HOUSE RESEARCH ORGANIZATION bill analysis | 3/19/2001 | HB 445 Goodman, G. Lewis (CSHB 445 by Y. Davis)

SUBJECT:	Creating a municipal sales and use tax for city street repair and maintenance
COMMITTEE:	Ways and Means — committee substitute recommended
VOTE:	6 ayes — Oliveira, McCall, Y. Davis, Heflin, Keffer, Ritter 0 nays 5 absent — Craddick, Hartnett, Bonnen, Hilbert, Ramsay
WITNESSES:	None

BACKGROUND: In addition to the 6.25 percent sales tax levied by the state, local governments may levy up to an additional 2 percent in combined sales taxes, with the aggregate total state and local sales and use tax rate capped at no more than 8.25 percent in any geographic area. Texas cities currently are allowed to levy up to a maximum of 1 percent for general purposes, which leaves cities and other local governments 1 percent to levy for special purposes.

Since 1989, many cities have had the option of levying economic development sales and use taxes of up to 0.5 percent for each of two categories of projects. The revenue must be spent on infrastructure associated with manufacturing, industrial and commercial development or related "quality-of-life" improvements. Cities also may impose sales taxes specifically to reduce property taxes, create crime control and prevention districts, or finance construction of professional sports arenas.

DIGEST: CSHB 445 would add Chapter 327 to the Tax Code allowing municipalities (incorporated cities, towns and villages) to levy a quarter-cent sales and use tax dedicated to municipal street maintenance and repair. None of the revenue could be spent on a county, state, or federal road or highway, and revenue from the tax could be used to maintain and repair only city streets existing as of the date of the election authorizing the tax. The combined local sales tax rate of any location within the city limits still could not exceed 2 percent.

The tax could be imposed only through a local-option election. The election could be initiated either by an ordinance of the city's governing body or by a petition signed by registered voters in a number equal to at least 5 percent of the votes cast in the most recent regular municipal election. Other local sales tax elections held simultaneously would take precedence if the outcomes caused the combined local sales tax rate to exceed 2 percent. If approved, the street maintenance sales tax would not take effect until a complete calendar quarter-year had elapsed.

Unless reauthorized in a subsequent election, the tax would expire four years from its original effective date, or, in the case of expiration after reauthorization, on the first day of the first calendar quarter following the fourth anniversary of its reauthorization. The Comptroller's Office could delay expiration if it deemed it necessary, but not later than the last day of the first quarter after notification of expiration. The city would have to wait a full year from the expiration date before seeking to reinstate the tax.

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, 2001.

SUPPORTERS SAY:

Many streets in Texas cities are wearing out faster than they can be repaired. Some cities are experiencing such rapid population growth and development that they are forced to spend all their budgeted funds on new streets. Without additional revenue, they cannot afford adequately to maintain and repair existing streets. This is especially true of small cities in suburban areas where infrastructure demands can outpace a city's ability to raise revenue.

The cities of Fort Worth, Arlington, Bedford and Round Rock estimate their street repair and maintenance costs range from $12 million to $16 million. Under CSHB 445, Arlington could raise an additional $4.5 million annually. The gain to Round Rock would be about $1 million a year, according to the fiscal note.

CSHB 445 would allow residents of eligible cities to choose to tax themselves additionally to address this shortfall. The bill contains a relatively new and creative sunset provision first used in Texas sales tax law in relation to crime control and prevention districts (Local Government Code, Chapter 363). Voters would have to renew the tax every four years or else it would expire. It could not remain in effect in perpetuity without being reauthorized by the voters. If the tax ever expired without being reauthorized by the voters, then at least one year would have to elapse before the city could call another election to approve the tax. Revenue could be spent only on repair and maintenance of existing city streets, which would prevent the tax from being used for purposes voters did not approve. A targeted, temporary tax increase that ended when the problem is solved would preferable to a general, permanent one not tied to results.

The Comptroller's Office estimates that 559 of the state's approximately 1,100 taxing cities (those levying the full 1 percent general purpose local sales tax) would be eligible to enact a street maintenance sales tax under this bill without having to repeal any existing local sales taxes to remain under the 2 percent cap. If the bill took effect September 1, the Legislative Council estimates that most eligible cities probably would be able to implement the tax no sooner than July 1, 2002. The delay in implementation of the tax would allow enough time for the Comptroller's Office to prepare and for merchants to reprogram their cash registers.

The bill would retain the 2-percent cap on combined local sales tax rates. A city could not enact the street maintenance sales tax if any portion of the city that is taxed by another governmental entity would exceed the cap if the new tax were approved. This would protect against over-taxation.

Sales taxes are widely accepted in Texas as a sound method of paying for public works. Using the sales tax for street maintenance not only would spread the burden among the most payers but also would extend it to out-of-town motorists who use city streets while purchasing goods and services sold in the city. Such a broad-based tax would be appropriate in this case, because almost every resident uses city streets to some extent and benefits from streets remaining in good repair. Worn-out streets inhibit commerce, damage vehicles, create safety hazards, and hamper the efficient operation of vehicles used to meet crucial needs, such as law enforcement, emergency response and utility repair.

OPPONENTS SAY:

Cities already are entitled to collect taxes equal to 1 percent of sales to pay for general-purpose expenditures like street maintenance and repair. Additional sales taxes are designed for special purposes like economic development, not basic services. This bill would set a questionable precedent by allowing cities to add new layers of taxation to pay for essentials for which taxpayers already are paying. Lack of funds for a basic service should be addressed in the budgeting process where priorities are set for municipal spending.

The sales tax is regressive, penalizing those who can least afford to pay by taking away a larger proportional share of their income. The sales tax is overused by Texas government, as evidenced by the large number of metropolitan areas that have reached the 2 percent combined local sales tax cap.

Enacting this tax could put merchants in large urban areas at a competitive disadvantage. Customers could take their business elsewhere to a nearby municipality that did not have the so-called “pothole tax.” This tax would not be the best approach for regional metropolitan centers whose businesses attract customers from smaller outlying cities and towns and rural areas. With no other viable alternatives, these out-of-town shoppers would pay a premium for buying goods and services in cities that levy the tax.

OTHER OPPONENTS SAY:

Cities should be able to spend the revenue from this sales tax on a county, state or federal road or highway if necessary. Traffic on county, state and federal road often passes through sections of a city without generating sufficient revenue to help pay for the wear it causes on city streets. The sales and use tax should be more flexible in this regard. Also, the tax rate should be incremental to allow cities to start with a one-eighth levy or scale back from one-quarter if deemed appropriate.

NOTES:

The substitute added a section to the original bill sunsetting the tax in four years and delineating procedures for reauthorization elections as well as expiration and reinstitution of the tax.

A related bill, HB 938 by Solis, which would give counties similar authority to conduct elections to levy a dedicated sales and use tax only for county road repair and maintenance, was referred to the House Ways and Means Committee.