

1-1 By: Carona S.B. No. 1350
1-2 (In the Senate - Filed March 4, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Finance; April 17, 2009,
1-4 reported adversely, with favorable Committee Substitute by the
1-5 following vote: Yeas 10, Nays 0; April 17, 2009, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 1350 By: Lucio

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to the creation, administration, financing, and use of a
1-10 Texas Transportation Revolving Fund; granting the authority to
1-11 issue bonds.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 222, Transportation Code, is amended by
1-14 adding Subchapter F to read as follows:

1-15 SUBCHAPTER F. TEXAS TRANSPORTATION REVOLVING FUND

1-16 Sec. 222.131. DEFINITIONS. In this subchapter:

1-17 (1) "Bonds" means bonds, notes, and other public
1-18 securities.

1-19 (2) "Credit agreement" has the meaning assigned by
1-20 Section 1371.001, Government Code.

1-21 (3) "Fund" means the Texas Transportation Revolving
1-22 Fund.

1-23 (4) "Fund revenue bonds" means bonds issued under
1-24 Section 222.135.

1-25 (5) "Highway improvement project" includes
1-26 acquisition of the highway, construction, reconstruction, and
1-27 major maintenance, including any necessary design, and the
1-28 acquisition of rights-of-way.

1-29 (6) "Transit provider" has the meaning assigned by
1-30 Section 370.003.

1-31 (7) "Transportation project" means:

1-32 (A) a tolled or nontolled highway improvement
1-33 project;

1-34 (B) the acquisition, construction, relocation,
1-35 maintenance, or operation of a freight or passenger rail facility
1-36 or system;

1-37 (C) the acquisition, construction, maintenance,
1-38 or operation of a mass transit or other transportation project by a
1-39 transit provider;

1-40 (D) the acquisition, construction, maintenance,
1-41 or operation of a port facility, including a wharf or dock, cargo
1-42 handling facility, or other facility useful in or beneficial to the
1-43 operation of a port facility;

1-44 (E) the establishment, construction, or repair
1-45 of an aviation facility under Chapter 21; and

1-46 (F) any other improvements constituting a
1-47 transportation project as defined in Section 370.003, and any
1-48 rights-of-way, structure, facility, or improvement that is useful
1-49 in or beneficial to the effective construction, maintenance, or
1-50 operation of a project, facility, or system of projects or
1-51 facilities described in this subdivision, including an intermodal
1-52 transfer or staging area, weigh station, entrance plaza, tollhouse,
1-53 parking area or structure, inspection station, rest area, train or
1-54 bus station, warehouse, freight interchange or loading facility,
1-55 switching yard, and maintenance yard.

1-56 Sec. 222.132. CREATION OF FUND. The Texas Transportation
1-57 Revolving Fund is created as a fund held in the Texas Treasury
1-58 Safekeeping Trust Company.

1-59 Sec. 222.133. ADMINISTRATION OF FUND. (a) The commission,
1-60 through the department, shall manage, invest, use, administer, and
1-61 provide financial assistance from the fund as provided by this
1-62 subchapter.

1-63 (b) The commission may create within the fund one or more

2-1 accounts or subaccounts as determined appropriate and necessary by
2-2 the commission.

2-3 (c) The commission shall prepare and file annually with the
2-4 governor and the Legislative Budget Board a report providing
2-5 information on the operation of the fund, including:

2-6 (1) the amounts and sources of money deposited in the
2-7 fund during the year;

2-8 (2) investments and returns on investments of money in
2-9 the fund;

2-10 (3) loans made from the fund;

2-11 (4) other financial assistance provided from the fund;
2-12 and

2-13 (5) the status of any defaults on repayment of loans or
2-14 other financial assistance provided from the fund.

2-15 Sec. 222.134. SOURCES OF MONEY DEPOSITED IN FUND. The
2-16 commission may deposit in the fund money derived from any source
2-17 available to the commission, including:

2-18 (1) if appropriated by the legislature for that
2-19 purpose:

2-20 (A) the proceeds of bonds issued under Section
2-21 222.003;

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

2-26 (C) money provided by the commission from the
2-27 state highway fund;

2-28 (D) money provided by the commission from the
2-29 Texas Mobility Fund that is in excess of the money required to be on
2-30 deposit in the Texas Mobility Fund by the proceedings authorizing
2-31 Texas Mobility Fund bonds and credit agreements; and

2-32 (E) other direct appropriations;
2-33 (2) repayments of principal and interest on loans made
2-34 under Section 222.137;

2-35 (3) the proceeds from the sale of loans under Section
2-36 222.140;

2-37 (4) the proceeds from the sale of fund revenue bonds;
2-38 and

2-39 (5) gifts and grants.

2-40 Sec. 222.135. FUND REVENUE BONDS. (a) The commission may
2-41 issue, sell, and deliver fund revenue bonds for the purpose of
2-42 providing money for the fund.

2-43 (b) Fund revenue bonds are special obligations of the
2-44 commission payable from the repayment of loans from the fund and
2-45 other money on deposit in the fund as the commission may designate.

2-46 (c) Fund revenue bonds do not constitute a debt of the state
2-47 or a pledge of the faith and credit of the state.

2-48 (d) The commission by order or resolution may issue fund
2-49 revenue bonds in the name and on behalf of the state and the
2-50 department and may enter into credit agreements related to the
2-51 bonds. The bonds may be issued in multiple series and issues from
2-52 time to time and may be issued on the terms and with the provisions
2-53 the commission determines appropriate and in the interests of the
2-54 state.

2-55 (e) The commission has all powers necessary or appropriate
2-56 to carry out this section, including the powers granted to other
2-57 bond-issuing governmental agencies and units and to nonprofit
2-58 corporations by Chapters 1201, 1207, and 1371, Government Code.

2-59 (f) Before the issuance of fund revenue bonds or credit
2-60 agreements, the commission shall submit the record of proceedings
2-61 of the commission authorizing the issuance, execution, and delivery
2-62 of the bonds or credit agreement and any contract providing revenue
2-63 or security to pay the bonds or credit agreement to the attorney
2-64 general for review. If the attorney general finds that the
2-65 proceedings authorizing a bond or credit agreement and any bonds
2-66 authorized in the proceedings conform to the requirements of the
2-67 Texas Constitution and this subchapter, the attorney general shall
2-68 approve the proceedings and the bonds and deliver to the
2-69 comptroller for registration a copy of the attorney general's legal

3-1 opinion stating that approval and the record of proceedings. After
 3-2 approval, the bonds or credit agreement may be executed and
 3-3 delivered, exchanged, or refinanced from time to time in accordance
 3-4 with those authorizing proceedings.

3-5 (g) If the proceedings and any bonds authorized in the
 3-6 proceedings are approved by the attorney general and registered by
 3-7 the comptroller as provided above, the bonds or credit agreement,
 3-8 as applicable, or a contract providing revenue or security included
 3-9 in or executed and delivered according to the authorizing
 3-10 proceedings are incontestable in a court or other forum and are
 3-11 valid, binding, and enforceable according to their terms.

3-12 (h) The proceeds from the sale of fund revenue bonds may be
 3-13 used to finance other funds or accounts relating to the bonds or
 3-14 credit agreement, including a debt service reserve fund, and to pay
 3-15 the costs of issuance. All remaining proceeds received from the
 3-16 sale of the bonds shall be deposited in the fund and invested and
 3-17 used as provided by this subchapter.

3-18 Sec. 222.136. INVESTMENT OF MONEY IN THE FUND. (a) Money
 3-19 in the fund may be invested as provided by Chapter 2256, Government
 3-20 Code, except that the proceeds of bonds deposited in the fund under
 3-21 Section 222.134 shall be subject to any limitations contained in
 3-22 the documents authorizing the issuance of the bonds.

3-23 (b) Income received from the investment of money in the fund
 3-24 shall be deposited in the fund, subject to requirements that may be
 3-25 imposed by the proceedings authorizing bonds issued to provide
 3-26 money for deposit in the fund that are necessary to protect the
 3-27 tax-exempt status of interest payable on the bonds in accordance
 3-28 with applicable law of the United States concerning federal income
 3-29 taxation of interest on the bonds. Investment income shall be
 3-30 deposited in an account or subaccount in the fund as determined by
 3-31 the department.

3-32 Sec. 222.137. USES OF MONEY IN THE FUND. (a) Except as
 3-33 otherwise provided by this section, the commission may use money
 3-34 held in the fund to provide financial assistance to a public or
 3-35 private entity, including the department, for the costs of a
 3-36 transportation project by:

3-37 (1) making loans, including through the purchase of
 3-38 obligations of the public or private entity;

3-39 (2) providing liquidity or credit enhancement,
 3-40 including through the agreement to loan to or purchase bonds,
 3-41 notes, or other obligations from a public or private entity;

3-42 (3) serving as a reserve fund established in
 3-43 connection with debt financing by the public or private entity;

3-44 (4) providing capitalized interest for debt financing
 3-45 by the public or private entity; or

3-46 (5) providing a guarantee of the payment of the costs
 3-47 of operations and maintenance of a transportation project.

3-48 (b) The proceeds of bonds authorized by Section 49-p,
 3-49 Article III, Texas Constitution, or issued under Section 222.003
 3-50 may only be used to provide financial assistance for highway
 3-51 improvement projects, subject to any limitations provided by law.

3-52 (c) Money from the state highway fund may only be used for
 3-53 the purposes for which revenues are dedicated under Section 7-a,
 3-54 Article VIII, Texas Constitution.

3-55 (d) Money from the Texas Mobility Fund may only be used to
 3-56 provide financial assistance for state highway improvement
 3-57 projects, publicly owned toll roads, and public transportation
 3-58 projects, whether on or off of the state highway system, subject to
 3-59 any limitations provided by law.

3-60 (e) A private entity is only eligible to receive financial
 3-61 assistance for a transportation project approved by the commission
 3-62 that:

3-63 (1) provides a demonstrated public benefit, as
 3-64 determined by the commission; or

3-65 (2) is constructed, maintained, or operated in
 3-66 cooperation and under an agreement with a state agency or another
 3-67 public entity.

3-68 (f) Money in the fund may be used to pay debt service on fund
 3-69 revenue bonds.

4-1 (g) The commission may require the payment of reasonable
 4-2 fees and other amounts by a public or private entity for all forms
 4-3 of financial assistance provided under this section.

4-4 (h) The department shall monitor the use of financial
 4-5 assistance provided to a public or private entity to ensure the
 4-6 financial assistance is used for purposes authorized by law and may
 4-7 audit the books and records of a public or private entity for this
 4-8 purpose.

4-9 Sec. 222.138. BORROWING FROM THE FUND BY PUBLIC ENTITY.

4-10 (a) A public entity, including a municipality, county, district,
 4-11 authority, agency, department, board, or commission, that is
 4-12 authorized by law to construct, maintain, or finance a
 4-13 transportation project may borrow money from the fund, including by
 4-14 direct loan or other financial assistance from the fund, and may
 4-15 enter into any agreement relating to receiving financial assistance
 4-16 from the fund.

4-17 (b) Money received by a public entity under this subchapter
 4-18 must be segregated from other funds under the control of the public
 4-19 entity and may only be used for purposes authorized by this
 4-20 subchapter.

4-21 (c) To provide for the repayment of a loan or other
 4-22 financial assistance, a public entity may:

4-23 (1) pledge revenues or income from any available
 4-24 source;

4-25 (2) pledge, levy, and collect any taxes, subject to
 4-26 any constitutional limitation; or

4-27 (3) pledge any combination of revenues, income, and
 4-28 taxes.

4-29 (d) This section is wholly sufficient authority for a public
 4-30 entity to borrow or otherwise obtain financial assistance from the
 4-31 fund as authorized by this subchapter and to pledge revenues,
 4-32 income, or taxes, or any combination of revenues, income, and
 4-33 taxes, to the repayment of a loan or other financial assistance.

4-34 Sec. 222.139. REPAYMENT TERMS; DEPOSIT OF REPAYMENTS.

4-35 (a) For financial assistance that must be repaid, the commission
 4-36 shall determine the terms and conditions of the repayment,
 4-37 including the interest rates to be charged.

4-38 (b) The commission may require the entity receiving
 4-39 financial assistance that must be repaid to make charges, levy and
 4-40 collect taxes, pledge revenues, or otherwise take such action as
 4-41 may be necessary to provide for money in an amount sufficient for
 4-42 repayment according to the terms agreed on at the time the financial
 4-43 assistance is provided.

4-44 (c) For a tolled highway improvement project, the
 4-45 commission, in lieu of requiring the repayment of financial
 4-46 assistance and any interest thereon, may require that revenues from
 4-47 the project be shared between the entity and the department, and the
 4-48 entity and the department may enter into an agreement specifying
 4-49 the terms and conditions of the revenue sharing.

4-50 (d) The department shall deposit in the fund all amounts
 4-51 received from repayment of the financial assistance or as a share of
 4-52 revenues from a tolled highway improvement project.

4-53 Sec. 222.140. SALE OF LOANS. (a) As used in this section,
 4-54 "loan" includes any financial assistance that must be repaid or any
 4-55 portion of such assistance.

4-56 (b) The commission may sell any loans made from money in the
 4-57 fund and shall deposit the proceeds of the sale in the fund.

4-58 (c) For any loans to be sold under this section, the
 4-59 commission may submit to the attorney general for review and
 4-60 approval the related financial assistance agreement, which shall,
 4-61 for the purposes of Chapter 1202, Government Code, be considered to
 4-62 be a public security, along with the record of proceedings of the
 4-63 borrowing entity relating to the agreement. If the attorney
 4-64 general approves the agreement, it shall be incontestable in a
 4-65 court or other forum and is valid, binding, and enforceable
 4-66 according to its terms as provided by Chapter 1202, Government
 4-67 Code.

4-68 (d) The commission must sell the loans using a competitive
 4-69 bidding process and at the price and under the terms and conditions

5-1 that it determines to be reasonable.

5-2 (e) As part of the sales agreement with the purchaser of a
5-3 loan, the commission may agree to perform the functions required to
5-4 enforce the conditions and requirements stated in the loans,
5-5 including the payment of debt service by the borrowing entity.

5-6 (f) The commission may exercise any powers necessary to
5-7 carry out the authority granted by this section, including the
5-8 authority to contract with any person to accomplish the purposes of
5-9 this section.

5-10 (g) The commission shall not be liable for the repayment of,
5-11 and may not repay, any loan sold under this section.

5-12 Sec. 222.141. WAIVER OF SOVEREIGN IMMUNITY. A public
5-13 entity receiving financial assistance under this subchapter and the
5-14 department may agree to waive sovereign immunity to suit for the
5-15 purpose of adjudicating a claim to enforce any of their obligations
5-16 brought by a party for breach of the terms of the financial
5-17 assistance agreement.

5-18 Sec. 222.142. IMPLEMENTATION BY RULE. (a) The commission
5-19 shall adopt rules to implement this subchapter, including rules:

5-20 (1) establishing eligibility and prioritization
5-21 criteria for entities applying for financial assistance from the
5-22 fund and for transportation projects that may receive financial
5-23 assistance from the fund;

5-24 (2) specifying the method for setting the terms and
5-25 conditions for providing financial assistance from the fund and for
5-26 the repayment of financial assistance from the fund; and

5-27 (3) establishing procedures for the sale of loans
5-28 originated from amounts on deposit in the fund.

5-29 (b) The eligibility and prioritization criteria described
5-30 in Subsection (a)(1) shall provide that financial assistance made
5-31 available for the delivery of a transportation project by the
5-32 department or a private entity may not be in a larger amount or on
5-33 more favorable terms than the financial assistance requested and
5-34 previously offered for the delivery of that transportation project
5-35 by a public entity, if any.

5-36 (c) The commission shall appoint a rules advisory committee
5-37 to advise the department and the commission on the development of
5-38 the commission's initial rules required by this section. The
5-39 committee must include one or more members representing a local
5-40 toll project entity, as defined in Section 228.0111. Chapter 2110,
5-41 Government Code, does not apply to the committee. This subsection
5-42 expires on the date the commission adopts initial rules under this
5-43 section.

5-44 SECTION 2. This Act takes effect immediately if it receives
5-45 a vote of two-thirds of all the members elected to each house, as
5-46 provided by Section 39, Article III, Texas Constitution. If this
5-47 Act does not receive the vote necessary for immediate effect, this
5-48 Act takes effect September 1, 2009.

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