HOUSE
RESEARCH
ORGANIZATION bill analysis 5/16/2001

SJR 16
Shapiro (Brimer, G. Lewis)
(CSSJR 16 by Alexander)

SUBJECT: Creating the Texas Mobility Fund, allowing state funding for toll roads

COMMITTEE: Transportation — committee substitute recommended

VOTE: 7 ayes — Alexander, Hawley, Hamric, Hill, Noriega, Pickett, Swinford

0 nays

2 absent — Y. Davis, Edwards

SENATE VOTE: On final passage, March 15 — 29-1 (Fraser)

WITNESSES: For — Gary Bushell, Alliance for I-69 Texas, Corpus Christi Chamber of Commerce, and U.S. 190 Coalition; Judge Lee Jackson, Dallas County and Dallas Regional Mobility Coalition; Greg Solomon, Burleson Area Chamber of Commerce and Texas Association of Business and Chambers of Commerce; Vic Suhm, North Texas Commission; Michael White, Greater Houston Partnership; *Registered but did not testify:* Anderson Bynam; Les Findeisen, Texas Motor Transportation Association; Mayor Elizabeth G. Flores, City of Laredo; Joe A. Garcia, Texas Border Infrastructure Coalition; Jorge A. Garza, Salomon, Smith, Barney; Hector Gutierrez, City of El Paso; Sandy Hentges, Greater Austin Chamber of Commerce; Shanna Igo, Texas Municipal League; Judge Cyndi Taylor Krier, Bexar County; Donald Lee, Texas Conference of Urban Counties; James McCarley, Dallas Regional Mobility Coalition; Joe Paniagua, Fort Worth City Council; Jay Stewart, Hance, Scarborough, and Wright; Sally Velasquez, Webb, Willacy, and Zapata counties and City of Eagle Pass; Larry Zacharias, City of Richardson

Against — None

On — Glenn Gadbois, Texas Citizen Fund; John W. Johnson and Ric Williamson, Texas Transportation Commission; *Registered but did not testify:* Lawrence Olsen, Texas Good Roads Association

BACKGROUND: The Texas Constitution, Art. 3, sec. 52-b requires the Texas Turnpike Authority or its successor agency to repay to the State Highway Fund (Fund 6) any monies spent by the Texas Department of Transportation (TxDOT) on toll roads, toll bridges, or turnpikes. Art. 8, sec. 7-a dedicates three-fourths of net motor-fuel tax revenue to the State Highway Fund (Fund 6), which also receives revenue from motor-vehicle registration fees and sales taxes on lubricants. Money in Fund 6 may be appropriated only for specific highway-related purposes.

Art. 3, sec. 49 prohibits state debt, generally requiring that voters approve bonded indebtedness before the state may incur it.

DIGEST:

CSSJR 16 would propose amending the Constitution to add Art. 3, sec. 49-k, creating the Texas Mobility Fund in the state treasury. The Texas Transportation Commission (TTC) would administer this revolving fund to finance acquisition, construction, maintenance, reconstruction, and expansion of state highways, including design and right-of-way purchases. Money in the fund also could be spent on public toll roads and other public transportation projects.

The TTC could issue bonds pledged against the fund to be repaid from the fund balance. Bond proceeds could be used for refunding obligations and related credit agreements, for creating reserves, and for paying issuance costs and interest on bonds.

The Legislature could dedicate one or more specific revenue sources or portions of other state revenues to the mobility fund as long as the sources were not dedicated by the Constitution. Motor-vehicle registration fees and motor-fuel and lubricant sales taxes could not be dedicated to the mobility fund. Money dedicated to the fund would be considered appropriated when received. The dedication could not be modified unless the Legislature dedicated a substitute or different source that the comptroller projected to be of equal or greater value and unless the Legislature authorized the TTC to guarantee payment by pledging the full faith and credit of the state if dedicated revenue was insufficient. If the TTC took such action and the revenue dedicated to the fund was insufficient, the first revenue into the state treasury not otherwise dedicated constitutionally would be appropriated to pay principal and interest on the bonds, less any fund amount available for payment.

The attorney general would have to approve any obligations and credit agreements issued in conjunction with the mobility fund. They would be considered incontestable if approved by the attorney general. Judicial enforcement would be delegated to a Travis County district court.

Obligations and credit agreements of the mobility fund would not be included in computing the limit on state debt under Art. 3, sec. 49-j of the Constitution unless the TTC had exercised its authority to pledge the state's full faith and credit, or if money were dedicated to the fund from an unspecified source, if the comptroller projected that state general revenue would be needed to pay obligations or credit agreements.

The proposed amendment also would authorize TxDOT to loan or grant money for the acquisition, construction, maintenance, or operation of turnpikes or toll roads and toll bridges. The constitutional requirement to repay Fund 6 from tolls or other turnpike revenue would be repealed.

The proposal would be presented to Texas voters at an election on November 6, 2001. The ballot proposal would read: "The constitutional amendment creating the Texas Mobility Fund and authorizing grants and loans of money and issuance of obligations for financing the construction, reconstruction, acquisition, operation, and expansion of state highways, turnpikes, toll roads, toll bridges, and other mobility projects."

SUPPORTERS SAY:

Texas' traditional "pay-as-you-go" approach to highway finance has been overtaken by reality. The phenomenal growth in Texas' population has led to more vehicle miles traveled, greater traffic congestion, clogged borders, deficient rural roads, and many unsafe bridges. Demand has far outstripped capacity and spending has lagged. Texas never will catch up if it does not prepare itself to innovate, as allowed by CSSJR 16.

Highways are the only major capital projects for which the state does not borrow money. That policy no longer is defensible in the face of spiraling needs, lost economic opportunities, and reduced quality of life. Cities and counties routinely finance road and street projects with bonds, and the state should use this financing tool as well, subject to appropriate constraints.

If approved by voters, the Texas Mobility Fund would supplement federal and state highway revenue without jeopardizing either. It would provide both flexibility and structure, allowing spending on a variety of transportation projects while keeping the fund secure. The balance would be used primarily to leverage highway bonds, which would enable projects to begin sooner and would lessen the impact of construction inflation. The interest earned would allow pursuit of other projects.

It would be up to the Legislature to dedicate revenue to the fund, either through greater efficiencies, increased appropriations, or new sources. However, it is important to establish the fund now as a policy statement until adequate funding can be implemented.

Allowing the state to spend up front on toll roads would hasten much-needed projects by providing crucial financial leverage, typically at a 5:1 ratio.

Forgoing repayment to TxDOT would alleviate the “double whammy” most toll projects face of two liens, one to TxDOT and the other to bondholders. This would make toll projects more attractive to investors, accelerate debt retirement, and hasten toll revenue production. It also would reduce local governments’ costs and would free more state dollars that would have been spent outright, in lieu of borrowing. With toll equity alleviating some of the burden of capital outlay for startup costs, toll roads could return as much as 20 percent in excess revenue.

Taxes pay for many roads that some motorists never use. Toll roads make sense as alternative routes available to motorists for a nominal user fee. Nevertheless, tollways never will replace non-toll roads. Free alternative routes always will exist.

OPPONENTS SAY:

Borrowing money by issuing bonds would make highways more expensive because of debt service, underwriting, and issuance costs. It would drain precious resources away from the task of providing transportation and would tie up revenue that could be used on other projects. Bonding would not generate new money for highways; it merely would reallocate it and commit it for the future. Over-commitment would limit Texas’ ability to meet unforeseen needs.

Currently, the state lacks the resources to make bonding viable soon enough to make a sizeable dent in Texas' transportation crisis. The Legislature either should find sufficient money in general revenue or should raise the gasoline tax, the closest thing to a user fee for motorists.

Toll roads represent double taxation. Motorists pay for highways at the gasoline pump, at the vehicle registration counter, and at auto supply retailers. They should not have to pay for highways again when they exercise their right to travel on them.

The constitutional prohibition against paying for toll roads with non-toll revenue remains sound. If tolls are not sufficient in themselves to finance and sustain a road, the road should not be built as a toll road. Scarce state highway funds should not be risked on ventures not likely to return taxpayers' investment.

Tolls are supposed to be high enough only to pay for the toll roads and their financing. Transferring excess toll revenue to a highway bond fund would create an incentive to turn toll projects into "cash cows." Users of toll roads should not be expected to subsidize other highways.

OTHER OPPONENTS SAY:

It would be pointless to create a fund with no revenue, not unlike opening a bank account with no deposit. The Legislature should postpone this idea until it is prepared to finance it.

Texans need more money for roads now, not empty promises to be fulfilled sometime later. Borrowing against an almost-sure thing, like federal highway funds, would provide a quicker and more meaningful infusion of capital than waiting for a budget surplus that may never come or a tax hike that is not going to happen.

Even if Texas' toll roads increased in number, they never would provide enough revenue to reduce significantly the huge number of other projects Texas needs to build. CSSJR 16 would turn the original toll equity concept on its head. Rather than the state subsidizing toll roads, toll roads would be asked to subsidize the state highway program. In fairness, toll revenue at least should be dedicated to more toll roads.

NOTES:

Approval of CSSJR 16 by Texas voters would authorize implementation of SB 4 by Shapiro, creating the Texas Mobility Fund, and SB 342 by Shapiro, setting forth procedures for TxDOT's participation in toll projects. SJR 12 by Shapiro, the constitutional amendment originally proposed in conjunction with SB 342, has been incorporated into CSSJR 16.

SB 342 would authorize TTC to create regional tollway authorities, which would transfer to the Texas Mobility Fund any toll revenue exceeding debt service and operation, maintenance, or expansion costs. SB 342 also would transfer to the fund all unspent and unobligated appropriations and other funds under the control of the Texas Turnpike Authority board, which would be abolished by the bill, if SB 4, setting up the fund, is takes effect.

The Senate engrossed version of SJR 16 would have proposed creating the mobility fund with the comptroller, rather than in the treasury. The committee substitute added the provision that would prohibit dedication of motor-vehicle registration fees or motor-fuel or lubricant sales taxes to the mobility fund. Also, the Senate engrossed version did not include the provisions on toll equity or repealing the constitutional repayment requirement.