

## **BILL ANALYSIS**

S.B. 1350  
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Transportation  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The current economic instability in equity and credit markets has made it difficult for public and private entities alike to obtain financing for needed transportation projects, especially startup toll authorities such as regional mobility authorities. Issues with municipal bond access and project financial feasibility may require some degree of state level support to ensure the project is sound from a financial and credit standpoint.

Subject to constitutional limitations, a transportation revolving fund can be used to provide loans or credit enhancement, or to serve as a reserve fund for debt financing or the cost of operation and maintenance. This would allow public and private entities, particularly local tolling authorities, to mitigate certain project financial risks which limit access to the capital markets, or to access additional financing for needed projects. S.B. 1350 creates the Texas Transportation Revolving Fund (fund) and 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. Additionally, by using the fund to provide credit enhancement, public or private entities may be able to undertake projects that would otherwise not be financially feasible because of the current state of credit markets.

S.B. 1350 provides for the creation, administration, financing, and use of a Texas Transportation Revolving Fund and grants the authority to issue bonds.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 1 (Section 222.142, Transportation Code) of this bill.

### **ANALYSIS**

SECTION 1. Amends Chapter 222, Transportation Code, by adding Subchapter F, as follows:

#### **SUBCHAPTER F. TEXAS TRANSPORTATION REVOLVING FUND**

Sec. 222.131. DEFINITIONS. Defines "bonds," "credit agreement," "fund," "fund revenue bonds," "highway improvement project," "transit provider," 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.

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

(b) Authorizes TTC to create within the fund one or more accounts or subaccounts as determined appropriate and necessary by TTC.

(c) Requires TTC to prepare and file annually with the 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; and the status of any defaults on repayment of loans or other financial assistance provided from the fund.

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:

- (1) if appropriated by the legislature for that purpose, the proceeds of bonds issued under Section 222.003 (Issuance of Bonds Secured by State Highway Fund); the proceeds of bonds authorized by Section 49-p (Texas Transportation Commission; Texas Highway Improvement Funds), Article III (Legislative Department), Texas Constitution, if the law providing for the issuance of the bonds does not prohibit the deposit of the proceeds in the fund; money provided by TTC from the state highway fund; money provided by TTC from the Texas Mobility Fund that is in excess of the money required to be on deposit in the Texas Mobility Fund by the proceedings authorizing Texas Mobility Fund bonds and credit agreements; and other direct appropriations;
- (2) repayments of principal and interest on loans made under Section 222.137;
- (3) the proceeds from the sale of loans under Section 222.140;
- (4) the proceeds from the sale of fund revenue bonds; and
- (5) 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 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 (Public Security Procedures Act), 1207 (Refunding Bonds), and 1371 (Obligations for Certain Public Improvements), 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 of public accounts (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 refund, 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 income received from the investment of money in the fund be deposited in the fund, subject to requirements that are authorized to 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) Authorizes TTC, except as otherwise provided by this section, to use money held in the fund to provide financial assistance to a public or private entity, including TxDOT, for the costs of a transportation project by making loans, including through the purchase of obligations of the public or private entity; providing liquidity or credit enhancement, including through the agreement to loan to or purchase bonds, notes, or other obligations from a public or private entity; serving as a reserve fund established in connection with debt financing by the public or private entity; providing capitalized interest for debt financing by the public or private 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 to be used only to provide financial assistance for highway improvement projects, subject to any limitations provided by law.

(c) Authorizes money from the state highway fund to be used only 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; Purchases for Which Used), Article VIII (Taxation and Revenue), Texas Constitution.

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

(e) Provides that a private entity is only eligible to receive financial assistance for a transportation project approved by TTC that provides a demonstrated public benefit, as determined by TTC or is constructed, maintained, or operated in cooperation and under an agreement with a state agency or another public entity.

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

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

(h) Requires TxDOT to monitor the use of financial assistance provided to a public or private 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 or private 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 is authorized 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 it to be used only 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, shall 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 stated 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. 221.141. 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. (a) Requires TTC to adopt rules to implement this subchapter, including rules:

(1) establishing eligibility and prioritization criteria for entities applying for financial assistance from the fund and for transportation projects that are authorized to receive financial assistance from the fund;

(2) 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

(3) 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) provide that financial assistance made available for the delivery of a transportation project by TxDOT or a private entity may not be in a larger amount or 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 to advise TxDOT and TTC on the development of TTC's initial rules required by this section. Requires that the advisory committee 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 advisory committee. Provides that this subsection expires on the date TTC adopts initial rules under this section.

SECTION 2. Effective date: upon passage or September 1, 2009.

**EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2009.