

By: Nichols

S.B. No. 1669

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the authority and powers of regional mobility
3 authorities.

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

5 SECTION 1. Sections 370.003(12) and (14), Transportation
6 Code, are amended to read as follows:

7 (12) "Surplus revenue" means revenue that exceeds:

8 (A) an authority's debt service requirements for
9 a transportation project, including the redemption or purchase
10 price of bonds subject to redemption or purchase as provided in the
11 applicable bond proceedings;

12 (A-1) an authority's payment obligations under a
13 contract or agreement authorized by this chapter;

14 (B) coverage requirements of a bond indenture for
15 a transportation project;

16 (C) costs of operation and maintenance for a
17 transportation project;

18 (D) cost of repair, expansion, or improvement of
19 a transportation project;

20 (E) funds allocated for feasibility studies; and

21 (F) necessary reserves as determined by the
22 authority.

23 (14) "Transportation project" means:

24 (A) a turnpike project;

- 1 (B) a system;
- 2 (C) a passenger or freight rail facility,
3 including:
- 4 (i) tracks;
- 5 (ii) a rail line;
- 6 (iii) switching, signaling, or other
7 operating equipment;
- 8 (iv) a depot;
- 9 (v) a locomotive;
- 10 (vi) rolling stock;
- 11 (vii) a maintenance facility; and
- 12 (viii) other real and personal property
13 associated with a rail operation;
- 14 (D) a roadway with a functional classification
15 greater than a local road or rural minor collector;
- 16 (E) a ferry;
- 17 (F) an airport, provided that an authority may
18 only acquire or operate ~~other than~~ an airport that on September 1,
19 2005, was served by one or more air carriers engaged in scheduled
20 interstate transportation, as these terms were defined by 14 C.F.R.
21 Section 1.1 on that date, with the consent of the existing airport
22 operating authority and other affected entities as required by
23 applicable federal law
- 24 (G) a pedestrian or bicycle facility;
- 25 (H) an intermodal hub;
- 26 (I) an automated conveyor belt for the movement
27 of freight;

1 (J) a border crossing inspection station;

2 (K) an air quality improvement initiative;

3 (L) a public utility facility;

4 (M) a transit system;

5 (M-1) a parking area, structure, or facility, or
6 a collection device for parking fees; and

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

10 SECTION 2. Section 370.004(a), Transportation Code, is
11 amended to read as follows:

12 (a) The cost of acquisition, construction, improvement,
13 extension, or expansion of a transportation project under this
14 chapter includes the cost of:

15 (1) the actual acquisition, construction,
16 improvement, extension, or expansion of the transportation
17 project;

18 (2) the acquisition of real property, rights-of-way,
19 property rights, easements, and other interests in real property;

20 (3) machinery and equipment;

21 (4) interest payable before, during, and for not more
22 than three years after acquisition, construction, improvement,
23 extension, or expansion as provided in the bond proceedings;

24 (5) traffic estimates, revenue estimates, engineering
25 and legal services, plans, specifications, surveys, appraisals,
26 construction cost estimates, and other expenses necessary or
27 incidental to determining the feasibility of the acquisition,

1 construction, improvement, extension, or expansion;

2 (6) necessary or incidental administrative, legal,
3 and other expenses;

4 (7) compliance with laws, regulations, and
5 administrative rulings, including any costs associated with
6 necessary environmental mitigation measures;

7 (8) financing;

8 (9) the assumption of debts, obligations, and
9 liabilities of an entity relating to a transportation project
10 transferred to an authority by that entity; ~~and~~

11 (10) expenses related to the initial operation of the
12 transportation project; and

13 (11) payment obligations of an authority under a
14 contract or agreement authorized by this chapter in connection with
15 the acquisition, construction, improvement, extension, expansion,
16 or financing of the transportation project.

17 SECTION 3. Sections 370.033(a), (f), and (g),
18 Transportation Code, are amended to read as follows:

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

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

22 (2) adopt an official seal;

23 (3) study, evaluate, design, finance, acquire,
24 construct, maintain, repair, and operate transportation projects,
25 individually or as one or more systems, provided that a
26 transportation project that is subject to Subpart C, 23 C.F.R. Part
27 450, is:

1 (A) included in the plan approved by the
2 applicable metropolitan planning organization; and

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

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

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

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

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

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

22 (8-a) participate in the state travel management
23 program administered by the comptroller for the purpose of
24 obtaining reduced airline fares and reduced travel agent fees,
25 provided that the comptroller may charge the authority a fee not to
26 exceed the costs incurred by the comptroller in providing services
27 to the authority;

1 (9) notwithstanding Sections 221.003 and 222.031 and
2 subject to Subsections (j) and (m), apply for, directly or
3 indirectly receive and spend loans, gifts, grants, and other
4 contributions for any purpose of this chapter, including the
5 construction of a transportation project, and receive and spend
6 contributions of money, property, labor, or other things of value
7 from any source, including the United States, a state of the United
8 States, the United Mexican States, a state of the United Mexican
9 States, the commission, the department, a subdivision of this
10 state, or a governmental entity or private entity, to be used for
11 the purposes for which the grants, loans, or contributions are
12 made, and enter into any agreement necessary for the grants, loans,
13 or contributions;

14 (10) install, construct, or contract for the
15 construction of public utility facilities, direct the time and
16 manner of construction of a public utility facility in, on, along,
17 over, or under a transportation project, or request the removal or
18 relocation of a public utility facility in, on, along, over, or
19 under a transportation project;

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

22 (12) adopt and enforce rules not inconsistent with
23 this chapter for the use of any transportation project, including
24 tolls, fares, or other user fees, speed and weight limits, and
25 traffic and other public safety rules, provided that an authority
26 must consider the same factors that the Texas Turnpike Authority
27 division of the department must consider in altering a prima facie

1 speed limit under Section 545.354;

2 (13) enter into leases, operating agreements, service
3 agreements, licenses, franchises, and similar agreements with a
4 public or private party governing the party's use of all or any
5 portion of a transportation project and the rights and obligations
6 of the authority with respect to a transportation project;

7 (14) borrow money from or enter into a loan agreement
8 or other arrangement with the state infrastructure bank, the
9 department, the commission, or any other public or private entity;
10 and

11 (15) do all things necessary or appropriate to carry
12 out the powers and duties expressly granted or imposed by this
13 chapter.

14 (f) An authority and a governmental entity may enter into a
15 contract, agreement, interlocal agreement, or other similar
16 arrangement under which the authority may plan, design, construct,
17 or operate a transportation project on behalf of the governmental
18 entity. An authority may enter into a contract with the department
19 under which the authority will plan, develop, operate, or maintain
20 a transportation project on behalf of the department, subject to
21 the transportation project being in the authority's area of
22 jurisdiction. A contract or agreement under this subsection may
23 contain terms and conditions as may be approved by an authority,
24 including payment obligations of the governmental entity and the
25 authority.

26 (g) Payments to be made to an authority under a contract or
27 agreement described by Subsection (f) constitute operating

1 expenses of the transportation project or system that is to be
2 operated under the contract. The contract may extend for the number
3 of years as agreed to by the parties.

4 SECTION 4. Subchapter B, Chapter 370, Transportation Code,
5 is amended by adding Section 370.040 to read as follows:

6 Sec. 370.040. TOLL COLLECTION. (a) An authority shall
7 provide, for reasonable compensation, customer service and other
8 toll collection and enforcement services for a toll project in the
9 geographic boundaries of the authority, regardless of whether the
10 toll project is developed, financed, constructed, and operated
11 under an agreement, including a comprehensive development
12 agreement, with the authority or another entity.

13 (b) An authority may not provide financial security for the
14 performance of services it provides under Subsection (a) if:

15 (1) the authority determines that providing financial
16 security could restrict the amount or increase the cost of bonds or
17 other debt obligations the authority may subsequently issue under
18 this chapter; or

19 (2) the authority is not reimbursed its cost of
20 providing the security.

21 (c) Subsection (a) may be waived by the authority under a
22 written agreement between the authority and the entity developing
23 the toll project.

24 SECTION 5. Sections 370.071(a) and (b), Transportation
25 Code, are amended to read as follows:

26 (a) An authority may pay the expenses of studying the cost
27 and feasibility of a transportation project, the design and

1 engineering of a transportation project, and any other expenses
2 relating to the preparation and issuance of bonds for a proposed
3 transportation project by:

4 (1) using legally available revenue derived from an
5 existing transportation project;

6 (2) borrowing money and issuing bonds or entering into
7 a loan agreement payable out of legally available revenue
8 anticipated to be derived from the operation of an existing
9 transportation project; ~~or~~

10 (3) pledging to the payment of the bonds or a loan
11 agreement legally available revenue anticipated to be derived from
12 the operation of transportation projects or revenue legally
13 available to the authority from another source; or

14 (4) pledging to the payment of the bonds or a loan
15 agreement the proceeds from the sale of other bonds.

16 (b) Money spent under this section for a proposed
17 transportation project must be reimbursed to the transportation
18 project from which the money was spent from the proceeds of bonds
19 issued for the acquisition and construction of the proposed
20 transportation project, unless the transportation projects are or
21 become part of a system under Section 370.034.

22 SECTION 6. Section 370.072(c), Transportation Code, is
23 amended to read as follows:

24 (c) Money in the feasibility study fund may be used only to
25 pay the expenses of studying the cost and feasibility of a
26 transportation project, the design and engineering of a
27 transportation project, and any other expenses relating to:

1 (1) the preparation and issuance of bonds for the
2 acquisition and construction of a proposed transportation project;

3 (2) the financing of the improvement, extension, or
4 expansion of an existing transportation project; and

5 (3) private participation, as authorized by law, in
6 the financing of a proposed transportation project, the refinancing
7 of an existing transportation project or system, or the
8 improvement, extension, or expansion of a transportation project.

9 SECTION 7. Section 370.073(a), Transportation Code, is
10 amended to read as follows:

11 (a) One or more municipalities, counties, or other
12 governmental entities, a combination of municipalities, counties,
13 and other governmental entities, or a private group or combination
14 of individuals in this state may pay all or part of the expenses of
15 studying the cost and feasibility of a transportation project, the
16 design and engineering of a transportation project, and any other
17 expenses relating to:

18 (1) the preparation and issuance of bonds for the
19 acquisition or construction of a proposed transportation project by
20 an authority;

21 (2) the improvement, extension, or expansion of an
22 existing transportation project of the authority; or

23 (3) the use of private participation under applicable
24 law in connection with the acquisition, construction, improvement,
25 expansion, extension, maintenance, repair, or operation of a
26 transportation project by an authority.

27 SECTION 8. Section 370.113(a), Transportation Code, is

1 amended to read as follows:

2 (a) The principal of, interest on, and any redemption
3 premium on bonds issued by an authority are payable solely from:

4 (1) the revenue of the transportation project for
5 which the bonds are issued;

6 (2) payments made under an agreement with the
7 commission, the department, or other governmental entity as
8 authorized [provided] by this chapter [Subchapter G];

9 (3) money derived from any other source available to
10 the authority, other than money derived from a transportation
11 project that is not part of the same system or money derived from a
12 different system, except to the extent that the surplus revenue of a
13 transportation project or system has been pledged for that purpose;
14 ~~[and]~~

15 (4) amounts received under a credit agreement relating
16 to the transportation project for which the bonds are issued; and

17 (5) the proceeds of the sale of other bonds.

18 SECTION 9. Section 370.114, Transportation Code, is amended
19 to read as follows:

20 Sec. 370.114. EFFECT OF LIEN. (a) A lien on or a pledge of
21 revenue from a transportation project under this chapter or on a
22 reserve, replacement, or other fund established in connection with
23 a bond issued under this chapter or an agreement entered into under
24 this chapter:

25 (1) is enforceable at the time of payment for and
26 delivery of the bond or on the effective date of the agreement;

27 (2) applies to each item on hand or subsequently

1 received;

2 (3) applies without physical delivery of an item or
3 other act; and

4 (4) is enforceable against any person having a claim,
5 in tort, contract, or other remedy, against the applicable
6 authority without regard to whether the person has notice of the
7 lien or pledge.

8 (b) A copy of any bond resolution shall ~~[is not required to]~~
9 be maintained ~~[recorded except]~~ in the regular records of the
10 authority.

11 SECTION 10. Section 370.172, Transportation Code, is
12 amended by amending Subsection (b) and adding Subsection (k) to
13 read as follows:

14 (b) Tolls, fees, fares, or other charges must be set at
15 rates or amounts so that the aggregate of tolls, fees, fares, or
16 other charges from an authority's transportation project, together
17 with other revenue of the transportation project:

18 (1) provides revenue sufficient to pay:

19 (A) the cost of maintaining, repairing, and
20 operating the transportation project; ~~and~~

21 (B) the principal of and interest on any bonds
22 issued for the transportation project as those bonds become due and
23 payable; and

24 (C) any other payment obligations of an authority
25 under a contract or agreement authorized under this chapter; and

26 (2) creates reserves for a purpose listed under
27 Subdivision (1).

1 (k) Notwithstanding any other provision of this chapter to
2 the contrary, an authority may pledge all or any part of its
3 revenues and any other funds available to the authority to the
4 payment of any obligations of the authority under a contract or
5 agreement authorized by this chapter.

6 SECTION 11. Section 370.173(c), Transportation Code, is
7 amended to read as follows:

8 (c) The authority may use money in the revolving fund to:

9 (1) finance the acquisition, construction,
10 maintenance, or operation of a transportation project, including
11 the extension, expansion, or improvement of a transportation
12 project;

13 (2) provide matching money required in connection with
14 any federal, state, local, or private aid, grant, or other funding,
15 including aid or funding by or with public-private partnerships;

16 (3) provide credit enhancement either directly or
17 indirectly for bonds issued to acquire, construct, extend, expand,
18 or improve a transportation project;

19 (4) provide security for or payment of future or
20 existing debt for the design, acquisition, construction,
21 operation, maintenance, extension, expansion, or improvement of a
22 transportation project or system;

23 (5) borrow money and issue bonds, promissory notes, or
24 other indebtedness payable out of the revolving fund for any
25 purpose authorized by this chapter; and

26 (6) provide for any other reasonable purpose that
27 assists in the financing of an authority as authorized by this

1 chapter.

2 SECTION 12. Section 370.177, Transportation Code, is
3 amended by adding Subsection (1) to read as follows:

4 (1) In addition to the other powers and duties provided by
5 this chapter, with regard to its toll collection and enforcement
6 powers for its turnpike projects or other toll projects developed,
7 financed, constructed, and operated under an agreement, including a
8 comprehensive development agreement, with the authority or another
9 entity, an authority has the same powers and duties as the
10 department under Chapter 228, a county under Chapter 284, and a
11 regional tollway authority under Chapter 366.

12 SECTION 13. Sections 370.251(a) and (b), Transportation
13 Code, are amended to read as follows:

14 (a) Except as provided by Subsection (a-1), the governing
15 body of an authority is a board of directors consisting of
16 representatives of each county in which a transportation project of
17 the authority is located or is proposed to be located. The
18 commissioners court of each county that initially forms the
19 authority shall appoint at least two directors to the board.
20 Additional directors may be appointed to the board at the time of
21 initial formation by agreement of the counties creating the
22 authority to ensure fair representation of political subdivisions
23 in the counties of the authority that will be affected by a
24 transportation project of the authority, provided that the number
25 of directors must be an odd number. The commissioners court of a
26 county that is subsequently added to the authority shall appoint at
27 least one director to the board. The governor shall appoint one

1 director to the board who shall serve as the presiding officer of
2 the board and shall appoint an additional director to the board if
3 an appointment is necessary to maintain an odd number of directors
4 on the board.

5 (b) The appointment [~~Unless the commissioners courts~~] of
6 additional directors from a county subsequently added to an [~~the~~
7 ~~counties of the~~] authority or from a [~~unanimously agree otherwise,~~
8 ~~the commissioners court of each~~] county of an authority that
9 contains an operating transportation project of the authority shall
10 be by a process unanimously agreed to by the commissioners courts of
11 all the counties of the authority [~~appoint one additional~~
12 ~~director~~].

13 SECTION 14. Section 370.303, Transportation Code, is
14 amended by amending Subsections (a) and (b) and adding Subsections
15 (b-1) and (g) to read as follows:

16 (a) A governmental entity [~~other than a nonprofit~~
17 ~~corporation~~] may, consistent with the Texas Constitution, issue
18 bonds, notes, or other obligations or enter into and make payments
19 under agreements with an authority in connection with the
20 financing, acquisition, construction, [~~to acquire, construct,~~
21 ~~maintain,~~] or operation of [~~operate~~] a transportation project by an
22 authority, whether inside or outside the geographic boundaries of
23 the governmental entity, including agreements to pay the principal
24 of, and interest on, bonds, notes, or other obligations issued by
25 the authority and make payments under any related credit
26 agreements. The entity may impose and collect taxes to pay the
27 interest on the bonds and to provide a sinking fund for the

1 redemption of the bonds.

2 (b) In addition to the powers provided by Subsection (a), a
3 governmental entity may, to the extent constitutionally permitted,
4 agree with an authority to:

5 (1) issue bonds, notes, or other obligations;

6 (2) [~~7~~] create:

7 (A) a taxing district;

8 (B) a transportation reinvestment zone under
9 Subchapter E, Chapter 222; or

10 (C) an entity to promote economic development;

11 (3) collect and remit to an authority taxes, fees, or
12 assessments collected for purposes of developing transportation
13 projects;

14 (4) [~~7~~] fund public improvements to promote economic
15 development; [~~7~~] or

16 (5) enter into and make payments under an agreement to
17 acquire, construct, maintain, or operate any portion of a
18 transportation project of the authority.

19 (b-1) An agreement under Subsection (b) may include a means
20 for a local governmental entity to pledge or otherwise provide
21 funds for a transportation project that benefits the governmental
22 entity to be developed by the authority.

23 (g) An agreement under this section may contain repayment or
24 reimbursement obligations of an authority.

25 SECTION 15. Section 370.304, Transportation Code, is
26 amended to read as follows:

27 Sec. 370.304. ADDITIONAL AGREEMENTS OF AUTHORITY. An

1 authority may enter into any contract, loan agreement, or other
2 agreement necessary or convenient to achieve the purposes of this
3 subchapter.

4 SECTION 16. Section 371.051(a), Transportation Code, as
5 added by Chapter 103 (H.B. 570), Acts of the 80th Legislature,
6 Regular Session, 2007, is amended to read as follows:

7 (a) A toll project entity may not use motor vehicle
8 registration or other information derived from a license plate on a
9 vehicle using a toll project, including information obtained by the
10 use of automated enforcement technology described by Section
11 228.058, for purposes other than those related to:

12 (1) toll collection, ~~and~~ toll collection
13 enforcement, and toll project development and operation; and

14 (2) law enforcement purposes on request by a law
15 enforcement agency [~~, subject to Section 228.058(d)~~].

16 SECTION 17. Section 370.317(d), Transportation Code, is
17 repealed.

18 SECTION 18. This Act takes effect immediately if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, this Act takes effect September 1, 2009.