

SUBJECT: Authorizing the dedication of Rainy Day Fund revenue to transportation

COMMITTEE: Transportation Funding, Select — favorable, without amendment

VOTE: 6 ayes — Phillips, Burkett, Geren, Harper-Brown, Hunter, Muñoz
1 nay — S. Thompson

WITNESSES: For — (*Registered, but did not testify*: Brandon Aghamalian, City of Fort Worth; Jim Allison, County Judges and Commissioners Association of Texas; Victor Boyer, San Antonio Mobility Coalition, Inc. and Transportation Advocates of Texas, Inc; Gary Bushell, Alliance for I-69 Texas and U S 190/Gulf Coast Strategic Highway Coalition; Snapper Carr, City of Corpus Christi; Les Findeisen, Texas Motor Transportation Association; Donald Lee, Texas Conference of Urban Counties; Seth Mitchell, Bexar County Commissioners Court; Jennifer Newton, AGC of Texas; Lawrence Olsen, Texas Good Roads Association; Craig Pardue, Dallas County; Rider Scott, Dallas Regional Mobility Coalition; Chris Shields, Greater San Antonio Chamber of Commerce; Tara Snowden, Zachry Corporation; Jill Schulz Boyer)

Against — (*Registered, but did not testify*: Eric Hartman, Texas AFT; Dick Lavine, Center for Public Policy Priorities and Texas Forward)

On — Phil Wilson, Texas Department of Transportation; (*Registered, but did not testify*: Phillip Ashley, Paul Ballard, Rob Coleman, and John Heleman, Comptroller of Public Accounts; John Barton, Texas Department of Transportation; Ursula Parks, Legislative Budget Board)

BACKGROUND: **Rainy Day Fund.** Art. 3, sec. 49-g of the Texas Constitution establishes the Economic Stabilization Fund, which was ratified by voters in 1988. The fund, also known as the Rainy Day Fund, receives general revenue equivalent to 75 percent of any oil or natural gas production tax revenue that exceeds the amount collected in fiscal 1987. Additionally, the comptroller must transfer one-half of any unencumbered balance remaining in the General Revenue Fund at the end of a fiscal biennium to the Rainy Day Fund.

Fund 6. The State Highway Fund (Fund 6) is the state's primary highway

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funding mechanism, collecting the vast majority of highway-related revenue from federal reimbursements, state motor fuels taxes, motor vehicle registrations, and various fees. The Legislature may appropriate funds from Fund 6 for various highway-related purposes in accord with constitutionally and statutorily established limits.

DIGEST:

HJR 1 would direct the comptroller to allocate to the State Highway Fund (Fund 6) one-half of the general revenue currently transferred to the Rainy Day Fund. The Legislature would, by statute, create a procedure whereby the amount allocated to the Rainy Day Fund could be greater than one-half.

Revenue transferred to Fund 6 could be used only for constructing, maintaining, and acquiring rights-of-way for public roadways other than toll roads.

HJR 1 would take effect immediately upon receiving the necessary approval from voters, and would apply to transfers the comptroller made after September 1, 2014.

The proposal would be presented to the voters at an election on Tuesday, November 4, 2014. The ballot proposal would read: “The constitutional amendment providing for the use and dedication of certain money transferred to the state highway fund to assist in the completion of transportation construction, maintenance, and rehabilitation projects, not to include toll roads.”

**SUPPORTERS
SAY:**

HJR 1, in combination with its enabling legislation, CSHB 1, would take a key step toward securing critical funding for transportation projects in Texas. While far from a cure-all, the proposed resolution would present a politically viable means to secure a portion of the funding Texas needs to maintain roadway congestion at current levels, given population and economic growth. Although many options for highway funding have been discussed in the past three regular legislative sessions, these have not proved politically feasible.

HJR 1 would generate an estimated \$879 million for public highways in fiscal 2015, increasing to \$1.1 billion in fiscal 2018. This steady revenue stream would send a message to citizens, crediting bureaus, and businesses that Texas is serious about financing critical transportation infrastructure.

Dedicated funding stream for public roads. HJR 1 would dedicate an additional, much-needed funding stream to constructing and maintaining public, non-tolled roads. If approved, the amendment would represent a sharp departure from relying on debt and toll roads as primary mechanisms for funding highways. The amendment would make use of expected increases in oil and gas production tax remissions to increase funding for highways and retain a solid reserve.

Texas since 2001 has relied on enhanced authority to issue bonds, borrowing from public and private interests, and concessions payments from private comprehensive development agreements (CDAs) to build and maintain toll roads. These approaches, while an important part of the highway funding mix, will not by themselves meet the growing demands the state is placing on transportation infrastructure.

As of fiscal 2013, the Texas Department of Transportation had used a total of \$13 billion in bond authorization, with \$4.9 billion in authorized bonds yet to be used. Issuing these bonds will cost the state \$32.5 billion in total debt service. The agency's main bond programs — State Highway Fund bonds, Texas Mobility Fund bonds, and general obligation highway bonds — are, for all intents and purposes, exhausted.

The ongoing crisis in highway funding in Texas has been delayed several years — first by federal American Revitalization Act funds, and second by a \$5 billion general obligation bond appropriation made in fiscal 2009 and 2011. These infusions may have helped put off the transportation funding crisis a few years, but one-time measures are no remedy for terminal ills.

One-time infusions do little to instill confidence that the Legislature is willing and able to make tough policy decisions necessary to provide infrastructure for vibrant business activity, national and international trade, and a superior quality of life. HJR 1 would enable voters to show they are serious about increasing funding for critical infrastructure.

Sufficient balance. While HJR 1 would authorize a dedicated funding stream for transportation projects, it also would allow the Legislature to take necessary means to ensure a minimum balance in the Rainy Day Fund was available to respond to natural disasters and fiscal emergencies. CSHB 1, the amendment's enabling legislation would call for the appointment of a committee of legislators to determine a sufficient balance for the Rainy Day Fund, under which no general revenue would be

transferred to Fund 6.

The sufficient balance provision authorized by HJR 1 would strike a compromise between an automatic Fund 6 transfer, irrespective of the status of the Rainy Day Fund, and a constitutionally established floor under which no transfer would be made. Without a floor of any kind, a combination of unforeseen events could leave the Legislature with insufficient funds to finance emergency spending needs. A constitutionally designated floor, on the other hand, might not provide the Legislature sufficient flexibility to meet varying needs each session.

HJR 1, in combination with CSHB 1, would provide an assurance that a sufficient balance remained in the Rainy Day Fund while granting each Legislature license to address the needs of the time. In addition, CSHB 1, which would enable the Legislature to adjust a sufficient balance determination within the first 60 days of a regular session, would ensure proper legislative oversight in determining what the state should maintain as a reserve fund.

Credit rating. Contrary to claims otherwise, dedicating a revenue stream for key transportation infrastructure would help the state retain its strong credit rating. Instead of looking at a particular number or percentage in reserve, credit rating bureaus look for a balance between maintaining a healthy amount in reserve for unexpected events and using reserve funds for critical needs such as infrastructure and water. HJR 1 would strike this balance by appropriating funds for transportation only when there was a legislatively determined substantial balance in reserve for emergencies.

Public approval. If HJR 1 were enacted by the Legislature, it still would need to be approved by a majority of Texas voters in November 2014. This would provide a valuable opportunity to educate the public about the conditions of the state's roads and the need for enhanced funding for transportation infrastructure. Those promoting the initiative would be supporters of transportation funding who had a vested interest in ensuring that the public did not get the false impression that the measure would wholly satisfy the state's transportation funding needs.

OPPONENTS
SAY:

HJR 1 would not provide a solution to the state's serious, ongoing highway funding shortage and would not adequately safeguard emergency reserves in the Rainy Day Fund.

No additional revenue. Because the proposed amendment would not authorize the collection of any additional revenue, in effect it would take money out of one fiscal pocket and move it to another. While this might not cause problems in times of plenty, it could create some difficult choices in trying fiscal times. There was strong resistance during the 83rd Legislature's regular session to allowing the Rainy Day Fund to drop below a certain amount, generally perceived to be about \$6 billion. Reluctance to drain the account below this level, coupled with the 50 percent dedication to highways proposed in HJR 1, could leave the Legislature with effectively little to spend for emergency purposes.

Inadequate safeguard. HJR 1 would provide no guarantee of a minimum balance in the Rainy Day Fund before authorizing a transfer of funds to Fund 6. The amendment relegates this authority to each legislature, which is inevitably subject to the whims and political vagaries of any given legislative session. The Rainy Day Fund transfer is designated in the Constitution in part to provide a well-protected reserve and to ensure continuity and stability. A constitutionally protected reserve is important for the state's ability to weather economic calamities and for its credit rating.

Failing to provide a constitutionally designated floor under which no transfer to Fund 6 would be made — such as has been considered and approved in previous versions of this legislation — would open the door to decisions that could leave future legislatures with shortfalls in revenue and a shallow reserve pool from which to draw.

Prioritizing transportation. The amendment would dedicate funds to transportation that are now available for general purpose spending, including core priorities such as public education. The state has needs in many areas of priority, and dedicating funds only to transportation would have the effect of elevating transportation above all other needs. This preference would become salient in the event the state experienced another fiscal downturn and lawmakers were forced to choose to fund other priorities with less in reserve.

In addition, the dedication to transportation would reduce the likelihood that the state would reach the Rainy Day Fund ceiling of 10 percent of the total amount of general revenue deposited during the preceding biennium, after which that revenue would otherwise be made available for general-purpose spending.

Credit rating. A strong balance in the Rainy Day Fund has been a great asset to the state, helping it retain a strong credit rating through the recession. Any measure that reduced the state's savings account could directly or indirectly harm its credit rating down the road by leaving less revenue in reserve for emergencies. Credit rating agencies do indeed look at the percentage of general funds that states keep in reserve for emergency spending. Allowing this reserve to fall below a well-established threshold could jeopardize the state's rating, which would significantly increase the cost of borrowing and have other negative repercussions.

False impressions. HJR 1, which would have to be approved by voters, could create the impression among the general public that this measure would be a remedy for the state's transportation funding woes. Because the measure would require a statewide vote, there likely would be a lot of campaigning about the need to fund transportation. It would be difficult to campaign to achieve success for the measure at the polls without also spreading the false notion that this measure would cure transportation funding ills. If HJR 1 were to pass, it would risk creating the same false expectations for transportation funding as the Texas Lottery did for funding public education.

OTHER
OPPONENTS
SAY:

Planning problems. Establishing a legislatively determined sufficient balance would mean that transportation planners could not count on receiving additional funds more than a year or two into the future because the receipt of those funds would depend on unpredictable factors, such as legislative appropriations for emergencies. As currently drafted, HJR 1 would create a dedicated but not a reliable source of funding for transportation.

NOTES:

The Legislative Budget Board (LBB) estimates the proposed amendment would dedicate \$878.6 million for Fund 6 in 2015, \$932.4 million in fiscal 2016, \$986.2 million in fiscal 2017, and \$1.1 billion in fiscal 2018. The corresponding losses to the Rainy Day Fund would exceed the gains to Fund 6 due to a loss of projected interest earnings.

The LBB estimates the cost to the state for publishing the resolution would be \$108,921.

CSHB 1, the enabling legislation for HJR 1, is set for second-reading

consideration on today's Major State Calendar.