

BILL ANALYSIS

Senate Research Center
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S.B. 433
By: Wentworth
Transportation & Homeland Security
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, with exception of the statute for Dallas-Fort Worth Airport, Texas statutes do not specifically authorize the state, counties, or municipalities, jointly or independently, to form political subdivisions for the purpose of forming and managing airports and heliports. As proposed, S.B. 433 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

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. LEGISLATIVE DECLARATION; PURPOSE. (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 Act 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 the purpose of improving certain navigation facilities; financing the cost of certain activities by the issuance of bonds or other obligations of an authority payable from the income of the authority and otherwise secured to the extent permitted by law without the incurrence of debt by the state or by a political subdivision; and promoting and facilitating transportation by air from or to points located within the state, to the benefit and general welfare of the state, including its political subdivisions and inhabitants.

SECTION 2. AIRPORT AUTHORITIES. Amends Title 3, Transportation Code, by adding Chapter 27, as follows:

CHAPTER 27. AIRPORT AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 27.001. DEFINITIONS. Defines "aircraft," "air navigation facility," "airport," "airport facility," "authority," "board," and "indenture."

Sec. 27.002. ASSISTANCE BY STATE OR LOCAL ENTITIES. Authorizes certain political subdivisions of the state, including a public corporation, with or without consideration, to provide certain services.

[Reserves Sections 27.003-27.050 for expansion.]

SUBCHAPTER B. CREATION AND EXPANSION

Sec. 27.051. INCORPORATION. (a) Authorizes an authority to organize as a public corporation.

(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 and to attach to the application a proposed form of articles of incorporation for the corporation.

(c) Requires the applicants under Subsection (b) to become the incorporators of and to incorporate the authority as a public corporation using the form of the articles approved, 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.

Sec. 27.052. **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. 27.053. **INCLUSION IN AUTHORITY.** Provides that 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 is required to vest in the authority created under this subchapter unless otherwise specified by the resolution including the municipality or county in the authority.

Sec. 27.054. **STATE JOINING 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. 27.055. **CONTENTS OF CERTIFICATION OF INCORPORATION.** Requires the certificate of incorporation of an authority to state certain information.

Sec. 27.056. **INCORPORATION; EXECUTION AND FILING OF ARTICLES.** (a) Requires the articles of incorporation of an authority to adhere to certain procedures.

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

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

(d) Requires the articles to include the number and terms of board members. Prohibits a term from exceeding two years.

[Reserves Sections 27.057-27.100 for expansion.]

SUBCHAPTER C. BOARD OF DIRECTORS; ADMINISTRATION

Sec. 27.101. **BOARD OF DIRECTORS.** Sets forth certain guidelines and membership appointment procedures of the board of a governing body of an authority.

Sec. 27.102. **VACANCY; REMOVAL.** Sets forth provisions regarding the resignation, death, incapacity, removal, and replacement of a board member.

Sec. 27.103. **ELIGIBILITY.** Provides that an officer of the state, a county, or a municipality is not eligible to serve as a board member.

Sec. 27.104. **TERMS.** Requires staggered board terms of office of a length established by the authority's articles of incorporation.

Sec. 27.105. QUORUM. Sets forth certain quorum procedures.

Sec. 27.106. MEETINGS. Requires a board to hold regular monthly meetings and other meetings as provided for in the authorities bylaws.

(b) Authorizes special meetings to be held at the call of the board chair or of two board members.

(c) Provides that any matter authorized for board action may be acted on at a regular or special meeting.

(d) Requires the vote on a question before a board, at the request of a board member, to be taken by yeas and nays and entered on the record. Requires all board proceedings 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. 27.107. COMPENSATION. Provides that a board member is not entitled to receive compensation but is entitled to reimbursement for actual and necessary expenses.

Sec. 27.108. OFFICERS. Sets forth provisions regarding the election of certain board officers.

[Reserves Sections 27.109-27.150 for expansion.]

SUBCHAPTER D. POWERS AND DUTIES

Sec. 27.151. GENERAL POWERS. Sets forth certain powers and duties of an authority.

Sec. 27.152. ZONING. (a) Provides that an authority is exempt from municipal or county zoning laws, ordinances, and regulations. Provides that an authority has the same zoning powers, for certain purposes, as a municipality that owns or operates an airport.

Sec. 27.153. LIMIT ON EMINENT DOMAIN POWER. Prohibits an authority from acquiring by eminent domain real property or rights owned or held by a railroad or utility.

Sec. 27.154. MUNICIPAL VOTE REQUIRED FOR MUNICIPAL AIRPORTS. Provides that before an authority may own, acquire, construct, or operate an airport or an airport facility within the corporate limits of a municipality, a majority of the governing body of the municipality is required to vote in favor of the proposed airport or airport facility.

Sec. 27.155. PEACE OFFICERS. 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.

[Reserves Sections 27.156-27.200 for expansion.]

SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS; TAX EXEMPTIONS

Sec. 27.201. TAX EXEMPTIONS; BONDS, PROPERTY, INCOME. (a) Provides that bonds issued by an authority and the income on the bonds are exempt from all state taxation.

(b) Provides that all property and income of an authority are exempt from all state and local taxation.

(c) Provides that Subsection (b) does not exempt certain contractees of an authority from the payment of any taxes, including licenses or privilege taxes imposed by the state, a county, or a municipality.

Sec. 27.202. TAX EXEMPTION; ACCESS TO AIRPORTS. Prohibits a county or municipality from requiring the payment of any tax or privilege license from a person for the reasonable use of public streets, roads, or highways leading to or from an airport or aircraft landing area owned or operated by or under the jurisdiction of an authority.

Sec. 27.203. FUNDING. 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 an authority purpose.

(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.

[Reserves Sections 27.204-27.250 for expansion.]

SUBCHAPTER F. BONDS

Sec. 27.251. GENERAL PROVISIONS. (a) Authorizes an authority to issue interest-bearing revenue bonds for any of the authority's corporate purposes.

(b) Provides that the principal of and the interest on bonds is payable solely from and may be secured by a pledge of the revenue derived by an authority from the operation of authority airports, 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 a municipality.

Sec. 27.252. BONDS ISSUED. (a) Requires board proceedings to determine how bonds are issued, including certain bond issuance matters.

(b) Provides that a bond having a stated maturity date more than 10 years after its date of issue is subject to redemption at the option of an authority no 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 the 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.

Sec. 27.253. NOTICE; CHALLENGES. (a) Authorizes, on the adoption of a resolution providing for the issuance of bonds, an authority to publish a notice of challenge, and sets forth text and procedures for 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, certain challenges to the validity of an action or proceeding also expire.

Sec. 27.254. EXECUTION AND DELIVERY. Requires the bonds to be signed by certain board officers and sets forth procedures for execution and delivery of bonds.

Sec. 27.255. SECURITY. (a) Authorizes the bonds, at the discretion of an authority, 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, in an indenture or resolution providing for the issuance of bonds, to adhere to certain pledges, assignments, and mortgages.

(c) Sets forth certain guidelines for a pledge of revenue and a lien of the pledge.

(d) Requires a pledge statement filed with a county clerk under Subsection (c) to contain certain information.

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

(f) Provides that 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, a holder of the bonds or any of the coupons, the trustee under an indenture if authorized in the indenture may take certain actions.

Sec. 27.256. PROCEEDS. (a) Authorizes the proceeds derived from the sale of bonds to be used only to pay the cost of certain activities related to an airport, facility or other property as specified in the proceedings in which bonds are authorized to be issued.

(b) Sets forth certain costs which constitute eligible costs under Subsection (a).

(c) Requires the proceeds, 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), to be used for retirement of the principal of the bonds of the same issue.

Sec. 27.257. REFUNDING BONDS. (a) Authorizes an authority at any time to issue refunding bonds for certain purposes.

(b) Authorizes the 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) Authorizes certain actions to effect refunding.

(d) 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 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. 27.258. LOCAL GOVERNMENT INVESTMENT. Authorizes a governing body of a county or municipality to invest idle or surplus money held in its treasury in authority bonds.

Sec. 27.259. LEGAL INVESTMENTS. (a) Provides that bonds issued under this subchapter are legal investments for certain fiduciaries, unless otherwise directed by the court having jurisdiction of the fiduciary's 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.

[Reserves Section 27.260-27.300 for expansion.]

SUBCHAPTER G. WITHDRAWAL OR DISSOLUTION

Sec. 27.301. WITHDRAWAL FROM AUTHORITY. (a) Authorizes one or more certain public entities in an authority, after the organization of an airport authority, to withdraw from the authority by resolution of the governor, the commissioners court of the county, or the governing body of the municipality.

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

Sec. 27.302. DISSOLUTION. Authorizes an authority, if the authority does not have outstanding bonds, to be dissolved on the filing of articles of dissolution with the secretary of state by each member of the authority. Sets forth certain guidelines governing a dissolution.

SECTION 3. Effective date: upon passage or September 1, 2005.