transportation financing option to local governments in an era of increasing congestion and limited resources. While raising the motor fuels tax may be another reasonable approach to securing additional funding for highways, this has proved a political impossibility in recent sessions. In a context of fixed state and federal funds for transportation projects, it is critical to maximize the options available for developing transportation projects.

Claims that provisions allowing local entities to establish a reinvestment zone for a state highway could jeopardize federal funding are unfounded. Recent iterations of federal law authorizing reimbursements for highway projects have demonstrated support for alternative financing of highway projects, which transportation reinvestment zones clearly provide. In addition, current federal law governing highway reimbursements is set to expire in fall 2009. This could open an opportunity for a revision of federal laws to provide this option for local governments establishing reinvestment zones.

**OPPONENTS
SAY:**

CSHB 1810 would continue the state's piecemeal approach to providing transportation funding without addressing the core issue facing the state — a motor fuels tax that has been declining in relative value since 1991.

Transportation reinvestment zones would likely be used on a limited basis in select areas and would not address statewide highway funding shortfalls. The state needs to address the core issue facing highway funding and increase or index to inflation the motor fuels tax — preferably both. Reinvestment zones represent another diversion away from this necessity.

Increasing opportunities to establish transportation reinvestment zones also would represent an expansion of the troubling practice of using property taxes to fund transportation improvements. This is a questionable use of property taxes and could create an incentive to increase appraisals of property in the zone. Further, the increment dedicated to paying the costs of transportation projects is diverted away from other pressing needs of local governments.

CSHB 1810 could threaten the state's ability to receive certain federal reimbursements for highway projects. Provisions in current law governing federal reimbursements allow for penalties to a state that authorizes local transportation entities to assume responsibility for certain roads that the state's transportation department is responsible for maintaining. Any action that may threaten federal funds for highways is problematic, since annual reimbursements from the federal highway trust fund already are being recalled on a yearly basis.

**OTHER
OPPONENTS
SAY:**

CSHB 1810 does not specify the eligibility of toll projects to be funded through use of a transportation reinvestment zone. As such, the bill could create more opportunities for the state and local governments to push a policy of constructing new roads only as toll projects. Toll roads are an unfair form of double-taxation and place unwarranted burdens on taxpayers to pay unreasonable sums for the right to travel to necessary destinations. The bill should be amended specifically to exclude toll roads from eligible projects funded through transportation reinvestment zones.

NOTES:

In the fiscal note, the Legislative Budget Board (LBB) estimates that the enactment of the bill could result in a loss of federal highway funds to the state. The LBB cites an analysis by TxDOT that provisions in the bill could be a violation of Title 23, Code of Federal Regulations. According to TxDOT, this provision allows the Federal Highway Administration to sanction the state with penalties from one to ten percent of federal highway apportionments for allowing a local transportation entity to assume full responsibility for a road project that is a part of or joined with

federally-funded or regulated state and interstate highways. The LBB estimates that, if applied, sanctions could range from \$5.5 million to \$55.5 million for each year the state was in violation of the provision.

The companion bill, SB 2378 by Nichols, passed the Senate by 31-0 on May 1.