HOUSE
RESEARCH
ORGANIZATION bill analysis | 3/19/2007 | HB 735 Straus, et al.

SUBJECT: Discontinuing the Telecommunications Infrastructure Fund

COMMITTEE: Regulated Industries — favorable, without amendment

VOTE: 9 ayes — P. King, Christian, Crabb, Hartnett, Oliveira, Smithee, Straus, Swinford, Turner

0 nays

WITNESSES: For — Bill Peacock, Byron Schlomach, Texas Public Policy Foundation; (*Registered, but did not testify:* Todd Baxter, Texas Cable and Telecommunications; José A. Camacho, Windstream Communications; Brad Denton, Texas Telephone Association; Henry G. Flores, EMBARQ; Patrick Fucik, Sprint Nextel; Bill Hammond, Texas Association of Business; Ron Hinkle, Verizon Wireless; Thomas Ratliff, T-Mobile and Alltel; Luis Saenz, Time Warner Cable)

Against — None

BACKGROUND: In 1995, the 74th Legislature enacted HB 2128 by Seidlits, which made major changes to the regulation of telecommunication utilities in Texas. The bill created the Telecommunications Infrastructure Fund (TIF) to finance access to telecommunications services for public schools, nonprofit hospitals, public libraries, and higher education institutions across the state. The fund was created and maintained through an assessment of 1.25 percent on telecommunications providers' taxable receipts and was authorized to collect up to $1.5 billion over 10 years. TIF was governed by a nine-member board, which awarded grants for Internet connections, computer hardware, distance learning, telemedicine technology, and technology training programs to eligible entities.

In response to the state's budget shortfall, Gov. Rick Perry in January 2003 froze $224 million of the TIF board's fiscal 2003 appropriation. The 78th Legislature later eliminated the TIF board's appropriation and directed money from the fund toward other programs, including a pre-existing "technology allotment" of $30 per student that had been funded through general revenue. The Legislature did not appropriate any money for new grant awards for fiscal 2004-05 and instead appropriated

$2.1 million to the board to oversee existing grants before the board's 2005 Sunset review.

Gov. Perry vetoed this appropriation and transferred all of the TIF board's remaining funds, assets, and employees to the Texas Workforce Commission, which is responsible for closing out all outstanding grants. In addition to eliminating TIF grants, the 78th Legislature increased TIF's revenue cap from $1.5 billion to $1.75 billion, allowing the fund to continue collecting receipts from telecommunications providers.

In 2005, the 79th Legislature enacted SB 1863 by Ogden, which repealed the $1.75 billion TIF cap and directed $200 million from TIF to general revenue. The bill also extended the expiration date of the fund until September 1, 2011, and allowed utilities to recover the assessment from their customers through their monthly billing process.

DIGEST: HB 735 would eliminate TIF by repealing Utilities Code, ch. 57, subchap. C, which authorizes the collection of the 1.25 percent assessment on telecommunications providers' taxable receipts. The bill also would repeal Education Code, sec. 32.202 and Government Code, sec. 441.1385, which prohibit public schools and public libraries, respectively, from qualifying for TIF grants unless they create an Internet use policy that restricts minors' access to obscene material and prevents disclosure of minors' personal information. It also would strike references to TIF or its governing board throughout the education, government, and utility codes.

Collection of the assessment would continue through September 30, and the last installment would be due October 31, 2007. HB 735 would take effect October 1, 2007, except that the section providing for the collection of the assessment, including continuing to allow providers to recover assessment costs from their customers through their monthly billing process, would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, that provision would take effect August 27, 2007.

SUPPORTERS SAY: HB 735 would eliminate a government program that accomplished its original purpose and needs to be ended. TIF successfully has prevented a "digital divide" from emerging between different groups and regions of the state regarding access to advanced telecommunications services and the Internet. The program has helped purchase computers and install networks in schools, libraries, and hospitals throughout Texas. The ratio of students to computers has dropped from 20 to 1 to a level where there now is a computer for every four students. TIF helped create the Virtual College of Texas to link community colleges and assisted more than 900 libraries. Now that it has achieved its purpose, there is no reason to continue collecting TIF money. Texas can afford to abolish TIF in the current fiscal environment, and doing so would be consistent with Gov. Perry's call for more transparency in budgeting.

History is full of examples of dedicated taxes that continue long after the original purpose has been fulfilled. Congress imposed a special tax on long-distance calls — then a luxury item — to help finance the Spanish-American War in 1898. That conflict ended within months, but the tax continued to be collected until it finally was repealed in 2006. The TIF only dates from 1995, but Texas should not have to wait decades to abolish it.

Utility bills should not be used as tax collection vehicles. Monthly telephone statements list line after line of special taxes and fees. This money may go to worthwhile goals, but these extra charges become burdensome to consumers. Studies show that the only services more heavily taxed than telecommunications are liquor and cigarettes. While such "sin taxes" are intended to discourage unhealthy consumption, telecommunication service is a vital and necessary part of Texas' economic health and development. Having a vibrant telecommunications sector is crucial to continued growth in the years to come, and this sector should not be subject to high taxes.

Immediately ending collection of the HB 735 assessment rather than phasing it out early in the next fiscal biennium would create a shortfall in expected revenue for the remaining months of the current biennium that will end on August 31. The amount of lost revenue would depend on when the collections ceased, but reduction could be a significant amount. Last session, the Legislature carefully considered the decision to use revenue from the TIF assessment to support needed items in the budget, and those deliberations were based on the best available information at the time. Rather than second-guessing budget decisions made in 2005, it would be a more productive use of the Legislature's time to make important choices about the upcoming biennium without introducing uncertainty about the amount of revenue that will be available.

OPPONENTS SAY:

By eliminating the TIF assessment, the bill would result in an estimated loss to the state of $369 million in the coming biennium and a further $424 million in fiscal 2010-11. TIF funds have been used to support essential government services in recent years and may be necessary to contribute to property tax relief or other important programs in the future.

While the TIF's success is commendable, its original mission has not completely been accomplished. Schools, libraries, and hospitals continue to need new computers, and Texas still can upgrade telecommunication networks. All these projects require a secure and dedicated source of funding. The state should continue collecting the TIF assessment, but the money should be dedicated to its original purpose instead of general revenue.

The state already empowers private enterprise to serve as tax collectors. Merchants routinely collect and remit sales taxes from their customers. Similarly, utilities should not be exempt from collecting taxes.

OTHER OPPONENTS SAY:

Collection of the TIF assessment should end as quickly as possible rather than wait until September 30. Delaying that provision of HB 735 until the next fiscal year only would compound the unfairness of this tax. The Legislature should reconsider the decision made last session to divert the TIF assessment revenue to pay for other general revenue expenditures. This biennium is projected to end with a substantial surplus, so any revenue loss from ending the TIF assessment as soon as possible would not affect current spending priorities. The Legislature often revises the budget adopted in the previous regular session through supplemental appropriations bills that authorize additional spending, so there is no reason why the revenue side also cannot be adjusted to end the TIF assessment as soon as possible during the current fiscal biennium.

NOTES:

During second-reading floor consideration of HB 735 on March 14, Rep. Thompson offered an amendment that would have ended the TIF assessment as of March 31, 2007, and given HB 735 immediate effect if the bill was approved by the necessary vote in both houses. If the bill took effect later than March 31, the Public Utility Commission by rule could have authorized a refund to customers of any assessment collected after March 31. A motion by Rep. P. King to table the amendment was withdrawn, and the House postponed further consideration of HB 735 until today.

SB 294 by Williams, the identical companion bill, has been referred to the Senate Finance Committee. Three other bills that would eliminate TIF — HB 1255 by Isett, HB 1348 by Thompson, and HB 1410 by Keffer — also were referred to the House Regulated Industries Committee. HB 1255 and HB 1348 were left pending after the February 20 hearing when HB 735 was considered.

According to the Legislative Budget Board, the bill would reduce general revenue-related funds by $369 million for fiscal 2008-09.