

## **BILL ANALYSIS**

Senate Research Center  
81S10047 JD-D

S.B. 1  
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Finance  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

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

This legislation 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 would otherwise not be financially feasible because of the current state of credit markets.

And finally, this legislation updates the contingency rider for the above items (Rider 60 of the General Appropriations Act, Senate Bill 1, 81st Legislature, Regular Session) by correcting a reference to applicable legislation.

As proposed, S.B. 1 amends current law relating to certain sources of revenue for the funding of highways and transportation projects.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to Texas Transportation Commission in SECTION 2 (Section 222.142, Transportation Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter A, Chapter 222, Transportation Code, by adding Section 222.004, as follows:

Sec. 222.004. ISSUANCE OF GENERAL OBLIGATION BONDS FOR HIGHWAY IMPROVEMENT PROJECTS. (a) Defines "bonds," "credit agreement," and "improvement."

(b) Authorizes the Texas Transportation Commission (TTC) by order or resolution to issue general obligation bonds for the purposes provided in this section. Prohibits the aggregate principal amount of the bonds that are issued from exceeding the amount specified by Section 49-p(a) (relating to funding for highway improvement projects), Article III (Legislative Department), Texas Constitution.

(c) Authorizes TTC to enter into credit agreements relating to the bonds. Authorizes a credit agreement entered into under this section to be secured by and payable from the same sources as the bonds.

(d) Requires that the bonds be executed in the form, on the terms, and in the denominations, bear interest, and be issued in installments as prescribed by TTC, and mature not later than 30 years after their dates of issuance, subject to any refundings or renewals. Authorizes the bonds to be issued in multiple series and

issues from time to time and to have the provisions TTC determines appropriate in the interest of the state.

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

(f) Requires that the bonds and the record proceedings authorizing the bonds and any related credit agreements 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 section and other applicable law, to approve them, and, 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.

(g) 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 this section, the cost or expense of the issuance of the bonds, or all or part of a payment owed to be owed under a credit agreement; and to provide money for deposit in the Texas Transportation Revolving Fund (fund) or similar revolving fund authorized by law, to be used for the purpose of making loans for highway improvement projects as provided by law.

(h) Prohibits the proceeds from the issuance and sale of the bonds from being expended or used for the purposes authorized under this section unless those proceeds have been appropriated by the legislature.

(i) Requires the comptroller of public accounts (comptroller) 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.

SECTION 2. Amends Chapter 222, Transportation Code, by adding Subchapter F, as follows:

#### SUBCHAPTER F. TEXAS TRANSPORTATION REVOLVING FUND

Sec. 222.131. DEFINITIONS. Defines "bonds," "company," "credit agreement," "fund," "fund revenue bonds," "highway improvement project," and "transportation project."

Sec. 222.132. CREATION OF FUND. Provides that the Texas Transportation Revolving Fund (fund) is created as a fund held in the Texas Treasury Safekeeping Trust Company (company).

Sec. 222.133. ADMINISTRATION OF FUND. (a) Requires TTC, through the Texas Department of Transportation (TxDOT), to use, administer, and provide financial assistance from the fund as provided by this subchapter.

(b) Requires that the company to hold and invest the assets of the fund in accordance with this subchapter and the direction of TTC. Requires that the expenses associated with the service provided by the company be paid from the fund.

(c) 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 TTC.

(d) Requires TTC to prepare and file annually with the governor, the lieutenant governor, and the Legislative Budget Board a report providing information on the operation of the fund, including the amounts and sources of money deposited in the fund during the year, investments and returns on investments of money in the fund, loans made from the fund, other financial assistance provided from the fund, the status of any defaults on repayment of loans or other financial assistance provided from the fund, and details of any transportation project for which financial assistance is received from the fund, including the identity of any highway directly affected by the project, and the degree to which the project is designed to reduce congestion, improve traffic safety, and enhance connectivity.

Sec. 222.134. SOURCES OF MONEY DEPOSITED IN FUND. Authorizes TTC to deposit in the fund money derived from any source available to TTC, including certain appropriations, repayments, sale proceeds, and gifts and grants.

Sec. 222.135. FUND REVENUE BONDS. (a) Authorizes TTC to issue, sell, and deliver fund revenue bonds for the purpose of providing money for the fund.

(b) Provides that fund revenue bonds are special obligations of TTC payable from the repayment of loans from the fund and other money on deposit in the fund as TTC may designate.

(c) Provides that fund revenue bonds do not constitute a debt of the state or a pledge of the faith and credit of the state.

(d) Authorizes TTC by order or resolution to issue fund revenue bonds in the name and on behalf of the state and TxDOT and to enter into credit agreements related to the bonds. Authorizes the bonds to be issued in multiple series and issues from time to time and to be issued on the terms and with the provisions TTC determines appropriate and in the interests of the state.

(e) Provides that TTC has all powers necessary or appropriate to carry out this section, including the powers granted to other bond-issuing governmental agencies and units and to nonprofit corporations by Chapters 1201, 1207, and 1371, Government Code.

(f) Requires TTC, before the issuance of fund revenue bonds or credit agreements, to submit the record of proceedings of TTC 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. Requires the attorney general, if the attorney general finds that the proceedings authorizing a bond or credit agreement and any bonds authorized in the proceedings conform to the requirements of the Texas Constitution and this subchapter, to approve the proceedings and the bonds and deliver to the comptroller for registration a copy of the attorney general's legal opinion stating that approval and the record of proceedings. Authorizes the bonds or credit agreement, after approval, to be executed and delivered, exchanged, or refinanced from time to time in accordance with those authorizing proceedings.

(g) Provides that if the proceedings and any bonds authorized in the proceedings are approved by the attorney general and registered by the comptroller 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.

(h) Authorizes the proceeds from the sale of fund revenue bonds 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. Requires

that all remaining proceeds received from the sale of the bonds be deposited in the fund and invested and used as provided by this subchapter.

Sec. 222.136. INVESTMENT OF MONEY IN THE FUND. (a) Authorizes money in the fund to be invested as provided by Chapter 2256 (Public Funds Investment), Government Code, except that the proceeds of bonds deposited in the fund under Section 222.134 are required to be subject to any limitations contained in the documents authorizing the issuance of the bonds.

(b) Requires that the income received from the investment of money in the fund be deposited in the fund, subject to requirements that may be imposed by the proceedings authorizing bonds issued to provide money for deposit in the fund that are necessary to protect the tax-exempt status of interest payable on the bonds in accordance with applicable law of the United States concerning federal income taxation of interest on the bonds. Requires that investment income be deposited in an account or subaccount in the fund as determined by TxDOT.

Sec. 222.137. USES OF MONEY IN THE FUND. (a) Requires TTC, except as otherwise provided by this section, 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, including through the purchase of obligations of the public entity; providing liquidity or credit enhancement, including through the agreement to loan to or purchase bonds, notes, or other obligations from a public entity; 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.

(b) Authorizes the proceeds of bonds authorized by Section 49-p, Article III, Texas Constitution, or issued under Section 222.003 (Issuance of Bonds Secured by State Highway Fund) to only be used to provide financial assistance for highway improvement projects, subject to any limitations provided by law.

(c) Authorizes money from the state highway fund to only be used for the purposes for which revenues are dedicated under Section 7-a (Revenues from Motor Vehicle Registration Fees and Taxes on Motor Fuels and Lubricants; Purposes for Which Used), Article VIII, Texas Constitution.

(d) Authorizes money from the Texas Mobility Fund to only be used 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.

(e) Authorizes money in the fund to be used to pay debt service on fund revenue bonds.

(f) Authorizes TTC to require the payment of reasonable fees and other amounts by a public entity for all forms of financial assistance provided under this section.

(g) Requires TxDOT to monitor the use of financial assistance provided to a public entity to ensure the financial assistance is used for purposes authorized by law and authorizes TxDOT to audit the books and records of a public entity for this purpose.

Sec. 222.138. BORROWING FROM THE FUND BY PUBLIC ENTITY. (a) 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, including by direct loan or other financial assistance from the fund, and to enter into any agreement relating to receiving financial assistance from the fund.

(b) Requires that money received by a public entity under this subchapter be segregated from other funds under the control of the public entity and authorizes that money to only be used for purposes authorized by this subchapter.

(c) Authorizes a public entity, to provide for the repayment of a loan or other financial assistance, to pledge revenues or income from any available source; pledge, levy, and collect any taxes, subject to any constitutional limitation; or pledge any combination of revenues, income, and taxes.

(d) Provides that this section is wholly sufficient authority for a public entity to borrow or otherwise obtain financial assistance from the fund as authorized by this subchapter 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.

Sec. 222.139. REPAYMENT TERMS; DEPOSIT OF REPAYMENTS. (a) Requires TTC, for financial assistance that must be repaid, to determine the terms and conditions of the repayment, including the interest rates to be charged.

(b) Authorizes TTC 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 as may be necessary to provide for money in an amount sufficient for repayment according to the terms agreed on at the time the financial assistance is provided.

(c) Authorizes TTC, for a tolled highway improvement project, in lieu of requiring the repayment of financial assistance and any interest thereon, to require that revenues from the project 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.

(d) 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.

Sec. 222.140. SALE OF LOANS. (a) Defines "loan."

(b) Authorizes TTC to sell any loans made from money in the fund and requires TTC to deposit the proceeds of the sale in the fund.

(c) Authorizes TTC, for any loans to be sold under this section, to submit to the attorney general for review and approval the related financial assistance agreement, which is required, for the purposes of Chapter 1202 (Examination and Registration of Public Securities), Government Code, to be considered to be a public security, along with the record of proceedings of the borrowing entity relating to the agreement. Provides that the agreement, if the attorney general approves the agreement, is required to be incontestable in a court or other forum, and is valid, binding, and enforceable according to its terms as provided by Chapter 1202, Government Code.

(d) Requires TTC to sell the loans using a competitive bidding process and at the price and under the terms and conditions that it determines to be reasonable.

(e) Authorizes TTC, 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 state in the loans, including the payment of debt service by the borrowing entity.

(f) Authorizes TTC to exercise any powers necessary to carry out the authority granted by this section, including the authority to contract with any person to accomplish the purposes of this section.

(g) Prohibits TTC from being liable for the repayment of, and from repaying, any loan sold under this section.

Sec. 222.141. WAIVER OF SOVEREIGN IMMUNITY. Authorizes a public entity receiving financial assistance under this subchapter 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 financial assistance agreement.

Sec. 222.142. IMPLEMENTATION BY RULE. Requires TTC to adopt rules to implement this subchapter, including rules establishing eligibility and prioritization criteria for entities applying for financial assistance from the fund and for the transportation projects that are authorized to 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 of the fund; and establishing procedures for the sale of loans originated from amounts on deposit in the fund.

(b) Requires that the eligibility and prioritization criteria described in Subsection (a)(1) (relating to eligibility and prioritization criteria for certain entities) 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.

(c) Requires TTC to appoint a rules advisory committee (committee) to advise TxDOT and TTC on the development of TTC's initial rules required by this section. Requires the committee to include one or more members representing a local toll project entity, as defined in Section 228.0111 (Toll Projects of Local Toll Project Entities). Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the committee. Provides that this subsection expires on the date TTC adopts initial rules under this section.

SECTION 3. Amends Rider No. 60, Article VII, S.B. No. 1, Acts of the 81st Legislature, Regular Session, 2009 (the General Appropriations Act appropriations to TxDOT, page VII-36), as follows:

60. New heading: Contingency for legislation authorizing issuance of Proposition 12 bonds and creation of Texas Transportation Revolving Fund.

a. Provides that out of funds appropriated above in strategy A.1.2, Contracted Planning and Design, the amount of \$60,000,000 in fiscal year 2010, and in Strategy A.1.3, Right-of-way Acquisition, the amount of \$90,000,000 in fiscal year 2010, and in B.1.2, New Construction Contracts, \$250,000,000 in fiscal year 2010 and \$600,000,000 in fiscal year 2011, and in Strategy B.1.3, Construction Grants & Services, \$1 billion in fiscal year 2011 in Proposition 12 General Obligation Bond proceeds and in strategy F.1.1, General Obligation Bonds, \$100 million in General Revenue are contingent upon the enactment of legislation, rather than of SB 263 or similar legislation, relating to the issuance by TTC of general obligation bonds for highway improvement projects, by the Eighty-first Legislature, Regular Session, or by a called session of the Eighty-first Legislature. Requires that the amounts from Proposition 12 General Obligation Bond Proceeds in Strategy B.1.2, New Construction Contracts, be used to make progress payments on a maximum of \$1,850,000,000 in new multi-year construction contract obligations for non-tolled highway projects.

b. Provides that contingent upon the enactment of legislation, rather than of Senate Bill 1350 or similar legislation, relating to the creation, administration, financing, and use of a Texas Transportation Revolving Fund by the Eighty-first Legislature, Regular Session, or by a called session of the Eighty-first Legislature,

\$1 billion out of the contingent appropriation of Proposition 12 General Obligation Bond proceeds in Strategy B.1.3, Construction Grants & Services, in Subsection (a) of this rider is required to be used to capitalize the Texas Transportation Revolving Fund for the purpose of implementing the provisions of such legislation, rather than of Senate Bill 1350 or similar legislation. Deletes existing text requiring that if Senate Bill 1350 or similar legislation is not enacted, \$1 billion of the contingent appropriation from Proposition 12 General Obligation Bond proceeds in Strategy B.1.3, Construction Grants & Services, in subsection (a) of this rider, be used to capitalize the State Infrastructure Bank.

SECTION 4. Effective date: upon passage or on the 91st day after the last day of the legislative session.