

## **BILL ANALYSIS**

C.S.S.B. 1263  
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Transportation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under current law, certain mass transit authorities must call upon commissioned peace officers to conduct fare inspections and issue citations to individuals who do not show proof of payment for boarding a bus or train. The activities of these peace officers would be better used in the enforcement of more serious criminal behavior against persons or the property of these mass transit authorities. It would be more efficient to use noncommissioned personnel in the enforcement of fares, but there is no statutory mechanism that would permit the engagement of fare enforcement officers that would give them proper jurisdiction to enforce fares. Additionally, this offense is a theft of service, which is considered a crime of moral turpitude. The Transportation Code provides that commissioned peace officers employed by certain mass transit authorities have enforcement jurisdiction anywhere in the service area of these authorities. However, there is some doubt that the Transportation Code is clear enough to provide that contract commissioned peace officers engaged by certain mass transit authorities have enforcement jurisdiction in a part of the service area that is not their usual jurisdiction.

C.S.S.B. 1263 authorizes a metropolitan rapid transit authority confirmed before July 1, 1985, in which the principal municipality has a population of less than 750,000 to employ fare enforcement officers and establishes that a fare enforcement officer is not a peace officer and has no special authority to enforce a criminal law. The bill authorizes a peace officer contracted for employment by the authority to have the same powers and duties as a peace officer commissioned and employed under other provisions of the law governing metropolitan rapid transit authorities, including the authority to make an arrest in any county in which the transit authority system is located. The bill subjects the authority to the Texas Sunset Act and revises the composition of the board of the authority. The bill also adds provisions relating to the authority of certain transit authorities to take private property through the use of eminent domain.

### **RULEMAKING AUTHORITY**

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

### **ANALYSIS**

C.S.S.B. 1263 amends the Transportation Code to add a citation issued by a fare enforcement officer to provisions authorizing a notice of nonpayment to be included in a citation in connection with an offense relating to the nonpayment of the appropriate fare or charge for use of a public transportation system. The bill establishes that such an offense, in addition to being a Class C misdemeanor, is not a crime of moral turpitude.

C.S.S.B. 1263 adds provisions that apply only to a metropolitan rapid transit authority confirmed before July 1, 1985, in which the principal municipality has a population of less than 750,000. The bill authorizes such an authority to employ persons to serve as fare enforcement officers to enforce the payment of fares for use of the public transportation system by requesting and

inspecting evidence showing payment of the appropriate fare from a person using the system and issuing a citation to a person who uses the system and does not possess evidence showing that the appropriate fare has been paid. The bill requires a person, before commencing duties as a fare enforcement officer, to complete a 40-hour training course approved by the authority that is appropriate to the duties required of such an officer. The bill requires the officer, while performing duties, to wear a distinctive uniform that identifies the officer as a fare enforcement officer and to work under the direction of the authority's manager of safety and security. The bill authorizes the officer to request evidence showing payment of the appropriate fare from passengers of the public transportation system, request personal identification from a passenger who does not produce evidence showing payment of the appropriate fare on request by the officer, request that a passenger leave the public transportation system if the passenger does not possess evidence of payment, and file a complaint in the appropriate court that charges the person with an offense of nonpayment. The bill prohibits a fare enforcement officer from carrying a weapon while performing the officer's duties. The bill establishes that a fare enforcement officer is not a peace officer and has no authority to enforce a criminal law, other than the authority possessed by any other person who is not a peace officer.

C.S.S.B. 1263 provides that a peace officer contracted for employment by such an authority has the same powers and duties as a peace officers commissioned and employed under other provisions of the law governing metropolitan rapid transit authorities. The bill provides that the establishment of or a change to fares, tolls, charges, rents, and other compensation by such an authority takes effect immediately on approval by a majority vote of the board of the authority, except that the establishment of or a change to a single-ride base fare takes effect on the 60th day after the date the board approves the fare or change to the fare, unless the policy board of the metropolitan planning organization that serves the area of the authority disapproves the fare or change to the fare by a majority vote.

C.S.S.B. 1263 establishes that provisions regarding a referendum for a rail plan do not require the authority to hold a referendum on a proposal to enter into a contract or interlocal agreement to build, operate, or maintain a fixed rail transit system for another entity. The bill authorizes the authority to spend funds of the authority to enter into a contract and operate under that contract to build, operate, or maintain a fixed rail transit system if the other entity will reimburse the authority for the funds. The bill establishes that a referendum held by a political subdivision, the authority, or an entity other than the authority at which funding is approved for a fixed rail transit system is considered to meet the requirements for a referendum if the notice contains a description of the general location of any proposed routes. The bill authorizes the referendum to allow for financial participation of more than one political subdivision or entity and authorizes the authority to only spend funds of the authority if the referendum authorizes that expenditure.

C.S.S.B. 1263 requires the board of the authority to appoint a qualified individual to perform internal auditing services for a term of five years. The bill authorizes the board to remove the auditor only on the affirmative vote of at least three-fourths of the members of the board and requires the auditor to report directly to the board. The bill makes the authority subject to review under the Texas Sunset Act as if it were a state agency but prohibits abolishment of the authority under the act. The bill requires the review to be conducted as if the authority were scheduled to be abolished September 1, 2011, and requires another review to be conducted as if the authority were scheduled to be abolished September 1, 2017. The bill requires the reviews to include an assessment of the governance, management, and operating structure of the authority and the authority's compliance with the duties and requirements placed on it by the legislature. The bill requires the authority to pay the cost incurred by the Sunset Advisory Commission in performing a review, requires the commission to determine the cost, and requires the authority to pay the amount promptly on receipt of a statement from the commission detailing the cost.

C.S.S.B. 1263 requires the authority to provide an annual report to each governing body of a municipality or county in the authority regarding the status of any financial obligation of the authority to the municipality or county.

C.S.S.B. 1263 makes provisions that apply to the board composition of certain authorities apply only to the board of an authority created before July 1, 1985, in which the principal municipality has a population of less than 750,000. The bill removes the provision establishing that the board is composed of seven members and changes the composition of the board. The bill specifies that one board member who is an elected official, rather than two members representing the general public, is appointed by the metropolitan planning organization designated by the governor that serves the area of the authority; one member who is an elected official, rather than two members, is appointed by the governing body of the principal municipality; and one board member is jointly appointed by the governing body of the principal municipality and the commissioners court of the principal county, rather than solely by that commissioners court. The bill establishes that one member is jointly appointed by the governing body of the principal municipality and the commissioners court of the county, excluding the principal county, that has the largest population of the counties in the authority, rather than by a panel composed of the mayor of all the municipalities in the authority located in the principal county of the authority, excluding the mayor of the principal municipality; and that one member, who is an elected official, is appointed by a panel composed of the mayors of all municipalities in the authority, excluding the mayor of the principal municipality, rather than by a panel composed of certain mayors, county judges, and presiding officers. The bill adds one board member who has at least 10 years of professional financial or accounting experience appointed by the metropolitan planning organization that serves the area in which the authority is located; one board member who has at least 10 years of experience in an executive-level position in a public or private organization, including a governmental entity, appointed by the metropolitan planning organization serving the area in which the authority is located; and two board members appointed by the metropolitan planning organization that serves the area if, according to the most recent federal decennial census, more than 35 percent of the population in the territory of the authority resides outside the principal municipality.

C.S.S.B. 1263 specifies that, notwithstanding provisions regarding board terms, members of the board serve staggered three-year terms, with the terms of two or three members, as applicable, expiring June 1 of each year. The bill establishes that the members who are elected officials are included in the requirement that the person be a member of the governing body of the political subdivision entitled to make the appointment or over which a member of the panel entitled to make an appointment presides and be subject to certain other provisions. The bill removes certain other members from this requirement.

C.S.S.B. 1263 requires certain members appointed by the local metropolitan planning organization to be qualified voters residing in the principal municipality. The bill requires the member jointly appointed by the governing body of the principal municipality and the commissioners court of the principal county to have the member's principal place of occupation or employment in the principal municipality or the portion of the authority's service area located in the principal county, or to be a qualified voter of either jurisdiction. The bill requires the member jointly appointed by the governing body of the principal municipality and the commissioners court of the county, excluding the principal county, that has the largest population of the counties in the authority to have the member's principal place of occupation or employment in the principal municipality or the portion of the authority's service area located in the county, other than the principal county, that has the largest population of the counties in the authority, or to be a qualified voter of either jurisdiction. The bill requires a joint appointment to fill a vacancy to be made not later than the 60th day after the date a position becomes vacant. The bill removes a provision providing that the terms of members of a board are staggered if the authority was confirmed before July 1, 1985, and has a principal municipality with a population of less than 750,000.

C.S.S.B. 1263 establishes that the term of a board member that is scheduled, under the law as it existed before the bill's effective date, to expire after the bill's effective date but before January 1, 2010, is extended to December 31, 2009, and that a term scheduled to expire, under that

previous law, on or after January 1, 2010, expires on the date the term was scheduled to expire under law as it existed before the effective date of the bill. The bill requires, as soon as practicable on or after the effective date of the bill but not later than December 31, 2009, the specified persons and entities to appoint the members of the board in compliance with the changes made by the bill to serve terms that begin, as applicable, January 1, 2010, or the day after a term expires under law as it existed before the effective date of the bill. The bill sets forth provisions relating to the filling of a vacancy created because of the expiration of a term as provided above. The bill requires the members of the board appointed under those provisions to draw lots to determine which terms of two members expire June 1, 2011, which terms of two members expire June 1, 2012, and which terms of three members expire June 1, 2013.

C.S.S.B. 1263 requires the metropolitan planning organization that appoints two members only if the most recent federal decennial census shows that more than 35 percent of the population in the territory of the authority resides outside the principal municipality, as soon as practicable after determining that the condition applies, to appoint one member of the board of the authority for a term to expire June 1, 2011, or if that date has passed, the following six-year anniversary of that date, and one member of the board of the authority for a term to expire June 1, 2013, or if that date has passed, the following six-year anniversary of that date.

C.S.S.B. 1263 adds provisions that apply only to a metropolitan rapid transit authority that operates in an area in which the principal municipality has a population of 1.9 million or more. The bill prohibits such an authority from taking private property through the use of eminent domain if the taking of the property is related to the construction of a segment of a fixed guideway transit system, including a light rail or bus rapid transit segment, authorized by the voters of the authority and the planned route of the segment as approved in the ballot proposition submitted to the voters is changed by the authority after approval of the ballot proposition by the voters or the ballot proposition submitted to the voters did not specifically describe the route of the segment. The bill requires a court in which a condemnation proceeding is initiated under provisions relating to eminent domain, if the court determines that the condemnation proceeding was initiated in violation of the provisions described above, to determine that the condemnor does not have the right to condemn, dismiss the condemnation proceeding, and order the condemnor to pay all costs of the condemnation proceeding, including all reasonable attorney's fees incurred by the owner. The bill makes these provisions applicable to a condemnation proceeding in which the petition is filed on or after the effective date of this bill or a condemnation proceeding pending on the effective date of this bill in which the petition was filed on or after May 15, 2007, or to a condemnation proceeding authorized or initiated on or after May 15, 2007.

C.S.S.B. 1263 repeals Sections 451.5021(g) and (h), Transportation Code.

#### **EFFECTIVE DATE**

September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 1263 removes provisions included in the original relating to the authorization for an officer or employee of certain transportation or transit authorities or departments to participate in the comptroller of public accounts' contracts for travel services. The substitute removes provisions included in the original relating to the ballot for a referendum held on the question of whether a metropolitan rapid transit authority described by the bill may operate a fixed rail transit system and the requirement to hold a referendum on a proposal to expand a transit system that was previously approved. The substitute adds provisions not included in the original authorizing the authority to spend funds of the authority to enter into a contract with another entity and operate under that contract to build, operate, or maintain a fixed rail transit system if

the other entity will reimburse the authority for the funds. The substitute adds provisions not included in the original to establish that a referendum held by a political subdivision, the authority, or an entity other than the authority at which funding is approved for a fixed rail transit system is considered to meet the requirements for a referendum if the notice contains a description of the form of the fixed rail transit system, to authorize the referendum to allow for financial participation of more than one political subdivision or entity, and to provide that the authority may only spend funds of the authority if the referendum authorizes that expenditure.

C.S.S.B. 1263 differs from the original by requiring the board of the authority to appoint a qualified individual to perform internal auditing services for a term of five years and authorizing the board to remove the auditor only on the affirmative vote of at least three-fourths of the members of the board, whereas the original requires the board to enter into a contract with a qualified individual to perform internal auditing services as specified in the contract and prohibits the contract from being renewed for more than three consecutive fiscal years.

C.S.S.B. 1263 differs from the original by removing the requirement that a certain board member of the authority be appointed by a panel that includes the county judges of the counties having unincorporated area in the authority. The substitute adds a provision not included in the original to require a joint appointment to fill a vacancy to be made not later than the 60th day after the date a position becomes vacant. The substitute adds a provision not included in the original to remove the authority from the provision providing that the terms of members of a board are staggered. The substitute provides that a term scheduled to expire on or after January 1, 2010, expires on the date the term was scheduled to expire under law as it existed before the effective date of the bill, rather than June 1, 2010, as in the original. The substitute provides for board terms to begin January 1, 2010, or the day after a term expires, rather than January 1, 2010, or June 2, 2010, as in the original. The substitute adds provisions not included in the original setting forth provisions relating to the filling of a vacancy created because of the expiration of a term. The substitute differs from the original by requiring board members to draw lots to determine which terms of two members, rather than three members as in the original, expire June 1, 2011 and June 1, 2012. The substitute adds provisions not included in the original to provide for certain appointments by a metropolitan planning organization.

C.S.S.B. 1263 adds provisions not included in the original relating to the authority of certain transit authorities to take private property through the use of eminent domain and to condemnation proceedings initiated under that authority.