

BILL ANALYSIS

C.S.H.B. 2138
By: Phillips
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law provides for certain formations of regional mobility authorities (mobility authority). Existing transportation authorities of various types have expressed concern regarding their treatment under these mobility authorities.

Public transit is not available in all parts of Texas. There are many types and sizes of transit systems, and limited funding. Mobility authorities have the power to construct, maintain, and operate nearly every mode of transportation, but not a bus system.

Harris County operates various toll projects under the authority of Chapter 284, Transportation Code. The North Texas Tollway Authority operates various turnpike projects under the authority of Chapter 366, Transportation Code. Harris County, the North Texas Tollway Authority, and the counties that are part of the North Texas Tollway Authority currently lack the ability to take advantage of the additional powers granted to mobility authorities by transferring existing projects to a mobility authority, or by assuming jurisdiction over a project transferred by a mobility authority, and any debts, obligations, and liabilities of a mobility authority relating to that project.

As proposed, CSHB 2138 provides necessary, but permissive, accommodations to facilitate the formation and operation of a mobility authority. It provides mobility authorities with the ability to provide mass transit service and to assume the mass transit obligations of existing transit authorities, authorizes the transfer to a mobility authority of the toll facilities of regional tollway authorities and certain counties, subject to the constitution, property, and contract rights and the effect on bonds, and to assume the project related obligations of an entity transferring a transportation project to the mobility authority, authorizes a mobility authority to transfer a transportation project to governmental entities under certain conditions, and sets forth other necessary provisions and accommodations to facilitate the formation and operation of a mobility authority.

Regionalizing mass transit may encourage the efficient and effective use of mass transit. In addition, regionalization will make it easier for mass transit to be integrated into other transportation projects. This bill makes regionalization voluntary. An existing transit system may agree to be taken over by a mobility authority, subject to certain conditions. The mobility authority may create its own transit system, but is prohibited from competing with existing systems that have implemented their taxing authority.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 1 of this bill.

ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 284, Transportation Code, by adding Section 284.011, as follows:

Sec. 284.011. TRANSFER OF ASSETS. (a) Authorizes a county, acting through the commissioners court of the county, to submit a request to the Texas Transportation Commission (commission) for authorization to create a mobility authority under Chapter 370 (Regional

Mobility Authorities) and to transfer all projects under this chapter to the mobility authority if certain conditions are met.

(b) Authorizes the county to submit to the commission a proposed structure for the initial board of directors of the mobility authority and a method for appointment to the board of directors at the creation of the mobility authority. Provides that subsequent appointments to the board of directors are subject to the requirements of Subchapter F (Governance), Chapter 370.

(c) Authorizes the county, after commission authorization, to transfer each of its projects under this chapter to the mobility authority to the extent authorized by the Texas Constitution if property and contract rights in the projects and bonds issued for the projects are not affected unfavorably.

(d) Requires the commission to adopt rules governing the creation of a mobility authority and the transfer of projects under this section.

SECTION 2. Amends Section 366.004(a), Transportation Code, to provide that the cost of the acquisition, construction, improvement, extension, or expansion of a turnpike project or system by a regional tollway authority under that chapter includes the costs of the assumption of debts, obligations, and liabilities of an entity relating to a turnpike project or system transferred to a regional tollway authority by that entity.

SECTION 3. Amends Section 366.033, Transportation Code, by adding Subsection (k) to authorize a regional tollway authority, acting through its board, to agree with another entity to acquire a turnpike project or system from that entity, and to assume any debts, obligations, and liabilities of the entity relating to a turnpike project or system transferred to the regional tollway authority.

SECTION 4. Amends Subchapter B, Chapter 366, Transportation Code, by adding Section 366.036, as follows:

Sec. 366.036. TRANSFER OF TURNPIKE PROJECT OR SYSTEM. (a) Authorizes a regional tollway authority to transfer any of its turnpike projects or systems to one or more local governmental entities if certain conditions are met.

(b) Authorizes a regional tollway authority to transfer to one or more local governmental entities work product developed by the regional tollway authority in determining the feasibility of the construction, improvement, extension, or expansion of a turnpike project or system, and the regional tollway authority's rights and obligations under any related agreements, if the requirements of Subsection (a)(1) and (6) are met.

(c) Requires a local governmental entity to reimburse any expenditures made by a regional tollway authority from its feasibility study fund or otherwise to pay the costs of work product transferred to the local governmental entity under Subsection (b), and any other amounts expended under related agreements transferred to the local governmental entity. The reimbursement may be made over time, as determined by the local governmental entity and the regional tollway authority.

SECTION 5. Amends Section 370.003, Transportation Code, to redefine "transportation project" and define "mass transit," "service area," "transit provider," and "transit system."

SECTION 6. Amends Section 370.004(a), Transportation Code, to provide that the cost of the acquisition, construction, improvement, extension, or expansion of a transportation project by a mobility authority under that chapter includes the costs of the assumption of debts, obligations, and liabilities of an entity relating to a transportation project transferred to a mobility authority by that entity.

SECTION 7. Amends Section 370.031, Transportation Code, by adding Subsection (c) to provide that a municipality that borders the United Mexican States and has a population of 500,000 or more has the same authority as a county to create and participate in a mobility

authority. Provides that a municipality creating or participating in an authority has the same powers and duties as a county participating in a mobility authority, the governing body of the municipality has the same powers and duties as the commissioners court of a county participating in a mobility authority, and an elected member of the municipality's governing body has the same powers and duties as a commissioner of a county that is participating in a mobility authority.

SECTION 8. Amends Section 370.033, Transportation Code, by amending Subsection (m) and adding Subsections (o) and (p), as follows:

(m) Authorizes a mobility authority, if it receives money from the general revenue fund, the Texas Mobility Fund, or the state highway fund, to use the money only for certain actions for a turnpike project under Section 370.003(14)(A) or (D) (Definitions), or a transit system under Section 370.351.

(o) Prohibits a mobility authority, except as provided in Subchapter J (Acquiring Transit Systems) from providing mass transit services in the service area of another transit provider that has taxing authority and has implemented it anywhere in the service area unless the service is provided under a written agreement with the transit provider or under Section 370.186.

(p) Authorizes a mobility authority, acting through its board, to agree with another entity to acquire a transportation project or system from that entity, and to assume any debts, obligations, and liabilities of the entity relating to a transportation project or system transferred to the mobility authority.

SECTION 9. Amends Subchapter B, Chapter 370, Transportation Code, by adding Section 370.039, as follows:

Sec. 370.039. TRANSFER OF TRANSPORTATION PROJECT OR SYSTEM. (a) Authorizes a mobility authority to transfer any of its transportation projects or systems to one or more governmental entities if certain conditions are met.

(b) Authorizes a mobility authority to transfer to one or more governmental entities work product developed by the mobility authority in determining the feasibility of the construction, improvement, extension, or expansion of a transportation project or system, and the mobility authority's rights and obligations under any related agreements, if the requirements of Subsection (a)(1) and (6) are met.

(c) Requires a governmental entity to reimburse any expenditures made by a mobility authority from its feasibility study fund or otherwise to pay the costs of work product transferred to the governmental entity under Subsection (b), and any other amounts expended under related agreements transferred to the governmental entity. The reimbursement may be made over time, as determined by the governmental entity and the mobility authority.

SECTION 10. Amends Section 370.186, Transportation Code, by amending Subsection (a) and adding Subsections (c) and (d), as follows:

(a) Provides that except as provided by Subsection (c), a mobility authority may not construct, maintain, or operate a turnpike or toll project in an area having a governmental entity established under Chapter 284 (Causeways, Bridges, Tunnels, Turnpikes, and Highways in Certain Counties) or 366 (Regional Tollway Authorities) unless the governmental entity and the mobility authority enter into a written agreement specifying the terms and conditions under which the project shall be undertaken.

(c) Provides that Subsection (a) does not apply to a turnpike or toll project located in a county in which a regional tollway authority has transferred all turnpike projects of the regional tollway authority located in the county, and all work product developed by the regional tollway authority in determining the feasibility of the construction, improvement, extension, or expansion of a turnpike project to be located in the county.

(d) Prohibits a mobility authority from constructing, maintaining, or operating a passenger rail facility within the boundaries of an intermunicipal commuter rail district created under Article 6550c-1, Vernon's Texas Civil Statutes, as those boundaries existed on September 1, 2005, unless the district and the mobility authority enter into a written agreement specifying the terms and conditions under which the project will be undertaken.

SECTION 11. Amends Chapter 370, Transportation Code, by adding Subchapters I and J, as follows:

SUBCHAPTER I. TRANSIT SYSTEMS

Sec. 370.351. TRANSIT SYSTEMS. (a) Authorizes a mobility authority to construct, own, operate, and maintain a transit system.

(b) Requires a mobility authority to determine each transit route, including transit route changes.

(c) Provides that this chapter does not prohibit an authority, municipality, or transit provider from providing any service that complements a transit system, including providing parking garages, special transportation for certain persons, or medical transportation services.

Sec. 370.352. PUBLIC HEARING ON FARE AND SERVICE CHANGES. (a) Defines "service change," "transit revenue vehicle mile," "transit route," and "transit route mile."

(b) Requires a mobility authority to hold a public meeting on certain fare and service changes and establishment of new transit routes, except as provided by Section 370.353.

(c) Requires a mobility authority to hold the public hearing required by Subsection (b) before the cumulative amount of service changes in a fiscal year equals a percentage amount described in Subsection (b)(2)(A) or (B).

Sec. 370.353. PUBLIC HEARING ON FARE AND SERVICE CHANGES: EXCEPTIONS. (a) Defines "experimental service change."

(b) Provides that a public hearing under Section 370.352 is not required for certain actions.

(c) Authorizes a hearing on an experimental service change in effect for more than 180 days to be held before or while the experimental service change is in effect and provides that the hearing satisfies the requirement for a public hearing if the hearing notice required by Section 370.354 states that the change may become permanent at the end of the effective period. Requires the service that existed before the change, if a hearing is not held before or while the experimental service change is in effect, to be reinstated at the end of the 180th day after the change became effective and a public hearing to be held in accordance with Section 370.352 before the experimental service change may be continued.

Sec. 370.354. NOTICE OF HEARING ON FARE OR SERVICE CHANGE. (a) Requires the mobility authority, after calling a public hearing required by Section 370.352, to publish and post notice of the hearing by a certain procedure.

(b) Requires the notice to contain certain information.

(c) Provides that the requirement for a public hearing under Section 370.352 is satisfied at a public hearing required by federal law if certain requirements are met and the proposed fare or service change is addressed at the meeting.

Sec. 370.355. CRIMINAL PENALTIES. (a) Authorizes a mobility authority by resolution to prohibit the use of the transit system by a person who fails to possess evidence showing that the appropriate fare for the use of the system has been paid and to establish reasonable and appropriate methods, including using peace officers under Section 370.181(c), to ensure that persons using the transit system pay the appropriate fare for that use.

(b) Authorizes a mobility authority by a resolution to provide that a fare for or charge for the use of the transit system that is not paid incurs a penalty, not to exceed \$100.

(c) Requires a mobility authority to post signs designating each area in which a person is prohibited from using the transit system without possession of evidence showing that the appropriate fare has been paid.

(d) Provides that a person commits an offense if the person, or another for whom the person is criminally responsible under Section 7.02, Penal Code, uses the transit system and does not possess evidence showing the appropriate fare has been paid or fails to pay the appropriate fare or other charge and any penalty within 30 days of being notified of the amount of fare or charge and penalty.

(e) Authorizes the notice required by Subsection (d)(2) to be included in a citation issued to the person by a peace officer under Article 14.06 (Must Take Offender Before Magistrate), Code of Criminal Procedure, in connection with an offense relating to the nonpayment of the appropriate fare or charge for the use of the transit system.

(f) Provides that an offense under Subsection (d) is a Class C misdemeanor.

(g) Provides an offense under Subsection (d) is not a crime of moral turpitude.

SUBCHAPTER J. ACQUIRING TRANSIT SYSTEMS

Sec. 370.361. TRANSFER OF TRANSIT SYSTEMS. (a) Defines “unit of election.”

(b) Authorizes a mobility authority to request a transit provider to transfer the provider’s transit system and taxing authority to the mobility authority if the board determines that the traffic needs of the counties in which the mobility authority operates could be most efficiently and economically met by the transfer.

(c) Authorizes the governing body of the transit provider, if a mobility authority makes a request under Subsection (b), to authorize the mobility authority to solicit public comment. Requires the mobility authority to conduct at least one public hearing on the proposed transfer in each unit of election in the transit provider’s service area if authorized by the governing body of the transit provider. Requires notice of the hearing to be published in the Texas Register, one or more newspapers of general circulation in the transit provider’s service area, and a newspaper, if any, published in the counties of the requesting authority. Requires the notice to also solicit written comments on the proposed transfer. Authorizes the transit provider to participate in conducting the hearing.

(d) Authorizes the board of directors of a mobility authority (board) to approve the acquisition of the transit provider if the governing body of the transit provider approves transfer of its operations to the mobility authority and dissolution of the transit provider is approved in an election under Subsection (e). Requires the board, before approving the acquisition, to consider public comments received under Subsection (c).

(e) Authorizes the governing body of the transit provider, after considering public comments received under Subsection (c), to order an election to dissolve the transit provider and transfer all services, property, funds, assets, employees, debts, and obligations to the mobility authority. Requires the governing body of the transit provider to submit to the qualified voters in the units of election in the transit provider’s service area a proposition that contains certain provisions.

(f) Requires an election under Subsection (e) to be conducted so that votes are separately tabulated and canvassed in each participating unit of election in the transit provider's service area.

(g) Requires the governing body of the transit provider to canvass the returns and declare the results of the election separately with respect to each unit of election. Provides that if a majority of the votes received in a unit of election are in favor of the proposition, the proposition is approved in that unit of election. Provides that the transit provider is dissolved and its services, property, funds, assets, employees, debts, and obligations are transferred to the mobility authority only if the proposition is approved in every unit of election. Provides that if the proposition is not approved in every unit of election, the proposition does not pass and the transit provider is not dissolved.

(h) Requires a certified copy of the order or resolution recording the results of the election to be filed with the department, the comptroller, and the governing body of each unit of election in the transit provider's service area.

(i) Requires the mobility authority to assume all debts or other obligations of the transferred transit provider in connection with the acquisition of property under Subsection (g). Prohibits the mobility authority from using the revenue from sales and use tax collected under this subchapter or other revenue of the transit system in a manner inconsistent with any pledge of that revenue for the payment of any outstanding bonds, unless provisions have been made for a full discharge of the bonds.

Sec. 370.362. SALES AND USE TAX. (a) Authorizes a mobility authority, if the mobility authority acquires a transit provider with taxing authority, to impose a sales and use tax at a permissible rate that does not exceed the rate approved by the voters who reside in the services area of the transit provider's transit system at an election under this subchapter.

(b) Authorizes the mobility authority by resolution to take certain actions.

(c) Requires a mobility authority, if the mobility authority orders an election, to publish notice of the election in a newspaper of general circulation in the territory of the mobility authority at least once each week for three consecutive weeks, with the first publication occurring at least 21 days before the date of the election.

(d) Requires a resolution ordering an election and the election notice required by Subsection (c) to show, in addition to the requirements of the Election Code, the hours of the election and polling places in election precincts.

(e) Requires a copy of the election notice required by Subsection (c) to be furnished to the commission and the comptroller.

(f) Provides that the permissible rates for a sales and use tax imposed under this subchapter are one-quarter of one percent, one-half of one percent, three-quarters of one percent, or one percent.

(g) Provides that Chapter 322 (Sales and Use Taxes for Special Purpose Taxing Authorities), applies to a sales and use tax imposed under this subchapter.

Sec. 370.363. MAXIMUM TAX RATE. (a) Prohibits a mobility authority from adopting a sales and use tax rate, including a rate increase, that when combined with rates of all sales and use taxes imposed by all political subdivisions of this state having territory in the service area of the transferred transit system exceeds two percent in any location in the service area.

(b) Provides that an election to approve a sales and use tax or to increase the rate of an authority's sales and use tax has no effect in certain circumstances.

Sec. 370.364. ELECTION TO CHANGE TAX RATE. (a) Requires the ballots, at an election ordered under Section 370.362(b)(2), to be printed with certain text, to permit voting for or against the proposition.

(b) Provides that the increase or decrease in the tax rate becomes effective only if it is approved by a majority of the votes cast.

(c) Requires a notice of the election and a certified copy of the order canvassing the election results to be sent to the commission and the comptroller and filed in the deed records of the county.

Sec. 370.365. SALES TAX: EFFECTIVE DATES. (a) Provides that a sales and use tax implemented under this subchapter takes effect on the first day of the second calendar quarter that begins after the date the comptroller receives a copy of the order required to be sent under Section 370.364(c).

(b) Provides that an increase or decrease in the rate of a sales and use tax implemented under this subchapter takes effect on certain dates.

SECTION 12. Amends Section 451.554, Transportation Code, as follows:

Sec. 451.554. BOARD APPROVAL OF ANNEXATION; EFFECTIVE DATE. (a) Provides that the addition of territory annexed under Section 451.551 does not take effect if, before the effective date of the addition under Subsection (b), the board of the authority gives written notice to the governing body of the municipality that added new territory to the authority by virtue of annexation, or to the governing body of the municipality or the commissioners court of the county that held the election, that the addition would create a financial hardship on the authority because of certain circumstances.

(b) Provides that in the absence of a notice under Subsection (a), the addition of territory takes effect on the 31st day after the date of the municipal ordinance, if annexed by a municipality under Section 451.551, or the election, if approved under Section 451.552 or 451.553.

SECTION 13. Repeals Section 370.161(b), Transportation Code, which is reenacted in SECTION 5 of the bill.

SECTION 14. Provides that the changes in law made by this Act to Chapter 370, Transportation Code, apply to a regional mobility authority created or participated in by a municipality described by Section 370.031(c), Transportation Code, as added by this Act, or Section 370.161(b), Transportation Code, as it existed before the effective date of this Act, in the same manner as they apply to any other entity that creates or participates in a regional mobility authority.

SECTION 15. Effective date: upon passage or September 1, 2005.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute differs from the original by:

(1) adding new SECTION 2 to provide that the cost of the acquisition, construction, improvement, extension, or expansion of a turnpike project or system by a regional tollway authority includes the costs of the assumption of debts, obligations, and liabilities of an entity relating to a turnpike project or system transferred to a regional tollway authority by that entity;

(2) striking former SECTION 2 that authorized the dissolution of a regional tollway authority and the creation of a mobility authority by the regional tollway authority, and the transfer to the mobility authority of each of the turnpike projects of the regional tollway authority;

(3) adding new SECTION 3 to authorize a regional tollway authority, acting through its board, to agree with another entity to acquire a turnpike project or system from that entity, and to assume any debts, obligations, and liabilities of the entity relating to a turnpike project or system transferred to the regional tollway authority;

(4) adding new SECTION 4 to authorize a regional tollway authority to transfer to one or more local governmental entities any of its turnpike projects or systems, any work product developed by the regional tollway authority relating to a turnpike project or system, and rights and obligations of the regional tollway authority under related agreements if certain conditions are met, and to provide for reimbursement to the regional tollway authority under certain conditions;

(5) adding new SECTION 6 to provide that the cost of the acquisition, construction, improvement, extension, or expansion of a transportation project by a mobility authority includes the costs of the assumption of debts, obligations, and liabilities of an entity relating to a transportation project transferred to a mobility authority by that entity;

(6) adding new SECTION 7 to recodify the authority granted in existing Section 370.161(b), Transportation Code, providing that a municipality that borders the United Mexican States and has a population of 500,000 or more has the same authority as a county to create and participate in a mobility authority;

(7) amending Section 370.033, Transportation Code, to strike the amendments to Subsections (a) and (k), and to amend added Subsection (o) to prohibit a mobility authority, except as provided in Subchapter J (Acquiring Transit Systems) from providing mass transit services in the service area of another transit provider that has taxing authority and has implemented it anywhere in the service area unless the service is provided under a written agreement with the transit provider or under Section 370.186;

(8) amending Section 370.033, Transportation Code, to add Subsection (p) to authorize a mobility authority, acting through its board, to agree with another entity to acquire a transportation project or system from that entity, and to assume any debts, obligations, and liabilities of the entity relating to a transportation project or system transferred to the mobility authority;

(9) adding new SECTION 9 to authorize a mobility authority to transfer to one or more governmental entities any of its transportation projects, any work product developed by the mobility authority relating to a transportation project or system, and rights and obligations of the mobility authority under related agreements if certain conditions are met, and to provide for reimbursement to the mobility authority under certain conditions;

(10) striking former SECTIONS 5 and 6, relating to providing certain utility facilities for certain transit system purposes carried out by a mobility authority;

(11) adding new SECTION 10 to provide that the requirements of Section 370.186(a), Transportation Code, relating to a mobility authority obtaining the agreement of a regional tollway authority to construct and operate a toll project in the area of the regional tollway authority, do not apply to a turnpike or toll project located in a county in which a regional tollway authority has transferred all turnpike projects of the regional tollway authority located in the county, and all work product developed by the regional tollway authority in determining the feasibility of the construction, improvement, extension, or expansion of a turnpike project to be located in the county;

(12) adding in new SECTION 10 that a mobility authority is prohibited from constructing, maintaining, or operating a passenger rail facility within the boundaries of an intermunicipal commuter rail district created under Article 6550c-1, Vernon's Texas Civil Statutes, as those boundaries existed on September 1, 2005, unless the district and the mobility authority enter into a written agreement specifying the terms and conditions under which the project will be undertaken;

(13) striking provisions in added Section 370.351, Transportation Code, relating to the construction, maintenance, and operation of an electric bus system by a mobility authority;

(14) defining "unit of election";

(15) providing that a mobility authority can request that a transit provider transfer its taxing authority, as well as its transit system, to the mobility authority, requiring a hearing on the proposed transfer to be held in each unit of election in the transit provider's service area, and providing that the transit authority may participate fully with the mobility authority in conducting a public hearing;

(16) providing that a condition to approval by the board of a mobility authority of the acquisition of a transit provider is approval of the dissolution of the transit provider in an election ordered under Section 370.361(e), Transportation Code;

(17) providing that after considering public comments received, the governing body of the transit provider may order an election to dissolve the transit provider and transfer all services, property, funds, assets, employees, debts, and obligations to the mobility authority, and providing requirements for conducting an election ordered for this purpose;

(18) providing that if a majority of the votes received in a unit of election are in favor of the proposition, the proposition is approved in that unit of election, and that the transit provider is dissolved and its services, property, funds, assets, employees, debts, and obligations are transferred to the authority only if the proposition is approved in every unit of election;

(19) providing that the mobility authority may not use revenue from sales and use tax collected under this subchapter or other revenue of the transit system in a manner inconsistent with any pledge of that revenue for the payment of any outstanding bonds, unless provisions have been made for a full discharge of the bonds;

(20) striking a requirement that notwithstanding any other state law, the mobility authority shall continue to collect any state or federal funding for which the transferred transit provider was eligible and receiving;

(21) providing that the permissible rates for a sales and use tax imposed by a mobility authority for mass transit purposes are one-quarter of one percent, one-half of one percent, three-quarters of one percent, or one percent;

(22) adding new SECTION 12 to provide that the addition of territory annexed under Section 451.551, Transportation Code, does not take effect if, before the effective date of the addition, the board of the authority gives written notice to the governing body of the municipality that added new territory to the authority by virtue of annexation, or to the governing body of the municipality or the commissioners court of the county that held the election, that the addition would create a financial hardship on the authority because of certain circumstances, and to provide that in the absence of a notice, the addition of territory takes effect on the 31st day after the date of the municipal ordinance, if annexed by a municipality under Section 451.551, Transportation Code; and

(23) adds new SECTIONS 13 and 14 to repeal Section 370.161(b), Transportation Code, which is reenacted in SECTION 5, and to provide that the changes in law made by this Act to Chapter 370, Transportation Code, apply to a regional mobility authority created or participated in by a municipality described by Section 370.031(c), Transportation Code, as added by this Act, or Section 370.161(b), Transportation Code, as it existed before the effective date of this Act, in the same manner as they apply to any other entity that creates or participates in a regional mobility authority.

