

By: Phillips

H.B. No. 3218

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the administration, financing, and use of the State
3 Infrastructure Bank.

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

5 SECTION 1. Section 222.071, Transportation Code, is amended
6 to read as follows:

7 Sec. 222.071. DEFINITIONS. In this subchapter:

8 (1) "Bank" means the state infrastructure bank
9 account.

10 (2) "Bonds" means bonds, notes, and other public
11 securities.

12 (3) [~~(2)~~] "Construction" has the meaning assigned by
13 23 U.S.C. Section 101.

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

16 (5) [~~(3)~~] "Federal act" means Section 350 of the
17 National Highway System Designation Act of 1995 (Pub. L. No.
18 104-59).

19 (6) [~~(4)~~] "Federal-aid highway" has the meaning
20 assigned by 23 U.S.C. Section 101.

21 (7) [~~(5)~~] "Qualified project" includes:

22 (A) the construction of a federal-aid highway;

23 (B) a transit project under 49 U.S.C. Sections
24 5307, 5309, and 5311; [~~or~~]

1 (C) a transportation project; or
2 (D) [~~(C)~~] for the expenditure of secondary funds
3 from a subaccount subject to the federal act, a project eligible for
4 assistance under Title 23 or Title 49, United States Code.

5 (8) [~~(6)~~] "Secondary funds" includes:

6 (A) the repayment of a loan or other assistance
7 that is provided with money deposited to the credit of the bank; and

8 (B) investment income generated by secondary
9 funds deposited to the credit of the bank.

10 (9) "Transportation project" means a tolled or
11 nontolled highway improvement project.

12 SECTION 2. Section 222.072, Transportation Code, is amended
13 to read as follows:

14 Sec. 222.072. STATE INFRASTRUCTURE BANK. (a) The state
15 infrastructure bank is an account held in the Texas Treasury
16 Safekeeping Trust Company [~~state highway fund~~]. The bank is
17 administered by the commission.

18 (b) The commission may deposit in the bank money derived
19 from any source available to the commission, including:

20 (1) federal [~~Federal~~] funds received by the state,
21 including funds received under the federal act; [~~7~~]

22 (2) matching state funds in an amount required by the
23 federal [~~that~~] act; [~~7~~]

24 (3) if appropriated by the legislature for that
25 purpose:

26 (A) the proceeds of bonds issued under Section
27 222.003;

1 (B) the proceeds of bonds issued under Section
2 222.004; and

3 (C) other direct appropriations;

4 (4) the proceeds of bonds issued under Section 201.943
5 and money provided by the commission from the Texas Mobility Fund
6 that is in excess of the money required to be on deposit in the Texas
7 Mobility Fund by the proceedings authorizing Texas Mobility Fund
8 bonds and credit agreements;

9 (5) repayments of principal and interest on loans made
10 under Section 222.074;

11 (6) the proceeds from the sale of loans under Section
12 222.078;

13 (7) proceeds from bonds issued under Section 222.075;
14 [7]

15 (8) secondary funds; and [7]

16 (9) gifts and grants [other state funds deposited into
17 the bank by order of the commission, and other money received by the
18 state that is eligible for deposit in the bank may be deposited into
19 the bank and used only for the purposes described in this
20 subchapter].

21 (c) The commission shall prepare and file biennially with
22 the governor, the lieutenant governor, and the Legislative Budget
23 Board a report providing information on the operation of the bank,
24 including:

25 (1) the amounts and sources of money deposited in the
26 bank during the biennium;

27 (2) investments and returns on investments of money in

1 the bank during the biennium;

2 (3) loans made from the bank during the biennium;

3 (4) other financial assistance provided from the bank
4 during the biennium;

5 (5) the status of any defaults on repayment of loans or
6 other financial assistance provided from the bank; and

7 (6) the details of any qualified project for which
8 financial assistance is received from the bank during the biennium,
9 including the identity of any highway directly affected by the
10 project, and the degree to which the project is designed to reduce
11 congestion, improve traffic safety, and enhance connectivity.

12 SECTION 3. Section 222.074, Transportation Code, is amended
13 by amending Subsection (a) and by adding Subsections (d), (e), (f),
14 and (g) to read as follows:

15 (a) To further a purpose described by Section 222.073, the
16 commission may use money deposited to the credit of the bank to
17 provide financial assistance to a public or private entity,
18 including the department, for a qualified project to:

19 (1) extend credit by direct loan, including through
20 the purchase of obligations of a public entity;

21 (2) provide liquidity or credit enhancement,
22 ~~[enhancements]~~ including through the agreement to loan to a public
23 or private entity or to purchase bonds, notes, or other obligations
24 from a public entity;

25 (3) serve as a capital reserve for bond or debt
26 instrument financing;

27 (4) subsidize interest rates;

1 (5) insure the issuance of a letter of credit or credit
2 instrument;

3 (6) finance a purchase or lease agreement in
4 connection with a transit project;

5 (7) provide capitalized interest for debt financing by
6 the public or private entity;

7 (8) providing a guarantee of the payment of the costs
8 of the operation and maintenance of a qualified project by a public
9 entity;

10 (9) [~~(7)~~] provide security for bonds and other debt
11 instruments; [~~or~~]

12 (10) pay the costs of issuing bonds or other debt
13 instruments; or

14 (11) [~~(8)~~] provide methods of leveraging money that
15 have been approved by the United States secretary of transportation
16 and relate to the project for which the assistance is provided.

17 (d) The proceeds of bonds issued under Section 222.003 or
18 Section 222.004 may only be used to provide financial assistance
19 for highway improvement projects, subject to any limitations
20 provided by law.

21 (e) Money from the Texas Mobility Fund may only be used to
22 provide financial assistance for state highway improvement
23 projects, publicly owned toll roads, and public transportation
24 projects, whether on or off of the state highway system, subject to
25 any limitations provided by law.

26 (f) The commission may require a public or private entity to
27 pay an application fee and other reasonable amounts in connection

1 with any request for financial assistance provided from the bank.
2 Revenue generated from payments of fees and other amounts shall be
3 deposited in the state highway fund.

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

9 SECTION 4. Section 222.0745, Transportation Code, is
10 amended to read as follows:

11 Sec. 222.0745. INCURRENCE OF DEBT BY PUBLIC ENTITY. (a) A
12 public entity in this state, including a municipality, county,
13 district, authority, agency, department, board, or commission,
14 that is authorized by law to construct, maintain, or finance a
15 qualified project may borrow money from the bank, including by
16 direct loan or other financial assistance from the bank, and may
17 enter into any agreement relating to receiving financial assistance
18 from the bank [~~based on the credit of the public entity~~].

19 (b) Money received by a public entity under this subchapter
20 [~~borrowed under this section~~] must be segregated from other funds
21 under the control of the public entity and may only be used for
22 purposes authorized by this subchapter [~~related to a qualified~~
23 ~~project~~].

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

26 (1) pledge revenues or income from any available
27 source;

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

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

5 (d) This section is wholly sufficient authority for a public
6 entity to borrow or otherwise obtain financial assistance from the
7 bank as authorized by this subchapter and to pledge revenues,
8 income, or taxes, or any combination of revenues, income, and
9 taxes, to the repayment of a loan or other financial assistance.

10 (e) [~~e~~] The authority granted by this section does not
11 affect the ability of a public entity to incur debt using other
12 statutorily authorized methods.

13 SECTION 5. Section 222.075, Transportation Code, is amended
14 by amending Subsections (b), (f), (i), and (j) to read as follows:

15 (b) Except as provided by Subsection (c), the commission may
16 issue revenue bonds or revenue refunding bonds under this section
17 without complying with any other law applicable to the issuance of
18 bonds, and may enter into credit agreements related to the bonds.

19 (f) The commission may require participants to make
20 charges, levy taxes, or otherwise provide for sufficient money to
21 repay financial assistance provided from the bank, including any
22 [pay] acquired obligations.

23 (i) Before the issuance of revenue bonds or credit
24 agreements, the commission shall submit the record of [All]
25 proceedings of the commission authorizing [~~relating to~~] the
26 issuance, execution, and delivery of the [~~revenue~~] bonds or credit
27 agreement and any contract providing revenue or security to pay the

1 bonds or credit agreement [~~issued under this section shall be~~
2 ~~submitted~~] to the attorney general for review [~~examination~~]. If
3 the attorney general finds that the proceedings authorizing a bond
4 or credit agreement and any bonds authorized in the proceedings
5 conform to the requirements of the Texas Constitution and this
6 subchapter [~~On determining that the revenue bonds have been~~
7 ~~authorized in accordance with law~~], the attorney general shall
8 approve the proceedings and the [~~revenue~~] bonds, and shall deliver
9 to [~~the revenue bonds shall be registered by~~] the comptroller for
10 registration a copy of the attorney general's legal opinion stating
11 that approval and the record of proceedings. After approval, the
12 bonds or credit agreement may be executed and delivered, exchanged,
13 or refinanced from time to time in accordance with those
14 authorizing proceedings. After the approval and registration, the
15 [~~revenue~~] bonds or credit agreement, as applicable, or a contract
16 providing revenue or security included in or executed and delivered
17 according to the authorizing proceedings are incontestable in any
18 court or other forum for any reason and are valid, [~~and~~] binding,
19 and enforceable [~~obligations~~] in accordance with their terms for
20 all purposes.

21 (j) The proceeds from the sale of revenue bonds may be used
22 to finance other funds or accounts relating to the bonds or credit
23 agreement, including a debt service reserve fund, and to pay the
24 costs of issuance. All remaining [~~The~~] proceeds received from the
25 sale of the [~~revenue~~] bonds shall be deposited in the bank and
26 invested and used in the manner provided for other funds deposited
27 under this subchapter.

1 SECTION 6. Section 222.076, Transportation Code, is amended
2 by adding Subsection (c) to read as follows:

3 (c) The commission may create within a subaccount one or
4 more additional subaccounts as determined appropriate and
5 necessary by the commission.

6 SECTION 7. Section 222.077, Transportation Code, is amended
7 to read as follows:

8 Sec. 222.077. REPAYMENT TERMS; DEPOSIT OF REPAYMENTS;
9 INVESTMENT INCOME. (a) For financial assistance that ~~[Any funds~~
10 ~~disbursed through the state infrastructure bank]~~ must be repaid,
11 ~~[on terms determined by]~~ the commission shall determine the terms
12 and conditions of the repayment, including the interest rates to be
13 charged. The terms must comply with the federal act except for terms
14 applicable to funds deposited in a subaccount described by Section
15 222.076(b).

16 (b) For a tolled highway improvement project, the
17 commission may require that revenues from the project be shared
18 between the entity and the department, and the entity and the
19 department may enter into an agreement specifying the terms and
20 conditions of the revenue sharing.

21 (c) [(b)] Notwithstanding any other law to the contrary:

22 (1) the repayment of a loan or other assistance
23 provided with money deposited to the credit of a subaccount in the
24 bank, including all amounts received as a share of revenues from a
25 tolled highway improvement project, shall be deposited in that
26 subaccount; and

27 (2) investment income generated by money deposited to

1 the credit of a subaccount in the bank shall be:

2 (A) credited to that subaccount, subject to
3 requirements that may be imposed by the proceedings authorizing
4 bonds issued to provide money for deposit in the bank that are
5 necessary to protect the tax-exempt status of interest payable on
6 the bonds in accordance with applicable law of the United States
7 concerning federal income taxation of interest on the bonds;

8 (B) available for use in providing financial
9 assistance under this subchapter; and

10 (C) invested in United States Treasury
11 securities, bank deposits, or other financing instruments approved
12 by the United States secretary of transportation to earn interest
13 and enhance the financing of projects assisted by the bank, except
14 that the proceeds of bonds deposited in the bank under Section
15 222.072 shall be subject to any limitations contained in the
16 documents authorizing the issuance of the bonds.

17 (d) [~~(e)~~] The commission shall administer the bank in
18 compliance with applicable requirements of the federal act and any
19 applicable federal regulation or guideline.

20 (e) [~~(d)~~] The commission by rule shall:

21 (1) implement this subchapter; and

22 (2) establish eligibility criteria for an entity
23 applying for financial assistance from the bank.

24 SECTION 8. Subchapter D, Chapter 222, Transportation Code,
25 is amended by adding Sections 222.078 and 222.079 to read as
26 follows:

27 Sec. 222.078. SALE OF LOANS. (a) As used in this section,

1 "loan" includes any financial assistance that must be repaid or any
2 portion of such assistance.

3 (b) The commission may sell any loans made from money in the
4 bank and shall deposit the proceeds of the sale in the bank.

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

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

18 (e) As part of the sales agreement with the purchaser of a
19 loan, the commission may agree to perform the functions required to
20 enforce the conditions and requirements stated in the loans,
21 including enforcing the payment of debt service by the borrowing
22 entity.

23 (f) The commission may exercise any powers necessary to
24 carry out the authority granted by this section, including the
25 authority to contract with any person to accomplish the purposes of
26 this section.

27 (g) Neither the state nor the commission shall be liable for

1 the repayment of, and may not repay, any loan sold under this
2 section.

3 Sec. 222.079. WAIVER OF SOVEREIGN IMMUNITY. A public
4 entity receiving financial assistance under this subchapter waives
5 sovereign immunity to suit for the purpose of adjudicating a claim
6 for breach of the terms of the financial assistance agreement.

7 SECTION 9. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2011.