

BILL ANALYSIS

Senate Research Center
83R712 TRH-D

S.B. 1018
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Transportation
3/26/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The North Texas Tollway Authority (NTTA) is an organization sanctioned by the State of Texas to develop and maintain high-quality roadways in North Texas. NTTA tollways are designed to relieve traffic congestion and get North Texans around the region quickly, easily, and safely.

S.B. 1018 amends Chapters 222 (Funding and Federal Aid) and 366 (Regional Tollway Authorities) of the Transportation Code. Among other provisions, S.B. 1018 clarifies the definition, sources, and uses of revenue, and reduces restrictions on the NTTA's ability to seek competitive proposals from financial services providers.

As proposed, S.B. 1018 amends current law relating to the agreements, costs, revenues, and finances of regional tollway authorities.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to a regional tollway authority is modified in SECTION 5 (Section 366.033, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 222.108(d), Transportation Code, to redefine "transportation project" in this section.

SECTION 2. Amends Section 222.110(e), Transportation Code, as follows:

(e) Authorizes the sales and use taxes to be deposited into the tax increment account under this section to be disbursed from the account only to:

(1) pay for the transportation project for which the transportation reinvestment zone was designated, and for aesthetic improvements within the zone, including the repayment of amounts owed under a contract, entered into under Section 222.106 (Municipal Transportation Reinvestment Zones) or 222.107 (County Transportation Reinvestment Zones), as applicable, rather than pay for projects authorized under Section 222.104 (Pass-Through Tolls), including the repayment of amounts owed under an agreement entered into under that section; and

(2) notwithstanding Sections 321.506 (Use of Tax Revenue by Municipality) and 323.505 (Use of Tax Revenue), Tax Code, satisfy claims of holders of tax increment bonds, notes, or other obligations issued or incurred for a transportation project for which the zone was designated, rather than for projects authorized under Section 222.104.

SECTION 3. Amends Sections 366.003(8), (9), and (11), Transportation Code, to define "governmental entity" rather than "local government entity," and to redefine "revenue," and "turnpike project."

SECTION 4. Amends Section 366.004(a), Transportation Code, to provide that the cost of acquisition, construction, improvement, extension, or expansion of a turnpike project or system

under this chapter includes certain costs, including the cost of compliance with laws, regulations, and administrative rulings, including any costs associated with necessary environmental mitigation measures, and payment obligations of an authority under a contract or agreement authorized by this chapter in connection with the acquisition, construction, improvement, extension, expansion, or financing of the turnpike project or system. Makes nonsubstantive changes.

SECTION 5. Amends Sections 366.033(a), (g), and (k), Transportation Code, as follows:

(a) Authorizes a regional tollway authority (authority), acting through its board of directors (board), without state approval, supervision, or regulation, to:

(1) adopt rules for the regulation of its affairs and the conduct of its business;

(2) Makes no change to this subdivision;

(3) study, evaluate, design, finance, acquire, construct, maintain, repair, and operate turnpike projects, individually or as one or more systems;

(4) Makes no change to this subdivision;

(5) enter into contracts or operating agreements with similar authorities, other governmental entities, or agencies of the United States, a state of the United States, the United Mexican States, or a state of the United Mexican States;

(6) Makes no change to this subdivision;

(7) cooperate and work directly with property owners and governmental entities, rather than governmental agencies, and officials to support an activity required to promote or develop a turnpike project or system;

(8) Makes no change to this subdivision;

(9) apply for and directly or indirectly receive and spend loans, gifts, grants, and other contributions for the construction of a turnpike project or system, and receive and spend contributions of money, property, labor, or other things of value from any source, including the United States, a state of the United States, the United Mexican States, a state of the United Mexican States, the Texas Transportation Commission (TTC), the Texas Department of Transportation (TxDOT), any subdivision of the state, or any other governmental, rather than local governmental, or private entity, to be used for the purposes for which the grants or contributions are made, and enter into any agreement necessary for the grants or contributions;

(10)-(11) Makes no change to these subdivisions;

(12) adopt and enforce rules not inconsistent with this chapter for the use of any turnpike project or system, including rules relating to enforcement of tolls, fares, or other user fees, speed and weight limit rules, and traffic and other public safety rules; and

(13)-(14) Makes no change to these subdivisions.

(g) Authorizes an authority and any governmental entity including TxDOT, rather than an authority and any local governmental entity, to enter into a contract under which the authority will operate a turnpike project or system on behalf of the governmental entity. Makes a conforming change. Deletes existing text authorizing an authority to enter into a contract with TxDOT under which the authority will operate a turnpike project or system on behalf of TxDOT.

(k) Authorizes the contract or agreement, if an authority enters into a contract or agreement to design, or any other certain function for a turnpike project, system, or improvement authorized on behalf of a government entity, including the TTC, TxDOT, a regional mobility authority, or other entity, to provide that the authority, in performing the function, is governed by the applicable provisions of this chapter and the rules and procedures adopted by the authority under this chapter, in lieu of the laws, rules, or procedures applicable to the other party for the performance of the same function. Makes conforming changes.

SECTION 6. Amends Section 366.034, Transportation Code, by adding Subsection (c), as follows:

(c) Authorizes an authority, notwithstanding Subsection (b) (relating to the requirement that the revenue of a system be accounted for separately and is prohibited from being commingled with the revenue of a turnpike project that is not a part of the system or with the revenue of another system), to transfer revenue from one or more turnpike projects or systems to a general fund of the authority if the transfer does not violate, and is not inconsistent with, any bond proceedings governing the use of the revenue. Authorizes an authority to use revenue or other money in a general fund for any purpose authorized by this chapter.

SECTION 7. Amends Section 366.036, Transportation Code, as follows:

Sec. 366.036. TRANSFER OF TURNPIKE PROJECT OR SYSTEM. (a) Authorizes an authority to transfer any of its turnpike projects or systems to one or more governmental entities, rather than local governmental entities, if certain criteria has been met, including the authority has commitments from the governing bodies of the governmental entities to assume jurisdiction over the transferred projects or systems, adequate provision has been made for the assumption of all debts, obligations, and liabilities of the authority relating to the transferred projects or systems by the governmental entities assuming jurisdiction over the transferred projects or systems, and the governmental entities are authorized to assume jurisdiction over the transferred projects or systems and to assume the debts, obligations, and liabilities of the authority relating to the transferred projects or systems. Makes conforming changes.

(b)-(c) Makes conforming changes.

SECTION 8. Amends Sections 366.037(a) and (c), Transportation Code, as follows:

(a) Authorizes the board of an authority, in addition to the powers granted under this chapter and without supervision or regulation by any state agency or other governmental entity, rather than local governmental entity, but subject to an agreement entered into under Subsection (c), to by resolution, and on making the findings set forth in this subsection, authorize the use of surplus revenue of a turnpike project or system for the study, design, construction, maintenance, repair, and operation of a highway or similar facility that is not a turnpike project if the highway or similar facility meets certain criteria.

(c) Requires an authority to enter into an agreement to implement this section with TxDOT, TTC, or other governmental entity, rather than a local governmental entity or another political subdivision, that owns a street, road, alley, or highway that is directly affected by the authority's turnpike project or related facility.

SECTION 9. Amends Section 366.071(a), Transportation Code, to authorize an authority to pay the expenses of studying the cost and feasibility of a turnpike project or system, the expenses of designing and engineering a turnpike project or system, and any other expenses relating to the preparation and issuance of bonds for a proposed turnpike project or system by certain means, including by pledging to the payment of bonds or loan agreements proceeds from certain revenue, including from the sale of other bonds. Makes nonsubstantive changes.

SECTION 10. Amends Section 366.072(c), Transportation Code, as follows:

(c) Authorizes money in the feasibility study fund to be used only to pay:

(1) the expenses of studying the cost and feasibility of a turnpike project or system, or designing and engineering a turnpike project or system; or

(2) any other expenses relating to:

(A) the preparation and issuance of bonds for, or the financing of the acquisition and construction of a proposed turnpike project or system, or the improvement, extension, or expansion of an existing turnpike project or system; or

(B) private participation, as authorized by law, in the financing of a proposed turnpike project or system, the refinancing of an existing turnpike project or system, or the financing of an improvement, extension, or expansion of a turnpike project or system.

Makes nonsubstantive changes.

SECTION 11. Amends the heading to Section 366.073, Transportation Code, to read as follows:

Sec. 366.073. FEASIBILITY STUDY BY MUNICIPALITY, COUNTY, OTHER GOVERNMENTAL ENTITY, OR PRIVATE GROUP.

SECTION 12. Amends Section 366.073(a), Transportation Code, as follows:

(a) Authorizes one or more municipalities, counties, or governmental entities or a combination of municipalities, counties, and governmental entities, or a private group or combination of individuals to pay all or part of the expenses of studying the cost and feasibility of a turnpike project or system and any other expenses relating to:

(1) the preparation and issuance of bonds for, or the financing of the acquisition and construction of a proposed turnpike project or system by an authority; or the improvement, extension, or expansion of an authority's existing turnpike project or system; or

(2) the use of private participation under applicable law in connection with the acquisition, construction, improvement, expansion, extension, maintenance, repair, or operation of a turnpike project or system by an authority.

Makes nonsubstantive changes.

SECTION 13. Amends Section 366.111, Transportation Code, by amending Subsection (a) and adding Subsection (i), as follows:

(a) Authorizes an authority, by adoption of a bond resolution, to authorize the issuance of bonds to pay all or part of the cost of a turnpike project or system, to refund any bonds previously issued for the turnpike project or system, or to pay for all or part of the cost of a turnpike project or system that is or will become a part of another system.

(i) Requires bonds issued under this chapter to be considered authorized investments under Chapter 2256 (Public Funds Investment), Government Code, for this state, any governmental entity, and any other public entity proposing to invest in the bonds.

SECTION 14. Amends Sections 366.113(a) and (b), Transportation Code, as follows:

(a) Provides that the principal of, interest on, and any redemption premium on bonds issued by an authority are payable solely from:

- (1) Makes no change to this subdivision;
- (2) payments made under an agreement with the commission or a governmental entity as authorized by this chapter, rather than payments made under an agreement with TCC or a local governmental entity as provided by Subchapter G (Aid for Regional Turnpike Projects);
- (3) revenue from a turnpike project that is not part of the same system or from a different system that has been pledged for that purpose under Section 366.175 (Use of Surplus Revenue), rather than money derived from any other source available to the authority, other than money derived from a turnpike project that is not part of the same system or money derived from a different system, except to the extent that the surplus revenue of a turnpike project or system has been pledged for that purpose;
- (4) Makes no change to this subdivision;
- (5) revenue or other money in a general fund of an authority;
- (6) proceeds of the sale of other bonds; and
- (7) money derived from any other source available to the authority.

Makes nonsubstantive changes.

(b) Provides that bonds issued under this chapter do not constitute a debt of the state, a governmental entity, or any of the counties of an authority or a pledge of the faith and credit of the state, a governmental entity, or any of the counties. Requires that each bond contain on its face a statement to the effect that the state, the authority, the counties of the authority, and any other governmental entity are not obligated to pay the bond or the interest on the bond from a source other than the amount pledged to pay the bond and the interest on the bond, and the faith and credit and taxing power of neither the state, any governmental entity, or the counties of the authority are pledged to the payment of the principal of or interest on the bond. Provides that this subsection does not apply to a governmental entity that has issued bonds or entered into an agreement under Subchapter G. Makes nonsubstantive changes.

SECTION 15. Amends Section 366.114(a), Transportation Code, to provide that a lien on or a pledge of revenue from a turnpike project or system under this chapter, a lien on or a pledge of revenue from a reserve, replacement, or other fund established in connection with a bond issued under this chapter, or a lien on or a pledge of revenue from a contract or agreement entered into under this chapter and is applicable under certain conditions, including is enforceable at the time of payment for and delivery of the bond or on the effective date of the contract or agreement.

SECTION 16. Amends Section 366.118, Transportation Code, to provide that all laws affecting the issuance of bonds by governmental entities, rather than local governmental entities, including Chapters 1201 (Public Security Procedures Act), 1202 (Examination and Registration of Public Securities), 1204 (Interest Rate), and 1371 (Obligations for Certain Public Improvements), Government Code, apply to bonds issued under this chapter.

SECTION 17. Amends Section 366.162(a), Transportation Code, to authorize an authority to construct or improve a turnpike project on real property, including a right-of-way acquired by the authority or provided to the authority for that purpose by TTC, a political subdivision of this state, or any other governmental entity, rather than local governmental entity.

SECTION 18. Amends Subchapter E, Chapter 366, Transportation Code, by adding Section 366.1631, as follows:

Sec. 366.1631. PARTICIPATION PAYMENT FOR REAL PROPERTY. (a) Authorizes an authority, as an alternative to paying for an interest in real property or a real property right with a single fixed payment, to pay the owner by means of a participation payment, with the property owner's consent.

(b) Provides that a right to receive a participation payment under this section is subordinate to any right to receive a fee as payment on the principal of or interest on a bond that is issued for the construction of the applicable segment.

(c) Defines "participation payment" in this section.

SECTION 19. Amends Sections 366.169(a), (b), and (c), Transportation Code, as follows:

(a) Authorizes an authority to use real property, including submerged land, streets, alleys, and easements, owned by the state or another governmental entity, rather than a local governmental entity, that the authority considers necessary for the construction or operation of a turnpike project.

(b) Authorizes the state or another governmental entity, rather than a local governmental entity, having charge of public real property to consent to the use of the property for a turnpike project.

(c) Authorizes the state or another governmental entity, rather than local governmental entity, except as provided by Section 228.201 (Limitation on Toll Facility Design), including highways and other real property already devoted to public use and rights or easements in real property, that may be necessary or convenient to accomplish the authority's purposes, including the construction or operation of a turnpike project. Authorizes a conveyance, grant, or lease under this section to be made without advertising, court order, or other action other than the normal action of the state or another governmental entity, rather than local governmental entity, necessary for a conveyance, grant, or lease.

SECTION 20. Amends Section 366.170(c), Transportation Code, to make a conforming change.

SECTION 21. Amends Section 366.173, Transportation Code, by amending Subsections (b), (c), and (d) and adding Subsection (h), as follows:

(b) Requires that tolls be set so that the aggregate of tolls from an authority's turnpike project or system, together with other revenue of the turnpike project or system, provides revenue sufficient to pay certain costs, including any other payment obligation of the authority under a contract or agreement authorized under this chapter, and creates reserves for certain purposes. Makes nonsubstantive changes.

(c) Provides that tolls are not subject to supervision or regulation by any state agency or other governmental entity, rather than local governmental entity.

(d) Requires that tolls and other revenue derived from a turnpike project or system for which bonds are issued, except the part necessary to pay the cost of maintenance, repair, and operation and to provide reserves for those costs as may be provided in the bond proceedings, to set aside at regular intervals as may be provided in the bond resolution or trust agreement in a sinking fund that is pledged to and charged with the payment of certain interest, principal, and other charges, including an amounts due under credit agreements. Makes nonsubstantive changes.

(h) Authorizes an authority, notwithstanding any other provision of this chapter, to pledge all or any part of its revenue and any other funds available to the authority to the payment of any obligations of the authority under a contract or agreement authorized by this chapter.

SECTION 22. Authorizes Section 366.175, Transportation Code, as follows:

Sec. 366.175. New heading: USE OF REVENUE. Authorizes the board of an authority to by resolution authorize the use of revenue of a turnpike project or system to pay the costs of another turnpike project or system, rather than authorizing the board of an authority to by resolution authorize the use of surplus revenue of a turnpike project or system other than a project financed under Subchapter G. Authorizes the board to in the resolution prescribe terms for the use of the revenue, including the pledge of the revenue, but the board is prohibited from taking an action under this section that violates, impairs, or is inconsistent with a bond resolution, trust agreement, or indenture governing the use of the revenue, rather than indenture governing the use of the surplus revenue.

SECTION 23. Amends Section 366.176(b), Transportation Code, to exempt an authority from payment of development fees, utility connection fees, assessments, and service fees imposed or assessed by a county, municipality, road and utility district, river authority, any other governmental entity, rather than any other state or local governmental entity, or any property owners' or homeowners' association.

SECTION 24. Amends Section 366.182(c), Transportation Code, to authorize an authority to contract with any governmental entity, rather than any state or local governmental entity, for the services of peace officers of that entity, rather than agency.

SECTION 25. Amends Section 366.302(a), Transportation Code, as follows:

(a) Authorizes an authority to enter into an agreement with a public or private entity, including a toll road corporation, the United States, a state of the United States, the United Mexican States, a state of the United Mexican States, or a governmental entity, rather than a local governmental entity or another political subdivision, to permit the entity, jointly with the authority, to study the feasibility of a turnpike project or system or to acquire, design, finance, construct, maintain, repair, operate, extend, or expand a turnpike project or system. Authorizes an authority and a private entity jointly to enter into an agreement with another governmental entity to study the feasibility of a turnpike project or system or to acquire, design, finance, construct, maintain, repair, operate, extend, or expand a turnpike project or system.

SECTION 26. Amends Section 366.303, Transportation Code, as follows:

Sec. 366.303. New heading: AGREEMENTS BETWEEN AUTHORITY AND GOVERNMENTAL ENTITIES. (a) Authorizes a governmental entity to, consistent with the Texas Constitution, rather than authorizes a local governmental entity other than a nonprofit corporation to, consistent with the Texas Constitution:

(1) issue bonds or enter into and make payments under agreements with an authority to acquire, construct, maintain, or operate a turnpike project or system, whether inside or outside the geographic boundaries of the governmental entity; and

(2) make payments under any related credit agreements.

(a-1) Authorizes agreements under Subsection (a) to include agreements for the governmental entity to pay the principal of, and interest on, bonds, notes, or other obligations issued by the authority.

(a-2) Authorizes the governmental entity to levy and collect taxes to pay the interest on bonds issued under Subsection (a) and to provide a sinking fund for the redemption of the bonds. Makes a nonsubstantive change.

(b) Authorizes a governmental entity, rather than a local governmental entity, in addition to the powers provided by Subsection (a), to, within any applicable constitutional limitations, agree with an authority to:

(1) issue bonds or enter into and make payments under an agreement to acquire, construct, maintain, or operate any portion of a turnpike project or system of that authority;

(2) create a taxing district; a transportation reinvestment zone under Subchapter E (Toll Facilities), Chapter 222 (Funding and Federal Aid); or an entity to promote economic development; and

(3) collect and remit to an authority taxes, fees, or assessments collected for purposes of developing turnpike projects or systems.

Makes conforming and nonsubstantive changes.

(b-1) Authorizes an agreement under Subsection (b) to include a means for a governmental entity to pledge or otherwise provide funds for a transportation project that benefits the governmental entity to be developed by the authority.

(c) Authorizes a governmental entity, rather than a local governmental entity, to make payments under an agreement under Subsection (b), to pay the interest on bonds issued under Subsection (b), or to provide a sinking fund for the bonds or the agreement, rather than contract, to:

(1) pledge revenue from any available source, including annual appropriations;

(2) levy and collect taxes;

(3) use funds deposited in a tax increment account established for a transportation reinvestment zone under Subchapter E, Chapter 222; or

(4) provide for a combination of Subdivisions (1), (2), and (3).

Makes nonsubstantive changes.

(d) Makes no change to this subsection.

(e) Requires that any election required to permit action under this subchapter be held in conformity with Chapter 1251 (Bond Elections), Government Code, or other law applicable to the governmental entity, rather than to the local governmental entity

(f) Authorizes the governing body of any governmental entity issuing bonds, notes, or other obligations or entering into agreements under this section to exercise the authority granted to the governing body of an issuer with regard to issuance of obligations under Chapter 1371, Government Code, except that the prohibition in that chapter on the repayment of an obligation with ad valorem taxes does not apply to an issuer exercising the authority granted by this section.

(g) Authorizes an agreement under this section to contain repayment or reimbursement obligations of an authority.

SECTION 27. Effective date: September 1, 2013.