Texas HB 19 Takes Aim at Local Government Debt and Tax Practices

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Perhaps the most impactful public finance bill making its way through the Texas Legislature currently is House Bill 19 (HB 19). The bill is largely an amalgamation of other bills filed this session (notably, House Bill 1453 and Senate Bill 470) aimed at restricting the issuance of debt.

Generally Applicable Changes

If passed and signed by Governor Greg Abbott, the bill would require that bond elections be held only in November, a recurring theme from recent sessions.

The bill also would limit local government debt by prescribing that the maximum annual debt service in any fiscal year on debt payable from property taxes may not exceed 20% of an amount equal to the average of the amount of property tax collections for the three preceding fiscal years.

With certain restrictions, HB 19 would prohibit an issuer from issuing an anticipation note if a bond proposition for the same purpose had failed during the preceding five years.

Certificates of Obligation

HB 19 would significantly restrict the issuance of non-voted certificates of obligation by cities and counties. The bill would amend the definition of "Public work" to no longer include public safety facilities; judicial facilities; administrative office buildings; animal shelters; libraries; parks or recreational facilities; the rehabilitation, expansion, reconstruction, or maintenance of an existing stadium, arena, civic center, convention center, or coliseum; or hotels. The only purposes for which certificates of obligation could be issued would be to (1) comply with a state or federal law or rule for which the city or county has been notified of noncompliance; (2) mitigate the impact of a public health emergency; (3) finance the cleanup, mitigation, or remediation of a

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declared natural disaster; comply with a court order; and pay for professional services necessary for a public work.

The bill would further limit when certificates of obligation may be authorized by a city or county and would require the public work construction contract to be entered within 180 days of the governing body's authorization of the issuance of the certificates.

HB 19 also would reduce the maximum maturity of certificates from 40 years to 30 years and, with certain exceptions, increase the blackout period for issuance of certificates after a failed bond election from three years to five years. Further, the bill would decrease the protest petition threshold from 5% of qualified voters to 2% of registered voters. If a petition with the required number of signatures is received by the issuer before the date tentatively set for the authorization of the issuance, or before authorization, the city or county could not authorize the issuance of certificates unless approved at an election.

Tax Code

HB 19 also would make a critical definitional change of "current debt service" within the Tax Code. The current definition, "debt service for the current year," would be amended to "the minimum dollar amount required to be expended for debt service for the current year." The new definition is problematic for issuers for numerous reasons, including that issuers usually need the ability to set tax rates to produce a sufficient amount of taxes to pay an estimated (not known) amount of interest on variable rate debt.

The bill would restrict the debt service rate component of a taxing unit's tax rate by requiring that this component, if exceeding the rate as determined under subsection 26.05(a)(1), may only be approved (a) pursuant to a motion that, among other things, describes the purpose for which any excess revenue collected will be used and (b) by a vote of at least 60 percent of the members of the governing body. Subsection 26.05(a)(1) of the Tax Code generally prescribes the debt service tax rate to be the rate that, if applied to total taxable value, will produce tax revenue sufficient to pay the amount of principal and interest due in the next year, less

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any amount of additional sales and use tax revenue that will be used to pay debt service.

The bill also would prohibit an increase in a taxing unit's maintenance and operations tax revenue derived from an election under the Tax Code (i.e., an election to exceed the voter-approval tax rate) to be used or transferred to repay debt in installment payments.

Lastly, the bill would repeal various provisions within the definition of "debt" in the Tax Code to exclude issuances for designated infrastructure, vehicles or equipment, and renovations to existing buildings. The result would be that taxes to pay such debt would be counted against a taxing unit's maintenance and operations tax revenue, the growth of which is already heavily restricted under state law.

For more information on these new requirements, please contact the authors or any attorney with Frost Brown Todd's Public Finance Practice Group.

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