

BILL ANALYSIS

S.B. 1706
By: Wentworth
Transportation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, with the exception of Dallas-Fort Worth Airport, Texas does not have legislation enabling the state, counties, or municipalities, jointly or independently, to form political subdivisions for the purpose of forming and managing airports and heliports. S.B. 1706 authorizes the creation of airport authorities by the state, counties, and municipalities to acquire and operate airports and heliports, and provides for financing the costs of such facilities.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Title 3, Transportation Code, by adding Chapter 27, as follows:

CHAPTER 27. AIRPORT AUTHORITIES SUBCHAPTER A. GENERAL PROVISIONS

Sec. 27.001. LEGISLATIVE DECLARATION. (a) Provides that the economic well-being of the state and the general welfare of its residents require adequate, safe, secure, and efficient aviation facilities at a reasonable cost.

(b) Provides that the purpose of this chapter is to authorize the creation by the state, counties, and municipalities, through their independent or joint action, airport authorities, corporate and politic, constituting political subdivisions of the state, for certain purposes.

Sec. 27.002. DEFINITIONS. Defines "aircraft," "air navigation facility," "airport," "airport building," "airport facility," "airport hazard," "authority," "board," "bond," "coupon," "director," "heliport," and "indenture."

[Reserves Sections 27.003-27.030 for expansion.]

SUBCHAPTER B. INCORPORATION AND ADMINISTRATION OF AUTHORITY

Sec. 27.031. INCORPORATION. (a) Authorizes a public corporation organized under this chapter (authority) to be organized as a public corporation under this chapter.

(b) Requires at least three natural persons to file, with the governing body of one or more counties or municipalities, an application, in writing, for permission to incorporate a public corporation under this chapter, and to attach to the application a proposed form of articles of incorporation for the corporation.

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(b) Requires at least three natural persons to file, with the governing body of one or more counties or municipalities, an application, in writing, for permission to incorporate a public corporation under this chapter, and to attach to the application a proposed form of articles of incorporation for the corporation.

(c) Provides that if each governing body with which the application is filed adopts a resolution approving the form of the articles of incorporation and authorizing the formation of a public corporation, the applicants under Subsection (b) become the incorporators of, and are required to incorporate the authority as a public corporation under this chapter using the form of the articles approved.

Sec. 27.032. **ADDITIONAL COUNTIES OR MUNICIPALITIES.** Authorizes an additional county or municipality to become part of an authority if each additional county or municipality and each county or municipality, in the authority adopts a resolution consenting to the inclusion of the additional county or municipality in the authority.

Sec. 27.033. **INCLUSION IN AUTHORITY.** Requires, on the inclusion of a county or municipality in an authority, either initially or as an additional member, all rights, contracts, obligations, and property, both real and personal, of a municipality or county used for or in relation to transportation by air to vest in the authority created under this subchapter, unless otherwise specified by the resolution including the municipality or county in the authority.

Sec. 27.034. **STATE JOINING AN AIRPORT AUTHORITY.** Authorizes the governor, on behalf of the state, to authorize the state to join in the creation of an authority under this subchapter, or to join an existing authority created under this subchapter.

Sec. 27.035. **WITHDRAWAL FROM AUTHORITY.** (a) Authorizes a county or municipality in an authority to withdraw from the authority by resolution of the commissioners court of the county or governing body of the municipality after the organization of an airport authority by more than one governmental entity.

(b) Prohibits a withdrawing county or municipality from claiming or removing an asset of the authority.

Sec. 27.036. **CONTENTS OF CERTIFICATE OF INCORPORATION.** Requires the certificate of incorporation of an authority to state certain information.

Sec. 27.037. **INCORPORATION; EXECUTION AND FILING OF ARTICLES.** (a) Requires the articles of incorporation of an authority to be signed and acknowledged by the incorporators and have attached a certified copy of each of the resolutions provided for in Section 27.031.

(b) Requires the articles of incorporation of an authority, and the documents required to be attached under Subsection (a), to be filed with the secretary of state.

(c) Requires the authority referred to in the certificate of incorporation to come into existence, constitute a public corporation under the name listed in the certificate, and have all the rights and powers given to authorities under this chapter, when a certificate of incorporation is issued by the secretary of state after the filing of the articles and attached documents.

Sec. 27.038. **BOARD OF DIRECTORS.** (a) Provides that the governing body of an authority is a board with at least five, but no more than nine, members appointed in certain manners under certain circumstances.

(b) Requires each member elected by a governing body of an authorizing governmental entity to be a resident of the authorizing governmental entity. Authorizes the additional member elected under Subsection (a)(3)(C) to be a resident of any county electing the member.

(c) Provides that if each governing body with which the application is filed adopts a resolution approving the form of the articles of incorporation and authorizing the formation of a public corporation, the applicants under Subsection (b) become the incorporators of, and are required to incorporate the authority as a public corporation under this chapter using the form of the articles approved.

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(b) Requires the articles of incorporation of an authority, and the documents required to be attached under Subsection (a), to be filed with the secretary of state.

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Sec. 27.038. **BOARD OF DIRECTORS.** (a) Provides that the governing body of an authority is a board with at least five, but no more than nine, members appointed in certain manners under certain circumstances.

(b) Requires each member elected by a governing body of an authorizing governmental entity to be a resident of the authorizing governmental entity. Authorizes the additional member elected under Subsection (a)(3)(C) to be a resident of any county electing the member.

(c) Authorizes each authorizing governmental entity to elect the same number of members as any other authorizing governmental entity, other than the additional member elected under Subsection (a)(3)(C).

(d) Provides that a board member is eligible for re-election.

(e) Provides that the state is entitled, if the state joins in the creation of an airport authority under this subchapter, or joins an existing airport authority created under this subchapter, to the number of board members agreed on by the authorizing governmental entities and the state, but is entitled to at least one board member. Requires a board member representing the state to be appointed by the governor.

(f) Authorizes the board to employ and set the compensation of necessary personnel.

Sec. 27.039. VACANCY; IMPEACHMENT. (a) Requires, except as provided by Subsection (b), if a board member resigns, dies, or becomes incapable or ineligible to act as a board member, a successor to serve the unexpired portion of the board member's term to be elected in the same manner provided by Section 27.038, as the board member whose unexpired term the successor is filling.

(b) Requires the governor, if a vacancy in the office of the additional member elected under Section 27.038(a)(3)(C) continues for more than 30 days, to appoint a successor, on the request of any governmental entity that elected the member.

(c) Authorizes a board member to be impeached and removed from office.

Sec. 27.040. ELIGIBILITY. Provides that an officer of the state, a county, or a municipality is not eligible to serve as a board member.

Sec. 27.041. TERMS. (a) Requires the term of office of a board member to be set out in the articles of incorporation of an authority.

(b) Provides that board members serve staggered terms so that the term of at least one member expires each year.

Sec. 27.042. QUORUM. (a) Provides that except as provided by Subsection (b), a majority of the board members constitutes a quorum for the transaction of business.

(b) Authorizes a meeting of a board to be adjourned by a majority of the board members present, or to be adjourned by a single board member if the member is the only board member present at the meeting.

(c) Requires that a vacancy in the board not impair the right of a quorum to exercise all the powers and duties of an authority.

Sec. 27.043. MEETINGS. (a) Requires a board to hold regular monthly meetings, and any other meeting as provided for in the bylaws of the authority.

(b) Authorizes a board to hold a special meeting at the call of the chair of the authority, or two board members.

(c) Authorizes any matter on which the board is authorized to act, to be acted upon at a regular or special meeting.

(d) Requires, at the request of a board member, the vote on a question before a board

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(d) Requires, at the request of a board member, the vote on a question before a board

to be taken by yeas and nays and entered upon the record. Requires all proceedings of a board to be reduced to writing by the secretary of the authority and open to board members and to the public at all times. Provides that copies of the proceedings, when certified by the secretary of an authority under its seal, are admissible in a court as evidence of the matters certified in the proceedings.

Sec. 27.044. COMPENSATION. Provides that a board member is not entitled to receive compensation, but is entitled to reimbursement for actual and necessary expenses.

Sec. 27.045. OFFICERS. (a) Establishes the officers of the board.

(b) Requires the board to elect from the members of the board a chair, vice chair, and secretary for a term of one year.

(c) Provides that the treasurer and any other officers a board considers necessary need not be members of the board, and requires those offices to be elected by the board for terms determined by the board.

(d) Authorizes the offices of secretary and treasurer to be held by the same person.

Sec. 27.046. TAX EXEMPTION; BONDS, PROPERTY, INCOME. (a) Exempts bonds issued by an authority, and the income on the bonds, from all state taxation.

(b) Exempts all property and income of an authority from all state, county, municipal, and other local taxation.

(c) Provides that Subsection (b) does not exempt concessionaires, licensees, tenants, operators, or lessees of an authority from the payment of any taxes, including licenses or privilege taxes levied by the state, a county, or a municipality.

Sec. 27.047. TAX EXEMPTION; ACCESS TO AIRPORTS. Prohibits a county or municipality from requiring the payment of any tax or privilege license from a person, firm, or corporation for the reasonable use of public streets, roads, or highways leading to or from an airport, heliport, or aircraft landing area owned or operated by or under the jurisdiction of an authority.

Sec. 27.048. ZONING. (a) Exempts an authority from zoning laws, ordinances, and regulations.

(b) Provides that an authority has the same zoning powers, with respect to the zoning of an airport in an unincorporated area owned or operated by the authority and the zoning of the unincorporated area lying within two miles of the boundaries of the airport, as a municipality that owns or operates an airport.

Sec. 27.049. GENERAL POWERS. Authorizes an authority to perform certain duties and wield certain powers.

Sec. 27.050. LIMITATION ON POWER. Prohibits an authority from acquiring by eminent domain real property or rights owned or held by a railroad or utility.

Sec. 27.051. MUNICIPAL VOTE REQUIRED. Requires a majority of the governing body of the municipality to vote in favor of the proposed airport facility before an authority is authorized to own, acquire, construct, or operate an airport or an airport facility.

Sec. 27.052. PEACE OFFICERS. (a) Authorizes the authority to employ security officers

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Sec. 27.052. PEACE OFFICERS. (a) Authorizes the authority to employ security officers

who have obtained a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education.

(b) Provides that a court of a municipality that is an authorizing governmental entity has jurisdiction over a misdemeanor committed on the property of an authority.

(c) Provides that a county that is an authorizing governmental entity has jurisdiction over a misdemeanor committed on the property of an authority if there is no authorizing municipality.

Sec. 27.053. FUNDING. (a) Provides that an authority is authorized to accept, receive, disburse, and expend federal money, state money, and any other money made available by grant or loan to accomplish a purpose of this chapter.

(b) Requires federal money accepted under this section to be accepted and expended by an authority on terms prescribed by the United States that are not inconsistent with the laws of this state.

Sec. 27.054. ASSISTANCE BY STATE OR LOCAL ENTITIES. Authorizes a county, municipality, or other political subdivision of the state, including a public corporation, to engage in certain activities or functions, with or without consideration.

Sec. 27.055. DISSOLUTION. (a) Authorizes the authority to be dissolved on the filing of articles of dissolution with the secretary of state that are required to be sworn to, and subscribed by, each member of the authority, if an authority does not have outstanding bonds.

(b) Provides that on issue of a certificate of dissolution by the secretary of state, an authority ceases to exist. Provides that on dissolution, all rights, titles, and interests of the authority in property vest in the authorizing governmental entities, as provided by the articles of incorporation, or if not provided for in the articles of incorporation, vest in the authorizing governmental entities equally.

Sec. 27.056. CONTRACT VALIDATION. Provides that a contract entered into, or a legal action instituted by a de facto or de jure authority, is validated.

[Reserves Sections 27.057-27.100 for expansion.]

SUBCHAPTER C. BONDS

Sec. 27.101. GENERAL PROVISIONS. (a) Authorizes an authority to issue interest-bearing revenue bonds for any of its corporate purposes.

(b) Provides that the principal of, and the interest on, bonds is payable solely from, and is authorized to be secured by, a pledge of the revenues derived by an authority from the operation of authority airports, heliports, facilities, and other property.

(c) Provides that bonds issued or contracts entered into by an authority under this chapter do not create debt of the state, a county, or a municipality, and do not create a charge against the credit or taxing powers of the state, a county, or municipality.

Sec. 27.102. BONDS ISSUED. (a) Requires board proceedings to determine how bonds are issued and certain matters relating to how bonds are issued.

(b) Requires a bond having a stated maturity date more than 10 years after its date of issue to be made subject to redemption at the option of an authority not later than the

who have obtained a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education.

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(b) Requires a bond having a stated maturity date more than 10 years after its date of issue to be made subject to redemption at the option of an authority not later than the

10th anniversary of its date of issue and on any interest payment date after that time at a price, after notice, on terms, in the manner provided in the board proceeding that authorized the bond issuance.

(c) Authorizes bonds of an authority to be sold at public or private sale in the manner and from time to time as may be determined by the board.

(d) Authorizes an authority to pay all reasonable expenses, premiums, fees, and commissions that the board determines are necessary, or advantageous, in connection with the authorization, sale, and issuance of bonds.

(e) Requires bonds to contain a recital that the bonds are issued under this chapter.

(f) Provides that a public hearing is not required for the issuance of bonds by an authority.

(g) Provides that bonds issued under this chapter are negotiable instruments within the meaning of the negotiable instruments law of this state, if the bonds otherwise possess all the characteristics of a negotiable instrument under the law of this state, notwithstanding the fact that they are payable solely from a specified source.

Sec. 27.103. NOTICE; CHALLENGES. (a) Authorizes an authority, on the adoption of a resolution providing for the issuance of bonds, to publish, once a week for two consecutive weeks, in a newspaper that is distributed in the county in which the principal office of the authority is located, notice in, substantially, a certain form, at the end of which shall be printed the name and title of either the chair or secretary of the authority. Sets forth the form of the notice.

(b) Requires an action or proceeding in a court to set aside or question the proceedings for the issuance of bonds referred to in a notice under Subsection (a), or to contest the validity of the bonds or the validity of the pledge and any instruments made to secure the bonds, to be commenced before the 31st day after the date of first publication of the notice.

(c) Provides that after the 30-day period described under Subsection (b) expires, a right of action or defense questioning or attacking the validity of the proceedings, bonds, pledge, or instruments may not be asserted, the validity of the proceedings, bonds, pledge, or instruments are not open to question in a court on any ground.

Sec. 27.104. EXECUTION AND DELIVERY. (a) Requires bonds to be signed by the chair or vice chair and by the secretary or treasurer of an authority. Authorizes the signature of one of the officers whose signatures will appear on the bonds to be imprinted or otherwise reproduced.

(b) Requires the seal of an authority to be affixed onto the bonds or a facsimile of the seal of an authority to be imprinted or otherwise reproduced on the bonds.

(c) Requires coupons to be signed by the chair or vice chair and by the secretary or treasurer of an authority. Authorizes the signature of the secretary or treasurer to be imprinted or otherwise reproduced.

(d) Provides that delivery of bonds executed as provided under this section is valid notwithstanding any changes in officers or in the authority seal after the signing and sealing of the bonds.

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(g) Provides that bonds issued under this chapter are negotiable instruments within the meaning of the negotiable instruments law of this state, if the bonds otherwise possess all the characteristics of a negotiable instrument under the law of this state, notwithstanding the fact that they are payable solely from a specified source.

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(b) Requires an action or proceeding in a court to set aside or question the proceedings for the issuance of bonds referred to in a notice under Subsection (a), or to contest the validity of the bonds or the validity of the pledge and any instruments made to secure the bonds, to be commenced before the 31st day after the date of first publication of the notice.

(c) Provides that after the 30-day period described under Subsection (b) expires, a right of action or defense questioning or attacking the validity of the proceedings, bonds, pledge, or instruments may not be asserted, the validity of the proceedings, bonds, pledge, or instruments are not open to question in a court on any ground.

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(c) Requires coupons to be signed by the chair or vice chair and by the secretary or treasurer of an authority. Authorizes the signature of the secretary or treasurer to be imprinted or otherwise reproduced.

(d) Provides that delivery of bonds executed as provided under this section is valid notwithstanding any changes in officers or in the authority seal after the signing and sealing of the bonds.

Sec. 27.105. SECURITY. (a) Authorizes, at the discretion of an authority, bonds to be issued under and secured by an indenture between the authority and a trustee. Authorizes a trustee to be a private person or corporation, including a trust company or bank having trust powers.

(b) Authorizes the authority to engage in certain actions, in an indenture or resolution providing for the issuance of bonds.

(c) Requires a pledge of revenues to be valid and binding from the time it is made. Provides that pledged revenues received after the pledge by an authority immediately become subject to the lien of the pledge without physical delivery or further act. Provides that the lien of the pledge is valid and binding against a party having a claim of any kind against the authority, regardless of whether the party has actual notice of the lien, from the time a statement is filed in the office of the county clerk of the county in which the principal office of the authority is located, or a county in which any part of the property, the revenues from which are pledged, is located.

(d) Sets forth the required content of a statement under Subsection (c).

(e) Authorizes an authority, in an indenture or resolution pledging revenues from an airport, heliport, building, or facility, to include certain provisions customarily contained in instruments securing evidence of indebtedness.

(f) Authorizes a holder of the bonds or any of the coupons, or the trustee under an indenture if authorized in the indenture, if an authority defaults in payment of the principal of or interest on bonds or in an agreement included in an indenture securing the bonds, to enforce payment of the principal or interest by civil action, mandamus, or other proceeding and to compel performance of a duty of the board and officers of the authority, and requires that entity to be entitled as a matter of right and regardless of the sufficiency of the security to the appointment of a receiver with all the powers of a receiver for the operation and maintenance of the property of the authority covered by the indenture, and collection, segregation, and application of revenues from property of the authority covered by the indenture.

Sec. 27.106. PROCEEDS. (a) Authorizes proceeds derived from the sale of bonds to be used only to pay the cost of acquiring, constructing, improving, enlarging, and equipping an airport, facility, or property as specified in the proceedings in which the bonds are authorized to be issued.

(b) Sets forth the eligible costs under Subsection (a).

(c) Requires, if any proceeds derived from the sale of bonds remain undisbursed after completion of the work described under Subsection (a) and payment of costs under Subsection (b), the proceeds to be used for retirement of the principal of the bonds of the same issue.

Sec. 27.107. REFUNDING BONDS. (a) Authorizes an authority, at any time and from time to time, to issue refunding bonds for certain purposes.

(b) Authorizes proceeds derived from the sale of refunding bonds to be used only for the purposes for which the refunding bonds were authorized to be issued.

(c) Provides that refunding may be effected by sale of the refunding bonds and the application of the proceeds, or by exchange of the refunding bonds for the bonds or interest coupons to be refunded, except that the holders of the bonds or coupons to be refunded are prohibited from being compelled without their consent to surrender their

Sec. 27.105. SECURITY. (a) Authorizes, at the discretion of an authority, bonds to be issued under and secured by an indenture between the authority and a trustee. Authorizes a trustee to be a private person or corporation, including a trust company or bank having trust powers.

(b) Authorizes the authority to engage in certain actions, in an indenture or resolution providing for the issuance of bonds.

(c) Requires a pledge of revenues to be valid and binding from the time it is made. Provides that pledged revenues received after the pledge by an authority immediately become subject to the lien of the pledge without physical delivery or further act. Provides that the lien of the pledge is valid and binding against a party having a claim of any kind against the authority, regardless of whether the party has actual notice of the lien, from the time a statement is filed in the office of the county clerk of the county in which the principal office of the authority is located, or a county in which any part of the property, the revenues from which are pledged, is located.

(d) Sets forth the required content of a statement under Subsection (c).

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bonds or coupons for payment or exchange before the date on which they may be paid or redeemed by call of the authority under their respective provisions.

(d) Provides that this subchapter applies to refunding bonds to the extent the provisions are consistent with this section.

(e) Provides that if an authority issues bonds for the purpose of refunding the principal of and interest on any of its bonds or for any other purpose for which it is authorized to issue bonds, this section applies only to the portion of the combined issue authorized for refunding purposes, and the rest of this subchapter applies to the remaining portion of the combined issue.

Sec. 27.108. LOCAL GOVERNMENT INVESTMENT. Authorizes a governing body of a county or municipality to invest idle or surplus money held in its treasury in bonds of an authority.

Sec. 27.109. LEGAL INVESTMENTS. (a) Provides that bonds issued under this subchapter are legal investments for executors, administrators, trustees, and other fiduciaries, unless otherwise directed by the court having jurisdiction of the fiduciary relation, or by the document that is the source of the fiduciary's authority.

(b) Provides that bonds issued under this subchapter are legal investments for savings banks and insurance companies organized under the laws of this state.

SECTION 2. Effective date: upon passage or September 1, 2003.

EFFECTIVE DATE

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