

**SUBJECT:** Using Texas Mobility Fund provisions to authorize highway bonds

**COMMITTEE:** Transportation — favorable, without amendment

**VOTE:** 7 ayes — Krusee, Phillips, Hamric, Edwards, Garza, Harper-Brown, Mercer  
0 nays  
2 absent — Hill, Laney

**WITNESSES:** None

**BACKGROUND:** Texas Constitution, Art. 3, sec. 49 prohibits state debt, generally requiring that voters approve bonded indebtedness before the state may incur it. Sec. 49-j limits annual state debt payable from state general revenue to 5 percent of the average annual amount of nondedicated general revenue for the three preceding fiscal years.

Art. 3, sec. 49-k, approved by Texas voters in November 2001, contains provisions governing the Texas Mobility Fund (TMF), administered by the Texas Transportation Commission (TTC). The Legislature may dedicate previously nondedicated revenue sources or amounts to the TMF. In addition to those revenue dedications, sec. 49-k(g) allows the Legislature to authorize the TTC to guarantee the payment of any obligations and credit agreements issued and executed by the commission by pledging the state's full faith and credit to that payment if dedicated revenue is insufficient for that purpose. In that instance, "while any of the ... obligations ... are outstanding and unpaid, and for any fiscal year during which the dedicated revenue, taxes, and money are insufficient ..., there is appropriated, ... out of the first money coming into the state treasury in each fiscal year that is not otherwise appropriated by this constitution, an amount ... sufficient to pay the principal ... and the interest on the obligations." TMF obligations do not count against the 5 percent debt limit unless sec. 49-k(g) is implemented. In that case, they would be included in the debt-limit calculation to the extent that the comptroller projects that general state funds would be required to pay TMF obligations.

In 2001, the 77th Legislature created the TMF by enacting SB 4 by Shapiro (Transportation Code, ch. 201, subchapter M). The TMF is a revolving bond fund for transportation projects. The TTC must authorize bonds pledged against the fund. The comptroller must certify that the fund contains 110 percent of the principal and interest required to be paid on any obligations against the fund. Payments are secured by a pledge of and a lien against the fund balance.

Sec. 201.944(a) states, in part, that the TTC may guarantee fund payments by pledging the state's full faith and credit "... in the event the revenue and money ... dedicated to the fund ... are insufficient for that purpose." Sec. 201.944(b) prohibits the TTC from issuing aggregate obligations exceeding the maximum obligation amount which, according to sec. 201.941(5), refers to the maximum amount of principal the TTC may issue "after receipt of the applicable comptroller's certification."

No bonds have been issued to date. The Legislature has yet to designate a revenue source for the TMF or deposit any money into it.

**DIGEST:**

HB 1806 would invoke authority of Texas Constitution, Art. 3, sec. 49-k(g) to authorize the TTC to issue up to \$1 billion in general obligation bonds, enter into related credit agreements, and guarantee payment of both by pledging the state's full faith and credit, without securing payments by a pledge of or lien against TMF money and without the comptroller's projecting required payments or certifying revenue in the fund.

The TTC could issue obligations and enter into credit agreements regardless of whether there was any or sufficient money in the fund. All other provisions of subchapter M would remain intact.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

In 2001, Texas began shifting away from its long-standing "pay as you go" policy for transportation projects, particularly highway construction. With voter approval, the Legislature created the first state revolving bond fund to supplement federal and state funding sources. The goal was to make more

money available sooner to speed up project completion, thereby helping alleviate traffic congestion and improving mobility. Unfortunately, an economic downturn and the ensuing fiscal crisis have precluded dedicating a revenue source for the fund or depositing any money into it.

Nevertheless, Texans clearly have indicated their willingness to assume some additional debt to address what is becoming a statewide transportation crisis. By using some of the constitutional provisions voters approved in anticipation of a full-fledged fund, the state could begin the process of weaning itself away from dependence on cash on hand to build assets that will benefit virtually all Texans for generations to come.

HB 1806 would not do anything the Legislature and voters did not intend for the TMF to do. The constitutional restrictions it would remove for general obligation bond issuance are not necessary; other safeguards are in place that secure state debt. The restrictions still would apply to bonds issued against the fund once a revenue source was designated or deposits were made.

At 1.42 percent (2.2 percent, including unissued obligations) as of the end of fiscal 2002, Texas is well below its 5 percent debt limit. The state would be foolish not to take advantage of historically low interest rates, which can be locked in for the life of the bonds. Although the amount of bonds issued still would be up to the TTCs' discretion, \$1 billion worth of bonds would represent only about one-tenth of the biennial budget of the Texas Department of Transportation. Texas motorists should not be penalized by interpretations of constitutional language that was not written to prevent highway bonding but to clarify how the TMF would function.

**OPPONENTS  
SAY:**

HB 1806 might be unconstitutional and have no effect. At the least, it is a misinterpretation of the Constitution and a misuse, however well intentioned, of the TMF statute.

For whatever reasons, the Legislature has set aside no revenue for the fund. Therefore, as the Constitution requires, there is no insufficiency as such because there is no revenue whatsoever, sufficient or not. So the provision allowing the Legislature to pledge the state's full faith and credit in case of insufficiency cannot be invoked. That stopgap provision was meant as a safeguard for TMF bonds in case something unforeseen happened to its

revenue stream. The idea was to protect the state's fiscal integrity by assuring investors that it would fulfill its obligations regardless of how the new fund performed. The intent was not to create another means of issuing bonds if the Legislature did not follow through on dedicating or appropriating revenue to the TMF.

Transportation spending policies should not be based on legal loopholes. If the Legislature wants to issue general obligation bonds to build highways and other projects, it should ask voters to amend the Constitution, as it does each time it seeks to issue such debt. Doing otherwise would abrogate the bonding policy established by the Legislature, ratified by the voters, and embodied in the TMF.

**OTHER  
OPPONENTS  
SAY:**

HB 1806 apparently would conflict with portions of the TMF statute, mainly Transportation Code, sec. 201.944(a) and (b) and sec. 201.941(5). The bill should modify or repeal these sections accordingly.

**NOTES:**

The bill's fiscal note estimates that issuance of \$1 billion in general obligation bonds would cost the state \$150 million in general revenue for debt service during fiscal 2004-05, based on a 4.25 percent interest rate and a 20-year maturity.