

By: Carona, Shapiro

S.B. No. 1350

A BILL TO BE ENTITLED

AN ACT

relating to the creation, administration, financing, and use of a Texas Transportation Revolving Fund; granting the authority to issue bonds.

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

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

SUBCHAPTER F. TEXAS TRANSPORTATION REVOLVING FUND

Sec. 222.131. DEFINITIONS. In this subchapter:

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

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

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

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

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

(6) "Transit provider" has the meaning assigned by Section 370.003.

(7) "Transportation project" means a tolled or

1 nontolled highway improvement project.

2 Sec. 222.132. CREATION OF FUND. The Texas Transportation  
3 Revolving Fund is created as a fund held in the Texas Treasury  
4 Safekeeping Trust Company.

5 Sec. 222.133. ADMINISTRATION OF FUND. (a) The commission,  
6 through the department, shall manage, invest, use, administer, and  
7 provide financial assistance from the fund as provided by this  
8 subchapter.

9 (b) The commission may create within the fund one or more  
10 accounts or subaccounts as determined appropriate and necessary by  
11 the commission.

12 (c) The commission shall prepare and file annually with the  
13 governor, the lieutenant governor, and the Legislative Budget Board  
14 a report providing information on the operation of the fund,  
15 including:

16 (1) the amounts and sources of money deposited in the  
17 fund during the year;

18 (2) investments and returns on investments of money in  
19 the fund;

20 (3) loans made from the fund;

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

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

24 (6) the details of any transportation project for  
25 which financial assistance is received from the fund, including the  
26 identity of any highway directly affected by the project, and the  
27 degree to which the project is designed to reduce congestion,

1 improve traffic safety, and enhance connectivity.

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

5 (1) if appropriated by the legislature for that  
6 purpose:

7 (A) the proceeds of bonds issued under Section  
8 222.003;

9 (B) the proceeds of bonds authorized by Section  
10 49-p, Article III, Texas Constitution, if the law providing for the  
11 issuance of the bonds does not prohibit the deposit of the proceeds  
12 in the fund;

13 (C) money provided by the commission from the  
14 state highway fund;

15 (D) money provided by the commission from the  
16 Texas Mobility Fund that is in excess of the money required to be on  
17 deposit in the Texas Mobility Fund by the proceedings authorizing  
18 Texas Mobility Fund bonds and credit agreements; and

19 (E) other direct appropriations;

20 (2) repayments of principal and interest on loans made  
21 under Section 222.137;

22 (3) the proceeds from the sale of loans under Section  
23 222.140;

24 (4) the proceeds from the sale of fund revenue bonds;

25 and

26 (5) gifts and grants.

27 Sec. 222.135. FUND REVENUE BONDS. (a) The commission may

1 issue, sell, and deliver fund revenue bonds for the purpose of  
2 providing money for the fund.

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

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

8 (d) The commission by order or resolution may issue fund  
9 revenue bonds in the name and on behalf of the state and the  
10 department and may enter into credit agreements related to the  
11 bonds. The bonds may be issued in multiple series and issues from  
12 time to time and may be issued on the terms and with the provisions  
13 the commission determines appropriate and in the interests of the  
14 state.

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

19 (f) Before the issuance of fund revenue bonds or credit  
20 agreements, the commission shall submit the record of proceedings  
21 of the commission authorizing the issuance, execution, and delivery  
22 of the bonds or credit agreement and any contract providing revenue  
23 or security to pay the bonds or credit agreement to the attorney  
24 general for review. If the attorney general finds that the  
25 proceedings authorizing a bond or credit agreement and any bonds  
26 authorized in the proceedings conform to the requirements of the  
27 Texas Constitution and this subchapter, the attorney general shall

1 approve the proceedings and the bonds and deliver to the  
2 comptroller for registration a copy of the attorney general's legal  
3 opinion stating that approval and the record of proceedings. After  
4 approval, the bonds or credit agreement may be executed and  
5 delivered, exchanged, or refinanced from time to time in accordance  
6 with those authorizing proceedings.

7 (g) If the proceedings and any bonds authorized in the  
8 proceedings are approved by the attorney general and registered by  
9 the comptroller as provided above, the bonds or credit agreement,  
10 as applicable, or a contract providing revenue or security included  
11 in or executed and delivered according to the authorizing  
12 proceedings are incontestable in a court or other forum and are  
13 valid, binding, and enforceable according to their terms.

14 (h) The proceeds from the sale of fund revenue bonds may be  
15 used to finance other funds or accounts relating to the bonds or  
16 credit agreement, including a debt service reserve fund, and to pay  
17 the costs of issuance. All remaining proceeds received from the  
18 sale of the bonds shall be deposited in the fund and invested and  
19 used as provided by this subchapter.

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

25 (b) Income received from the investment of money in the fund  
26 shall be deposited in the fund, subject to requirements that may be  
27 imposed by the proceedings authorizing bonds issued to provide

1 money for deposit in the fund that are necessary to protect the  
2 tax-exempt status of interest payable on the bonds in accordance  
3 with applicable law of the United States concerning federal income  
4 taxation of interest on the bonds. Investment income shall be  
5 deposited in an account or subaccount in the fund as determined by  
6 the department.

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

12 (1) making loans, including through the purchase of  
13 obligations of the public entity;

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

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

19 (4) providing capitalized interest for debt financing  
20 by the public entity; or

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

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

27 (c) Money from the state highway fund may only be used for

1 the purposes for which revenues are dedicated under Section 7-a,  
2 Article VIII, Texas Constitution.

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

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

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

13 (g) The department shall monitor the use of financial  
14 assistance provided to a public entity to ensure the financial  
15 assistance is used for purposes authorized by law and may audit the  
16 books and records of a public entity for this purpose.

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

18 (a) A public entity, including a municipality, county, district,  
19 authority, agency, department, board, or commission, that is  
20 authorized by law to construct, maintain, or finance a  
21 transportation project may borrow money from the fund, including by  
22 direct loan or other financial assistance from the fund, and may  
23 enter into any agreement relating to receiving financial assistance  
24 from the fund.

25 (b) Money received by a public entity under this subchapter  
26 must be segregated from other funds under the control of the public  
27 entity and may only be used for purposes authorized by this

1 subchapter.

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

4 (1) pledge revenues or income from any available  
5 source;

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

8 (3) pledge any combination of revenues, income, and  
9 taxes.

10 (d) This section is wholly sufficient authority for a public  
11 entity to borrow or otherwise obtain financial assistance from the  
12 fund as authorized by this subchapter and to pledge revenues,  
13 income, or taxes, or any combination of revenues, income, and  
14 taxes, to the repayment of a loan or other financial assistance.

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

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

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

25 (c) For a tolled highway improvement project, the  
26 commission, in lieu of requiring the repayment of financial  
27 assistance and any interest thereon, may require that revenues from



1 the project be shared between the entity and the department, and the  
2 entity and the department may enter into an agreement specifying  
3 the terms and conditions of the revenue sharing.

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

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

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

12 (c) For any loans to be sold under this section, the  
13 commission may submit to the attorney general for review and  
14 approval the related financial assistance agreement, which shall,  
15 for the purposes of Chapter 1202, Government Code, be considered to  
16 be a public security, along with the record of proceedings of the  
17 borrowing entity relating to the agreement. If the attorney  
18 general approves the agreement, it shall be incontestable in a  
19 court or other forum and is valid, binding, and enforceable  
20 according to its terms as provided by Chapter 1202, Government  
21 Code.

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

25 (e) As part of the sales agreement with the purchaser of a  
26 loan, the commission may agree to perform the functions required to  
27 enforce the conditions and requirements stated in the loans,

1 including the payment of debt service by the borrowing entity.

2 (f) The commission may exercise any powers necessary to  
3 carry out the authority granted by this section, including the  
4 authority to contract with any person to accomplish the purposes of  
5 this section.

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

8 Sec. 222.141. WAIVER OF SOVEREIGN IMMUNITY. A public  
9 entity receiving financial assistance under this subchapter and the  
10 department may agree to waive sovereign immunity to suit for the  
11 purpose of adjudicating a claim to enforce any of their obligations  
12 brought by a party for breach of the terms of the financial  
13 assistance agreement.

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

16 (1) establishing eligibility and prioritization  
17 criteria for entities applying for financial assistance from the  
18 fund and for transportation projects that may receive financial  
19 assistance from the fund;

20 (2) specifying the method for setting the terms and  
21 conditions for providing financial assistance from the fund and for  
22 the repayment of financial assistance from the fund; and

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

25 (b) The eligibility and prioritization criteria described  
26 in Subsection (a)(1) shall provide that financial assistance made  
27 available for the delivery of a transportation project by the

1 department may not be in a larger amount or on more favorable terms  
2 than the financial assistance requested and previously offered for  
3 the delivery of that transportation project by a public entity, if  
4 any.

5 (c) The commission shall appoint a rules advisory committee  
6 to advise the department and the commission on the development of  
7 the commission's initial rules required by this section. The  
8 committee must include one or more members representing a local  
9 toll project entity, as defined in Section 228.0111. Chapter 2110,  
10 Government Code, does not apply to the committee. This subsection  
11 expires on the date the commission adopts initial rules under this  
12 section.

13 SECTION 2. 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 September 1, 2009.