

## CHAPTER 101

## S.B. No. 1132

An Act relating to the types of property held by, the procedures for withdrawal of a unit of election from, the letting of certain contracts by certain regional transportation authorities, and the authority of certain authorities to provide or contract for a power supply for rail systems; amending Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), by amending Subdivisions (11) and (12), Section 2 and Section 20; adding Sections 9A and 10C; and repealing Subsections (k) and (l), Section 9.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Subdivisions (11) and (12), Section 2, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), are amended to read as follows:

“(11) ‘Public transportation’ means the conveyance of passengers and hand-carried packages or baggage of passengers by means of any mode of transportation [~~other than a privately owned vehicle~~].

“(12) ‘Public transportation system’ means all real and personal property owned or *otherwise held, including property held in accordance with a contract with the owner making the property subject to the control of or regulation by the authority*, by an authority for public transportation or general transportation service purposes, including but not limited to land, interests in land, buildings, structures, rights-of-way, easements, franchises, rail lines, bus lines, mass transportation facilities, rapid transit facilities, stations, platforms, terminals, rolling stock, garages, shops, equipment and facilities (including vehicle parking areas and facilities and other facilities

necessary or convenient for the beneficial use and access of persons and vehicles to public transportation), control houses, signals and land, facilities and equipment for the protection and environmental enhancement of all the facilities. *A private operator who contracts with an authority under this Act is not a public entity for purposes of any law of this state.*"

**SECTION 2.** Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended by adding Sections 9A and 10C to read as follows:

"Section 9A. **WITHDRAWALS FROM AUTHORITY.** (a) *A unit of election may withdraw from an authority created under this Act only in accordance with this section. An attempt to withdraw from an authority in a manner other than that provided by this section is void.*

"(b) *Subject to other provisions of this section, the governing body of a unit of election may on its own initiative call an election in the unit of election and submit to the voters of the unit of election the proposition prescribed by Subsection (f) of this section.*

"(c) *On receipt of a petition under Subsection (g) of this section, the governing body of a unit of election shall examine the petition. If the governing body determines that the petition conforms with the requirements of this section, the governing body, subject to the other provisions of this section, shall call an election in the unit of election and submit to the voters of the unit of election the proposition prescribed by Subsection (f) of this section. The governing body may call and hold public hearings and may conduct or order any investigations the governing body considers appropriate in making the determination under this subsection. The governing body's determination is conclusive of all issues involved. If the governing body determines that the petition conforms to the requirements of this section, the governing body shall call an election. If the governing body determines that the petition does not conform to the requirements of this section, the governing body shall reject the petition and may not call an election. A petition rejected under this subsection is void and may not be used in connection with any subsequent petitioning process.*

"(d) *An election for withdrawal in a unit of election under this section, whether by governing body initiative or by petition, may not be called more frequently than once during:*

"(1) *the 12-month period immediately following the date of the election creating the authority;*

or

"(2) *each 12-month period thereafter.*

"(e) *An election called under this section shall be held on the first legally available election date for that type of election under the Texas Election Code following the expiration of 12 calendar months after the date the election is called. Immediately on calling an election, the governing body of the unit of election shall give notice of the election to the executive committee, the State Department of Highways and Public Transportation, and the comptroller of public accounts.*

"(f) *In an election called under this section, the governing body of the unit of election shall submit the following proposition:*

"*Shall the (name of authority) be continued in (name of unit of election)?" The election shall be held in the regular precincts and at the regular voting places of the unit of election in accordance with the Texas Election Code. The governing body of the unit of election shall canvass the returns of the election at the earliest practicable date after the election. If a majority of the qualified voters voting at the election votes in favor of the proposition, the authority shall continue in the unit of election. If a majority of the qualified voters voting at the election votes against the proposition, the authority ceases to exist in the unit of election at midnight on the date the election returns are canvassed, and the financial obligations of the authority attributable to the unit of election cease to accrue at that time.*

"(g) *A person who is a qualified voter of a unit of election may apply to and obtain from the city or town secretary or other clerk or administrator of the unit of election official numbered and properly authenticated petitions for withdrawal prepared by the city or town official in accordance with this subsection, in an amount requested by the person. Not more than one petition may be outstanding at any one time. The secretary, clerk, or administrator shall authenticate and deliver additional sheets to the person as requested during the period for obtaining signatures. To be valid, a petition must contain the personal and actual signatures of not less than 20 percent of the registered voters of the unit of election, as listed on the official voter registration lists of the county or counties in which the unit of election is located, and be filed with the secretary, clerk, or administrator of the unit of election on or before the 60th day after the date the person received the first sheets of the petition. The secretary, clerk, or administrator shall examine the petition and file a report to the governing body of the unit of election stating whether, in the opinion of the secretary, clerk, or administrator, the petition conforms to the requirements of this section. On receipt of the report, the governing body shall conduct its examination as required by Subsection (c) of this section. In the event a petition is determined not to conform to the requirements of this section, a sheet of signatures that is a part of the petition containing valid signatures may not be used in connection with any subsequent petitioning process.*

“(h) A petition may consist of multiple sheets, each of which must be authenticated by the secretary, clerk, or administrator. Each sheet shall be headed with a statement in all capital letters regarding the nature of the petition as follows:

**‘THIS PETITION IS TO REQUIRE AN ELECTION TO BE HELD IN (name of the unit of election) TO DISSOLVE (name of authority) IN (name of the unit of election) SUBJECT TO THE CONTINUED COLLECTION OF SALES TAXES FOR THE PERIOD REQUIRED BY LAW.’**

An affidavit of the person who circulated each sheet shall be affixed or printed on each sheet in the following form and substance, and the affidavit shall be executed before a notary public:

‘STATE OF TEXAS

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, affirm that I personally witnessed each signer affix his or her signature, the date of signing, his or her voter registration number, and his or her residence address and zip code to this page of this petition for the dissolution of (name of authority) in the (name of unit of election). I affirm to the best of my knowledge and belief that each signature is the genuine signature of the person whose name is signed and that the date entered next to each signature is the date the signature was affixed to this page.

Sworn to and subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_, 19  
19\_\_\_\_\_

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas’

Each sheet of a petition shall be submitted at the same time and within the period specified in Subsection (g) of this section. Each person signing a petition must sign the petition in person in ink or indelible pencil and must personally enter beside his or her signature his or her current residence address and zip code, his or her correct voter registration number, and the date of signing. Any signature not accompanied correctly by all of the information required by this subsection is void and may not be counted in determining the validity of the petition.

“(i) On the effective date of the withdrawal of a unit of election from an authority created under this Act, all public transportation services provided by the authority to the unit of election shall cease. The withdrawal, however, does not affect any existing or future rights of the authority to proceed through the corporate limits of the unit of election to continue uninterrupted service to other units of election that have not withdrawn or that become a part of the authority in the future.

“(j) The withdrawal of a unit of election under this section is subject to the requirements of the constitutions of the United States of America and this state prohibiting the impairment of contracts. Taxes shall continue to be collected in the unit of election until an amount of taxes equal to the total financial obligations of the unit of election to the authority has been collected. To determine the amount of the total financial obligations of the unit of election, the executive committee shall compute, as of the date of withdrawal, the total of: (1) the current obligations of the authority authorized in the current budget and contracted for by the authority; (2) the amount of contractual obligations outstanding at that time for capital or other expenditures in the current or subsequent years, the payment of which has not been made or provided for from the proceeds of notes, bonds, or other obligations; (3) all amounts due and to become due in the current and subsequent years on all notes, bonds, or other securities or obligations for debt issued by the authority and outstanding; (4) the amount required by the authority to be reserved for all years to comply with financial covenants made with lenders, bond or note holders, or other creditors or contractors; (5) any additional amount, which may include an amount for contingent liabilities, determined by the executive committee to be the amount necessary for the full and timely payment of the current and continuing obligations of the authority, to avoid a default or impairment of those obligations; and (6) any additional amount determined by the executive committee to be necessary and appropriate to allocate to the unit of election because of current and continuing financial obligations of the authority that relate specifically to the unit of election. The unit of election’s share of the financial obligations of the authority under the first five computations required by this subsection shall be in the same ratio that the population of the unit of election has to the total population of the authority, according to the most recent and available population data of an agency of the federal government, as determined by the executive committee. The unit of election’s total financial obligation is the sum of the first five computations required by this subsection plus the amount allocated directly to the unit of election under the last computation required by this subsection. The executive committee shall certify to the governing body of the unit of election and to the comptroller of public accounts the amount of the total financial obligation of the unit of election. The comptroller of public accounts shall continue to collect taxes in the unit of election until an aggregate amount equal to the total financial obligation of the unit of election has been

collected and actually paid to the authority. After that amount has been collected, the comptroller of public accounts shall discontinue collecting in the unit of election the taxes imposed under this Act."

"Section 10C. POWER SUPPLY FOR RAIL SYSTEMS. (a) This section applies only to an authority in which the public transportation system includes or is to include passenger service by rail propelled by electric power and in which all or a part of the service area is served by the electric power distribution systems of more than one electric utility company or municipally owned electric utility system.

"(b) An authority to which this section applies is authorized to purchase, acquire, construct, build, own, and operate, solely for the purpose of powering its rail vehicles over its rail transportation system, sources of electric power, including wholly owned or partially owned generating facilities of any type and at any location, including fuel reserves and supplies. In conjunction with owning a generating facility, the authority may purchase, acquire, construct, build, own, and operate any transmission and distribution facilities needed to deliver power from such generating facility to its public transportation system.

"(c) In addition to, in conjunction with, or in lieu of owning a generating facility as authorized by Subsection (b) of this section, the authority may, solely for the purpose of supplying the power and energy necessary to operate the authority's rail vehicles, enter into contracts for the purchase of power and energy with any supplier or suppliers of power and energy that serves any part of the authority's public transportation service area. The parties to any such contract made under this subsection may fulfill the terms of the contract notwithstanding any order or rule of the Public Utility Commission of Texas with respect to certification, except that any supply of power or energy by one utility into the service area of another utility must be provided over transmission or distribution lines owned by the authority."

**SECTION 3.** Section 20, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 20. COMPETITIVE BIDS. (a) Except as otherwise provided by this section, all contracts for construction, services, and property, other than real property, shall be awarded after full and open competition based on solicitations for competitive sealed bids or competitive sealed proposals. All solicitations for competitive sealed bids or proposals shall describe all evaluation factors for source selection and the relative importance of each factor. The executive committee may authorize the negotiation of contracts without competitive sealed bids or proposals if:

"(1) the aggregate amount involved in the contract is less than \$10,000 for property or services or \$15,000 for construction;

"(2) the contract is for construction for which not more than one bid or proposal is received;

"(3) the contract is for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition;

"(4) the contract is to respond to an emergency condition for which the public exigency will not permit the delay incident to competition;

"(5) the contract is for personal or professional services or services for which competitive bidding is precluded by law; or

"(6) the contract, whether in the form of bonds, notes, other obligations, loan agreements, or otherwise, is for the purpose of borrowing money or is a part of a transaction relating to the borrowing of money, including credit support agreements, such as lines or letters of credit or other debt guaranties, bond, note, debt sale or purchase, trustee, paying agent, remarketing agent, indexing agent, or similar agreements, agreements with securities dealers, brokers, or underwriters, and any other contracts or agreements considered by the executive committee to be appropriate or necessary in support of the authority's financing activities.

"(b) An authority may enter into a contract providing for payment with debt obligations and for performance and payments extending over more than one fiscal year if the contract provides for the discharge of the authority's contractual obligations by committing current year funds, future tax revenues, or cancellation charges, making the contract subject to the future availability of funds, or other methods. The authority to contract for construction, services, and property, within budgeted amounts approved by the executive committee, may be delegated to persons designated by the executive committee.

"(c) The executive committee may adopt and enforce procurement procedures, guidelines, or rules defining the terms in and implementing the provisions of this section and covering the appointment of contracting officers, the solicitation for and award of contracts, the resolution of protests and contract disputes, foreign currency transactions and conversions, foreign exchange rate risk management, and all other aspects of the procurement process for domestic and international contracts. This section and procedures, guidelines, or rules adopted under this subsection confer no rights on actual or potential bidders, offerors, contractors, or any other person except as expressly stated in the procedures, guidelines, or rules. [Contracts for more than \$2,000 for the

construction of improvements or the purchase of material, machinery, equipment, supplies, and all other property, except real property, shall be let on competitive bids after notice published once at least 15 days before the date fixed for receiving bids in a newspaper of general circulation in the area in which the authority is located. The executive committee may adopt rules governing the taking of bids and the awarding of such contracts. This section shall not apply to personal and professional services or to the acquisition of existing transit systems.]”

**SECTION 4.** Subsections (k) and (l), Section 9, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), are repealed.

**SECTION 5.** This Act does not affect the validity or conduct of an election called before the effective date of this Act under Subsection (k), Section 9, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), whether or not the election is held before the effective date of this Act, or a contract for purchase made before the effective date of this Act under Section 20 of that Act. An election called under Subsection (k) of Section 9, or a contract made under Section 20, of Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), before the effective date of this Act is covered by the law in effect when the election was called or the contract was made, and the former law is continued in effect for that purpose.

**SECTION 6.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 4, 1985, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 1, 1985, by the following vote: Yeas 30, Nays 0; passed the House, with amendments, on April 25, 1985, by the following vote: Yeas 142, Nays 1, two present not voting.

Approved: May 13, 1985

Effective: Immediately