

SUBJECT: Enhanced financial report for local public entities

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 23 ayes — Pitts, Sylvester Turner, Ashby, Bell, G. Bonnen, Carter, Crownover, Darby, Giddings, Gonzales, Howard, Hughes, S. King, Longoria, Muñoz, Orr, Otto, Patrick, Perry, Price, Raney, Ratliff, Zerwas

0 nays

4 absent — S. Davis, Dukes, Márquez, McClendon

WITNESSES: For — Alan Hugley, City of Red Oak; James Quintero, Texas Public Policy Foundation; Oscar Rodriguez, Texas Assn of Broadcasters; Peggy Venable, Americans for Prosperity; Duke Burge, Midlothian ISD; Scott Niven, Red Oak ISD; and 4 others (*Registered, but did not testify*: Kathy Barber, NFIB/Texas; Konni Burton, Tea Party Caucus Advisory Committee; Brent Connett, Texas Conservative Coalition; Dr Rosemary Edwards, Travis County Republican Party; John Horton, Young Conservatives of Texas; Dustin Matocha, Texans for Fiscal Responsibility; Naomi Narvaiz, San Marcos Area Republican Texans Group; Charley Wilkison, Combined Law Enforcement Associations of Texas, and 4 others

Against — Jim Allison, County Judges and Commissioners Association of Texas; Mark Burroughs, City of Denton; Clayton Chandler, City of Mansfield; Lisa Clark, Texas Association of Builders; Howard Cohen, Schwartz, Page & Harding L.L.P.; James Hernandez, Harris County and Harris County Toll Road Authority; Brad Lancaster, Fast Growth School Coalition and Lake Travis ISD; Donald Lee, Texas Conference of Urban Counties; Bill Longley, Texas Municipal League; David Maxwell, Assoc of Water Board Directors; Peter Phillis, City of Mansfield, Texas; Micki Rundell, City of Georgetown; Danny Scarth, City of Fort Worth; Terry Simpson, San Patricio County; Joy Streater, County District Clerks Assn.; Byron Underwood, Texas Assoc. of Counties; Ed Van Eenoo, City of Austin; James Wilcox, Texas Association of School Boards, Texas Association of School Administrators, and Texas School Alliance, and 1 other (*Registered, but did not testify*: David D Anderson, Arlington ISD Board of Trustees; Steve Bresnen, North Harris County Regional

Water Authority; Snapper Carr, Andrews County; Mindy Ellmer, Tarrant Regional Water District; Wayne Halbert, Texas Irrigation Council; Angela Hale, City of McKinney; Roger Hord, West Houston Association; Mark Israelson, City of Plano; Jerry James, City of Victoria; Cassandra Kell, City of Irving; Jennifer May, City of Sugar Land; Ken McCraw, Texas Association of Community Schools; Mark Mendez, Tarrant County Commissioners Court; Seth Mitchell, Bexar County Commissioners Court; Terrell Palmer, First Southwest Company; TJ Patterson, City of Fort Worth; Dean Robbins, Texas Water Conservation Association; Karen Rue, Fast Growth School Coalition; Susie Shields, San Antonio Mobility Coalition; Jim Short, Fort Bend County; Jim Short, Houston Real Estate Council; Michelle Smith, Fast Growth School Coalition; Bob Stout, Newland Communities Texas, The Woodlands Development Co.; Frank Sturzl, City of Abilene; Paul Sugg, Texas Association of Counties; Tom Tagliabue, City of Corpus Christi)

On — Susan Combs, Tom Currah and Chance Sampson, Comptroller of Public Accounts; Donnis Baggett, Texas Press Association; Susan Combs, Texas Comptroller of Public Accounts; Deece Eckstein, Travis County Commissioners Court; Shane Fitzgerald, Freedom of Information Foundation of Texas; Robert Kline, Bond Review Board; Stephanie Leibe, Office of the Attorney General; Maureen Milligan, Teaching Hospitals of Texas; Heather Rosas, Texas Bond Review Board (*Registered, but did not testify*: Lita Gonzalez and Beth Hallmark, Comptroller of Public Accounts; Charles Bailey, Texas Hospital Association; Keith Ingram, Texas Secretary of State, Elections Division; Gary Johnstone, Texas Higher Education Coordinating Board; David Lancaster, Texas Society of Architects; Rob Latsha, Bond Review Board)

DIGEST:

CSHB 14 would require public entities — including counties, municipalities, school and junior college districts, and other special districts — to post financial, voter, public hearing, and other information on a website.

Website requirement. A political subdivision would have to maintain a website to comply with the bill's requirements. For counties or municipalities with a population less than 2,000 that did not maintain a website as of January 1, 2013, notice could be posted on a website where the entity controlled the content of the posting, such as a social media site, provided the information easily could be found by an online search.

County assessor-collectors would have to maintain or contract to maintain a website. If the assessor-collector served a county with a population less than 2,000 and did not maintain a website, it could post the information on a site in which the assessor-collector controlled the content of the posting, including a social media site.

A special district would be required to maintain a website or, if it did not have a website, would have to post the information on a site in which the district controlled the content of the posting, including a social media site.

Certificates of obligation. A governing body could not authorize a certificate of obligation for payment of a contractual obligation if a bond proposition for the same purpose was submitted within the last three years and failed to be approved. A governing body could authorize a certificate otherwise prohibited in a case of public calamity, to protect public health, for unforeseen damages to property, or to comply with a state or federal law for which the entity had been officially notified of noncompliance.

A notice of a plan to issue a certificate of obligation would have to be posted continuously on the issuer's website for at least 45 days, as opposed to 30 days under current law, before the date tentatively set to hear an ordinance authorizing the issuance. The bill would expand the content of notice requirements for certificates of obligation.

Public hearing. A political subdivision would have to conduct a public hearing prior to holding an election to authorize the issuance of bonds. Between 15 and 30 days before a hearing, a local government would take action to ensure that the notice was provided by:

- publication in at least one newspaper of general circulation;
- included in a newsletter mailed or delivered to each registered voter; or
- mailed to each registered voter in the political subdivision.

In addition, the notice would have to be posted on the political subdivision's website. The bill would impose requirements for a public hearing and associated documentation.

Voter information. A voter information document would have to be prepared for each proposition under consideration. The document would

contain specific information about the political subdivision's debt status, the cost of the proposed debt, the entity's property tax debt rate, the property tax debt levy per residence, and other information necessary to explain the figures in the document. A good faith estimate in a voter information document would not be a breach of contract with voters if the estimate was later found to be incorrect.

A political subdivision would have to post a sample of the ballot printed for a bond election on its website. The secretary of state would determine the form of a voter information document.

Financial report. A political subdivision would prepare an annual financial report that included specific financial and debt information. Alternatively, a subdivision could provide the required information to the comptroller, who would post it on the comptroller's website. The political subdivision would post a link to the location of the report on the comptroller's website.

An institution of higher education would have to ensure that its most recent financial report was posted on its website no later than November 30th of each year. The report would have to show the aggregate outstanding debt of a university system and the outstanding debt for each education institution.

Comprehensive review. Special districts would be required to conduct a comprehensive review. Any special district issuing debt after September 1, 2013, would have to conduct a comprehensive review within three years of issuing debt. Self-evaluation reports would have to include specific elements regarding the district's authority, assessments it imposes, revenue collected, and outstanding debt. The self-evaluation report would be posted on the district's website. The special district would have to conduct a public hearing to hear from persons interested in the self-evaluation report.

State responsibilities. The comptroller would publish the sales and use tax rate for every political subdivision that imposed such a tax, and the tax rate information reported by counties.

The Bond Review Board would enter into one or more contracts to procure services to collect and maintain information related to public indebtedness. It would require the Bond Review Board to publish a report

on local securities each year and it would revise the required content of the Bond Review Board's biennial debt statistics report.

The bill would require the attorney general to collect information on all local securities.

School facilities data. To provide information to the public on facilities and taxpayer value, a school district or open-enrollment charter school would have to:

- report data elements specified by rule to Texas Education Agency through an approved data management system; and
- provide a direct link on the district or schools website to the Texas Student Data System through which the facilities information relevant to the specific district or school could be readily accessed.

The education commissioner would adopt rules necessary to implement the reporting system and ensure that the system contained the appropriate data elements. Open-enrollment charter schools would have to ensure that an annual financial report was posted on their website online.

The rules would be based on the recommendations of the taxpayer and school facilities usage advisory committee, which the bill would establish. The committee would consist of nine members, including the comptroller and education commissioner, who would jointly appoint the other members. The committee would submit a report not later than December 31, 2014, with recommendations on the data that should be considered in evaluating a school's usage and taxpayer value with regard to school facility construction and renovation.

The Texas Higher Education Coordinating Board would require each junior college district to report building construction costs and related information for determining the average cost per square foot for the region of the state and the average cost per full-time student for each junior college district. The report would have to be posted on each entity's website.

Effective date. The bill would take effect September 1, 2013.

SUPPORTERS
SAY:

CSHB 14, the Texas Transparency Act, would take great strides toward improving fiscal transparency among public bodies in the state. While the

state has a low share of tax-supported debt, Texas has the second-highest local debt per capita ratio among the 10 most populous states. According to the Bond Review Board, about 83 percent of the state's total debt is local debt. Last decade, local entities more than doubled their debt load to \$7,500 per capita.

While much of this debt is well justified and necessary, it is incumbent on the Legislature to ensure that Texans are able to make informed choices about how much debt to assume and for what purposes. CSHB 14 is primarily a response to citizen concerns about debt in the state and the availability of accessible information on that debt.

Reporting. CSHB 14 would require all local governments to post online each year revenue and expenditure information, including key information on the bodies' long-term obligations. This would allow Texans to easily find and review financial information for their school district, county, municipality, etc. Currently, some of this information is available and some is not; all of it is scattered in various places that make it very difficult for the lay person to locate, assemble, and make sense of.

In recognition that some smaller entities may not have existing webpages — though many do — the bill would allow municipalities with a population of less than 2,000 and all special purpose districts without a webpage to make use of free social media resources, such as Facebook, Scribd, and Dropbox to post reports. These resources are free, easy to use, and available to anyone with an Internet connection.

The potential cost of this to public entities has been a subject of significant misinformation. Estimates that place the cost of a website at up to \$65,000 are based on hiring a dedicated web employee or contracting out to a specialized web firm. That estimate simply is not grounded in the requirements in the bill, which allow small political entities to access free and readily available online resources. Given various packages available, the actual annual cost should be as little as \$100 to \$300 for web hosting. There is no requirement in the bill that the website be adorned with all the latest and greatest bells and whistles; only that it be searchable, available to the public, and capable of storing modestly sized documents.

There are many, very affordable options for web hosting that meet these criteria. In addition, the comptroller has already made a web template to assist entities in posting this information available online.

Voter information. CSHB 14 would require local entities to make available key information on the entity's debt status and the cost of the proposed debt prior to an election for a new bond issuance. This would ensure that local entities provide the information necessary for voters to make informed decisions.

Voters are routinely asked to approve large bond packages that commit public entities, and hence taxpayers and ratepayers, to paying debt service for decades. Yet the voters who are so often asked to pledge their taxes to the payment of debt service are seldom provided the information necessary to make informed decisions about their money. Relatively small bond issuances, completed with frequency, can amount to an unsupportable debt burden. This is hard for voters to keep in check, since, all too often, they have no real way of knowing an entity's current debt status and the financial implications of the proposal on the table. The requirements of CSHB 14 would provide this necessary context.

Arguments that the information could be misleading underestimate voters' ability to look at comparative information and draw their own conclusions. If there is a reason that a particular local entity has a higher debt load than similar entities, then that reason naturally becomes part of the discussion on whether additional bond revenue is necessary. Voters are perfectly capable of taking into account unique circumstances when making judgments. The data required would provide a starting point for a more salient discussion.

Certificates of obligation. CSHB 14 would limit the issuance of debt commonly completed through certificates of obligation (COs) without voter approval. COs now account for 16.6 percent of all debt issued by entities with this authority. CSHB 14 would put an end to some of the worst practices by prohibiting local entities from issuing a CO to pay for capital projects that voters recently rejected. The bill also would improve taxpayers' ability to keep COs debt in check by extending voters' ability to organize and collect petitions necessary to force an election on a CO.

OPPONENTS
SAY:

CSHB 14 would impose sweeping requirements upon local entities without providing them with any additional resources to comply with the expanded requirements. It also could interfere significantly with local entities' ability to finance capital improvements that are necessary to meet demands from the rapid growth of population and commerce in the state.

Reporting. CSHB 14 would place an undue burden on thousands of local entities to comply with extensive reporting requirements and create and maintain websites within their existing resources. The cost of creating and maintaining a website can be expansive. The Texas Association of Counties estimated it cost \$5,000 to \$65,000 to establish a website, in addition to annual maintenance costs between \$500 and \$10,000.

This cost is due to language in the bill that applies to all local entities except special districts and municipalities with a population less than 5,000 that did not have a website already and requires those entities to “maintain” their own website. This is different than having a site wherein an entity could “control the content.” Maintaining a website is a technical enterprise that requires technical expertise that local entities would have to hire or contract. In addition, local entities that have a website become subject to other legal requirements.

The bill also would impose onerous annual financial reporting that must be done on a yearly basis. Many local entities do not have the staff resources to take on additional reporting. In addition, many cities do not have any debt to speak of, but would still have to do the report.

Voter information. In addition to the administrative burden, it is not clear that the information requirements would increase the public’s ability to make informed judgment. Bonds and finances are a very complicated subject and each capital project is subject to a unique set of factors. A simple apples-to-apples comparison of construction costs, for example, is dangerous, as it does not account for those unique factors.

Providing voter information prior to a bond election could put local entities in a difficult position, as they are not allowed to take a position.

Certificates of obligation. Many local entities have been using COs recently because the interest rate on COs is actually lower than corresponding rates for revenue bonds, as the CO is pledged with the entity’s full faith and credit. Increasing the ease with which residents may petition to force an election for a CO could defeat the purpose of a very important mechanism for financing urgent projects.

A portion of qualified voters can petition to force an election to a CO. Expanding the notice period from 30 to 45 days would increase the

likelihood of a petition challenge. If an election is forced, then the entity would have to wait to hold a special election on approved election days in May or November. This could create a significant delay in attaining funds for an urgent project.

NOTES:

The Legislative Budget Board estimates the bill would have a negative impact to general revenue funds of \$915,314 for fiscal 2014-15. The cost would stem from a Bond Review Board increase of four full-time-equivalent employees and other expenses necessary to meet requirements in the bill.

As part of the Local Government Impact section of the LBB fiscal note, the Texas Association of Counties estimates it costs \$5,000 and \$65,000 to establish a website with annual maintenance costs between \$500 and \$10,000.

The Association of Water Board Directors estimated the cost to satisfy the requirement for special districts to hold public hearings would range from \$17,250 to \$29,250.