

BILL ANALYSIS

H.B. 2660
By: Krusee
Transportation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

To create a Texas Rail Relocation and Improvement Fund, which will be administered by the Texas Transportation Commission (TTC) for the purpose of providing a method of financing the relocation and improvement of privately and publicly owned passenger and freight rail facilities.

Under Chapter 91, Transportation Code, the Texas Department of Transportation (TxDOT) has the authority to acquire, construct, and maintain rail facilities. Chapter 91 is limited to TxDOT-owned rail facilities, and very little funding is available to implement Chapter 91.

Under Subchapter M, Chapter 201, Transportation Code, the TTC may use the Texas Mobility Fund to finance public transportation projects. Public transportation projects include passenger rail facilities, but not freight rail facilities.

Highway capacity is not keeping up with demand. Texas roadways have become increasingly congested in recent years due in part to population growth and the changing economy.

The transportation of freight on the state's transportation system has grown tremendously and will continue to do so, causing a greater burden on both the highway system and the freight rail system.

The railroad industry was deregulated in 1980. As a result, the industry dramatically improved its productivity and stabilized its market share. This was accomplished, however, by downsizing and streamlining operations and keeping capital expenditures low. The industry does not generate sufficient profits to reinvest in the infrastructure. As the demand for freight transportation increases, the rail industry's infrastructure will not be sufficient to maintain its market share and keep freight off highways.

A rail relocation and improvement fund could leverage its assets to issue bonds. It is estimated that \$100 million per year could generate \$1 billion in bond proceeds to be used for the relocation or improvement of rail lines. In some instances, the costs of the projects could be offset somewhat by the acquisition of the existing right of way (in the case of relocated lines) and the potential for increased economic development along these corridors. Savings could be generated by the availability of highway funds that otherwise would have been expended on grade-separated rail crossings, safety improvements, and right of way expenses for highway improvements.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Chapter 201, Transportation Code, by adding Subchapter O, as follows:

SUBCHAPTER O. RAIL RELOCATION AND IMPROVEMENT

Sec. 201.971. DEFINITIONS. Defines "comptroller's certification," "credit agreement," "fund," "long-term obligations," "maximum obligation amount," "obligations," "rail facility," "short-term obligations," and "station."

Sec. 201.972. ADMINISTRATION OF FUND. Requires the comptroller to hold the fund and requires the TTC, through TxDOT, to manage, invest, use, and administer the fund as provided by this subchapter.

Sec. 201.973. AUTHORITY TO ISSUE OBLIGATIONS; PURPOSES; LIMITATIONS. (a) Authorizes the TTC by order or resolution, subject to Subsections (e), (f), and (g), to issue obligations in the name and on behalf of the state and TxDOT and to enter into credit agreements related to the obligations. Authorizes the obligations to be issued in multiple series and issues from time to time in an aggregate amount not exceeding the maximum obligation amount. Authorizes the obligations to be issued on and to have the terms and provisions the TTC determines appropriate and in the interests of the state. Authorizes obligations to be issued as long-term, short-term, or both. Prohibits the latest scheduled maturity of an issue or series of obligations from exceeding 30 years.

(b) Requires obligations to be secured by and payable from a pledge of and lien on all or part of the money in the fund. Authorizes obligations to be additionally secured by and payable from credit agreements. Authorizes the TTC to pay amounts due on the obligations from discretionary money available to it that is not dedicated to or appropriated for other specific purposes.

(c) Authorizes the TTC to create within the fund accounts, reserves, and sub-funds for the purposes the TTC finds appropriate and necessary.

(d) Authorizes obligations to be issued: to pay all or part of the costs of relocating, construction, reconstructing, acquiring, improving, rehabilitating, or expanding rail facilities owned or to be owned by TxDOT; to provide participation by the state in the payment of part of the costs of relocating, constructing, reconstructing, acquiring, improving, rehabilitating, or expanding publicly or privately owned rail facilities if the TTC determines that the project will be in the best interests of the state in its major goal of improving the mobility of the residents of the state and will relieve congestion on public highways, enhance public safety, improve air quality, or expand economic opportunity; to create debt service reserve accounts; to pay interest on obligations for a period of not longer than two years; to refund or cancel outstanding obligations; and to pay the TTC's cost of issuance.

(e) Prohibits long-term obligations in the amount proposed from being issued by the TTC unless the comptroller projects in a comptroller's certification that the amount of money dedicated to the fund under Section 49-o(d), Article III, Texas Constitution, and required to be on deposit in the fund under Section 49-o(e), Article III, Texas Constitution, and the investment earnings on that money, during each year of the period during which the proposed obligations are scheduled to be outstanding will be at least equal to 110 percent of the requirements to pay the principal of and interest on the proposed long-term obligations during that year.

(f) Prohibits short-term obligations in the amount proposed by the TTC from being issued unless the comptroller meets certain conditions in a comptroller's certification.

(g) Authorizes the TTC to agree to further restrictions in connection with the issuance of obligations and to retain independent professional consultants to make projections in addition to, but not instead of, those of the comptroller if required as a prerequisite to the issuance of the obligations.

(h) Provides that the TTC has all powers necessary or appropriate to carry out this subchapter and to implement Section 49-o, Article III, Texas Constitution, including the powers granted to other bond-issuing governmental agencies and units and to nonprofit corporations by Government Code Chapters 1201 (Public Security Procedures Act), 1207 (Refunding Bonds), and 1371 (Obligations for Certain Public Improvements).

(i) Requires proceedings authorizing obligations and related credit agreements to be issued and executed under this subchapter, as required by Section 49-o(g), Article III, Texas Constitution, to

be submitted to the attorney general for approval as to their legality. Requires the attorney general, if the attorney general finds that they will be issued in accordance with this subchapter and other applicable law, to approve them. Provides that, after payment by the purchasers of the obligations in accordance with the terms of sale and after execution and delivery of the related credit agreements, the obligations and related credit agreements are incontestable for any cause.

(j) Requires a comptroller's certification under this section to be based on economic data, forecasting methods, and projections that the comptroller determines are reliable. Requires the comptroller, in determining the principal and interest requirements on outstanding and proposed obligations, and subject to the express limitations of this subchapter and Section 49-o, Article III, Texas Constitution, to rely upon the assumptions included in the resolutions authorizing such obligations for the calculation of debt service.

(k) Provides that the holders of obligations and the counterparties to credit agreements have the rights granted in Section 49-o(i), Article III, Texas Constitution.

Sec. 201.974. PLEDGE OF STATE'S FULL FAITH AND CREDIT. (a) Authorizes the TTC to guarantee on behalf of the state the payment of any obligations and credit agreements issued under Section 201.973 by pledging the full faith and credit of the state to the payment of the obligations and credit agreements in the event the revenue and money dedicated to the fund pursuant to Section 49-o(d), Article III, Texas Constitution, and on deposit in the fund pursuant to Section 49-o(e), Article III, Texas Constitution, are insufficient for that purpose.

(b) Prohibits the exercise of the authority granted by Subsection (a) from modifying or relieving the TTC from complying with Section 201.973(e) or (f) and prohibits the issuance of aggregate obligations in an amount exceeding the maximum obligation amount.

(c) Requires the constitutional appropriation contained in Section 49-o(e), Article III, Texas Constitution, if the TTC exercises the authority granted by Subsection (a), to be implemented and observed by all officers of the state during any period in which obligations and credit agreements are outstanding and unpaid.

Sec. 201.975. DEDICATION OF REVENUE TO FUND. Requires that the revenue of the state that is dedicated or appropriated to the fund under Section 49-o(d), Article III, Texas Constitution, be annually deposited to the fund in accordance with Section 49-o(e), Article III, Texas Constitution.

Sec. 201.976. INVESTMENT AND USES OF MONEY IN FUND. (a) Authorizes money in the fund to be invested in the investments permitted by law for the investment of money on deposit in the state highway fund.

(b) Authorizes the TTC, as a part of its covenants and commitments made in connection with the issuance of obligations and the execution of credit agreements, to limit the types of investments eligible for investment of money in the fund but not to expand the types of investments to include any investments that are not authorized by Section (a).

(c) Requires income received from the investment of money in the fund to be deposited in the fund, subject to requirements that may be imposed by the proceedings authorizing obligations to protect the tax-exempt status of interest payable on the obligations under the Internal Revenue Code of 1986.

(d) Authorizes the TTC, to the extent money is on deposit in the fund in amounts that are in excess of the money required by the proceedings authorizing the obligations and credit agreements to be retained on deposit, to use the money for any purpose for which obligations may be issued under this subchapter.

Sec. 201.977. STRATEGIC PLAN. Prohibits the TTC from issuing obligations under this subchapter before TxDOT has developed a strategic plan that outlines how the money will be used and the benefit the state will derive from use of money in the fund.

SECTION 2. Provides that this Act takes effect on the date on which the constitutional amendment passed by the 79th Legislature, Regular Session, 2005, creating the Texas Rail Relocation and Improvement Fund and authorizing grants of money and issuance of obligations for financing the relocation, construction, reconstruction, acquisition, improvement, rehabilitation, and expansion of rail facilities takes effect.

EFFECTIVE DATE

The date which the constitutional amendment proposed by HJR 81 takes effect, if that amendment is approved by the voters.