

November 20, 2009

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OPINION COMMITTEE

FILE # ML-46257-09

I.D. # 46257

The Honorable Greg Abbott
Attorney General
State of Texas
209 W. 14th St., 8th Floor
Austin, Texas 78701-1614

RQ-0844-GA

Re: Attorney General Opinion request relating to the Rail Relocation and Improvement Fund

Dear General Abbott:

The Comptroller of Public Accounts respectfully requests an Attorney General Opinion relating to the interpretation and correct method of calculation of Section 17.10, Article IX-70, Senate Bill 1, 81st Legislature, R.S. (General Appropriations Act for the 2010-11 fiscal biennium).

Section 17.10 provides for a transfer of \$91 million in each fiscal year of the biennium to the Rail Relocation and Improvement Fund (Fund) upon a finding of fact by the Comptroller that there is an increase for the 2010-11 state fiscal biennium of at least \$182 million over the 2008-09 fiscal biennium. In particular, the rider provides:

a. Out of the funds appropriated above, and on a finding by the Comptroller under subsection (b) of this rider, an amount of \$91 million is allocated out of the State Highway Fund for fiscal 2010 and an amount of \$91 million is allocated out of the State Highway Fund for fiscal 2011 for transfer to the Texas Rail Relocation and Improvement Fund. The amounts are allocated for expenditure out of the Texas Rail Relocation and Improvement Fund to the Department of Transportation for the purposes described by Section 49-o, Article III, Texas Constitution.

b. The allocations under subsection (a) of this rider may be made only if the Comptroller issues a finding of fact that the following items result in a net increase for the 2010-11 state fiscal biennium of at least \$182 million over the 2008-09 state fiscal biennium:

- (1) the net impact of enacted revenue measures on incoming revenue of the State Highway Fund that is not dedicated under Article 8, Section 7-a of the Texas Constitution;
- (2) as a gain, any reduction in appropriations made from State Highway Fund No. 0006 to state agencies other than the Department of Transportation; and
- (3) as a loss, any reduction in appropriations made to the Department of Transportation from the General Revenue Fund.

The Rider requires the Comptroller to make a finding of fact that sufficient funds are available to make the transfers to the Fund. Of particular importance in making this finding of fact is the interpretation of subsection (b)(2) of the rider and what factors should be included or not included in the calculation.



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Section 17.10(b)(2) expressly requires that all "reductions in appropriations made from the State Highway Fund No. 0006 to state agencies other than the Department of Transportation" be made a part of the calculation. Effective Sept. 1, 2009, Section 1001.002, Transportation Code (as passed in House Bill 3097, 81st Legislature) created a new state agency to be called the Texas Department of Motor Vehicles (DMV). Section 1001.021, et seq., created an independent governing board appointed by the Governor with the advice and consent of the Senate. Article 6 of House Bill 3097 transfers all powers, duties, obligations and rights from the Texas Department of Transportation Motor Vehicles Division to the new DMV agency on Nov. 1, 2009. In addition, Section 6.01(g) transfers and reappropriates funds from TxDOT to the new DMV and Section 6.03 transfers employees from TxDOT to the new DMV. Finally, Section 17.30 (Article IX-75) in the General Appropriations Act is a contingency rider, which transfers appropriations and employees to the new agency upon passage of HB 3097 or similar legislation.


The general rule of statutory construction is that courts will give deference to the plain meaning of a statute and will also give deference to an agency's interpretation of statute if the agency's construction does not contradict the statute's plain language and is reasonable. *Tarrant Appraisal Dist. v. Moore*, 845 S.W.2d 820, 823 (Tex. 1993); see also TEX. GOV'T CODE ANN. § 311.023(6) (Vernon 2008) (stating that a court construing a statute may consider "among other matters the . . . administrative construction of the statute"). See also Tex. Att'y Gen. Op. No. GA-0403 (2006).

There are also two transfers of appropriations from the State Highway Fund to agencies other than TxDOT. In fiscal years 2008-09, transfers of appropriations from the State Highway Fund to the Health and Human Services Commission and the Texas Workforce Commission were made (in the amounts of \$53,902,291 and \$6,829,352 respectively). In fiscal years 2010-11, the Legislature did not make any transfers of appropriations out of the State Highway Fund to HHSC or TWC, which could be considered as a "gain" under a plain meaning reading of Section 17.10(b)(2).

The Comptroller seeks clarification from the Attorney General on the following:

- 1) Should State Highway Fund "transfers of appropriations" in 2008-09 to the Health and Human Services Commission and the Texas Workforce Commission be included as a gain within the calculations required by Section 17.10(b)(2)?
- 2) Should State Highway Fund "transfers of appropriations" in 2010-11 to the newly created Department of Motor Vehicles be included within the calculations required by Section 17.10(b)(2)?

Sincerely,


Martin A. Hubert
Deputy Comptroller

