

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1406
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Transportation & Homeland Security
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Air transportation is important for commerce, medical interests, and general accessibility, although owning and operating an airport may be too much of a burden for a single government to manage. Airport authorities would allow government entities to merge their resources and build and operate new airports or to acquire and operate existing airports that may have become too much of a burden or liability for the current owner. However, with the exception of the Dallas-Fort Worth Airport, current law does not provide for the state and political subdivisions to form airport authorities for these purposes.

C.S.S.B. 1406 creates a new chapter in the Transportation Code that authorizes the creation of airport authorities by the state, counties, and municipalities to acquire and operate airports and heliports and to provide for the financing of such facilities. This bill does not require the formation of any airport authority by any government entity and provides that a government entity joins or forms an airport authority under the entity's own judgment regarding the best interest of the applicable jurisdiction.

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 requires 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 (authorities), corporate and politic, constituting the political subdivisions of the state, for certain purposes.

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. (a) Authorizes certain actions to be taken by a county, municipality, or other political subdivision of the state, including a public corporation, with or without consideration.

(b) Provides that all transfers of land, licenses, easements, or other property under this section are subject to the continuing right of a utility to maintain existing facilities in those locations and to be reimbursed for any required relocation, removal, or adjustment of those facilities.

Sec. 27.003. NATURE OF AUTHORITY. Provides that an authority created under this chapter is an authority under Section 12 (Airport Authorities), Article IX, Texas Constitution.

[Reserves Sections 27.004-27.050 for expansion.]

SUBCHAPTER B. CREATION AND EXPANSION

Sec. 27.051. INCORPORATION. (a) Authorizes an authority to be organized as a public corporation under this chapter (corporation).

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

(c) Provides that the persons filing the application become incorporators upon the adoption of a resolution by each entity, with which the persons filed the application, approving the form of the articles and authorizing the formation of a public corporation. Requires the incorporators to incorporate the authority as a public corporation using said form.

Sec. 27.052. ADDITIONAL COUNTIES OR MUNICIPALITIES. Authorizes a county or municipality to become an additional part of an authority if each additional county or municipality and each of the authority's current counties or municipalities adopt a resolution consenting to the inclusion of the additional county or municipality.

Sec. 27.053. INCLUSION IN AUTHORITY. Requires the vesting of certain rights, contracts, obligations, and property of a municipality or county used for or in relation to transportation by air in the authority, unless otherwise specified by the resolution including the municipality or county in the authority, either initially or as an additional member.

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 or to join an existing authority.

Sec. 27.055. CONTENTS OF CERTIFICATE OF INCORPORATION. Sets forth required statements to be provided on the certificate of incorporation of an authority.

Sec. 27.056. INCORPORATION; EXECUTION AND FILING OF ARTICLES. (a) Sets forth certain actions to be taken with regard to the articles of incorporation of an authority.

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

(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. COMPOSITION OF BOARD OF DIRECTORS. (a) Sets forth certain requirements related to the composition of an authority's board of directors (board.)

(b) Requires each member appointed by a governing body of an authorizing governmental entity to reside in that entity. Requires the additional member elected under Subsection (a)(3)(c) to reside in any county electing the member (additional county member).

(c) Authorizes each authorizing governmental entity to appoint the same number of members as any other authorizing governmental entity, other than the additional county member.

(d) Provides that the state, upon joining the creation of an authority or an existing authority, is entitled 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 the governor to appoint each board member representing the state.

Sec. 27.102. VACANCY; REMOVAL. (a) Requires a successor to the unexpired term of a board member who otherwise becomes incapable or ineligible to act as a board member to be elected in the same manner provided by Section 27.101, Transportation Code, as the departed board member.

(b) Requires the governor, on the request of any governmental entity that elected the additional county member whose office has been vacant for 30 days or more, to appoint a successor to that member.

(c) Authorizes the removal of a board member from office.

Sec. 27.103. ELIGIBILITY. Provides that an officer of the state, a county, or a municipality is ineligible to serve as a board member.

Sec. 27.104. TERMS. (a) Provides that the terms of office of a board member is as set out in the authority's articles of incorporation.

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

Sec. 27.105. QUORUM. (a) Provides that a majority of the board members constitutes a quorum for the transaction of business, except as provided by Subsection (b).

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

(c) Provides that a vacancy on the board does not impair the right of a quorum to exercise all of the authority's duties and powers.

Sec. 27.106. MEETINGS. (a) Requires a board to hold regular monthly meetings and any other meetings as provided by the authority's bylaws.

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

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

(d) Requires, at the request of a board member, that the vote on the question before a board to be taken by record vote. Requires all board proceedings to be reduced to writing by the authority's secretary and open to board members and to the public at all times. Provides that copies of the proceedings, when certified by

the authority's secured under its seal, are admissible in a court as evidence of the matter 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. (a) Requires the board to elect from its membership a chair, a vice chair, a secretary, and any other officer the board considers necessary, for a term of one year.

(b) Provides that a treasurer or any other officer a board considers necessary is not required to be a board member. Authorizes the officer to be appointed by the board for a term determined by the board.

(c) Authorizes the holding of the offices of secretary and treasurer by the same person.

[Reserves Sections 27.109-27.150 for expansion.]

SUBCHAPTER D. POWERS AND DUTIES

Sec. 27.151. GENERAL POWERS. Sets forth certain actions that an authority is authorized to take.

Sec. 27.1511. ACQUISITION OR OPERATION OF CERTAIN AIRPORTS. Prohibits an authority from acquiring or operating an airport located within the authority's jurisdiction that has total annual commercial airline enplanements of 300,000 passengers or more, as reported by the United States Department of Transportation, as of the effective date of the Act that enacted this chapter.

Sec. 27.152. ZONING. (a) Provides that an authority is exempted from municipal or county zoning laws, ordinances, and regulations.

(b) Provides that an authority has the same zoning powers as a municipality that owns or operates an airport for the zoning of an airport in an unincorporated area either owned or operated by the authority or that lies within two miles of the boundaries of the airport.

Sec. 27.153. LIMIT ON EMINENT DOMAIN POWER. Prohibits an authority from acquiring by eminent domain certain real property or rights owned or held by a railroad or utility or under the management and control of an institution of higher education's governing body, as defined by the Texas Higher Education Coordinating Board in Section 61.003 (Definitions), Education Code.

Sec. 27.154. MUNICIPAL VOTE REQUIRED FOR MUNICIPAL AIRPORTS. (a) Requires the majority of a municipality's governing body to vote in favor of the proposed airport or airport facility before an authority is authorized to own, acquire, construct, or operate an airport or airport facility within that municipality.

(b) Requires each constituent agency of a joint board created under Section 22.074 (Joint Board), Transportation Code, if all agencies of the joint board are populous, home-rule municipalities, to vote in favor of the authority's ownership or operation of an airport operated by the joint board before the authority is authorized to own or operate that airport.

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 EXEMPTION; 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, county, municipal, and other local taxation.

(c) Provides that Subsection (b) does not exempt certain persons in connection with the 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 responsible use of public streets, roads, or highways leading to or from an airport or aircraft landing area owned, operated by, or under the jurisdiction of an authority.

Sec. 27.203. FUNDING. (a) Authorizes an authority to accept, receive, disburse, and expend federal, state, and any other money made available by grant or loan to accomplish an authority purpose.

(b) Requires federal money 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. 27.204. TAX IMPLICATIONS. Provides that this subchapter does not affect the taxability of any property that is taxable under the Tax Code on the effective date of the Act that enacted this chapter.

[Reserves Sections 27.205-27.250 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 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 do not create debt of and do not create a charge against the credit of taxing powers of the state, a county, or a municipality.

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

(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 authority's option not later than the 10th anniversary after that date 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 an authority's bonds to be sold at public or private sale in the manner and from time to time as determined by the board.

(d) Authorizes an authority to pay certain costs that the board determines to be 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 negotiable instruments law of this state if the bonds otherwise possess all the characteristics of said instruments.

Sec. 27.253. 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 of the authority's primary office, a notice regarding the issuance of the bonds and the proper time for questioning the validity of the bonds (notice). Requires the printing of the name and title of either the authority's chair or secretary after the notice. Sets forth the substantial content 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 the notice, or to contest the validity of the bonds, the pledge, and any instruments made to secure the bonds, to be commenced within 30 days of the first publication of the notice.
- (c) Prohibits the assertion of a right of action or defense questioning or attacking the validity of bonds or certain related aspects of the bond, and provides that the validity of bonds or certain related aspects are not open to question in a court on any ground, after the 30-day period described under Subsection (b).

Sec. 27.254. 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 imprint or other reproduction of one of the officer's signatures to appear on the bonds.

- (b) Requires the seal of an authority to be affixed onto the bonds or a facsimile of said seal to be imprinted or otherwise reproduced on the bonds.
- (c) Requires the signing of coupons by the chair or vice chair and by the secretary or treasurer. Authorizes the imprinting or otherwise reproducing the secretary's or treasurer's signature.
- (d) Provides that the delivery of bonds executed as provided under this section is valid regardless of any changes in officers or in the authority seal after the signing and sealing of the bonds.

Sec. 27.255. SECURITY. (a) Authorizes the issuance of bonds, at the authority's discretion, under and secured by an indenture between the authority and a trustee. Authorizes a trustee to be a private person or a certain corporation.

- (b) Authorizes an authority to take certain actions in an indenture or resolution providing for the issuance of bonds.
- (c) Provides that a pledge of revenue is valid from the time it is made. Provides that pledged revenue received after the pledge by an authority immediately becomes subject to the lien of the pledge (lien) without physical delivery or further act. Provides that the lien is 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 a certain county clerk's office.
- (d) Sets forth certain information required to be included in a statement under Subsection (c).

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

(f) Authorizes a holder of the bonds or any of the coupons or the trustee under an indenture, if authorized by the indenture, to take certain actions in the event that an authority defaults in payment of the principal of or interest on bonds or in an agreement included in an indenture securing the bonds.

Sec. 27.256. PROCEEDS. (a) Authorizes the use of proceeds derived from the sale of bonds only to pay the cost of acquiring, constructing, improving, enlarging, and equipping an airport, facility or other property as specified in the bond's proceedings.

(b) Sets forth certain costs eligible for payment by bond proceeds as provided under Subsection (a).

(c) Requires proceeds derived from the sale of bonds that remain undisbursed after completion of the work described under Subsection (a) and the 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 to issue refunding bonds at any time for the purpose of refunding the principal of and interest on certain outstanding bonds and premiums of the authority and for paying certain expenses incurred in connection with the refunding.

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

(c) Authorizes refunding to be effected by the sale of refunding bonds and application of the proceeds or by exchange of the refunding bonds for the bonds or interest coupons to be refunded, except that the authority is prohibited from compelling bond or coupon holders to surrender their bonds or coupons for payment or exchange without their consent before the date on which said bonds or coupons may be paid or redeemed by the call of the authority under respective provisions.

(d) Provides that this section applies only to the portion of the combined issue authorized for refunding the rest of this subchapter applies to the remaining portion of the combined issue, 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.

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 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 law of this state.

[Reserves Sections 27.260-27.300 for expansion.]

SUBCHAPTER G. WITHDRAWAL OR DISSOLUTION

Sec. 27.301. WITHDRAWAL FROM AUTHORITY. (a) Authorizes the state, a county, or a municipality to withdraw from an authority by resolution of the governor, the commissioners court of the county, or the municipality's governing body.

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

Sec. 27.302. DISSOLUTION. (a) Authorizes the dissolution of an authority with no outstanding bonds on the filing of articles of dissolution with the secretary of state by each member of the authority.

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

SECTION 3. EFFECTIVE DATE. Effective date: upon passage or September 1, 2007.