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S.B. No. 1712

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the administration and use of the Texas rail relocation
3 and improvement fund and the issuance of obligations for financing
4 the relocation, construction, reconstruction, acquisition,
5 improvement, rehabilitation, and expansion of rail facilities.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Chapter 201, Transportation Code, is amended by
8 adding Subchapter O to read as follows:

9 SUBCHAPTER O. RAIL RELOCATION AND IMPROVEMENT

10 Sec. 201.971. DEFINITIONS. In this subchapter:

11 (1) "Comptroller's certification" means:

12 (A) as to long-term obligations, the
13 certification made under Section 201.973(e); and

14 (B) as to short-term obligations, the
15 certification made under Section 201.973(f).

16 (2) "Credit agreement" has the meaning assigned by
17 Section 1371.001, Government Code.

18 (3) "Fund" means the Texas rail relocation and
19 improvement fund.

20 (4) "Long-term obligations" means an issue or series
21 of obligations the latest scheduled maturity of which is more than
22 five years.

23 (5) "Maximum obligation amount" means the maximum
24 aggregate principal amount of long-term obligations and short-term

1 obligations that the commission may issue from time to time after
2 receipt of the applicable comptroller's certification.

3 (6) "Obligations" means bonds, notes, and other public
4 securities.

5 (7) "Rail facility" means real or personal property,
6 or any interest in that property, that is determined to be necessary
7 or convenient for the provision of a freight or passenger rail
8 facility, including commuter rail, intercity rail, and high-speed
9 rail. The term includes all property or interests necessary or
10 convenient for the acquiring, providing, using, or equipping of a
11 rail facility or system, including rights-of-way, trackwork, train
12 controls, stations, and maintenance facilities.

13 (8) "Short-term obligations" means an issue or series
14 of obligations the latest scheduled maturity of which is five years
15 or less.

16 (9) "Station" means a passenger or freight service
17 building, terminal, station, ticketing facility, waiting area,
18 platform, concession, elevator, escalator, facility for
19 handicapped access, access road, parking facility for passengers,
20 baggage handling facility, or local maintenance facility, together
21 with any interest in real property necessary or convenient for
22 those items.

23 Sec. 201.972. ADMINISTRATION OF FUND. The comptroller
24 shall hold the fund, and the commission, through the department,
25 shall manage, invest, use, and administer the fund as provided by
26 this subchapter.

27 Sec. 201.973. AUTHORITY TO ISSUE OBLIGATIONS; PURPOSES;

1 LIMITATIONS. (a) Subject to Subsections (e), (f), and (g), the
2 commission by order or resolution may issue obligations in the name
3 and on behalf of the state and the department and may enter into
4 credit agreements related to the obligations. The obligations may
5 be issued in multiple series and issues from time to time in an
6 aggregate amount not exceeding the maximum obligation amount. The
7 obligations may be issued on and may have the terms and provisions
8 the commission determines appropriate and in the interests of the
9 state. The obligations may be issued as long-term obligations,
10 short-term obligations, or both. The latest scheduled maturity of
11 an issue or series of obligations may not exceed 30 years.

12 (b) Obligations must be secured by and payable from a pledge
13 of and lien on all or part of the money in the fund, including the
14 revenues of the state dedicated or appropriated for deposit to the
15 fund. Obligations may be additionally secured by and payable from
16 credit agreements. The commission may pay amounts due on the
17 obligations from discretionary money available to it that is not
18 dedicated to or appropriated for other specific purposes.

19 (c) The commission may create within the fund accounts,
20 reserves, and subfunds for purposes the commission finds
21 appropriate and necessary.

22 (d) Obligations may be issued for one or more of the
23 following purposes:

24 (1) to pay all or part of the costs of relocating,
25 constructing, reconstructing, acquiring, improving,
26 rehabilitating, or expanding rail facilities owned or to be owned
27 by the department, including any necessary design, in the manner

1 and locations determined by the commission that according to
2 conclusive findings of the commission have an expected useful life,
3 without material repair, of not less than 10 years;

4 (2) to provide participation by the state in the
5 payment of part of the costs of relocating, constructing,
6 reconstructing, acquiring, improving, rehabilitating, or expanding
7 publicly or privately owned rail facilities, including any
8 necessary design, if the commission determines that the project
9 will be in the best interests of the state in its major goal of
10 improving the mobility of the residents of the state and will:

11 (A) relieve congestion on public highways;

12 (B) enhance public safety;

13 (C) improve air quality; or

14 (D) expand economic opportunity;

15 (3) to create debt service reserve accounts;

16 (4) to pay interest on obligations for a period of not
17 longer than two years;

18 (5) to refund or cancel outstanding obligations; and

19 (6) to pay the commission's costs of issuance.

20 (e) Long-term obligations in the amount proposed to be
21 issued by the commission may not be issued unless the comptroller
22 projects in a comptroller's certification that the amount of money
23 dedicated to the fund pursuant to Section 49-o(d), Article III,
24 Texas Constitution, and required to be on deposit in the fund
25 pursuant to Section 49-o(e), Article III, Texas Constitution, and
26 the investment earnings on that money, during each year of the
27 period during which the proposed obligations are scheduled to be

1 outstanding will be equal to at least 110 percent of the
2 requirements to pay the principal of and interest on the proposed
3 long-term obligations during that year.

4 (f) Short-term obligations in the amount proposed by the
5 commission may not be issued unless the comptroller, in a
6 comptroller's certification:

7 (1) assumes that the short-term obligations will be
8 refunded and refinanced to mature over a 20-year period with level
9 principal requirements and bearing interest at then current market
10 rates, as determined by the comptroller; and

11 (2) projects that the amount of money dedicated to the
12 fund pursuant to Section 49-o(d), Article III, Texas Constitution,
13 and required to be on deposit in the fund pursuant to Section
14 49-o(e), Article III, Texas Constitution, and the investment
15 earnings on that money, during each year of the assumed 20-year
16 period will be equal to at least 110 percent of the requirements to
17 pay the principal of and interest on the proposed refunding
18 obligations during that year.

19 (g) The commission may agree to further restrictions in
20 connection with the issuance of obligations and may retain
21 independent professional consultants to make projections in
22 addition to, but not instead of, those of the comptroller if
23 required as a prerequisite to the issuance of the obligations.

24 (h) The commission has all powers necessary or appropriate
25 to carry out this subchapter and to implement Section 49-o, Article
26 III, Texas Constitution, including the powers granted to other
27 bond-issuing governmental agencies and units and to nonprofit

1 corporations by Chapters 1201, 1207, and 1371, Government Code.

2 (i) As required by Section 49-o(g), Article III, Texas
3 Constitution, proceedings authorizing obligations and related
4 credit agreements to be issued and executed under this subchapter
5 shall be submitted to the attorney general for approval as to their
6 legality. If the attorney general finds that they will be issued in
7 accordance with this subchapter and other applicable law, the
8 attorney general shall approve them, and, after payment by the
9 purchasers of the obligations in accordance with the terms of sale
10 and after execution and delivery of the related credit agreements,
11 the obligations and related credit agreements are incontestable for
12 any cause.

13 (j) A comptroller's certification under this section must
14 be based on economic data, forecasting methods, and projections
15 that the comptroller determines are reliable. In determining the
16 principal and interest requirements on outstanding and proposed
17 obligations, and subject to the express limitations of this
18 subchapter and Section 49-o, Article III, Texas Constitution, the
19 comptroller shall rely on the assumptions included in the
20 resolutions authorizing the obligations for the computation of debt
21 service.

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

25 Sec. 201.974. PLEDGE OF STATE'S FULL FAITH AND CREDIT. (a)
26 The commission may guarantee on behalf of the state the payment of
27 any obligations and credit agreements issued under Section 201.973

1 by pledging the full faith and credit of the state to the payment of
2 the obligations and credit agreements in the event the revenue and
3 money dedicated to the fund pursuant to Section 49-o(d), Article
4 III, Texas Constitution, and on deposit in the fund pursuant to
5 Section 49-o(e), Article III, Texas Constitution, are insufficient
6 for that purpose.

7 (b) The exercise of the authority granted by Subsection (a)
8 does not modify or relieve the commission from complying with
9 Section 201.973(e) or (f) and does not permit the issuance of
10 aggregate obligations in an amount exceeding the maximum obligation
11 amount.

12 (c) If the commission exercises the authority granted by
13 Subsection (a), the constitutional appropriation contained in
14 Section 49-o(f), Article III, Texas Constitution, shall be
15 implemented and observed by all officers of the state during any
16 period during which obligations and credit agreements are
17 outstanding and unpaid.

18 Sec. 201.975. DEDICATION OF REVENUE TO FUND. Annually, the
19 revenue of the state that is dedicated or appropriated to the fund
20 pursuant to Section 49-o(d), Article III, Texas Constitution, shall
21 be deposited to the fund in accordance with Section 49-o(e),
22 Article III, Texas Constitution.

23 Sec. 201.976. INVESTMENT AND USES OF MONEY IN FUND. (a)
24 Money in the fund may be invested in the investments permitted by
25 law for the investment of money on deposit in the state highway
26 fund.

27 (b) As a part of its covenants and commitments made in

1 connection with the issuance of obligations and the execution of
2 credit agreements, the commission may limit the types of
3 investments eligible for investment of money in the fund but may not
4 expand the types of investments to include any investments that are
5 not authorized by Subsection (a).

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

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

16 Sec. 201.977. STRATEGIC PLAN. The commission may not issue
17 obligations under this subchapter before the department has
18 developed a strategic plan that outlines how the money will be used
19 and the benefit the state will derive from use of money in the fund.

20 SECTION 2. This Act takes effect on the date on which the
21 constitutional amendment proposed by the 79th Legislature, Regular
22 Session, 2005, creating the Texas rail relocation and improvement
23 fund and authorizing grants of money and issuance of obligations
24 for financing the relocation, construction, reconstruction,
25 acquisition, improvement, rehabilitation, and expansion of rail
26 facilities takes effect. If that amendment is not approved by the
27 voters, this Act has no effect.