

BILL ANALYSIS

H.B. 3218
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Transportation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The state infrastructure bank was created by the legislature as a means of providing financial assistance to public and private entities for qualified transportation projects. The bank can leverage existing project funding and can expedite the delivery of needed projects by providing flexible financial assistance to clear hurdles that might otherwise obstruct or delay such projects. Interested parties support making the fund an account held by the Texas Treasury Safekeeping Trust Company and administering the fund as a revolving fund.

Subject to constitutional limitations, a transportation revolving fund could leverage available bond proceeds to provide additional funding for transportation projects. Equally important, a revolving fund could provide loans or credit enhancements or serve as a reserve fund for debt financing or for the costs of operation and maintenance. These important features would allow public and private entities, particularly local tolling authorities, to mitigate certain financial risks which limit access to capital markets or present challenges to financing needed projects.

Responding to these important issues, H.B. 3218 seeks to authorize the state infrastructure bank to be held in the Texas Treasury Safekeeping Trust Company and administered by the Texas Transportation Commission as a revolving fund to provide loans and other financial assistance to public and private entities for needed transportation projects, thereby expediting the delivery of those projects.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3218 amends the Transportation Code to redefine "qualified project," for purposes of the administration, financing, and use of the state infrastructure bank, to include a "transportation project," which the bill defines as a tolled or nontolled highway improvement project. The bill defines "bonds" and "credit agreement" for those purposes.

H.B. 3218 makes the state infrastructure bank an account held in the Texas Treasury Safekeeping Trust Company, rather than an account in the state highway fund. The bill authorizes the Texas Transportation Commission to deposit money in the bank derived from any source available to the commission, including the following: the proceeds of bonds secured by the state highway fund or issued as a general obligation of the state for highway improvement projects and other direct appropriations, if appropriated by the legislature for that purpose; the proceeds of bonds secured by the Texas Mobility Fund and money provided by the commission from the fund that is in excess of the money required to be on deposit in the fund by the proceedings authorizing bonds and credit agreements secured by the fund; repayments of principal and interest on loans from the state infrastructure bank; the proceeds from the sale of loans made from money in the state infrastructure bank under the bill's provisions; and gifts and

grants. The bill removes provisions including among the sources of money in the state infrastructure bank certain other funds and money.

H.B. 3218 requires the commission to prepare and file biennially with the governor, the lieutenant governor, and the Legislative Budget Board a report providing information on the operation of the bank, including the following: the amounts and sources of money deposited in the bank during the biennium; investments and returns on investments of money in the bank during the biennium; loans made from the bank during the biennium; other financial assistance provided from the bank during the biennium; the status of any defaults on repayment of loans or other financial assistance provided from the bank; and the details of any qualified project for which financial assistance is received from the bank during the biennium, including the identity of any highway directly affected by the project, and the degree to which the project is designed to reduce congestion, improve traffic safety, and enhance connectivity.

H.B. 3218 expands the authorization of the commission to use money deposited to the credit of the state infrastructure bank to provide financial assistance to a public or private entity for a qualified project and specifies that an entity eligible to receive financial assistance includes the Texas Department of Transportation (TxDOT). The bill includes among the uses of money deposited to the credit of the bank the following: extending credit by direct loan through the purchase of obligations of a public entity; providing liquidity or credit enhancement, including through the agreement to loan to a public or private entity or to purchase bonds, notes, or other obligations from a public entity; providing capitalized interest for debt financing by the public or private entity; providing a guarantee of the payment of the costs of the operation and maintenance of a qualified project by a public entity; and paying the costs of issuing bonds or other debt instruments.

H.B. 3218 authorizes the proceeds of bonds secured by the state highway fund or issued as a general obligation of the state for highway improvement projects that are deposited to the credit of the state infrastructure bank to be used only to provide financial assistance for highway improvement projects, subject to any limitations provided by law. The bill authorizes money in the bank from the Texas Mobility Fund to be used only to provide financial assistance for state highway improvement projects, publically owned toll roads, and public transportation projects, whether on or off of the state highway system, subject to any limitations provided by law.

H.B. 3218 authorizes the commission to require a public or private entity to pay an application fee and other reasonable amounts in connection with any request for financial assistance provided from the bank. The bill requires revenue generated from payments of fees and other amounts to be deposited in the state highway fund. The bill 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.

H.B. 3218 expands the authorization of a public entity in Texas to borrow money from the state infrastructure bank to include doing so by a form of financial assistance from the bank other than by direct loan. The bill removes a provision basing such borrowing on the credit of the public entity. The bill authorizes a public entity to enter into any agreement relating to receiving financial assistance from the bank. The bill requires money received by a public entity from the state infrastructure bank, rather than borrowed from the bank, to be segregated from other funds under the control of the public entity and to be used only for purposes authorized by the law governing the bank, rather than for purposes related to a qualified project. The bill 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. The bill makes its provisions relating to incurrence of debt by a public entity wholly sufficient authority for a public entity to borrow or otherwise obtain financial assistance from the bank as authorized by provisions of law and the bill's provisions and to pledge revenues, income, and taxes to the

repayment of a loan or other financial assistance.

H.B. 3218 authorizes the commission to enter into credit agreements related to revenue bonds issued by the commission for the purpose of providing money for the bank. The bill specifies that the authorization for the commission to require participants to make charges, levy taxes, and otherwise provide for sufficient money is to repay financial assistance provided from the bank, including any acquired obligations.

H.B. 3218 requires the commission, before the issuance of revenue bonds or credit agreements, to submit the record of proceedings of the commission 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. The bill 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 the law governing the state infrastructure bank, to approve the proceedings and the bonds and to deliver to the comptroller of public accounts for registration a copy of the attorney general's legal opinion stating that approval and the record of proceedings. The bill authorizes the bonds or credit agreement, after approval, to be executed and delivered, exchanged, or refinanced from time to time in accordance with those authorized proceedings. The bill makes 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, after the approval and registration, incontestable in any court or other forum for any reason and makes them valid, binding, and enforceable in accordance with their terms for all purposes. The bill authorizes the proceeds from the sale of revenue bonds to be used to finance other funds or accounts relating to the bonds or credit agreement, including a debt service reserve fund, and to pay the costs of issuance. The bill makes provisions of law apply to all remaining proceeds.

H.B. 3218 authorizes the commission to create within a state infrastructure bank subaccount one or more additional subaccounts as determined appropriate and necessary by the commission.

H.B. 3218 clarifies that for purposes of financial assistance that must be repaid under provisions of law relating to the state infrastructure bank, the commission is required to determine the terms and conditions of the repayment, including the interest rates to be charged. The bill authorizes the commission, for a tolled highway improvement project, 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. The bill includes all amounts received as a share of revenues from a tolled highway improvement project among the money that must be deposited to the credit of the appropriate subaccount in the bank.

H.B. 3218 expands the requirements for investment income generated by money deposited to the credit of a subaccount in the state infrastructure bank. The bill requires the income to be credited to that subaccount subject to requirements that may be imposed by the proceedings authorizing bonds issued to provide money for deposit in the bank 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. The bill creates an exception to provisions relating to investment of the income, requiring the proceeds of bonds deposited in the bank under provisions of law relating to the state infrastructure bank to be subject to any limitations contained in the documents authorizing the issuance of the bonds.

H.B. 3218 authorizes the commission to sell any loans made from money in the state infrastructure bank and deposit the proceeds of the sale in the bank. The bill defines "loan" for purposes of these provisions. The bill authorizes the commission, for any loans to be sold under the bill's provisions, to submit to the attorney general for review and approval the related financial assistance agreement, which shall, for the purposes of provisions of law relating to the examination and registration of public securities, be considered to be a public security, along with the record of proceedings of the borrowing entity relating to the agreement. The bill makes

the agreement, if the attorney general approves it, incontestable in a court or other forum and makes it valid, binding, and enforceable according to its terms as provided by provisions of law relating to the examination and registration of public securities.

H.B. 3218 requires the commission to sell loans made from money in the state infrastructure bank using a competitive bidding process and at the price and under the terms and conditions that it determines to be reasonable. The bill authorizes the commission, 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 enforcing the payment of debt service by the borrowing entity. The bill authorizes the commission to exercise any powers necessary to carry out the authority granted by the bill's provisions relating to sale of loans, including the authority to contract with any person to accomplish the purposes of the provisions. The bill specifies that neither the state nor the commission is liable for the repayment of, and prohibits those entities from repaying, any loan sold under the bill's provisions.

H.B. 3218 specifies that a public entity receiving financial assistance under the law governing the state infrastructure bank waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the terms of the financial assistance agreement. The bill makes nonsubstantive and conforming changes.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.