

SUBJECT: Eliminating county energy transportation reinvestment zones

COMMITTEE: Energy Resources — favorable, without amendment

VOTE: 11 ayes — Darby, C. Anderson, G. Bonnen, Canales, Clardy, Guerra, Isaac, P. King, Lambert, Landgraf, Schubert

0 nays

2 absent — Craddick, Walle

SENATE VOTE: On final passage, April 4 — 31-0

WITNESSES: *On House companion bill, HB 2813:*

For — John Kennedy, Texas Taxpayers and Research Association; (*Registered, but did not testify:* Adrian Acevedo, Anadarko Petroleum; Katherine Carmichael, Panhandle Producers & Royalty Owners Association; Teddy Carter, Devon Energy; Stan Casey, Concho Resources; Tricia Davis, Texas Royalty Council; Mark Gipson, Pioneer Natural Resources; Mark Harmon, Chesapeake Energy; Ed Longanecker, Texas Independent Producers and Royalty Owners Association; Greg Macksood, PDC Energy; Ben Sebree, Permian Basin Petroleum Association; Todd Staples, Texas Oil and Gas Association; Bill Stevens, Texas Alliance of Energy Producers; Julie Williams, Chevron; Christina Wisdom, Occidental Petroleum Corporation)

Against — (*Registered, but did not testify:* Michael Pacheco, Texas Farm Bureau)

On — David Millikan, Texas Department of Transportation

BACKGROUND: Transportation Code, sec. 222.1071 establishes procedures for the creation of a county energy transportation reinvestment zone (CETRZ), which allows a county to establish an account that captures revenue from increases in property tax revenues in specific areas and is dedicated to transportation infrastructure projects in those areas. Sec. 222.110 allows

any incremental increase in county sales tax collections to be directed to a CETRZ account.

Attorney general opinions GA-0981 and KP-0004 state that Texas Constitution Art. 8, sec. 1(a), which requires taxation to be equal and uniform, would likely cause a court to conclude that a county cannot dedicate certain property taxes to a specific zone through the use of a CETRZ.

In 2015, HB 4025 by Keffer was vetoed by the governor. The bill would have allowed money from a CETRZ to be used for any transportation project in the county, rather than only projects in the zone.

DIGEST:

SB 1305 would repeal the statutory authority for a county to create a county energy transportation reinvestment zone, along with the authority to dedicate increments in property and sales tax collections to projects in those zones.

The bill would make conforming changes to amend the application requirements, distribution formulas, and reporting requirements for grants from the Transportation Infrastructure Fund.

This bill would take effect December 31, 2017, and would not affect the validity of bonds issued before that date or the amount of any tax rate beginning in the 2018 tax year.

**SUPPORTERS
SAY:**

SB 1305 would repeal a program that has resulted in pending litigation and potential financial liability for counties that have taken advantage of it. According to several attorney general opinions over the years, using tax increments to fund county energy transportation reinvestment zones could be unconstitutional, violating Art. 8, sec. 1(a) of the Texas Constitution. If counties continue to operate energy transportation reinvestment zones, they could be subject to large financial liabilities. Current litigation involving one county asks that it refund large amounts of property tax revenue collected while a county energy transportation reinvestment zone (CETRZ) was in operation on the basis that it was not collected equitably

or uniformly.

While securing transportation funding for areas damaged by oil and gas development is a worthy cause, past attempts to remedy concerns about the constitutionality of CETRZs have been vetoed by the governor on the grounds that they were still unconstitutional, so the Legislature should instead focus its efforts on finding alternatives. Additionally, the bill would maintain state assistance for counties through grants from the Transportation Infrastructure Fund so that counties would not have to bear the full burden of maintaining local roads.

OPPONENTS
SAY:

CETRZs are not unconstitutional, and SB 1305 unnecessarily would eliminate an important tool that counties need to offset damage to county roads caused by oil and gas development. No final decision as to the constitutionality of CETRZ has been made, as attorney general opinions are not binding. Moreover, even if a court were to rule them unconstitutional, there could be ways to amend the program to make it consistent with Art. 8, sec. 1(a) of the Texas Constitution.

Heavy trucks and construction equipment cause roads to break down quickly, and funds from the State Highway Fund cannot go to county road maintenance. The Legislature should find a replacement for CETRZs before repealing county authority to establish them.

NOTES:

The companion bill, HB 2813 by Darby, was left pending in the House Energy Resources Committee on April 10.