

## CHAPTER 586

## S.B. No. 242

## AN ACT

relating to the transfer of Texas Turnpike Authority projects to a county or local government corporation and to the administration of those projects.

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

SECTION 1. Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended by adding Sections 12c and 12d to read as follows:

*Sec. 12c. TRANSFER OF TURNPIKE PROJECT. (a) This section applies to a county, or a local government corporation serving a county, or an adjacent county in a joint turnpike authority with a county whose population is more than 1.5 million, according to the most recent federal decennial census, as to which the Authority, the Texas Transportation Commission, and the governor approve the transfer of a Turnpike Project as being in the best interests of the state and the county.*

*(b) The Authority may lease, sell, or otherwise convey a Turnpike Project to a county or a local government corporation created under the Texas Transportation Corporation Act (Article 1528l, Vernon's Texas Civil Statutes). A county or a local government corporation may lease, buy, or otherwise receive a Turnpike Project.*

*(c) An agreement to lease, sell, or convey a Turnpike Project under Subsection (b) of this section must provide for the discharge and final payment or redemption of all of the Authority's outstanding bonded indebtedness issued for the Turnpike Project being leased, sold, or conveyed.*

*(d) A Turnpike Project that is leased, sold, or conveyed under Subsection (b) of this section is not eligible to become a part of the state highway system until all obligations, including refunding obligations, that are payable from or secured by revenues of the Turnpike Project or the system of pooled projects of which the Turnpike Project is a part are discharged and finally paid or redeemed.*

*(e) An agreement for the lease, sale, or conveyance of a Turnpike Project under this section shall be submitted to the attorney general for approval as a part of the records of proceedings relating to the issuance of bonds of the county or local government corporation. If the attorney general determines that the agreement is in accordance with law, the attorney general shall approve the agreement and deliver to the Texas Transportation Commission a copy of the legal opinion of the attorney general stating that approval.*

*Sec. 12d. SUCCESSOR AGENCY TO AUTHORITY. The following are considered successor agencies to the Texas Turnpike Authority for purposes of Article III, Section 52-b, of the Texas Constitution:*

*(1) a county or local government corporation that leases, buys, or receives a Turnpike Project under Section 12c of this Act; and*

*(2) a county, or a local government corporation serving a county, or an adjacent county in a joint turnpike authority with a county whose population is more than 1.5 million, according to the most recent federal decennial census, that constructs a toll road, toll bridge, or Turnpike Project.*

SECTION 2. Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended by adding Section 12e to read as follows:

*Sec. 12e. TEXAS TURNPIKE AUTHORITY PROJECT REVOLVING FUND. (a) The Authority may maintain a fund entitled the Texas Turnpike Authority Project Revolving*

*Fund.* A fund established under this section is a revolving fund held in trust separate from other funds of the Authority in a banking institution chosen by the Authority.

(b) The Authority may transfer amounts from any surplus fund established for a Turnpike Project to the revolving fund if the remaining balance in the surplus fund is not decreased below the minimum balance required by any trust agreement for that project.

(c) The Authority may transfer into the revolving fund amounts from any permissible source, including:

(1) amounts described by Subsection (b) of this section;

(2) amounts received under Section 20a of this Act or from a transfer of a project under Section 12c of this Act;

(3) advances from the Texas Department of Transportation authorized under Article III, Section 52-b, of the Texas Constitution; and

(4) contributions or assistance from the federal government, other state governments, a political subdivision of this state, Mexico, or a political subdivision of Mexico.

(d) The Authority may use the revolving fund to:

(1) finance the construction, maintenance, or operation of Turnpike Projects authorized by this Act;

(2) provide matching amounts necessary for federal grants or other types of participatory funding;

(3) provide credit enhancement for bonds issued to construct, expand, or improve Turnpike Projects;

(4) provide security for, or payment of, future or existing debt for construction, operation, or maintenance of Turnpike Projects;

(5) borrow money and issue promissory notes or other indebtedness payable out of the revolving fund for any purpose authorized by this Act; and

(6) provide for any other reasonable purpose that assists in the financing of the Authority as authorized by this Act.

(e) Amounts expended or advanced from the revolving fund for a Turnpike Project are considered a part of the cost of the project, and the revolving fund must be reimbursed for all amounts drawn from the fund that are used for the project.

SECTION 3. Section 20b, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20b. USE OF SURPLUS REVENUES. (a) Except as provided by Subsection (b) of this section, the [The] Board may use or pledge the surplus revenues of a turnpike project for the payment of costs, including the principal of or interest on bonds, of another turnpike project other than a project financed under Section 20a of this Act under terms, conditions, or pledges made by resolution of the Board. However, the Board may not take an action under this section that violates, impairs, or is inconsistent with the provisions of a bond resolution, trust agreement, or indenture governing the use of the surplus revenues.

(b) Except as provided by Subsection (c) of this section, the surplus revenues generated by a turnpike project that is under construction or operated by the Authority on January 1, 1993, may not be used for a purpose other than:

(1) the costs associated with the construction, expansion, or maintenance of the project generating the revenues; or

(2) transfers to the Texas Turnpike Authority Feasibility Study fund.

(c) The Board may use revenues from a project described by Subsection (b) of this section for a purpose authorized by this Act other than the purposes described by that subsection if:

(1) the Authority obtains permission of the commissioners court of each county in which the project is located; or

(2) an agreement between the Authority and a county or local government corporation created by the county for the lease, sale, or other conveyance of the turnpike project permits the revenue to be used for other purposes.

SECTION 4. Sections 7 and 7(a), Chapter 304, Acts of the 50th Legislature, 1947 (Article 6795b-1, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 7. Except as provided by Article 6674v-6, Revised Statutes, the powers herein granted may be carried out by such counties or local government corporations created in such counties under the Texas Transportation Corporation Act (Article 1528l, Vernon's Texas Civil Statutes), and the projects may be acquired, constructed, improved, maintained, [and] operated, and pooled and tolls and charges fixed and maintained without the consent, approval, supervision, or regulation of any commission, department, bureau, agency, or officer of the State of Texas, provided, however, that nothing in Article 6672, Revised Statutes, or this Section shall be construed to prevent the Texas [~~State Highway and Public~~] Transportation Commission from operating and maintaining the project or contributing to the cost of acquisition, construction, improvement, pooling, [such] operation, and maintenance under such provisions as may be agreed to by the county or local government corporation and the Texas Department of Transportation which are not inconsistent with the rights of bondholders or the rights of any agency, person, firm, or corporation then operating the project under lease or contract with the county or local government corporation. The Texas [~~State Highway and Public~~] Transportation Commission shall have authority without further legislative enactment to make such provision for and contributions toward acquisition, construction, improvement, pooling, operation, and maintenance of the project as it may see fit, and to lease the project under such terms not inconsistent with the provisions of the bond resolution or trust indenture as may be agreed upon with the county or local government corporation, and to declare the project or any part thereof to be a part of the State Highway System and to operate the project or such part thereof as a part of the State Highway System, provided, however, that such declaration may be made and such operation undertaken only to the extent that property and contract rights in the project and in the bonds are not unfavorably affected thereby. When all of the bonds and interest thereon that are payable from or secured by revenues of the project shall have been paid, or a sufficient amount for the payment of all bonds and the interest thereon to maturity shall have been set aside in a trust fund for the benefit of the bondholders and shall continue to be held for that purpose, the project shall become a part of the State Highway System and shall be maintained by the Texas [~~State Highway and Public~~] Transportation Commission, free of tolls.

Sec. 7(a). The county is hereby authorized to accept from the United States Government or any of its departments or agencies or from the State of Texas or any of its departments or agencies, any contributions or assistance available from such source or sources in connection with the acquisition, construction, improvement, maintenance, pooling, and operation of such project and to enter into agreements with one or any of them in reference to the acquisition, construction, improvement, maintenance, pooling, and operation of the project.

SECTION 5. Section 4A, Texas Transportation Corporation Act (Article 1528l, Vernon's Texas Civil Statutes), is amended by adding Subsections (g), (h), and (i) to read as follows:

(g) *The governing body of a local government may assume for the local government the powers and duties of a local government corporation that has been created by the local government. A local government that assumes the powers and duties of a local government corporation also assumes all of the assets and liabilities of the corporation. The powers, duties, assets, and liabilities of a local government corporation created by more than one local government may be assumed by a local government only if each creating local government so agrees.*

(h) *A local government corporation is a governmental unit within the meaning of Subdivision (2), Section 101.001, Civil Practice and Remedies Code, and the operations of a local government corporation are governmental and not proprietary functions.*

(i) *The local government that creates a local government corporation may establish and enforce traffic and other public safety rules on a toll road, toll bridge, or turnpike of the corporation. If more than one local government creates a local government corporation, the local governments may jointly establish and enforce traffic and other public safety rules.*

SECTION 6. Subsections (a) and (b), Article 6674v-6, Revised Statutes, are amended to read as follows:

(a) *A governmental or private entity, other than a county with a population of more than 1.5 [2.4] million, according to the most recent federal census, and other than a local*

government corporation created by a county with a population of more than 1.5 million, according to the most recent federal census, under the Texas Transportation Corporation Act (Article 1528l, Vernon's Texas Civil Statutes), may not begin construction of a toll road, toll bridge, or turnpike without the approval of the Texas [~~State Highway and Public~~] Transportation Commission if the toll road, toll bridge, or turnpike is to become a part of the state highway system. When deciding whether to approve a proposed toll road, toll bridge, or turnpike project, the commission shall consider:

(1) the feasibility of effectively integrating the toll road, toll bridge, or turnpike into the state highway system; and

(2) the ability of the Texas [~~State~~] Department of [~~Highways and Public~~] Transportation to construct any connecting roads necessary for the toll road, toll bridge, or turnpike to generate sufficient revenue to pay the debt incurred for its construction.

(b) Any bonds of a county, municipality, or political subdivision (other than a county with a population greater than 1.5 million, [2,100,000] according to the most recent [preeding] federal census, or a local government corporation created under the Texas Transportation Corporation Act (Article 1528l, Vernon's Texas Civil Statutes) in such a county) or any nonprofit corporation acting on behalf of a county, municipality, or political subdivision, payable in whole or in part from revenues derived from the ownership or operation of a toll road, toll bridge, or turnpike must be reviewed by the Texas [~~State Highway and Public~~] Transportation Commission.

SECTION 7. (a) This section applies to:

(1) a local government corporation created under the Texas Transportation Corporation Act (Article 1528l, Vernon's Texas Civil Statutes) serving a county with a population of more than 2.4 million, according to the most recent federal decennial census; and

(2) a county with a population of more than 2.4 million, according to the most recent federal decennial census, operating under Chapter 304, Acts of the 50th Legislature, 1947 (Article 6795b-1, Vernon's Texas Civil Statutes).

(b) A local government corporation or county shall set and make a good faith effort to meet or exceed goals for awarding contracts and subcontracts associated with a project it operates, maintains, or constructs to historically underutilized businesses. The goals shall equal or exceed the federal requirement on federal money used in highway construction and maintenance and the goals adopted by the Texas Department of Transportation under Article 6669c, Revised Statutes. The goals shall apply to the total value of all contracts and subcontracts awarded, including contracts and subcontracts for construction, maintenance, operations, supplies, services, materials, equipment, professional services, the issuance of bonds, and bond counsel.

(c) In this section, "historically underutilized business" means:

(1) a corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities is owned, managed, and in daily operations is controlled by one or more persons who have been historically underutilized because of their identification as members of certain groups, including African Americans, Hispanic Americans, women, Asian Pacific Americans, and Native Americans, who have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control;

(2) a sole proprietorship formed for the purpose of making a profit that is 100 percent owned and in daily operations is controlled by a person described by Subdivision (1) of this subsection;

(3) a partnership formed for the purpose of making a profit in which at least 51 percent of the assets and interest in the partnership is owned by one or more persons described by Subdivision (1) of this subsection and who also have proportionate interest in the control, daily operation, and management of the partnership's affairs;

(4) a joint venture in which each entity in the joint venture is a historically underutilized business; or

(5) a supplier contract between a historically underutilized business and a prime contractor under which the historically underutilized business is directly involved in the manufacture or

distribution of the supplies or materials or otherwise warehouses and ships the supplies or materials.

SECTION 8. 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 February 17, 1993: Yeas 31, Nays 0; the Senate concurred in House amendments on May 27, 1993: Yeas 31, Nays 0; passed the House, with amendments, on May 25, 1993, by a non-record vote.

Approved June 13, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.