

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 highway operations and maintenance and the acquisition of a highway or rights-of-way.

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

(7) "Transportation project" means:

(A) a tolled or nontolled highway improvement

1 project;

2 (B) the acquisition, construction, relocation,
3 maintenance, or operation of a freight or passenger rail facility
4 or system;

5 (C) a mass transit or public transportation
6 project acquired, constructed, maintained, or operated by a transit
7 provider;

8 (D) the acquisition, construction, maintenance,
9 or operation of a port facility, including a wharf or dock, cargo
10 handling facility, or other facility useful in or beneficial to the
11 operation of a port facility;

12 (E) the establishment, construction, or repair
13 of an aviation facility under Chapter 21; and

14 (F) any structure that is necessary for the
15 effective construction, maintenance, or operation of a project or
16 facility described in this subdivision, including an intermodal
17 transfer or staging area, weigh station, inspection station, rest
18 area, train or bus station, warehouse, freight interchange or
19 loading facility, switching yard, and maintenance yard.

20 Sec. 222.132. CREATION OF FUND. (a) The Texas
21 Transportation Revolving Fund is created within the state treasury.

22 (b) Notwithstanding any other law, the fund is exempt from
23 the application of Section 403.095, Government Code.

24 Sec. 222.133. ADMINISTRATION OF FUND. (a) The comptroller
25 shall hold the fund, and the commission, through the department,
26 shall manage, invest, use, administer, and provide financial
27 assistance from the fund as provided by this subchapter.

1 (b) The commission may create within the fund one or more
2 accounts or subaccounts as determined appropriate and necessary by
3 the commission.

4 (c) The commission shall prepare and file annually with the
5 governor and the presiding officer of each house of the legislature
6 a report providing information on the operation of the fund,
7 including:

8 (1) the amounts and sources of money deposited in the
9 fund during the year;

10 (2) investments and returns on investments of money in
11 the fund;

12 (3) loans made from the fund;

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

14 and

15 (5) the status of any defaults on repayment of loans or
16 other financial assistance provided from the fund.

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

20 (1) the proceeds of bonds issued under Section
21 222.003;

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

26 (3) repayments of principal and interest on loans made
27 under Section 222.137;

- 1 (4) the proceeds from the sale of loans under Section
2 222.140;
3 (5) the proceeds from the sale of fund revenue bonds;
4 (6) money provided by the commission from the state
5 highway fund;
6 (7) money provided by the commission from the Texas
7 Mobility Fund that is in excess of the money required to be on
8 deposit in the Texas Mobility Fund by the proceedings authorizing
9 Texas Mobility Fund bonds and credit agreements;
10 (8) gifts, grants, and direct appropriations; and
11 (9) money from any other source designated by the
12 commission.

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

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

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

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

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

5 (f) Before the issuance of fund revenue bonds, the
6 commission shall submit the bonds and the record of proceedings to
7 the attorney general. If the bonds are approved by the attorney
8 general and registered by the comptroller as provided by Chapter
9 1201, Government Code, the bonds and any contract the proceeds of
10 which are pledged to the payment of the bonds are valid and
11 incontestable in a court or other forum and are binding obligations
12 enforceable for all purposes according to their terms.

13 (g) Before delivery of a credit agreement relating to the
14 bonds, the commission shall submit the record of proceedings
15 authorizing the credit agreement to the attorney general. If the
16 proceedings are approved by the attorney general and registered by
17 the comptroller as provided by Chapter 1371, Government Code, the
18 credit agreement is incontestable in a court or other forum and is
19 valid, binding, and enforceable according to its terms.

20 (h) The proceeds from the sale of fund revenue bonds may be
21 used to finance other funds or accounts relating to the bonds,
22 including a debt service reserve fund, and to pay the costs of
23 issuance. All remaining proceeds received from the sale of the
24 bonds shall be deposited in the fund and invested and used as
25 provided by this subchapter.

26 Sec. 222.136. INVESTMENT OF MONEY IN THE FUND. (a) Money
27 in the fund may be invested as provided by Chapter 2256, Government

1 Code, except that the proceeds of bonds deposited in the fund under
2 Section 222.134 shall be subject to any limitations contained in
3 the documents authorizing the issuance of the bonds.

4 (b) Income received from the investment of money in the fund
5 shall be deposited in the fund, subject to requirements that may be
6 imposed by the proceedings authorizing bonds issued to provide
7 money for deposit in the fund that are necessary to protect the
8 tax-exempt status of interest payable on the bonds in accordance
9 with applicable law of the United States concerning federal income
10 taxation of interest on the bonds.

11 Sec. 222.137. USES OF MONEY IN THE FUND. (a) Except as
12 otherwise provided by this section, the commission may use money
13 held in the fund to provide financial assistance to a public or
14 private entity for the costs of a transportation project by:

- 15 (1) making loans;
16 (2) providing credit enhancement;
17 (3) serving as a reserve fund established in
18 connection with debt financing by the public or private entity;
19 (4) providing capitalized interest for debt financing
20 by the public or private entity; or
21 (5) providing a guarantee of the payment of the costs
22 of operations and maintenance.

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

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.

7 (e) A private entity is only eligible to receive financial
8 assistance for a transportation project approved by the commission
9 that:

10 (1) provides a demonstrated public benefit, as
11 determined by the commission; or

12 (2) is constructed, maintained, or operated in
13 cooperation and under an agreement with a state agency or another
14 public entity.

15 (f) Money in the fund may be used to pay debt service on fund
16 revenue bonds.

17 (g) The commission may require the payment of fees and other
18 amounts by a public or private entity for all forms of financial
19 assistance provided under this section.

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

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

1 (b) Money received by a public entity under this subchapter
2 must be segregated from other funds under the control of the public
3 entity and may only be used for purposes authorized by this
4 subchapter.

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

7 (1) pledge revenues or income from any available
8 source;

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

11 (3) pledge any combination of revenues, income, and
12 taxes.

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

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

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

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

1 (c) For a tolled highway improvement project, the
2 commission may require that revenues from the project be shared
3 between the entity and the commission, and the entity and the
4 department may enter into an agreement specifying the terms and
5 conditions of the revenue sharing.

6 (d) The department shall deposit in the fund all amounts
7 received from repayment of the financial assistance.

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

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

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

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

26 (e) As part of the sales agreement with the purchaser of a
27 loan, the commission may agree to perform the functions required to

1 enforce the conditions and requirements stated in the loans,
2 including the payment of debt service by the borrowing entity.

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

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

9 Sec. 222.141. WAIVER OF SOVEREIGN IMMUNITY BY PUBLIC
10 ENTITIES. A public entity receiving financial assistance under
11 this subchapter waives sovereign immunity to suit brought by the
12 department for the purpose of adjudicating a claim for breach of the
13 terms of the financial assistance agreement.

14 Sec. 222.142. IMPLEMENTATION BY RULE. The commission shall
15 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 SECTION 2. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

S.B. No. 1350

1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2009.