

CHAPTER 1012

H.B. No. 2400

AN ACT

relating to regional transportation authorities created, organized and operating under and amending the provisions of Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes).

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

SECTION 1. Section 2, Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended by adding Subsection (7a) to read as follows:

(7a) "Light rail mass transit system" means a system that is constructed by an authority under this Act and that uses a fixed guideway rail with electric power propelling mass transit passenger vehicles.

SECTION 2. Subsection (d), Section 5, Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The members of the executive committee shall elect from among their number a chairman, vice-chairman, and a secretary. The executive committee may appoint such assistant secretaries, either members or nonmembers of the executive committee, as it deems necessary. The secretary and assistant secretary or secretaries shall in addition to keeping the permanent records of all proceedings and transactions of the authority perform such other duties as may be assigned to them by the executive committee. *Members of the executive committee and officers of the authority are subject to the provisions of Chapter 640, Acts of the 68th Legislature, Regular Session, 1983 (Article 988b, Vernon's Texas Civil Statutes)* [~~No member of the executive committee or officer of the authority shall be pecuniarily interested or benefited directly or indirectly in any contract or agreement to which the authority is a party.~~]

SECTION 3. Subsection (b), Section 8, Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) A subregional board shall elect from among its membership a chairman, vice-chairman, and secretary. The board may appoint such assistant secretaries, either members or nonmembers of the board, as it deems necessary. The secretary and assistant secretary or secretaries shall in addition to keeping permanent records of all proceedings and transactions of the board perform such other duties as may be assigned to them by the board. *Members of a subregional board are subject to the provisions of Chapter 640, Acts of the 68th Legislature, Regular Session, 1983 (Article 988b, Vernon's Texas Civil Statutes)* [~~No member of a subregional board shall be pecuniarily interested or benefited directly or indirectly in any contract or agreement to which the authority is a party.~~]

SECTION 4. Section 20, Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d)(1) *An authority in a subregion having a principal city with a population in excess of 800,000 may adopt a program or programs designed to reasonably increase participation by minority and women-owned business enterprises in public contract awards. For purposes of this subsection, the term "minority business enterprise" means a small business concern, at least 51 percent of which is both owned and controlled in management and daily operations by minorities. The term "minority" includes Blacks, Hispanics, Asian Americans, American Indians, and Alaska Natives. The term "women-owned business enterprise" means a small business concern, at least 51 percent of which is both owned and controlled in management and daily operations by a woman or women. If as part of a program described by this paragraph, the governing body of such an authority establishes overall minority business enterprise or women business enterprise contract percentage goals, such overall goals shall be established after reasonable consultation with affected organizations and a qualified independent source and after public comment. In establishing such goals, the authority shall consider the various types of construction contracts the*

authority expects to award and the effect of market conditions on the attainability of the goals. The authority shall periodically review the effectiveness of its program and the reasonableness of its goals.

(2) The provisions of this Act relating to competitive bidding and the award of contracts are not affected by this subsection, but all prospective bidders may be required to meet uniform standards designed to assure a reasonable degree of participation by minority and women-owned business enterprises in the performance of any public contract.

(3) If the governing body of an authority described by Subdivision (1) of this subsection adopts a program described by that subdivision, the governing body must also provide a program outlining acceptable assistance that may be provided to minority and women business enterprises in the service area to achieve the purposes of the program described by Subsection (d)(1).

SECTION 5. Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended by adding Section 23B to read as follows:

Sec. 23B. An authority that constructs or operates or contracts with another entity to construct or operate a light rail mass transit system is not subject to any law of the state regulating or governing the design, construction, or operation of a railroad, railway, street railway, street car, or interurban railway. For purposes of ownership or transfer of ownership of any interest in real property, a light rail mass transit system line operating on property previously used by a railroad, railway, street railway, or interurban railway, is a continuation of existing rail use.

SECTION 6. Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended by adding Section 23C to read as follows:

Sec. 23C. Any authority established hereunder shall be within the definition of "unit of government" as defined by the Texas Tort Claims Act (Section 101.001 et seq., Civil Practice and Remedies Code), and all operations of such authority are deemed to be essential governmental functions and not proprietary functions for all purposes, including the application of the Texas Tort Claims Act. This section applies only to a cause of action that accrues on or after the effective date of this section. An action that accrued before the effective date of this section is governed by the law in effect at the time the action accrued, and such law is continued in effect for that purpose.

SECTION 7. Section 10, Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended by adding Subsection (u) to read as follows:

(u) The authority shall have the power to insure, through purchased insurance policies or self-insurance programs, or both, its legal liability and the legal liability of its contractors and subcontractors for damages to the person or property of others, for workers' compensation, and for officers' and employees' liability, in each case arising from the acquisition, construction, or operation of the programs and facilities of the authority. Authorities may utilize contracts and rating plans and may implement risk management programs designed to encourage the prevention of accidents. In developing its insurance or self-insurance program, an authority may take into account the peculiar hazards, indemnity standards, and past and prospective loss and expense experience of the authority itself as well as that of its contractors and subcontractors.

SECTION 8. Subsection (h), Section 15, Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) Bonds and notes that are wholly or partially secured by a pledge of sales and use tax revenues and that have a maturity longer than five years from the date of issue (other than bonds or notes that are issued for the purposes of refunding any outstanding bonds or notes, and other than bonds or notes that are issued for the purpose of creating or funding self-insurance or retirement and pension fund reserves, which purposes are hereby authorized) may not be issued by an authority until an election has been held and favorably carried by a majority vote of the

qualified voters of the authority voting thereat in accordance with either Subdivision (1) or Subdivision (2) of this subsection.

(1) An authority may call the election for the purpose of authorizing the pledge of its sales and use tax revenues, at a rate not exceeding the previously voted rate, to the payment of a specified amount of long-term bonds or notes for the purposes of its transportation system. If this method of holding the election is selected by the authority, the election shall be called by order of the executive committee, and the proposition and ballot shall be prepared and the election shall be held in accordance with and at the times permitted by the laws applicable to bond elections held by cities. If such election favorably carries, the authority is authorized to issue such bonds or notes up to such amount.

(2) If the boundaries of the authority include the incorporated territory of more than a single city, the executive committee may, alternatively, call and hold an election under this Subdivision (2) if the executive committee finds and determines in its judgment and discretion:

(A) that the proceeds of long-term bonds or notes are needed in order to acquire, construct, and equip its transportation system on a continuous and uninterrupted basis;

(B) that such method of financing is the best of available financing methods in order to provide transportation services at the earliest practicable date for the residents of its multi-city service area; and

(C) that the construction period needed to provide such services will extend beyond five years.

An election held under this Subdivision (2) will be for the purpose of authorizing the pledge of its sales and use tax revenues, at a rate not exceeding the previously voted rate, to the payment of a sufficient amount of long-term bonds or notes to provide transportation services for the residents of its multi-city service area. If this method is selected by the authority, the election shall be called by order of the executive committee and the election shall be held in accordance with and at the times permitted by the laws applicable to bond elections held by cities, except that the official proposition and the summary thereof to appear on the ballot shall read, respectively, substantially as follows:

“PROPOSITION

“Shall (name of authority) be authorized to pledge its _____ cent (insert amount) sales and use tax revenues to the payment of bonds or notes having a maturity longer than five years for the purpose of acquiring, constructing, and equipping the authority’s transportation system in order to provide transportation services for the residents of the cities of (list cities included in service area)?”

The ballot shall be arranged in such manner as will permit the voters to vote “For” or “Against” the following summary of the proposition:

“The pledge by (insert name of authority) of its _____ cent (insert amount) sales and use tax revenues to the payment of bonds or notes in order to provide transportation services for the residents of the cities of (list cities included in service area).”

The order calling an election under this Subdivision (2) may contain additional information pertaining to the authority’s plans and programs, such as:

(i) identification of the service area of the authority and a general description of the system expected to be constructed and provided according to the service plan then in effect, including, if appropriate, graphic materials and location maps and charts indicating the proposed locations and timing of any rail or similar lines or routes proposed to be provided;

(ii) *the current estimates of costs of the system to be provided, and the current estimates of the amount of long-term bonds and notes then expected to be issued under the voted proposition that will be needed, considering other estimated sources of payment such as fare box and other revenues, short-term borrowings, vendor supplied financing, and revenue bonds (other than secured by sales and use tax revenues) to pay such costs; and*

(iii) *any other matters deemed appropriate in informing the voters as to the details of the then proposed system and the financing plans of the authority.*

If the election is held under the optional provisions of this Subdivision (2) and favorably carries, then bonds and notes may be issued by the authority in such amounts and at such times as the executive committee deems appropriate in order to provide transportation services for the residents of its service area in accordance with its service plan in effect on the date of the election as the service plan may be amended and adjusted in accordance with Section 10A of this Act, without the necessity of further elections. It is provided, however, that the rate of sales and use tax that is pledged to such bonds shall never exceed the previously voted rate of tax that was permitted on the date of the election.

(3) Notice of an election held under either Subdivision (1) or Subdivision (2) of this subsection shall be given by publication of the order calling the election in the manner provided by law for the holding of bond elections by cities. The authority is authorized to publish or otherwise distribute such additional copies of the order calling the election as it shall deem appropriate in order to fully inform the voters of its content [~~Bonds payable solely from revenues may be issued by resolution of the executive committee, but no bonds, except refunding bonds, payable wholly or partially from taxes may be issued until authorized by a majority vote of the qualified voters of the authority voting in an election called and held for that purpose.~~]

SECTION 9. Subsection (a), Section 18, Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The responsibility for the operation and control of the properties belonging to an authority shall be vested in its executive committee. The executive committee may:

(1) appoint and prescribe compensation for a general manager who shall employ persons, firms, partnerships, or corporations deemed necessary by the executive committee for the conduct of the affairs of the authority, including but not limited to bookkeepers, engineers, financial advisers, and operating or management companies and in accordance with executive committee policy, prescribe the duties, tenure, and compensation of each; all employees may be removed by the general manager;

(2) appoint auditors and attorneys and prescribe the duties, tenure, and compensation of each;

(3) become a subscriber under the Texas workers' compensation act with any old-line legal-reserve insurance company authorized to write policies in the State of Texas;

(4) adopt a seal for the authority;

(5) *invest the funds of the authority in the following securities and obligations, to-wit:*

(A) direct and indirect obligations of the United States of America and of its agencies and instrumentalities, including treasury receipts evidencing ownership of future interest and principal payments thereon. Agencies and instrumentalities include, but are not limited to Federal Home Loan Banks, Federal Farm Credit Banks, Federal Home Loan Mortgage Association, Federal National Mortgage Association, Government National Mortgage Association, Student Loan Marketing Association, and International Bank for Reconstruction and Development;

(B) any obligations of any state, or the agencies thereof, or of the counties, cities, and other political subdivisions of any state, the payments of principal and interest on which are payable from taxes or revenues, either or both, and having a then current rating of no less than A or its equivalent by a nationally recognized rating firm;

(C) *direct repurchase agreements and reverse repurchase agreements with defined termination dates secured by obligations defined in Subdivisions (A) and (B) above such agreements to be executed with banks or trust companies organized under the laws of Texas, any national banking association, or any government bond dealer reporting to and recognized as a primary dealer by the Federal Reserve Bank of New York;*

(D) *the common trust funds of any bank and any money market mutual funds that consist solely of assets described in Subdivisions (A) and (B) above;*

(E) *certificates of deposit of state and national banks guaranteed or insured by the Federal Deposit Insurance Corporation or its successor or secured by obligations described in Subdivisions (A) and (B) above with a market value of no less than the principal amount of the certificates;*

(F) *commercial paper rated either A1 or P1 by a nationally recognized rating firm;*

(G) *foreign currencies and currency-swap agreements to the extent necessary to pay nondollar denominated obligations; and*

(H) *such other investments as may be authorized, from time to time, by resolution adopted by the executive committee of the authority.*

The executive committee by resolution may provide that an authorized representative of the authority may invest and reinvest the funds of the authority and provide for money to be withdrawn from the appropriate accounts of the authority for investments on such terms as the executive committee considers advisable. An authority may by contract approved by the executive committee enter into investment agreements pertaining to any of the foregoing, and may, additionally, enter into interest-rate swap and similar agreements with other parties upon such terms as the executive committee may deem appropriate. [invest funds of the authority in direct or indirect obligations of the United States, the state, or any county, city, school district, or other political subdivision of the state; funds of the authority may be placed in certificates of deposit of state or national banks or savings and loan associations within the state provided that they are secured in the manner provided for the security of the funds of counties of the State of Texas; the executive committee by resolution may provide that an authorized representative of the authority may invest and reinvest the funds of the authority and provide for money to be withdrawn from the appropriate accounts of the authority for the investments on such terms as the executive committee considers advisable;]

(6) *fix the fiscal year for the authority;*

(7) *establish a complete system of accounts for the authority and each year shall have prepared an audit of its affairs by an independent certified public accountant or a firm of independent certified public accountants which shall be open to public inspection; and*

(8) *designate one or more banks to serve as the depository for the funds of the authority.*

SECTION 10. Subsection (b), Section 18, Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) *All funds of the authority that are not otherwise invested shall be deposited in the depository bank or banks unless otherwise required by orders or resolutions authorizing the issuance of the authority's bonds or notes or other contractual undertakings.*

SECTION 11. 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 by the House on May 15, 1987, by the following vote: Yeas 144, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2400 on May 27, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 23, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 19, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.