

BILL ANALYSIS

H.B. 1
By: Pitts
Appropriations
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In the November 2007 general election, the people of Texas voted to allow the Texas Department of Transportation to issue general obligation bonds for highway improvement projects. House Bill 1 is the enabling legislation for these bonds.

H.B. 1 also establishes a revolving fund which allows money to be continually recycled by using repayments of financial assistance to provide assistance for other projects. Once a portfolio of loans has been established, money in the fund can be further leveraged by issuing revenue bonds supported by the repayment stream. A sale of loans would provide additional capital to the fund that could be used to provide additional financial assistance. By using the fund to provide credit enhancement, public entities may be able to undertake projects that otherwise would not be financially feasible because of the current state of credit markets.

Finally, H.B. 1 updates the contingency rider for the above items (Rider 60 of the General Appropriations Act (S.B. 1), 81st Legislature, Regular Session, 2009) by correcting a reference to legislation passed in the regular session instead of the special session.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 2 of this bill.

ANALYSIS

Issuance of General Obligation Bonds for Highway Improvement Projects

H.B. 1 amends the Transportation Code to authorize the Texas Transportation Commission to issue general obligation bonds for highway improvement projects in an aggregate principal amount not to exceed \$5 billion, as specified by the Texas Constitution, and to enter into related credit agreements secured by and payable from the same sources as the bonds. The bill defines "bonds," "credit agreement," and "improvement."

H.B. 1 requires the bonds to be executed in the form, on the terms, and in the denominations, bear interest, and be issued in installments as prescribed by the commission and to mature not later than 30 years after their dates of issuance, subject to any refundings or renewals. The bill authorizes the bonds to be issued in multiple series and issues from time to time and to have the provisions the commission determines appropriate and in the interest of the state. The bill grants the commission all powers necessary or appropriate to carry out the bill's provisions and to implement the constitutional provisions regarding the commission and Texas highway improvement funds, including the powers granted to other bond-issuing governmental agencies and units and to nonprofit corporations by the Public Security Procedures Act and provisions relating to refunding bonds and obligations for certain public improvements.

H.B. 1 requires the bonds and the record of proceedings authorizing the bonds and any related credit agreements to be submitted to the attorney general for approval as to their legality. The bill requires the attorney general to approve the bonds if the attorney general finds that the bonds will be issued in accordance with the bill's provisions and other applicable law. The bill establishes 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.

H.B. 1 authorizes bonds to be issued for one or more of the following purposes:

- to pay all or part of the costs of highway improvement projects;
- to pay the costs of administering projects authorized under the bill, to pay the cost or expense of issuing the bonds, or to pay all or part of a payment owed or to be owed under a credit agreement; and
- to provide money for deposit in the Texas Transportation Revolving Fund or similar revolving fund authorized by law, to be used to make loans for highway improvement projects as provided by law.

H.B. 1 prohibits proceeds from the issuance and sale of the bonds from being expended or used for the purposes authorized by the bill unless those proceeds have been appropriated by the legislature. The bill requires the comptroller of public accounts to pay the principal of the bonds as they mature and the interest as it becomes payable and to pay any cost related to the bonds that becomes due, including payments under credit agreements.

Texas Transportation Revolving Fund

Creation and Administration

H.B. 1 creates the Texas Transportation Revolving Fund as a fund held in the Texas Treasury Safekeeping Trust Company. The bill requires the commission, through the Texas Department of Transportation (TxDOT), to use, administer, and provide financial assistance from the fund as provided by the bill. The bill requires the company to hold and invest the fund's assets in accordance with the bill's provisions and the direction of the commission. The bill requires the expenses associated with the services provided by the company to be paid from the fund. The bill authorizes the company to create within the fund one or more accounts or subaccounts as determined appropriate or necessary by the company or as directed by the commission. The bill requires the commission to prepare and file annually with the governor, the lieutenant governor, and the Legislative Budget Board a report providing certain information on the fund's operation.

Sources of Money Deposited in the Revolving Fund

H.B. 1 authorizes the commission to deposit in the fund money derived from any source available to the commission, including:

- if appropriated by the legislature for that purpose, as applicable,
 - the proceeds of bonds issued by the commission and secured by the state highway fund;
 - the proceeds of bonds authorized by the Texas Constitution for highway improvement projects, if the applicable law does not prohibit their deposit in the fund;
 - money provided by the commission from the state highway fund;
 - money provided by the commission from the Texas Mobility Fund that is in excess of the money required to be on deposit in that fund by the proceedings authorizing Texas Mobility Fund bonds and credit agreements; and

- other direct appropriations;
- repayments of principal and interest on loans made under the bill's provisions;
- the proceeds from the sale of loans under the bill's provisions;
- the proceeds from the sale of fund revenue bonds; and
- gifts and grants.

Fund Revenue Bonds

H.B. 1 authorizes the commission to issue, sell, and deliver fund revenue bonds for the purpose of providing money for the fund and establishes that such bonds are special obligations of the commission payable from the repayment of loans from the fund and other money on deposit in the fund as the commission may designate and that such bonds do not constitute a debt of the state or a pledge of the faith and credit of the state.

H.B. 1 authorizes the commission to issue fund revenue bonds in the name and on behalf of Texas and TxDOT and to enter into related credit agreements. The bill authorizes the bonds to be issued periodically in multiple series and issues and to be issued on terms and with provisions the commission determines appropriate and in the interests of the state. The bill grants the commission all powers necessary or appropriate to carry out the bill's provisions, including the powers granted to other bond-issuing governmental agencies and units and to nonprofit corporations by the Public Security Procedures Act and Government Code provisions relating to refunding bonds and obligations for certain public improvements.

H.B. 1 requires the commission, before issuing fund revenue bonds or credit agreements, to submit the record of commission proceedings authorizing the issuance, execution, and delivery of the bonds or credit agreement and any contract providing revenue or security to pay the bonds or credit agreement to the attorney general for review. The bill requires the attorney general, if the attorney general finds that the proceedings and any bonds authorized in the proceedings conform to the requirements of the Texas Constitution and the bill's provisions, to approve the proceedings and the bonds and deliver to the comptroller for registration a copy of the attorney general's opinion stating that approval and the record of proceedings. The bill authorizes, after approval, the bonds or credit agreement to be executed and delivered, exchanged, or refinanced from time to time in accordance with those proceedings.

H.B. 1 establishes that if the proceedings and any bonds authorized in the proceedings are approved and registered as provided above, the bonds or credit agreement, as applicable, or a contract providing revenue or security included in or executed and delivered according to the authorizing proceedings, are incontestable in a court or other forum and are valid, binding, and enforceable according to their terms. The bill authorizes the fund revenue bond proceeds to be used to finance other funds or accounts relating to the bonds or credit agreement, including a debt service reserve fund, and to pay the costs of issuance and it requires all remaining proceeds to be deposited in the fund and invested and used as provided by the bill.

Investment of Money in the Revolving Fund

H.B. 1 authorizes money in the fund to be invested as provided by the Public Funds Investment Act but makes the bond proceeds deposited in the fund subject to any limitations contained in the bond issue's authorization. The bill requires income received from such investment to be deposited in the fund, subject to certain requirements that may be imposed as necessary to protect the tax-exempt status of interest payable on the bonds in accordance with applicable federal law concerning federal income taxation of interest on the bonds. The bill requires investment income to be deposited in an account or subaccount in the fund as determined by TxDOT.

Uses of Money in the Revolving Fund

H.B. 1 authorizes the commission to use money held in the fund to provide financial assistance to a public entity, including TxDOT, for the costs of a transportation project by making loans, providing liquidity or credit enhancement, serving as a reserve fund established in connection with debt financing by the public entity, providing capitalized interest for debt financing by the public entity, or providing a guarantee of the payment of the costs of operations and maintenance of a transportation project.

H.B. 1 restricts expenditures of bond proceeds and of money from the state highway fund and the Texas Mobility Fund as follows:

- the proceeds of bonds authorized by the Texas Constitution for highway improvement projects, or issued by the commission and secured by the state highway fund, may be used only to provide financial assistance for highway improvement projects, subject to any limitations provided by law;
- money from the state highway fund may be used only for the purposes for which revenues are dedicated under the Texas Constitution; and
- money from the Texas Mobility Fund may be used only to provide financial assistance for state highway improvement projects, publicly owned toll roads, and public transportation projects, whether on or off of the state highway system, subject to any limitations provided by law.

H.B. 1 authorizes money in the fund to be used to pay debt service on fund revenue bonds. The bill authorizes the commission to require the payment of reasonable fees and other amounts by a public entity for all forms of financial assistance provided under these provisions. The bill requires TxDOT to monitor the use of such assistance to ensure the assistance is used for purposes authorized by law and authorizes TxDOT to audit the books and records of a public entity for this purpose.

Borrowing From the Revolving Fund by a Public Entity

H.B. 1 authorizes a public entity, including a municipality, county, district, authority, agency, department, board, or commission, that is authorized by law to construct, maintain, or finance a transportation project to borrow money from the fund and to enter into any agreement relating to receiving financial assistance from the fund. The bill requires money received by the public entity to be segregated from other funds under the public entity's control and to be used only for purposes authorized by the bill. The bill authorizes a public entity to provide for the repayment of a loan or other financial assistance by pledging revenues or income from any available source; pledging, levying, and collecting any taxes, subject to any constitutional limitation; or pledging any combination of revenues, income, and taxes. The bill establishes that these provisions are wholly sufficient authority for a public entity to borrow or otherwise obtain financial assistance from the fund and to pledge revenues, income, or taxes, or any combination of revenues, income, and taxes, to the repayment of a loan or other financial assistance.

Repayment Terms and Deposit of Repayments

H.B. 1 requires the commission, for financial assistance that must be repaid, to determine the repayment terms and conditions, including the interest rates. The bill authorizes the commission to require the entity receiving financial assistance that must be repaid to make charges, levy and collect taxes, pledge revenues, or otherwise take such action necessary to provide a sufficient amount of money for repayment according to the terms agreed on at the time the financial assistance is provided. The bill authorizes the commission, for a tolled highway improvement project and in lieu of requiring the repayment of financial assistance and any interest, to require that project revenues be shared between the entity and TxDOT and authorizes the entity and TxDOT to enter into an agreement specifying the terms and conditions of the revenue sharing.

The bill requires TxDOT to deposit in the fund all amounts received from repayment of the financial assistance or as a share of revenues from a tolled highway improvement project.

Sale of Loans

H.B. 1 authorizes the commission to sell any loans made from money in the fund and requires the commission to deposit the proceeds of the sale in the fund. The bill authorizes the commission, for any loans to be sold under these provisions, to submit to the attorney general for review and approval the related financial assistance agreement, which, for the purposes of state law governing the examination and registration of public securities, is to be considered a public security, along with the record of proceedings of the borrowing entity relating to the agreement. The bill establishes that if the attorney general approves the agreement, the agreement is incontestable in a court or other forum and is valid, binding, and enforceable according to its terms as provided by that state law.

H.B. 1 requires the commission to sell the loans using a competitive bidding process and at the price and under the terms and conditions that the commission determines to be reasonable. The bill authorizes the commission, as part of the sales agreement with the purchaser of a loan, to agree to perform the functions required to enforce the conditions and requirements stated in the loans, including the payment of debt service by the borrowing entity. The bill authorizes the commission to exercise any powers necessary to carry out the authority granted by these provisions, including the authority to contract with any person to accomplish the purposes of these provisions. The bill establishes that the commission is not liable for the repayment of, and may not repay, any loan sold under these provisions.

Waiver of Sovereign Immunity

H.B. 1 authorizes a public entity receiving financial assistance under the bill's provisions and TxDOT to agree to waive sovereign immunity to suit for the purpose of adjudicating a claim to enforce any of their obligations brought by a party for breach of the terms of the agreement.

Implementation by Rule

H.B. 1 requires the commission to adopt rules to implement the bill's provision on the Texas Transportation Revolving Fund, including rules:

- establishing eligibility and prioritization criteria for entities applying for financial assistance from the fund and for transportation projects that may receive financial assistance from the fund;
- specifying the method for setting the terms and conditions for providing financial assistance from the fund and for the repayment of financial assistance from the fund; and
- establishing procedures for the sale of loans originated from amounts on deposit in the fund.

H.B. 1 requires the criteria described above to provide that financial assistance made available for the delivery of a transportation project by TxDOT may not be in a larger amount or on more favorable terms than the financial assistance requested and previously offered for the delivery of that transportation project by a public entity, if any.

H.B. 1 sets forth temporary provisions, set to expire on the date the commission adopts its initial rules as described above, that require the commission to appoint a rules advisory committee to advise TxDOT and the commission on the development of the commission's initial rules required by these provisions. The bill requires the committee to include one or more members representing a local toll project entity, defined as a regional tollway authority, a regional mobility authority, or a county acting under state law. The bill exempts the committee from state law governing state agency advisory committees.

H.B. 1 defines "bonds," "company," "credit agreement," "fund," "fund revenue bonds," "highway improvement project," "loan," and "transportation project" for purposes of provisions on the Texas Transportation Revolving Fund.

Contingency Budget Rider

H.B. 1 amends Rider No. 60, Article VII, S.B. No. 1, Acts of the 81st Legislature, Regular Session, 2009 (the General Appropriations Act appropriations to the Texas Department of Transportation, page VII-36), to provide a contingency for legislation authorizing issuance of Proposition 12 bonds and creation of the Texas Transportation Revolving Fund by a called session of the 81st Legislature. The bill removes language relating to use of Proposition 12 bond proceeds if legislation creating the revolving fund is not enacted.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect on the 91st day after the last day of the legislative session.