

By: Carona

S.B. No. 1

A BILL TO BE ENTITLED

AN ACT

relating to certain sources of revenue for the funding of highways and transportation projects.

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

SECTION 1. Subchapter A, Chapter 222, Transportation Code, is amended by adding Section 222.004 to read as follows:

Sec. 222.004. ISSUANCE OF GENERAL OBLIGATION BONDS FOR HIGHWAY IMPROVEMENT PROJECTS. (a) In this section:

(1) "Bonds" means bonds, notes, and other public securities.

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

(3) "Improvement" includes acquisition of the highway, construction, reconstruction, and major maintenance, including any necessary design, and the acquisition of rights-of-way.

(b) The commission by order or resolution may issue general obligation bonds for the purposes provided in this section. The aggregate principal amount of the bonds that are issued may not exceed the amount specified by Section 49-p(a), Article III, Texas Constitution.

(c) The commission may enter into credit agreements relating to the bonds. A credit agreement entered into under this section may be secured by and payable from the same sources as the

1 bonds.

2 (d) The bonds shall be executed in the form, on the terms,
3 and in the denominations, bear interest, and be issued in
4 installments as prescribed by the commission, and must mature not
5 later than 30 years after their dates of issuance, subject to any
6 refundings or renewals. The bonds may be issued in multiple series
7 and issues from time to time and may have the provisions the
8 commission determines appropriate and in the interest of the state.

9 (e) The commission has all powers necessary or appropriate
10 to carry out this section and to implement Section 49-p, Article
11 III, Texas Constitution, including the powers granted to other
12 bond-issuing governmental agencies and units and to nonprofit
13 corporations by Chapters 1201, 1207, and 1371, Government Code.

14 (f) The bonds and the record of proceedings authorizing the
15 bonds and any related credit agreements shall be submitted to the
16 attorney general for approval as to their legality. If the attorney
17 general finds that they will be issued in accordance with this
18 section and other applicable law, the attorney general shall
19 approve them, and, after payment by the purchasers of the
20 obligations in accordance with the terms of sale and after
21 execution and delivery of the related credit agreements, the
22 obligations and related credit agreements are incontestable for any
23 cause.

24 (g) Bonds may be issued for one or more of the following
25 purposes:

26 (1) to pay all or part of the costs of highway
27 improvement projects;

1 (2) to pay:

2 (A) the costs of administering projects
3 authorized under this section;

4 (B) the cost or expense of the issuance of the
5 bonds; or

6 (C) all or part of a payment owed or to be owed
7 under a credit agreement; and

8 (3) to provide money for deposit in the Texas
9 Transportation Revolving Fund or similar revolving fund authorized
10 by law, to be used for the purpose of making loans for highway
11 improvement projects as provided by law.

12 (h) The proceeds from the issuance and sale of the bonds may
13 not be expended or used for the purposes authorized under this
14 section unless those proceeds have been appropriated by the
15 legislature.

16 (i) The comptroller shall pay the principal of the bonds as
17 they mature and the interest as it becomes payable and shall pay any
18 cost related to the bonds that becomes due, including payments
19 under credit agreements.

20 SECTION 2. Chapter 222, Transportation Code, is amended by
21 adding Subchapter F to read as follows:

22 SUBCHAPTER F. TEXAS TRANSPORTATION REVOLVING FUND

23 Sec. 222.131. DEFINITIONS. In this subchapter:

24 (1) "Bonds" means bonds, notes, and other public
25 securities.

26 (2) "Company" means the Texas Treasury Safekeeping
27 Trust Company.

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

3 (4) "Fund" means the Texas Transportation Revolving
4 Fund.

5 (5) "Fund revenue bonds" means bonds issued under
6 Section 222.135.

7 (6) "Highway improvement project" includes
8 acquisition of the highway, construction, reconstruction, and
9 major maintenance, including any necessary design, and the
10 acquisition of rights-of-way.

11 (7) "Transportation project" means a tolled or
12 nontolled highway improvement project.

13 Sec. 222.132. CREATION OF FUND. The Texas Transportation
14 Revolving Fund is created as a fund held in the Texas Treasury
15 Safekeeping Trust Company.

16 Sec. 222.133. ADMINISTRATION OF FUND. (a) The commission,
17 through the department, shall use, administer, and provide
18 financial assistance from the fund as provided by this subchapter.

19 (b) The company shall hold and invest the assets of the fund
20 in accordance with this subchapter and the direction of the
21 commission. The expenses associated with the services provided by
22 the company shall be paid from the fund.

23 (c) The company may create within the fund one or more
24 accounts or subaccounts as determined appropriate or necessary by
25 the company or as directed by the commission.

26 (d) The commission shall prepare and file annually with the
27 governor, the lieutenant governor, and the Legislative Budget Board

1 a report providing information on the operation of the fund,
2 including:

3 (1) the amounts and sources of money deposited in the
4 fund during the year;

5 (2) investments and returns on investments of money in
6 the fund;

7 (3) loans made from the fund;

8 (4) other financial assistance provided from the fund;

9 (5) the status of any defaults on repayment of loans or
10 other financial assistance provided from the fund; and

11 (6) the details of any transportation project for
12 which financial assistance is received from the fund, including the
13 identity of any highway directly affected by the project, and the
14 degree to which the project is designed to reduce congestion,
15 improve traffic safety, and enhance connectivity.

16 Sec. 222.134. SOURCES OF MONEY DEPOSITED IN FUND. The
17 commission may deposit in the fund money derived from any source
18 available to the commission, including:

19 (1) if appropriated by the legislature for that
20 purpose:

21 (A) the proceeds of bonds issued under Section
22 222.003;

23 (B) the proceeds of bonds authorized by Section
24 49-p, Article III, Texas Constitution, if the law providing for the
25 issuance of the bonds does not prohibit the deposit of the proceeds
26 in the fund;

27 (C) money provided by the commission from the

1 state highway fund;

2 (D) money provided by the commission from the
3 Texas Mobility Fund that is in excess of the money required to be on
4 deposit in the Texas Mobility Fund by the proceedings authorizing
5 Texas Mobility Fund bonds and credit agreements; and

6 (E) other direct appropriations;

7 (2) repayments of principal and interest on loans made
8 under Section 222.137;

9 (3) the proceeds from the sale of loans under Section
10 222.140;

11 (4) the proceeds from the sale of fund revenue bonds;
12 and

13 (5) gifts and grants.

14 Sec. 222.135. FUND REVENUE BONDS. (a) The commission may
15 issue, sell, and deliver fund revenue bonds for the purpose of
16 providing money for the fund.

17 (b) Fund revenue bonds are special obligations of the
18 commission payable from the repayment of loans from the fund and
19 other money on deposit in the fund as the commission may designate.

20 (c) Fund revenue bonds do not constitute a debt of the state
21 or a pledge of the faith and credit of the state.

22 (d) The commission by order or resolution may issue fund
23 revenue bonds in the name and on behalf of the state and the
24 department and may enter into credit agreements related to the
25 bonds. The bonds may be issued in multiple series and issues from
26 time to time and may be issued on the terms and with the provisions
27 the commission determines appropriate and in the interests of the

1 state.

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

6 (f) Before the issuance of fund revenue bonds or credit
7 agreements, the commission shall submit the record of proceedings
8 of the commission authorizing the issuance, execution, and delivery
9 of the bonds or credit agreement and any contract providing revenue
10 or security to pay the bonds or credit agreement to the attorney
11 general for review. If the attorney general finds that the
12 proceedings authorizing a bond or credit agreement and any bonds
13 authorized in the proceedings conform to the requirements of the
14 Texas Constitution and this subchapter, the attorney general shall
15 approve the proceedings and the bonds and deliver to the
16 comptroller for registration a copy of the attorney general's legal
17 opinion stating that approval and the record of proceedings. After
18 approval, the bonds or credit agreement may be executed and
19 delivered, exchanged, or refinanced from time to time in accordance
20 with those authorizing proceedings.

21 (g) If the proceedings and any bonds authorized in the
22 proceedings are approved by the attorney general and registered by
23 the comptroller as provided above, the bonds or credit agreement,
24 as applicable, or a contract providing revenue or security included
25 in or executed and delivered according to the authorizing
26 proceedings are incontestable in a court or other forum and are
27 valid, binding, and enforceable according to their terms.

1 (h) The proceeds from the sale of fund revenue bonds may be
2 used to finance other funds or accounts relating to the bonds or
3 credit agreement, including a debt service reserve fund, and to pay
4 the costs of issuance. All remaining proceeds received from the
5 sale of the bonds shall be deposited in the fund and invested and
6 used as provided by this subchapter.

7 Sec. 222.136. INVESTMENT OF MONEY IN THE FUND. (a) Money
8 in the fund may be invested as provided by Chapter 2256, Government
9 Code, except that the proceeds of bonds deposited in the fund under
10 Section 222.134 shall be subject to any limitations contained in
11 the documents authorizing the issuance of the bonds.

12 (b) Income received from the investment of money in the fund
13 shall be deposited in the fund, subject to requirements that may be
14 imposed by the proceedings authorizing bonds issued to provide
15 money for deposit in the fund that are necessary to protect the
16 tax-exempt status of interest payable on the bonds in accordance
17 with applicable law of the United States concerning federal income
18 taxation of interest on the bonds. Investment income shall be
19 deposited in an account or subaccount in the fund as determined by
20 the department.

21 Sec. 222.137. USES OF MONEY IN THE FUND. (a) Except as
22 otherwise provided by this section, the commission may use money
23 held in the fund to provide financial assistance to a public entity,
24 including the department, for the costs of a transportation project
25 by:

26 (1) making loans, including through the purchase of
27 obligations of the public entity;

1 (2) providing liquidity or credit enhancement,
2 including through the agreement to loan to or purchase bonds,
3 notes, or other obligations from a public entity;

4 (3) serving as a reserve fund established in
5 connection with debt financing by the public entity;

6 (4) providing capitalized interest for debt financing
7 by the public entity; or

8 (5) providing a guarantee of the payment of the costs
9 of operations and maintenance of a transportation project.

10 (b) The proceeds of bonds authorized by Section 49-p,
11 Article III, Texas Constitution, or issued under Section 222.003
12 may only be used to provide financial assistance for highway
13 improvement projects, subject to any limitations provided by law.

14 (c) Money from the state highway fund may only be used for
15 the purposes for which revenues are dedicated under Section 7-a,
16 Article VIII, Texas Constitution.

17 (d) Money from the Texas Mobility Fund may only be used to
18 provide financial assistance for state highway improvement
19 projects, publicly owned toll roads, and public transportation
20 projects, whether on or off of the state highway system, subject to
21 any limitations provided by law.

22 (e) Money in the fund may be used to pay debt service on fund
23 revenue bonds.

24 (f) The commission may require the payment of reasonable
25 fees and other amounts by a public entity for all forms of financial
26 assistance provided under this section.

27 (g) The department shall monitor the use of financial

1 assistance provided to a public entity to ensure the financial
2 assistance is used for purposes authorized by law and may audit the
3 books and records of a public entity for this purpose.

4 Sec. 222.138. BORROWING FROM THE FUND BY PUBLIC ENTITY.

5 (a) A public entity, including a municipality, county, district,
6 authority, agency, department, board, or commission, that is
7 authorized by law to construct, maintain, or finance a
8 transportation project may borrow money from the fund, including by
9 direct loan or other financial assistance from the fund, and may
10 enter into any agreement relating to receiving financial assistance
11 from the fund.

12 (b) Money received by a public entity under this subchapter
13 must be segregated from other funds under the control of the public
14 entity and may only be used for purposes authorized by this
15 subchapter.

16 (c) To provide for the repayment of a loan or other
17 financial assistance, a public entity may:

18 (1) pledge revenues or income from any available
19 source;

20 (2) pledge, levy, and collect any taxes, subject to
21 any constitutional limitation; or

22 (3) pledge any combination of revenues, income, and
23 taxes.

24 (d) This section is wholly sufficient authority for a public
25 entity to borrow or otherwise obtain financial assistance from the
26 fund as authorized by this subchapter and to pledge revenues,
27 income, or taxes, or any combination of revenues, income, and

1 taxes, to the repayment of a loan or other financial assistance.

2 Sec. 222.139. REPAYMENT TERMS; DEPOSIT OF REPAYMENTS.

3 (a) For financial assistance that must be repaid, the commission
4 shall determine the terms and conditions of the repayment,
5 including the interest rates to be charged.

6 (b) The commission may require the entity receiving
7 financial assistance that must be repaid to make charges, levy and
8 collect taxes, pledge revenues, or otherwise take such action as
9 may be necessary to provide for money in an amount sufficient for
10 repayment according to the terms agreed on at the time the financial
11 assistance is provided.

12 (c) For a tolled highway improvement project, the
13 commission, in lieu of requiring the repayment of financial
14 assistance and any interest thereon, may require that revenues from
15 the project be shared between the entity and the department, and the
16 entity and the department may enter into an agreement specifying
17 the terms and conditions of the revenue sharing.

18 (d) The department shall deposit in the fund all amounts
19 received from repayment of the financial assistance or as a share of
20 revenues from a tolled highway improvement project.

21 Sec. 222.140. SALE OF LOANS. (a) As used in this section,
22 "loan" includes any financial assistance that must be repaid or any
23 portion of such assistance.

24 (b) The commission may sell any loans made from money in the
25 fund and shall deposit the proceeds of the sale in the fund.

26 (c) For any loans to be sold under this section, the
27 commission may submit to the attorney general for review and

1 approval the related financial assistance agreement, which shall,
2 for the purposes of Chapter 1202, Government Code, be considered to
3 be a public security, along with the record of proceedings of the
4 borrowing entity relating to the agreement. If the attorney
5 general approves the agreement, it shall be incontestable in a
6 court or other forum and is valid, binding, and enforceable
7 according to its terms as provided by Chapter 1202, Government
8 Code.

9 (d) The commission must sell the loans using a competitive
10 bidding process and at the price and under the terms and conditions
11 that it determines to be reasonable.

12 (e) As part of the sales agreement with the purchaser of a
13 loan, the commission may agree to perform the functions required to
14 enforce the conditions and requirements stated in the loans,
15 including the payment of debt service by the borrowing entity.

16 (f) The commission may exercise any powers necessary to
17 carry out the authority granted by this section, including the
18 authority to contract with any person to accomplish the purposes of
19 this section.

20 (g) The commission shall not be liable for the repayment of,
21 and may not repay, any loan sold under this section.

22 Sec. 222.141. WAIVER OF SOVEREIGN IMMUNITY. A public
23 entity receiving financial assistance under this subchapter and the
24 department may agree to waive sovereign immunity to suit for the
25 purpose of adjudicating a claim to enforce any of their obligations
26 brought by a party for breach of the terms of the financial
27 assistance agreement.

1 Sec. 222.142. IMPLEMENTATION BY RULE. (a) The commission
2 shall adopt rules to implement this subchapter, including rules:

3 (1) establishing eligibility and prioritization
4 criteria for entities applying for financial assistance from the
5 fund and for transportation projects that may receive financial
6 assistance from the fund;

7 (2) specifying the method for setting the terms and
8 conditions for providing financial assistance from the fund and for
9 the repayment of financial assistance from the fund; and

10 (3) establishing procedures for the sale of loans
11 originated from amounts on deposit in the fund.

12 (b) The eligibility and prioritization criteria described
13 in Subsection (a)(1) shall provide that financial assistance made
14 available for the delivery of a transportation project by the
15 department may not be in a larger amount or on more favorable terms
16 than the financial assistance requested and previously offered for
17 the delivery of that transportation project by a public entity, if
18 any.

19 (c) The commission shall appoint a rules advisory committee
20 to advise the department and the commission on the development of
21 the commission's initial rules required by this section. The
22 committee must include one or more members representing a local
23 toll project entity, as defined in Section 228.0111. Chapter 2110,
24 Government Code, does not apply to the committee. This subsection
25 expires on the date the commission adopts initial rules under this
26 section.

27 SECTION 3. Rider No. 60, Article VII, S.B. No. 1, Acts of

1 the 81st Legislature, Regular Session, 2009 (the General
2 Appropriations Act appropriations to the Texas Department of
3 Transportation, page VII-36), is amended to read as follows:

4 60. Contingency for legislation authorizing issuance of
5 Proposition 12 bonds and creation of Texas Transportation Revolving
6 Fund [~~Senate Bill 263 and Senate Bill 1350~~].

7 a. Out of funds appropriated above in strategy A.1.2, Contracted
8 Planning and Design, the amount of \$60,000,000 in fiscal year 2010,
9 and in Strategy A.1.3, Right-of-way Acquisition, the amount of
10 \$90,000,000 in fiscal year 2010, and in B.1.2, New Construction
11 Contracts, \$250,000,000 in fiscal year 2010 and \$600,000,000 in
12 fiscal year 2011, and in Strategy B.1.3, Construction Grants &
13 Services, \$1 billion in fiscal year 2011 in Proposition 12 General
14 Obligation Bond proceeds and in strategy F.1.1, General Obligation
15 Bonds, \$100 million in General Revenue are contingent upon the
16 enactment of [~~SB 263, or similar~~] legislation relating to the
17 issuance by the Texas Transportation Commission of general
18 obligation bonds for highway improvement projects, by the
19 Eighty-first Legislature, Regular Session, or by a called session
20 of the Eighty-first Legislature. The amounts from Proposition 12
21 General Obligation Bond Proceeds in Strategy B.1.2, New
22 Construction Contracts, shall be used to make progress payments on
23 a maximum of \$1,850,000,000 in new multi-year construction contract
24 obligations for non-tolled highway projects.

25 b. Contingent upon the enactment of [~~Senate Bill 1350 or similar~~]
26 legislation relating to the creation, administration, financing,
27 and use of a Texas Transportation Revolving Fund by the

1 Eighty-first Legislature, Regular Session, or by a called session
2 of the Eighty-first Legislature, \$1 billion out of the contingent
3 appropriation of Proposition 12 General Obligation Bond proceeds in
4 Strategy B.1.3, Construction Grants & Services, in subsection (a)
5 of this rider shall be used to capitalize the Texas Transportation
6 Revolving Fund for the purpose of implementing the provisions of
7 such [~~Senate Bill 1350 or similar~~] legislation. [~~If Senate Bill~~
8 ~~1350 or similar legislation is not enacted, \$1 billion of the~~
9 ~~contingent appropriation from Proposition 12 General Obligation~~
10 ~~Bond proceeds in Strategy B.1.3, Construction Grants & Services, in~~
11 ~~subsection (a) of this rider shall be used to capitalize the State~~
12 ~~Infrastructure Bank.~~]

13 SECTION 4. This Act takes effect immediately if it receives
14 a vote of two-thirds of all the members elected to each house, as
15 provided by Section 39, Article III, Texas Constitution. If this
16 Act does not receive the vote necessary for immediate effect, this
17 Act takes effect on the 91st day after the last day of the
18 legislative session.