

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1632
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Transportation
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

State Infrastructure Banks (SIB) were authorized in 1995 as part of the National Highway Designation Act to help accelerate needed mobility improvements through a variety of financial assistance options made to local entities through state transportation departments.

The SIB offers borrowers favorable terms to make roadway improvements and projects may be tolled or non-tolled. As a revolving loan fund, the account balance grows through the monthly interest earned and repaid principal and interest payments. SIB financial assistance can be granted to an entity authorized to construct, maintain or finance an eligible transportation project. Projects must be eligible for funding under existing federal highway rules to comply with SIB requirements. For a majority of the eligible projects this usually requires a project to be on a state's highway system and included in the statewide Transportation Improvement Plan.

Eligible work includes planning and preliminary studies; feasibility, economic and environmental studies; right of way acquisition; surveying; appraisal and testing; utility relocation; engineering and design; construction; inspection and construction engineering.

By enhancing the existing SIB and providing loans and credit enhancement to transportation-building entities, Texas will be able to leverage limited funding sources in a manner that most efficiently improves mobility, enhances safety, and generates economic activity.

C.S.S.B. 1632 amends current law relating to the financing of transportation projects, and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 4 (Section 222.074, Transportation Code) and SECTION 9 (Section 222.078, Transportation Code) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Transportation in SECTION 9 (Section 222.078, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 222.071, Transportation Code, to redefine "federal act," "qualified project," and "secondary funds," to define "credit agreement" and "financial assistance," and to delete the existing definition of "construction" and "federal-aid highway."

SECTION 2. Amends Section 222.072, Transportation Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Authorizes the Texas Transportation Commission (TTC) to deposit in the bank:

- (1) federal funds received by the state under the federal act;
- (2) matching state funds in an amount required by the federal act;

- (3) funds appropriated by the legislature for that purpose;
- (4) a payment or repayment of principal and interest on a loan made under Section 222.074 (Form of Assistance);
- (5) proceeds from the sale of loans under Section 222.078;
- (6)-(7) Makes nonsubstantive changes;
- (8) a gift or grant;
- (9) feeds paid to the bank; and
- (10) investment earnings on the money on deposit in the bank, rather than other state funds deposited into the bank by order of TTC, and other money received by the state that is eligible for deposit in the bank that is authorized to be deposited into the bank and used only for the purposes described in this subchapter.

(c) Requires the Texas Department of Transportation (TxDOT), not later than January 31 of each year, to prepare and file with the governor, the lieutenant governor, and the Legislative Budget Board (LBB), and each standing committee of the legislature with primary responsibility over transportation and state finance a report that provides information on the operation of the bank, including investments and returns on investments of money in the bank during the previous fiscal year; loans made from the bank during the previous fiscal year; other financial assistance provided from the bank during the previous fiscal year; the status of any defaults on repayment of loans or on repayment of debt service paid from the bank; and the status of any uncompleted qualified project for which a guarantee was provided from the bank during the previous fiscal year.

SECTION 3. Amends Section 222.073, Transportation Code, to require TTC, rather than to require TTC notwithstanding Section 222.001 (Use of State Highway Fund), to use money deposited in the bank for certain purposes, including to develop or expand transportation in the state.

SECTION 4. Amends Section 222.074, Transportation Code, by amending Subsection (a) and adding Subsections (d), (e), and (f) as follows:

(a) Authorizes TTC, to further a purpose described by Section 222.073, to use money deposited to the credit of the bank to provide financial assistance to a public entity, rather than a public or private entity, including TxDOT, for a qualified project for certain purposes, including to extend credit by direct loan, including by purchasing a bond or other obligation of a public entity; provide capitalized interest for debt financing by a public entity; pay the cost of issuing a bond or other debt instrument; or for money subject to the federal act, provide methods of leveraging money that have been approved by the United States secretary of transportation and relate to the project for which the assistance is provided.

(d) Authorizes TTC to require a public entity that requests financial assistance from the bank to pay an application fee and other reasonable amounts in connection with the request. Requires TxDOT to deposit revenue collected under this subsection to the credit of the state highway fund to reimburse TxDOT for administrative costs relating to the bank that were originally charged to the state highway fund or in the subaccount in the bank from which the financial assistance is requested.

(e) Requires TxDOT to monitor the use of financial assistance provided to a public entity to ensure that the assistance is used for a purpose authorized by the financial assistance agreement. Authorizes TxDOT to audit a book or record of a public entity for that purpose.

(f) Prohibits financial assistance made available under this subchapter for the delivery of a qualified project by TxDOT from, taking into account any differing forms of the offered assistance, being in a larger amount or on more favorable terms than the financial assistance previously requested and offered for the delivery of that project by a public entity other than TxDOT, if such a request and offer were made. Requires TTC to adopt rules to implement an analysis required to comply with this subsection.

SECTION 5. Amends Section 222.0745, Transportation Code, as follows:

Sec. 222.0745. INCURRENCE OF DEBT BY PUBLIC ENTITY. (a) Authorizes a public entity in this state, including a municipality, county, district, authority, agency, department, board, or commission, that is authorized by law to construct, maintain, finance, or refinance a qualified project, or a transportation corporation or local government corporation created under Chapter 431 (Texas Transportation Corporation Act) and acting on behalf of a public entity, to:

(1) borrow money from the bank, including by direct loan or through another form of financial assistance; and

(2) enter into an agreement that relates to receiving financial assistance from the bank, rather than borrow money from the bank, including by direct loan, based on the credit of the public entity.

(b) Requires that money received by a public entity under this subchapter be segregated from other funds under the control of the public entity and is authorized to only be used for purposes authorized by the financial assistance agreement, rather than requiring that money borrowed under this section be segregated from other funds under the control of the public entity and is authorized to only be used for purposes related to a qualified project.

(c) Authorizes a public entity, to provide for the payment or repayment of a loan or another form of financial assistance provided under this subchapter, to pledge revenue or income from any available source; pledge, impose, or collect a tax that the entity is otherwise authorized to impose; or pledge any combination of revenue, income, or taxes.

(d) Provides that this section is wholly sufficient authority for a public entity to borrow or otherwise obtain a form of financial assistance from the bank as authorized by this subchapter and pledge revenue, income, or taxes or any combination of revenue, income, or taxes for the payment or repayment of a loan or another form of financial assistance from the bank.

(e) Authorizes the public entity, if under any constitutional limitation a public entity must obtain voter approval to impose a tax to secure the payment or repayment of any financial assistance provided under this subchapter, to call an election for that purpose.

(f) Creates this subsection from existing text and makes no further change.

SECTION 6. Amends Sections 222.075(b), (f), (i), and (j), Transportation Code, as follows:

(b) Authorizes TTC, except as provided by Subsection (c) (relating to certain laws that apply to bonds issued by TTC), to issue certain bonds and enter into a credit agreement related to the bonds.

(f) Authorizes TTC to require an entity to provide for sufficient money to pay or repay financial assistance provided from the bank, including any acquired obligations, rather than authorizing TTC to require participants to make charges, levy taxes, or otherwise provide for sufficient money to pay acquired obligations.

(i) Requires TTC, before TTC issues revenue bonds or enters into a credit agreement under this section, to submit a record of the proceedings of TTC that authorize the issuance, execution, and delivery of the bonds or credit agreement and any contract that provides revenue or security to pay the bonds or credit agreement to the attorney general for review, rather than requiring that all proceedings relating to the issuance of revenue bonds issued under this section be submitted to the attorney general for examination. Requires the attorney general, if the attorney general finds that the proceedings authorizing the bonds or credit agreement and any bonds authorized by the proceedings conform to the requirements prescribed by the Texas Constitution and this subchapter, to approve the proceedings and bonds, and to deliver to the comptroller for registration a copy of the attorney general's legal opinion relating to the approval and a record of the proceedings, rather than requiring the attorney general, on determining that the revenue bonds have been authorized in accordance with law, to approve the revenue bonds, and the revenue bonds are required to be registered by the comptroller. Provides that, after the approval and registration, the bonds, credit agreement, or contract providing revenue or security included in or executed and delivered according to the authorization proceedings are incontestable in any court or other forum for any reason and are valid, binding, and enforceable in accordance with their terms for all purposes, rather than providing that, after the approval and registration, the revenue bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes.

(j) Authorizes TTC to use proceeds from the sale of revenue bonds to finance other funds or accounts relating to the bonds or credit agreement, including a debt service reserve fund, and to pay the cost of issuing the bonds. Requires that any remaining proceeds received from the sale of the bonds, rather than requiring that the proceeds received from the sale of revenue bonds, be deposited in the bank and invested and used in the manner provided for other funds deposited under this subchapter.

SECTION 7. Amends Section 222.076, Transportation Code, as follows:

Sec. 222.076. SEPARATE SUBACCOUNTS. (a) Requires the bank to consist of at least two separate subaccounts, a highway subaccount and a transit subaccount. Authorizes TTC to create additional subaccounts that are capitalized with federal funds or with a combination of federal funds and state funds.

(b) Requires TTC, rather than authorizes TTC, in addition to the subaccounts under Subsection (a), to create one subaccount that is, and is authorized to create more subaccounts that are capitalized with state funds only. Provides that subaccounts capitalized with state funds only are not subject to the federal act.

SECTION 8. Amends Section 222.077, Transportation Code, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

(a) Requires TTC, if a form of financial assistance is required to be paid or repaid, to determine the terms of the payment or repayment, including the interest rate to be charged, and enter into a financial assistance agreement with the public entity receiving the assistance specifying the terms of the payment or repayment, rather than requiring that any funds disbursed through the state infrastructure bank be repaid on terms determined by TTC. Requires that the terms comply with the federal act except for terms applicable to funds deposited in a subaccount described by Section 222.076(b).

(a-1) Authorizes TTC, for a tolled highway improvement project, to require that revenue from the project be shared between an entity and TxDOT.

(b) Provides that notwithstanding any other law to the contrary:

(1) the payment or repayment or repayment of a loan or other assistance provided with money deposited to the credit of an account, rather than a subaccount, in the

bank, including all amounts received as a share of revenue from a tolled highway improvement project, is required to be deposited in that subaccount; and

(2) investment income generated by money deposited to the credit of a subaccount in the bank is required to be credited to that subaccount, subject to any requirement imposed by a proceeding that authorizes bonds to be issued to provide money for deposit in the bank that is necessary to protect the tax-exempt status of interest payable on the bonds in accordance with applicable federal law; available for use in providing financial assistance under this subchapter; and invested as authorized by Chapter 2256 (Public Funds Investment), Government Code, but money in the bank subject to the federal act is required to be invested in United States Treasury securities, deposits in financial institutions, or other financing instruments approved by the United States secretary of transportation to earn interest and enhance the financing of projects assisted by the bank, and proceeds from bonds deposited in the bank under Section 222.072 are subject to any limitations contained in a document that authorizes the issuance of the bonds.

SECTION 9. Amends Subchapter D, Chapter 222, Transportation Code, by adding Section 222.078, as follows:

Sec. 222.078. SALE OF LOANS. (a) Defines, in this section, "loan" to mean any financial assistance provided under this subchapter that is required to be repaid, including financial assistance repaid through revenue sharing.

(b) Authorizes TTC to direct TxDOT to sell, in accordance with this section, any loan made from money in the bank. Requires TxDOT by rule to establish a competitive bidding process for a sale conducted under this section.

(c) Requires TxDOT, for a loan made to a public entity, to provide to the public entity written notice of TxDOT's intent to sell the loan. Requires that the notice be provided not later than the 90th day preceding the date established under rules of TTC on which the process required for the sale under Subsection (b) begins.

(d) Prohibits TxDOT from selling a loan made to a public entity if prepayment of the principal of and accrued interest due on the loan is tendered under Subsection (f) or the public entity prohibits the sale under Subsection (g).

(e) Prohibits TxDOT from selling a loan that was made to a public entity for a tolled highway improvement project before the later of:

(1) the date of the completion of the project's construction;

(2) the date the loan is completely funded; or

(3) the earlier of the date the project's forecasted stabilization and ramp-up is achieved based on an investment grade traffic and revenue study or the sixth anniversary of the date the project fully opened for tolled operations.

(f) Requires TxDOT to accept the prepayment of principal of and accrued interest due on a loan in accordance with the financial assistance agreement or, in the absence of prescribed terms in the financial assistance agreement regarding prepayment, on terms that TTC determines to be reasonable.

(g) Authorizes the public entity, if the terms of the financial assistance agreement prohibit a public entity from prepaying its loan at the time of a proposed sale of the loan under this section, to prohibit the sale of the loan, in which event TxDOT and the public entity are required to renegotiate the prepayment terms in the financial assistance agreement to allow for prepayment of the loan at the time of the proposed sale. Provides that the prohibition under this subsection terminates on the date an agreement on the renegotiated prepayment terms is executed.

(h) Authorizes TTC, for any loan made to a public entity to be sold under this section, to submit to the attorney general for review and approval the related financial assistance agreement together with the record of proceedings of the public entity relating to the agreement. Provides that, for the purposes of Chapter 1202 (Examination and Registration of Public Securities), Government Code, the financial assistance agreement is considered to be a public security. Requires the attorney general, if the attorney general finds that the financial assistance agreement has been authorized to be issued in conformity with law, to approve the agreement and deliver to the comptroller a copy of the attorney general's legal opinion stating that approval and the record of proceedings. Provides that, following approval by the attorney general, the financial assistance agreement is incontestable in a court or other forum and is valid, binding, and enforceable according to its terms as provided by Chapter 1202, Government Code.

(i) Authorizes TxDOT, 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 loan, including enforcing the payment of debt service by the borrowing entity.

(j) Requires TxDOT to deposit the proceeds of the sale of a loan under this section in the bank.

(k) Authorizes TTC and TxDOT to exercise any powers necessary to carry out the authority granted by this section, including the authority to contract with any person to accomplish the purposes of this section.

(l) Provides that the state, TxDOT, and TTC are not liable for the repayment of any loan sold under this section and neither is authorized to repay a loan sold under this section.

SECTION 10. Effective date: upon passage or September 1, 2013.