

By: Phillips

H.B. No. 2138

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the acquisition, construction, maintenance, operation,  
3 and provision of toll facilities and a transit system by a regional  
4 mobility authority, and the transfer to a regional mobility  
5 authority of the toll facilities, transit system, and related  
6 assets of a regional tollway authority or transit provider or of  
7 certain counties; providing criminal penalties; authorizing a tax.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

9 SECTION 1. Subchapter A, Chapter 284, Transportation Code,  
10 is amended by adding Section 284.011 to read as follows:

11 Sec. 284.011. TRANSFER OF ASSETS. (a) A county, acting  
12 through the commissioners court of the county, may submit a request  
13 to the commission for authorization to create a regional mobility  
14 authority under Chapter 370 and to transfer all projects under this  
15 chapter to the regional mobility authority if:

16 (1) the creation of the regional mobility authority  
17 and transfer of projects is not prohibited under the bond  
18 proceedings applicable to the projects;

19 (2) adequate provision has been made for the  
20 assumption by the regional mobility authority of all debts,  
21 obligations, and liabilities of the county arising out of the  
22 transferred projects; and

23 (3) the commissioners courts of any additional  
24 counties to be part of the regional mobility authority have

1 approved the request.

2 (b) The county may submit to the commission a proposed  
3 structure for the initial board of directors of the regional  
4 mobility authority and a method for appointment to the board of  
5 directors at the creation of the regional mobility authority.  
6 Subsequent appointments to the board of directors are subject to  
7 the requirements of Subchapter F, Chapter 370.

8 (c) After commission authorization, the county may transfer  
9 each of its projects under this chapter to the regional mobility  
10 authority to the extent authorized by the Texas Constitution if  
11 property and contract rights in the projects and bonds issued for  
12 the projects are not affected unfavorably.

13 (d) The commission shall adopt rules governing the creation  
14 of a regional mobility authority and the transfer of projects under  
15 this section.

16 SECTION 2. Chapter 366, Transportation Code, is amended by  
17 adding Subchapter H to read as follows:

18 SUBCHAPTER H. DISSOLUTION OF AUTHORITY

19 Sec. 366.036. DISSOLUTION OF AUTHORITY; TRANSFER OF ASSETS.

20 (a) An authority may submit a request to the commission for  
21 authorization to dissolve the authority and to create a regional  
22 mobility authority under Chapter 370 if:

23 (1) dissolution is not prohibited under the bond  
24 proceedings applicable to the turnpike projects and systems owned  
25 by the authority;

26 (2) adequate provision has been made for the  
27 assumption of all debts, obligations, and liabilities of the

1 authority by the regional mobility authority; and

2 (3) the request has been approved by the commissioners  
3 court of each county that is part of the authority.

4 (b) The authority may submit to the commission a proposed  
5 structure for the initial board of directors of the regional  
6 mobility authority and a method for appointment to the board of  
7 directors at the creation of the regional mobility authority.  
8 Subsequent appointments to the board of directors are subject to  
9 the requirements of Subchapter F, Chapter 370.

10 (c) After commission authorization, the authority may  
11 transfer each of its turnpike projects to the regional mobility  
12 authority if property and contract rights in the projects and bonds  
13 issued for the projects are not affected unfavorably.

14 (d) The commission shall adopt rules governing the creation  
15 of a regional mobility authority and the transfer of turnpike  
16 projects under this section.

17 SECTION 3. Section 370.003, Transportation Code, is amended  
18 by amending Subdivision (14) and adding Subdivisions (16), (17),  
19 (18), and (19) to read as follows:

20 (14) "Transportation project" means:

21 (A) a turnpike project;

22 (B) a system;

23 (C) a passenger or freight rail facility,

24 including:

25 (i) tracks;

26 (ii) a rail line;

27 (iii) switching, signaling, or other

1 operating equipment;

2 (iv) a depot;

3 (v) a locomotive;

4 (vi) rolling stock;

5 (vii) a maintenance facility; and

6 (viii) other real and personal property  
7 associated with a rail operation;

8 (D) a roadway with a functional classification  
9 greater than a local road or rural minor collector;

10 (E) a ferry;

11 (F) an airport;

12 (G) a pedestrian or bicycle facility;

13 (H) an intermodal hub;

14 (I) an automated conveyor belt for the movement  
15 of freight;

16 (J) a border crossing inspection station;

17 (K) an air quality improvement initiative;

18 (L) a public utility facility; ~~and~~

19 (M) a transit system; and

20 (N) if applicable, projects and programs listed  
21 in the most recently approved state implementation plan for the  
22 area covered by the authority, including an early action compact.

23 (16) "Mass transit" means the transportation of  
24 passengers and hand-carried packages or baggage of a passenger by  
25 any means of surface, overhead, or underground transportation,  
26 other than an aircraft or taxicab.

27 (17) "Service area" means the county or counties in

1 which an authority or transit provider has established a transit  
2 system.

3 (18) "Transit provider" means an entity that provides  
4 mass transit for the public and that was created under Chapter 451,  
5 452, 453, 454, 457, 458, or 460.

6 (19) "Transit system" means:

7 (A) property owned or held by an authority for  
8 mass transit purposes; and

9 (B) facilities necessary, convenient, or useful  
10 for:

11 (i) the use of or access to mass transit by  
12 persons or vehicles; or

13 (ii) the protection or environmental  
14 enhancement of mass transit.

15 SECTION 4. Section 370.033, Transportation Code, is amended  
16 by amending Subsections (a), (k), and (m) and adding Subsection (o)  
17 to read as follows:

18 (a) An authority, through its board, may:

19 (1) adopt rules for the regulation of its affairs and  
20 the conduct of its business;

21 (2) adopt an official seal;

22 (3) study, evaluate, design, finance, acquire,  
23 construct, maintain, repair, and operate transportation projects,  
24 individually or as one or more systems, provided that a  
25 transportation project that is subject to Subpart C, 23 C.F.R. Part  
26 450, is:

27 (A) included in the plan approved by the

1 applicable metropolitan planning organization; and

2 (B) consistent with the statewide transportation  
3 plan and the statewide transportation improvement program;

4 (4) acquire, hold, and dispose of property in the  
5 exercise of its powers and the performance of its duties under this  
6 chapter;

7 (5) enter into contracts or operating agreements with  
8 a similar authority, another governmental entity, or an agency of  
9 the United States, a state of the United States, the United Mexican  
10 States, or a state of the United Mexican States;

11 (6) enter into contracts or agreements necessary or  
12 incidental to its powers and duties under this chapter;

13 (7) cooperate and work directly with property owners  
14 and governmental entities and officials to support an activity  
15 required to promote or develop a transportation project;

16 (8) employ and set the compensation and benefits of  
17 administrators, consulting engineers, attorneys, accountants,  
18 construction and financial experts, superintendents, managers,  
19 full-time and part-time employees, agents, consultants, and other  
20 persons as the authority considers necessary or useful;

21 (9) notwithstanding Sections 221.003 and 222.031 and  
22 subject to Subsections (j) and (m), apply for, directly or  
23 indirectly receive and spend loans, gifts, grants, and other  
24 contributions for any purpose of this chapter, including the  
25 construction of a transportation project, and receive and spend  
26 contributions of money, property, labor, or other things of value  
27 from any source, including the United States, a state of the United

1 States, the United Mexican States, a state of the United Mexican  
2 States, the commission, the department, a subdivision of this  
3 state, or a governmental entity or private entity, to be used for  
4 the purposes for which the grants, loans, or contributions are  
5 made, and enter into any agreement necessary for the grants, loans,  
6 or contributions;

7 (10) install, construct, or contract for the  
8 construction of public utility facilities, including for transit  
9 system purposes as provided by Sections 370.351(e) and (f), direct  
10 the time and manner of construction of a public utility facility in,  
11 on, along, over, or under a transportation project, or request the  
12 removal or relocation of a public utility facility in, on, along,  
13 over, or under a transportation project;

14 (11) organize a corporation under Chapter 431 for the  
15 promotion and development of transportation projects;

16 (12) adopt and enforce rules not inconsistent with  
17 this chapter for the use of any transportation project, including  
18 tolls, fares, or other user fees, speed and weight limits, and  
19 traffic and other public safety rules, provided that an authority  
20 must consider the same factors that the Texas Turnpike Authority  
21 division of the department must consider in altering a prima facie  
22 speed limit under Section 545.354;

23 (13) enter into leases, operating agreements, service  
24 agreements, licenses, franchises, and similar agreements with a  
25 public or private party governing the party's use of all or any  
26 portion of a transportation project and the rights and obligations  
27 of the authority with respect to a transportation project;

1           (14) borrow money from or enter into a loan agreement  
2 or other arrangement with the state infrastructure bank; and

3           (15) do all things necessary or appropriate to carry  
4 out the powers and duties expressly granted or imposed by this  
5 chapter.

6           (k) An authority may not directly provide water,  
7 wastewater, natural gas, petroleum pipeline, electric  
8 transmission, electric distribution, telecommunications,  
9 information, or cable television services, except for transit  
10 system purposes as provided by Sections 370.351(e) and (f).

11           (m) If an authority receives money from the general revenue  
12 fund, the Texas Mobility Fund, or the state highway fund it may use  
13 the money only to acquire, design, finance, construct, operate, or  
14 maintain a turnpike project under Section 370.003(14)(A) or (D), or  
15 a transit system under Section 370.351.

16           (o) An authority may not provide a transit system in a  
17 service area where another transit provider has implemented taxing  
18 authority unless the service is provided under a written agreement  
19 with the transit provider or under Section 370.186.

20           SECTION 5. Section 370.170(a), Transportation Code, is  
21 amended to read as follows:

22           (a) An authority may adopt rules for the authority's  
23 approval of the installation, construction, relocation, and  
24 removal of a public utility facility in, on, along, over, or under a  
25 transportation project, and for transit system purposes as provided  
26 by Sections 370.351(e) and (f).

27           SECTION 6. Sections 370.181(d) and (e), Transportation



1 Code, are amended to read as follows:

2 (d) An authority may not directly provide water,  
3 wastewater, natural gas, petroleum pipeline, electric  
4 transmission, electric distribution, telecommunications,  
5 information, or cable television services, except for transit  
6 system purposes as provided by Sections 370.351(e) and (f).

7 (e) Nothing in this chapter, or any contractual right  
8 obtained under a contract with an authority authorized by this  
9 chapter, except for transit system purposes as provided by Sections  
10 370.351(e) and (f), supersedes or renders ineffective any provision  
11 of another law applicable to the owner or operator of a public  
12 utility facility, including any provision of the Utilities Code  
13 regarding licensing, certification, and regulatory jurisdiction of  
14 the Public Utility Commission of Texas or Railroad Commission of  
15 Texas.

16 SECTION 7. Chapter 370, Transportation Code, is amended by  
17 adding Subchapters I and J to read as follows:

18 SUBCHAPTER I. TRANSIT SYSTEMS

19 Sec. 370.351. TRANSIT SYSTEMS. (a) An authority may  
20 construct, own, operate, and maintain a transit system.

21 (b) An authority shall determine each transit route,  
22 including transit route changes.

23 (c) If an authority contracts with another entity to  
24 construct, maintain, or operate electric buses operated by the  
25 authority under this chapter, the electric bus system is not  
26 subject to any state law regulating or governing the design,  
27 construction, or operation of a railroad, railway, street railway,

1 street car, or interurban railway.

2 (d) For purposes of ownership or transfer of ownership of an  
3 interest in real property, an electric bus system operating under  
4 this chapter on property previously used by a railroad, railway,  
5 street railway, or interurban railway is a continuation of an  
6 existing rail use.

7 (e) If an authority establishes a transit system that  
8 includes or is to include bus service propelled by electric power in  
9 a service area all or part of which is served by the electric power  
10 distribution systems of more than one electric utility company or  
11 municipally owned electric utility system, the authority may:

12 (1) acquire, construct, own, operate, and maintain for  
13 the sole purpose of powering its vehicles over its transportation  
14 system, sources of electric power, including wholly owned or  
15 partially owned generating facilities of any type and at any  
16 location, fuel reserves, and supplies;

17 (2) in conjunction with owning a generating facility,  
18 acquire, construct, own, operate, and maintain transmission and  
19 distribution facilities needed to deliver power from the generating  
20 facility to its transit system; and

21 (3) contract for the purchase of power and energy with  
22 any supplier of power and energy that serves any part of the service  
23 area for the sole purpose of supplying the power and energy  
24 necessary to operate the authority's vehicles and equipment.

25 (f) The parties to a contract made under Subsection (e)(3)  
26 may fulfill the terms of the contract notwithstanding any order or  
27 rule of the Public Utility Commission of Texas with respect to

1 certification, except that any supply of power or energy by a  
2 utility into the service area of another utility must be provided  
3 over transmission or distribution lines owned by the authority.

4 (g) This chapter does not prohibit an authority,  
5 municipality, or transit provider from providing any service that  
6 complements a transit system, including providing parking garages,  
7 special transportation for persons who are disabled or elderly, or  
8 medical transportation services.

9 Sec. 370.352. PUBLIC HEARING ON FARE AND SERVICE CHANGES.

10 (a) In this section:

11 (1) "Service change" means any addition or deletion  
12 resulting in the physical realignment of a transit route or a change  
13 in the type or frequency of service provided in a specific,  
14 regularly scheduled transit route.

15 (2) "Transit revenue vehicle mile" means one mile  
16 traveled by a transit vehicle while the vehicle is available to  
17 public passengers.

18 (3) "Transit route" means a route over which a transit  
19 vehicle travels that is specifically labeled or numbered for the  
20 purpose of picking up or discharging passengers at regularly  
21 scheduled stops and intervals.

22 (4) "Transit route mile" means one mile along a  
23 transit route regularly traveled by transit vehicles while  
24 available to public passengers.

25 (b) Except as provided by Section 370.353, an authority  
26 shall hold a public hearing on:

27 (1) a fare change;

1           (2) a service change involving:

2                   (A) 25 percent or more of the number of transit  
3 route miles of a transit route; or

4                   (B) 25 percent or more of the number of transit  
5 revenue vehicle miles of a transit route, computed daily, for the  
6 day of the week for which the change is made; or

7           (3) the establishment of a new transit route.

8           (c) An authority shall hold the public hearing required by  
9 Subsection (b) before the cumulative amount of service changes in a  
10 fiscal year equals a percentage amount described in Subsection  
11 (b)(2)(A) or (B).

12           Sec. 370.353. PUBLIC HEARING ON FARE AND SERVICE CHANGES:  
13 EXCEPTIONS. (a) In this section, "experimental service change"  
14 means an addition of service to an existing transit route or the  
15 establishment of a new transit route.

16           (b) A public hearing under Section 370.352 is not required  
17 for:

18                   (1) a reduced or free promotional fare that is  
19 instituted daily or periodically over a period of not more than 180  
20 days;

21                   (2) a headway adjustment of not more than five minutes  
22 during peak-hour service and not more than 15 minutes during  
23 non-peak-hour service;

24                   (3) a standard seasonal variation unless the number,  
25 timing, or type of the standard seasonal variation changes; or

26                   (4) an emergency or experimental service change in  
27 effect for 180 days or less.

1       (c) A hearing on an experimental service change in effect  
2 for more than 180 days may be held before or while the experimental  
3 service change is in effect and satisfies the requirement for a  
4 public hearing if the hearing notice required by Section 370.354  
5 states that the change may become permanent at the end of the  
6 effective period. If a hearing is not held before or while the  
7 experimental service change is in effect, the service that existed  
8 before the change must be reinstated at the end of the 180th day  
9 after the change became effective and a public hearing must be held  
10 in accordance with Section 370.352 before the experimental service  
11 change may be continued.

12       Sec. 370.354. NOTICE OF HEARING ON FARE OR SERVICE CHANGE.

13       (a) After calling a public hearing required by Section 370.352, the  
14 authority shall:

15               (1) at least 30 days before the date of the hearing,  
16 publish notice of the hearing at least once in a newspaper of  
17 general circulation in the territory of the authority; and

18               (2) post notice in each transit vehicle in service on  
19 any transit route affected by the proposed change for at least two  
20 weeks within 30 days before the date of the hearing.

21       (b) The notice must contain:

22               (1) a description of each proposed fare or service  
23 change, as appropriate;

24               (2) the time and place of the hearing; and

25               (3) if the hearing is required under Section  
26 370.352(c), a description of the latest proposed change and the  
27 previous changes.

1       (c) The requirement for a public hearing under Section  
2 370.352 is satisfied at a public hearing required by federal law if:

3               (1) the notice requirements of this section are met;  
4 and

5               (2) the proposed fare or service change is addressed  
6 at the meeting.

7       Sec. 370.355. CRIMINAL PENALTIES. (a) An authority by  
8 resolution may prohibit the use of the transit system by a person  
9 who fails to possess evidence showing that the appropriate fare for  
10 the use of the system has been paid and may establish reasonable and  
11 appropriate methods, including using peace officers under Section  
12 370.181(c), to ensure that persons using the transit system pay the  
13 appropriate fare for that use.

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

17       (c) The authority shall post signs designating each area in  
18 which a person is prohibited from using the transit system without  
19 possession of evidence showing that the appropriate fare has been  
20 paid.

21       (d) A person commits an offense if:

22               (1) the person or another for whom the person is  
23 criminally responsible under Section 7.02, Penal Code, uses the  
24 transit system and does not possess evidence showing that the  
25 appropriate fare has been paid; and

26               (2) the person fails to pay the appropriate fare or  
27 other charge for the use of the transit system and any penalty on

1 the fare on or before the 30th day after the date the authority  
2 notifies the person that the person is required to pay the amount of  
3 the fare or charge and the penalty.

4 (e) The notice required by Subsection (d)(2) may be included  
5 in a citation issued to the person by a peace officer under Article  
6 14.06, Code of Criminal Procedure, in connection with an offense  
7 relating to the nonpayment of the appropriate fare or charge for the  
8 use of the transit system.

9 (f) An offense under Subsection (d) is a Class C  
10 misdemeanor.

11 (g) An offense under Subsection (d) is not a crime of moral  
12 turpitude.

13 SUBCHAPTER J. ACQUIRING TRANSIT SYSTEMS

14 Sec. 370.361. TRANSFER OF TRANSIT SYSTEMS. (a) An  
15 authority may request a transit provider to transfer the provider's  
16 transit system to the authority if the board determines that the  
17 traffic needs of the counties in which the authority operates could  
18 be most efficiently and economically met by the transfer.

19 (b) If an authority makes a request under Subsection (a),  
20 the governing body of the transit provider may authorize the  
21 authority to solicit public comment. The authority shall conduct a  
22 public hearing in each county in the transit provider's service  
23 area if authorized by the governing body of the transit provider.  
24 Notice of the hearing must be published in the Texas Register, one  
25 or more newspapers of general circulation in the counties in the  
26 transit provider's service area, and a newspaper, if any, published  
27 in the counties of the requesting authority. The notice shall also

1 solicit written comments on the proposed transfer.

2 (c) A board may approve the acquisition of the transit  
3 provider if the governing body of the transit provider approves  
4 transfer of its operations to the authority and agrees to dissolve.  
5 Before approving the acquisition, the board shall consider public  
6 comments received under Subsection (b).

7 (d) If the transfer is approved under Subsection (c), the  
8 governing body of the transit provider shall transfer to the  
9 authority all property, funds, and employees of the transit  
10 provider.

11 (e) The authority shall assume all debts or other  
12 obligations of the transferred transit provider in connection with  
13 the acquisition of property under Subsection (d).

14 (f) The authority shall continue to collect any existing  
15 sales and use tax at a permissible rate that does not exceed the  
16 rate approved by the voters who reside in the service area of the  
17 transferred transit provider for use in that taxing area.

18 (g) Notwithstanding any other state law, the authority  
19 shall continue to collect any state or federal funding for which the  
20 transferred transit provider was eligible and receiving.

21 Sec. 370.362. SALES AND USE TAX. (a) If an authority  
22 acquires a transit provider with taxing authority, the authority  
23 may impose a sales and use tax at a permissible rate that does not  
24 exceed the rate approved by the voters who reside in the service  
25 area of the transit provider's transit system at an election under  
26 this subchapter.

27 (b) The authority by resolution may:



1           (1) decrease the rate of the sales and use tax to a  
2 permissible rate; or

3           (2) call an election for the increase or decrease of  
4 the sales and use tax to a permissible rate.

5           (c) If an authority orders an election, the authority shall  
6 publish notice of the election in a newspaper of general  
7 circulation in the territory of the authority at least once each  
8 week for three consecutive weeks, with the first publication  
9 occurring at least 21 days before the date of the election.

10           (d) A resolution ordering an election and the election  
11 notice required by Subsection (c) must show, in addition to the  
12 requirements of the Election Code, the hours of the election and  
13 polling places in election precincts.

14           (e) A copy of the election notice required by Subsection (c)  
15 shall be furnished to the commission and the comptroller.

16           (f) The permissible rates for a sales and use tax imposed  
17 under this subchapter are:

18                   (1) one-quarter of one percent; or

19                   (2) one-half of one percent.

20           (g) Chapter 322, Tax Code, applies to a sales and use tax  
21 imposed under this subchapter.

22           Sec. 370.363. MAXIMUM TAX RATE. (a) An authority may not  
23 adopt a sales and use tax rate, including a rate increase, that when  
24 combined with the rates of all sales and use taxes imposed by all  
25 political subdivisions of this state having territory in the  
26 service area of the transferred transit system exceeds two percent  
27 in any location in the service area.

1        (b) An election to approve a sales and use tax or increase  
2 the rate of an authority's sales and use tax has no effect if:

3            (1) the voters in the service area approve the  
4 authority's sales and use tax rate or rate increase at an election  
5 held on the same day on which a municipality or county having  
6 territory in the jurisdiction of the service area adopts a sales and  
7 use tax or an additional sales and use tax; and

8            (2) the combined rates of all sales and use taxes  
9 imposed by the authority and all political subdivisions of this  
10 state would exceed two percent in any part of the territory in the  
11 service area.

12        Sec. 370.364. ELECTION TO CHANGE TAX RATE. (a) At an  
13 election ordered under Section 370.362(b)(2), the ballots shall be  
14 printed to permit voting for or against the proposition: "The  
15 increase (decrease) of the local sales and use tax rate for mass  
16 transit to (percentage)."

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

19        (c) A notice of the election and a certified copy of the  
20 order canvassing the election results shall be:

21            (1) sent to the commission and the comptroller; and

22            (2) filed in the deed records of the county.

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

1        (b) An increase or decrease in the rate of a sales and use  
2 tax implemented under this subchapter takes effect on:

3            (1) the first day of the first calendar quarter that  
4 begins after the date the comptroller receives the notice provided  
5 under Section 370.364(c); or

6            (2) the first day of the second calendar quarter that  
7 begins after the date the comptroller receives the notice, if  
8 within 10 days after the date of receipt of the notice the  
9 comptroller gives written notice to the board that the comptroller  
10 requires more time to implement tax collection and reporting  
11 procedures.

12        SECTION 8. This Act takes effect immediately if it receives  
13 a vote of two-thirds of all the members elected to each house, as  
14 provided by Section 39, Article III, Texas Constitution. If this  
15 Act does not receive the vote necessary for immediate effect, this  
16 Act takes effect September 1, 2005.