

SUBJECT: Citizen notification and approval of certificates of obligation

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 4 ayes — Talton, Van Arsdale, Edwards, Hunter

1 nay — Menendez

2 absent — Bailey, Wong

WITNESSES: For — Ray E. Gilbert, Jr.

Against — Bob Kamm, Travis County Commissioners Court; Donald Lee, Texas Conference of Urban Counties; Milo Nitschke, City of San Antonio; Keith Stretcher, City of Midland

BACKGROUND: Local Government Code, sec. 271.045 authorizes the governing body of a home-rule municipality or county to issue certificates of obligation for:

- public works projects,
- purchase of equipment, materials, supplies, machinery, buildings, and land; and
- payment of contractual obligations for professional services.

Sec. 271.049 requires the issuer of certificates to publish notice of its intention once a week for two consecutive weeks in a general circulation newspaper in the area of the issuer prior to the 14th day before the date tentatively set for the passage of the order authorizing issuance. It prohibits the issuer from making a certificate issuance without a bond election if the issuer receives a petition signed by at least 5 percent of the qualified voters of the issuer. Sec. 271.0525 requires that a petition to force a bond election on issuance of certificates to refinance or refund debt needs 5 percent of the number of votes cast in that county for governor in the most recent gubernatorial election.

DIGEST: CSHB 397 would prohibit the governing body of a municipality or county from issuing certificates of obligation unless it sent a press release of its

intention to major television, radio, and newspapers in the area. The press release would have to be sent before the 30th day tentatively set for the passage of the order authorizing issuance of the certificates. The bill also would require that public notification in the newspaper occur prior to 30 days before the meeting planned for authorizing the certificates.

CSHB 397 also would reduce the number of signatures needed to force a bond election before certificates could be issued for any purpose, including the refinancing and refunding of debt. It would require the petition to contain signatures of qualified voters equaling 2 percent of the number of votes cast for all candidates for governor in the most recent gubernatorial election held in the municipality or county.

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, 2003.

**SUPPORTERS  
SAY:**

CSHB 397 would prohibit cities from borrowing large sums of money that could result in higher taxes without voter approval. There has been a growing trend among cities and counties to make million dollar certificate issuances to finance capital improvement projects. Knowing that voters likely would not approve large bond issuances for many of these projects, some cities have chosen to issue certificates to finance controversial or unnecessary projects. By making the decision process for certificate of obligation issuance more open and by reducing the threshold that voters must reach to protest an issuance, CSHB 397 would prevent large scale abuse of this loophole that denies voters a say in municipal indebtedness.

By reducing the number of signatures required to protest a certificate issuance, CSHB 397 would relax an unreasonable standard that nearly is unattainable today for citizens who wish to force an election on questionable municipal borrowing. Current law requires the signatures of 5 percent of qualified voters in a locality, a percent that often is higher than the number of citizens who vote in city council elections. The bill would establish a more reasonable requirement that the petition contain signatures of qualified voters equal to 2 percent of those who voted for governor in the last election, a level that more effectively would check abuses of this mechanism by local officials.

CSHB 397 also would expand the public notice requirements for a certificate issuance, requiring a municipality or county to issue a press release on the proposal to major media in the region. Although an issuer currently must publish a notice in the newspaper, this method does not fulfill the Legislature's intent that citizens be fully informed about a debt proposal. By forcing municipalities to widely publicize an issuance in major regional media. The bill would force municipalities to think twice before issuing what might be unpopular debt.

**OPPONENTS  
SAY:**

CSHB 397 would tie the hands of municipalities and counties that often must respond quickly when small amounts of money are needed. Certificates of obligation were created by the Legislature in order to provide flexibility to municipalities in situations that do not justify a large bond issuances. Although there have been some minor cases of abuse, certificates have not spawned the gross financial mismanagement that some have alleged. Restrictions on this key financial management tool significantly would alter and undermine fiscal planning for cities that rely on certificates to respond to cash management emergencies and smooth out their financial burden over time.

This bill would introduce ambiguities into law governing debt issuance that could hamper the ability of municipalities to acquire funds at the most beneficial rates. Any unnecessary delay in a certificate issuance could cause a city to miss ideal opportunities in the fluctuating debt market. In addition, the vague requirement that a municipality or county send a press release to major media outlets could weaken any statutory basis for an issuance and open it to a challenge, again leading to potentially higher rates of interest. These factors could burden taxpayers with certificates at higher costs than they might otherwise have received.

CSHB 397 would attempt to address a problem that does not exist since there already are sufficient checks and balances against abuse of certificates. An issuance must be approved by a city council or commissioners court, and since officials are directly responsible to citizens, there is no need for additional safeguards that could only hinder this process.

**OTHER  
OPPONENTS  
SAY:**

To stop abuse of municipal authority once and for all, this bill either should place a cap on certificate issuances or include a ceiling on issuances above which an election automatically would be triggered. This would prevent municipalities from using certificates as a way to avoid bond elections.

**NOTES:**

The bill as introduced differs from the substitute in that it would have required an election to authorize any certificate issuance of \$2 million or more. The substitute increased the number of days between an public notification and an issuance from 14 in the original bill to 30.