

SUBJECT: Creating the Texas Local Participation Transportation Fund and Program

COMMITTEE: Transportation — favorable, without amendment

VOTE: 10 ayes — Pickett, Phillips, Callegari, Y. Davis, Guillen, Harper-Brown, McClendon, Merritt, T. Smith, W. Smith

0 nays

1 absent — Dunnam

SENATE VOTE: On final passage, May 5 — 28–1 (Ogden)

WITNESSES: (*On House companion, HB 3917:*)
For — Donald Lee, Texas Conference of Urban Counties (*Registered, but did not testify*: John Carpenter, Dallas Regional Mobility Coalition; Brian Cassidy, Pate Transportation Partners; Shanna Igo, Texas Municipal League; Lauren Kennedy, Texans for Safe Reliable Transportation; Ryan Paylor, Texas Conservative Coalition; Vic Suhm, Tarrant County Regional Transportation Coalition, North Texas Commission)

Against — None

On — (*Registered, but did not testify*: Amadeo Saenz, Phil Russell, Texas Department of Transportation)

BACKGROUND: In 2003, the 78th Legislature enacted HB 3588 by Krusee, which established the pass-through financing system. Pass-through financing allows public or private entities to construct state highway projects and receive payment from the Texas Department of Transportation (TxDOT) after completion of the project. Pass-through tolls are negotiated payments made incrementally to the entities that built a road and are based on traffic volume on the new road. The payments are made as if tolls were being collected from motorists by the operators upon project completion.

The 80th Legislature in 2007 enacted SB 1266 by Brimer, which established transportation reinvestment zones for counties and

municipalities that enter into a pass-through tolling agreement with TxDOT.

DIGEST:

SB 1383 would add Government Code, ch. 403, subch. O, creating the Texas Local Participation Transportation Fund and Program to be administered by the comptroller for the benefit of local entities participating in pass-through tolling agreements with TxDOT.

Local participation fund. SB 1383 would establish the Texas Local Participation Transportation Fund as a dedicated account in the general revenue fund. The fund would be composed of money transferred to the fund by the Legislature, gifts and grants dedicated to the fund, interest from investments, and money repaid by a local project sponsor under an authorized loan.

Revenue from the State Highway Fund (Fund 6) could not be transferred to the local participation fund. Money in the participation fund could be used only for the local participation program and could not be appropriated for other purposes. The comptroller could adopt rules governing the comptroller's responsibilities regarding the fund. The Legislature could not make the balance of the fund available for general-purpose spending, and accrued interest would remain in the account.

The comptroller would prepare an annual report projecting the funds available based on estimates of future deposits to the fund and loan repayments by local entities and would establish guidelines for disbursing the funds that accounted for project development and completion schedules.

Local participation program. The bill would establish the Texas Local Participation Transportation Program to encourage local entities to develop projects with financial assistance from the local participation fund. Eligible local entities would include municipalities, counties, regional mobility authorities, or other local tolling authorities. The comptroller would develop a process for certifying the eligibility of projects, which would be limited to pass-through tolling agreements that promoted economic development and diversification in an area, submitted by local entities for financial assistance. The process would require a local entity to submit a request for certification from the comptroller that included specific information.

Certification for participation. The comptroller would certify a project's eligibility and would issue a certification to the local entity to initiate negotiations with TxDOT regarding the pass-through toll agreement. The certification would identify the total funds available for the project in proportion to total available revenue in the fund. After certifying a project, the comptroller could disburse funds to a local project sponsor by means of a loan or grant in accord with guidelines established in the bill.

Funds for a local project would be subject to TxDOT's certification that the project could be integrated with the state highway system and was consistent with the department's unified transportation program and any applicable transportation plan for the area in which the project was located.

Disbursement of funds. The comptroller could not make a disbursement from the fund until there was a signed agreement for the project with TxDOT. The agreement could not require TxDOT to contribute funding toward the cost of the project. The comptroller could make disbursements from the fund to reimburse the portion of total project costs contributed from local sources. Disbursements would be made in the same manner as a pass-through toll payment.

A negotiated agreement for a project receiving funds would have to establish roles and responsibilities of involved parties for all significant work to be performed. The agreement would require a local entity to meet state design criteria, construction specifications, and administration procedures unless granted an exception by TxDOT.

In order to determine the amount contributed to the total project cost, a local entity could include funds on hand, property taxes, local option taxes or fees dedicate to the project, economic development grants, toll revenues, and other specific grants and gifts. An eligible project could not receive more than half of its total cost from the fund.

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, 2009.

SUPPORTERS
SAY:

SB 1383 would provide an extra incentive for funding local transportation projects that are developed by means of a pass-through tolling agreement with TxDOT, which does not necessarily mean the project would include a

toll for users. The bill would create a dedicated account in the state's general revenue fund to provide supplemental funds for local entities that have demonstrated the commitment to fund more than half of the project's cost upfront. The bill would be confined to those projects that would have economic development benefits locally. Creating a dedicated account for local highway developments associated with pass-through tolling agreements would be an important step in securing additional funding for local projects in the future.

A pass-through tolling agreement allows a local entity to pay the development costs of a road project and then seek reimbursement from TxDOT based on the estimated number of vehicles that travel on the road. Under current law, transportation reinvestment zones are confined to transportation projects funded through a pass-through tolling agreement with TxDOT. Transportation reinvestment zones allow a local entity to dedicate contractually additional tax revenue generated by an increase in property values around a transportation project to pay for the costs associated with developing the project. SB 1383 would provide a framework for state support of pass-through tolling agreements that have proved popular among local entities attempting to reduce congestion in their jurisdictions.

The bill would take important steps toward securing another transportation financing option for local governments in an era of increasing congestion and limited resources. While raising the motor fuels tax may be another reasonable approach to securing additional funding for highways, this has proved a political impossibility in recent sessions. In a context of fixed state and federal funds for transportation projects, it is critical to maximize the options available for developing transportation projects. Facilitating local development of transportation infrastructure distributes the burden on the state and increases the range of resources available for road projects statewide.

**OPPONENTS
SAY:**

Adding state incentives to enter into pass-through tolling agreements and associated transportation reinvestment zones would result in an expansion of the troubling practice of using property taxes to fund transportation improvements. This is a questionable use of property taxes and could create an incentive to increase appraisals of property in the zone, since debt obligations necessary for the projects are tied to taxes on included property. Further, the increment dedicated to paying the costs of

transportation projects is diverted from other pressing needs of local governments.

**OTHER
OPPONENTS
SAY:**

SB 1383 would continue the state's piecemeal approach to providing transportation funding without addressing the core issue facing the state — a motor fuels tax that has been declining in relative value since 1991. The dedicated but unfunded account in the bill would not address statewide highway funding shortfalls, which represent the most significant obstacle to adequate highway construction and maintenance. The state needs to address the core issue facing highway funding and increase or index to inflation the motor fuels tax, preferably both. Creating a transportation fund for local projects without a dedicated source of revenue would represent another diversion away from this necessity.

NOTES:

The companion bill, HB 3917 by W. Smith, was considered in a public hearing by the Transportation Committee on April 23 and left pending.

According to the fiscal note, the bill could have significant costs to the state, but that the cost would depend on how many eligible road projects were submitted by local entities.