

SUBJECT: Redirecting driving-related revenue and revising transportation provisions

COMMITTEE: Transportation — favorable, with amendments

VOTE: 6 ayes — Krusee, Phillips, Hamric, Garza, Harper-Brown, Mercer

1 nay — Laney

2 absent — Edwards, Hill

SENATE VOTE: On final passage, July 16 — 28-1 (Jackson)

WITNESSES: No public hearing

BACKGROUND: During its regular session, the 78th Legislature enacted HB 3588 by Krusee, et al. The omnibus legislation integrates existing transportation policies with new initiatives and financing mechanisms. These include the proposed Trans-Texas Corridor network, enhanced regional mobility authorities (RMAs), limited highway revenue bonding, broader toll road capability, expanded rail project authority, and expedited right-of-way acquisition (ROWA). The bill also reroutes part of the revenue stream for the Texas Department of Transportation (TxDOT).

Various driver's license and vehicle-inspection fees and penalties collected by the Department of Public Safety (DPS) will be redirected from general revenue into the heretofore empty Texas Mobility Fund (TMF), a revolving state bond fund for transportation projects administered by the Texas Transportation Commission (TTC). During fiscal 2004-05, however, the first \$90.5 million in fee collections will be deposited into general revenue. HB 3588 replaces the fee revenue with two new sources: point-based surcharges levied on habitually bad drivers and \$30 in court costs added to fines paid for most traffic-law violations. Half the surcharge revenue (less 1 percent for DPS' costs to administer the Driver Responsibility Program) and one-third of the court cost revenue (less 5 percent plus interest for local collection costs) are dedicated to trauma care facilities and emergency medical services (EMS). Half of the surcharges and two-thirds of the court costs are to be deposited into general revenue, up to \$250 million per fiscal year, aggregated. Above

that amount, any surcharge overage is to be divided equally between trauma/EMS and the TMF; any court cost overage goes to the TMF.

Primarily for budget certification purposes, HB 3588 reallocates the three revenue sources for fiscal 2004-05. Fee revenue is to remain in general revenue in fiscal 2004 and not be deposited into the TMF until fiscal 2005, when fees are estimated at \$231.7 million. Surcharges and court costs not deposited into the new trauma care/EMS account will go into a dedicated account for TMF debt service. Those monies cannot be appropriated in fiscal 2004 but may be transferred into the TMF in fiscal 2005, if needed.

HB 3588 also limits annual rail project spending outside the Trans-Texas Corridor (with some exceptions) to \$12.5 million; geographically restricts single-bond financing of and comprehensive development (design-build) agreements (CDAs) for multimodal systems; expands declaration-of-taking ROWA authority; and revises the Texas Turnpike Authority Division (TTAD) statute, Transportation Code, ch. 361. The 78th Legislature also enacted HB 3184 by Hill, which rewrites ch. 361 somewhat differently.

On May 29, 2003, the comptroller announced that the flexible grant portion of the \$1.3 billion in federal fiscal-relief funds appropriated to Texas by a 2003 federal law would make \$709.1 million available for general revenue expenditures and budget certification. HB 1, Art. IX, sec. 11.28 appropriates federal fiscal relief funds to the comptroller for transfer to state agencies; describes fund transfer procedures to be followed by the comptroller, governor, and Legislative Budget Board (LBB); and lists legislative spending priorities for the funds.

DIGEST:

SB 21, as amended, would revise provisions of HB 3588 by modifying the new revenue structure and fiscal 2004-05 allocations; appropriating additional general revenue for the fiscal 2004-05 budget cycle; excepting Governor's Office and non-highway federal funds from the rail project spending limit; authorizing unitary bonding for multidistrict system projects; and expanding the use of "quick-take" ROWA. The bill also would repeal portions of HB 3184 dealing with Transportation Code, ch. 361 and would revise revenue-bond repayment and CDA policies regarding turnpikes.

State traffic fine. A mandatory \$30 state traffic fine would replace the additional court cost in Transportation Code, sec. 542.4031. As of September 1, 2003, the state fine would be levied along with any fines of \$1 to \$200 imposed for most misdemeanor traffic convictions. The 2:1 revenue allocation ratio for general revenue and trauma care/EMS would be retained, as would the 5 percent local cost-recovery deduction, the 2007 expiration, and the annual \$250 million aggregate general revenue limit, including surcharges. The bill would specify, however, that all overage from either source would be allocated to TMF. The parallel provision pertaining to surcharge revenue would be harmonized on September 1, 2003, to denote state traffic fines, rather than court costs, and to allocate all overage, regardless of source, to the TMF. The bill would remove the allocation of half of any additional surcharge revenue to trauma care/EMS.

SB 21 would make several conforming changes to the Code of Criminal Procedure effective September 1, 2003. Judges would have to inform defendants about the state fine before accepting guilty or no-contest pleas. Fines would have to be imposed upon completion of defensive driving courses taken to satisfy citations for traffic violations. The bill would reenact and/or amend portions of the code amended or added by SB 631 by Harris and SB 1904 by Barrientos. Judges would have to impose the state fine on defendants who received deferred adjudication for misdemeanor traffic offenses, even if the defendants were not fined otherwise and complied with all court requirements.

Revenue redirection and appropriation. The TMF debt-service account would not be created within general revenue, and the provisions for transferring funds to TMF from that account would be eliminated. Surcharge and state traffic fine revenue not allocated to trauma care/EMS would be deposited into the TMF in both fiscal 2004 and 2005, then into general revenue beginning in fiscal 2006. Driver's license and vehicle-inspection fee revenue would remain in general revenue for both fiscal 2004 and 2005.

The bill would appropriate an estimated \$231.7 million in fee revenue for fiscal 2005 to replace an equal amount of federal fiscal-relief funds used to certify general revenue appropriations in HB 1 by Heflin, the general appropriations act for fiscal 2004-05. The federal funds would be appropriated to the comptroller for fiscal 2004-05 to be transferred to state

agencies as set forth in HB 1, which directs the governor and the LBB to develop a plan to transfer federal funds by fiscal year, agency, and strategy, and lists legislative spending priorities, including restoration of Medicaid reimbursement rates (partial) and community care program hours. SB 21 would delete a reference in HB 1 to comptroller implementation of the prorated contingency appropriation reduction mechanism and would add a reference to the governor's and LBB's state budget execution authority under Government Code, ch. 317.

The allocation to general revenue of the first \$90.5 million in fee revenue collected in fiscal 2004-05 would be repealed September 1, 2003.

Rail spending cap exception. The \$12.5 million annual limit on TxDOT rail spending would not apply to federal agency reimbursements for rail facilities, federal appropriations for specific rail projects, or grants from the governor's Texas Enterprise Fund.

System financing. TTC could finance and build single-project systems consisting of multiple facilities, combinations of different types of facilities, or additional facilities as needed for economy and efficiency. Systems could extend continuously through the territories of two or more metropolitan planning organizations (MPOs) or more than two adjacent TxDOT engineering districts.

Declaration-of-takings expansion. The Harris County Toll Road Authority would have essentially the same "quick-take" ROWA authority as TTAD, as do TxDOT, RMAs, and the North Texas Tollway Authority.

TTAD revisions. SB 21 would reenact and/or amend 20 subsections of Transportation Code, ch. 361, governing TTAD that were affected by both HB 3588 and HB 3184. Subject matter includes bonds, tolled segments, use of surplus revenue, taking and severing private property, private participation in turnpike projects, and joint agreements with private entities and other governmental agencies.

CDAs no longer would be defined in terms of private entities for turnpike projects. CDAs could be used for Trans-Texas Corridor purposes, including financing, development, design, construction, or operation of a facility or

combination of facilities. TxDOT's federal-fiscal-year spending on CDAs from the State Highway Fund and the TMF could not exceed 40 percent of the state's fiscal year federal highway funds allocation. Also, TTAD could secure and pay principal, interest, or redemption premiums on turnpike project revenue bonds issued by TTC from the bond proceeds or debt-service reserve funds securing the bonds.

The bill would take effect immediately or on September 1, 2003, as noted, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the special session.

**SUPPORTERS
SAY:**

SB 21 would help stabilize the fiscal 2004-05 state budget and would free up significant federal relief funds; address a dispute over collection projections for the point-based traffic fine surcharges; allay concerns about a potential constitutional question regarding the additional \$30 court costs; and clarify allocation of surcharge revenue in excess of the annual \$250 million aggregate general revenue limit.

Although the fiscal 2004-05 budget has been certified, state government remains in a precarious fiscal position. As crucial as increased transportation spending is to the state, it would be prudent to retain in general revenue the fees charged for driver's licenses and vehicle inspections, historically the most reliable of the three revenue sources allocated by HB 3588. By moving fee revenue appropriated to the TMF for fiscal 2005 back into general revenue, SB 21 would make an equivalent amount – almost \$232 million in federal fiscal-relief funds counting toward budget certification – available for appropriation under HB 1, Art. IX, sec. 11.28 to financially strapped state agencies, including those that provide vital health and human services to the neediest Texans. Deleting the reference in sec. 11.28 to the comptroller's "across-the-board" appropriations reduction (the "anti-bounce mechanism") would remove a contentious issue, while invoking the governor's and LBB's statutory budget execution authority would ensure their oversight of state agency relief.

Reallocating surcharge and state traffic fine revenue to the TMF in fiscal 2004-05 essentially would be a dollar-for-dollar trade, based on LBB estimates, with the fee revenue that would be going into general revenue

instead of the TMF. HB 3588 allows up to \$3 billion in highway revenue bonding that should help accelerate project delivery while the TMF is becoming fully capitalized. Bond investors would have the assurance that fee revenue will go into the TMF starting in fiscal 2006.

The comptroller has expressed reservations about the constitutionality of the additional court cost, despite the attorney general's assurances (and a concurring Legislative Council opinion) that these revenues need not be spent on the judiciary. Nevertheless, creating a separate state traffic fine would be preferable to a legal controversy or to interfering with the existing fine structure on which cities, counties, and many state programs rely. A mandatory state fine tacked onto most traffic violations would ensure a more stable revenue stream. This becomes more important given the comptroller's ambivalence about the amount of surcharge revenue likely to be generated by the new point-based Driver Responsibility Program.

A state fine would not be as intrusive on courts' discretion as would adding a state component to existing fines or increasing the fines and allocating the increase to the state. A state fine would be less likely to cause direct fiscal hardship to cities and counties, which still would retain 5 percent of collections, because judges could impose higher fine amounts overall, based on ability to pay. Raising only fine minimums could mean that local governments would keep less fine revenue and reduce collection rates. The question of reduced local traffic fine revenue becomes a tradeoff vis-a-vis more transportation money generated by the fine, much of which would be spent locally, in and near cities (at least \$250 million could be available for TMF bonding in fiscal 2004-05). Local governments also would benefit from the infusion of new state money (estimated at \$101 million in fiscal 2004 and \$165 million in fiscal 2005) for trauma care facilities and EMS, which are paid for largely by counties.

Portions of the Code of Criminal Procedure dealing with convictions for traffic offenses and other misdemeanors punishable only by fines or court costs must be changed to incorporate the new state traffic fine. This would ensure higher collection rates while protecting defendants' rights under the rubric of truth in sentencing.

Rewording the allocation of excess surcharge revenue deposited into general revenue would clarify that all, not half, of the surcharge revenue over and above \$250 million a year would go into the TMF, along with excess state traffic fine revenue. It no longer is necessary to designate the first \$90.5 million in driver's license and vehicle-inspection fee revenue for general revenue for fiscal 2004-05, because all of that revenue would be deposited into general revenue under SB 21.

Relaxing TxDOT's rail spending limit would allow the state to take full advantage of nonhighway federal funds, congressional "earmarks" for rail projects, or the possible redirection of federal rail expenditures. Doing so would not jeopardize the State Highway Fund or the state's federal highway fund allocation.

TxDOT needs system financing primarily to enhance the cost-effectiveness of Trans-Texas Corridor projects. Issuing bonds singly for an entire multicounty or trans-state project, rather than within the geographic limits of MPOs or TxDOT districts, would prevent motorists and taxpayers in major metropolitan areas from having to pay a disproportionate share of tolls and other costs associated with multimodal projects extending for long distances.

HB 3588 extends declaration-of-taking ROWA to TxDOT (for the Trans-Texas Corridor) and RMAs. This seldom-used "quick-take" procedure, originally reserved for TTAD, expedites eminent domain proceedings where price is the outstanding issue. Quick-take capability for turnpike projects is important to the bond markets that invest in toll roads. Questions have arisen as to whether the Harris County Toll Road Authority has quick-take authority. SB 21 would remove any ambiguity by granting it expressly.

TTAD needs to be able to make interest and other payments to bondholders and contractors while turnpike projects are under way. Until they are completed, the projects cannot generate any toll revenue. Allowing project payments from bond proceeds as well would give TTAD fiscal flexibility and would help ensure completion without unnecessary delays.

The 78th Legislature enacted two different versions of revisions to the statute governing TTAD. SB 21 would reenact portions of HB 3588 in conflict with HB 3184 and would repeal four portions of the statute authorizing various

TTAD financial arrangements that now are obsolete because of toll equity and CDA statutes.

**OPPONENTS
SAY:**

The comptroller already has certified the fiscal 2004-05 budget on the basis of gubernatorial vetoes and federal fiscal-relief funds. Therefore, the temporary reshuffling of revenue generated by HB 3588 is unnecessary. The most stable source, driver's license and vehicle-inspection fees, should be put into the TMF immediately to expedite bonding for much-needed transportation projects. Relying on new and relatively uncertain revenue sources could cause the state's as-yet untapped bond fund to remain unused.

The mandatory state traffic fine could cause a reduction in retained municipal and county traffic fine revenue. The state fine effectively would become a "first draw," even though indirectly. Once the new state fine took effect, judges might be reluctant to impose the same fine amounts as they do now, under the law of diminishing returns. The state fine inevitably would increase administrative and operational costs, and it might also increase the number of not-guilty pleas, failures to appear, indigency claims, payment alternatives, and clerical errors.

Requiring judges to inform traffic case defendants pleading guilty or no contest about the state traffic fine could prove problematic. Adding another notification element not only would increase court workloads, it would create a new ground for dismissal if judges did not comply. Fewer convictions could have the opposite and unintended effect of less, not more, deterrence of traffic violations.

Texas needs to spend more money on highways, not railroads, regardless of the source. Until TxDOT demonstrates an ability to use its newly expanded rail project authority to alleviate traffic congestion and promote economic growth, its rail budget should not be increased. The governor's Texas Enterprise Fund should be used for purposes other than expensive transportation links benefitting large corporations.

**OTHER
OPPONENTS
SAY:**

The Legislature should raise the minimum and maximum misdemeanor traffic fines by \$30 each to subsidize trauma care/EMS and general revenue, rather than create a "cash cow" state fine that would compete with fines in which financially strapped local governments share.

NOTES:

The House committee amendments to the Senate engrossed version would:

- allow TxDOT to use system financing for a project or a facility that would extend continuously through the territory of two or more MPOs or more than two adjacent TxDOT districts, and
- allow TxDOT to exceed the \$12.5 million cap on rail spending if the funds came from federal sources earmarked for rail facilities or from the governor's Texas Enterprise Fund.

The system financing amendment also is contained in SB 53 by Ogden, which passed the Senate by 30-0 on July 18 and has been referred to the Transportation Committee. The rail spending cap amendment also is contained in SB 52 by Ogden, which the Senate Infrastructure Development and Security Committee heard on July 18.