

1-1 By: Phillips (Senate Sponsor - Nichols) H.B. No. 1112
1-2 (In the Senate - Received from the House April 27, 2011;
1-3 April 28, 2011, read first time and referred to Committee on
1-4 Transportation and Homeland Security; May 9, 2011, reported
1-5 adversely, with favorable Committee Substitute by the following
1-6 vote: Yeas 9, Nays 0; May 9, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1112 By: Nichols

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the authority and powers of regional mobility
1-11 authorities.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Sections 370.003(12) and (14), Transportation
1-14 Code, are amended to read as follows:

1-15 (12) "Surplus revenue" means revenue that exceeds:

1-16 (A) an authority's debt service requirements for
1-17 a transportation project, including the redemption or purchase
1-18 price of bonds subject to redemption or purchase as provided in the
1-19 applicable bond proceedings;

1-20 (A-1) an authority's payment obligations under a
1-21 contract or agreement authorized by this chapter;

1-22 (B) coverage requirements of a bond indenture for
1-23 a transportation project;

1-24 (C) costs of operation and maintenance for a
1-25 transportation project;

1-26 (D) cost of repair, expansion, or improvement of
1-27 a transportation project;

1-28 (E) funds allocated for feasibility studies; and

1-29 (F) necessary reserves as determined by the
1-30 authority.

1-31 (14) "Transportation project" means:

1-32 (A) a turnpike project;

1-33 (B) a system;

1-34 (C) a passenger or freight rail facility,
1-35 including:

1-36 (i) tracks;

1-37 (ii) a rail line;

1-38 (iii) switching, signaling, or other
1-39 operating equipment;

1-40 (iv) a depot;

1-41 (v) a locomotive;

1-42 (vi) rolling stock;

1-43 (vii) a maintenance facility; and

1-44 (viii) other real and personal property
1-45 associated with a rail operation;

1-46 (D) a roadway with a functional classification
1-47 greater than a local road or rural minor collector;

1-48 (E) a ferry;

1-49 (F) an airport, other than an airport that on
1-50 September 1, 2005, was served by one or more air carriers engaged in
1-51 scheduled interstate transportation, as those terms were defined by
1-52 14 C.F.R. Section 1.1 on that date;

1-53 (G) a pedestrian or bicycle facility;

1-54 (H) an intermodal [~~intermodal~~] hub;

1-55 (I) an automated conveyor belt for the movement
1-56 of freight;

1-57 (J) a border crossing inspection station;

1-58 (K) an air quality improvement initiative;

1-59 (L) a public utility facility;

1-60 (M) a transit system;

1-61 (M-1) a parking area, structure, or facility, or
1-62 a collection device for parking fees; [and]

1-63 (N) if applicable, projects and programs listed

2-1 in the most recently approved state implementation plan for the
2-2 area covered by the authority, including an early action compact;
2-3 and

2-4 (O) improvements in a transportation
2-5 reinvestment zone designated under Subchapter E, Chapter 222.

2-6 SECTION 2. Section 370.004(a), Transportation Code, is
2-7 amended to read as follows:

2-8 (a) The cost of acquisition, construction, improvement,
2-9 extension, or expansion of a transportation project under this
2-10 chapter includes the cost of:

2-11 (1) the actual acquisition, construction,
2-12 improvement, extension, or expansion of the transportation
2-13 project;

2-14 (2) the acquisition of real property, rights-of-way,
2-15 property rights, easements, and other interests in real property;

2-16 (3) machinery and equipment;

2-17 (4) interest payable before, during, and for not more
2-18 than three years after acquisition, construction, improvement,
2-19 extension, or expansion as provided in the bond proceedings;

2-20 (5) traffic estimates, revenue estimates, engineering
2-21 and legal services, plans, specifications, surveys, appraisals,
2-22 construction cost estimates, and other expenses necessary or
2-23 incidental to determining the feasibility of the acquisition,
2-24 construction, improvement, extension, or expansion;

2-25 (6) necessary or incidental administrative, legal,
2-26 and other expenses;

2-27 (7) compliance with laws, regulations, and
2-28 administrative rulings, including any costs associated with
2-29 necessary environmental mitigation measures;

2-30 (8) financing;

2-31 (9) the assumption of debts, obligations, and
2-32 liabilities of an entity relating to a transportation project
2-33 transferred to an authority by that entity; ~~and~~

2-34 (10) expenses related to the initial operation of the
2-35 transportation project; and

2-36 (11) payment obligations of an authority under a
2-37 contract or agreement authorized by this chapter in connection with
2-38 the acquisition, construction, improvement, extension, expansion,
2-39 or financing of the transportation project.

2-40 SECTION 3. Sections 370.033(a), (f), and (g),
2-41 Transportation Code, are amended to read as follows:

2-42 (a) An authority, through its board, may:

2-43 (1) adopt rules for the regulation of its affairs and
2-44 the conduct of its business;

2-45 (2) adopt an official seal;

2-46 (3) study, evaluate, design, finance, acquire,
2-47 construct, maintain, repair, and operate transportation projects,
2-48 individually or as one or more systems, provided that a
2-49 transportation project that is subject to Subpart C, 23 C.F.R. Part
2-50 450, is:

2-51 (A) included in the plan approved by the
2-52 applicable metropolitan planning organization; and

2-53 (B) consistent with the statewide transportation
2-54 plan and the statewide transportation improvement program;

2-55 (4) acquire, hold, and dispose of property in the
2-56 exercise of its powers and the performance of its duties under this
2-57 chapter;

2-58 (5) enter into contracts or operating agreements with
2-59 a similar authority, another governmental entity, or an agency of
2-60 the United States, a state of the United States, the United Mexican
2-61 States, or a state of the United Mexican States;

2-62 (6) enter into contracts or agreements necessary or
2-63 incidental to its powers and duties under this chapter;

2-64 (7) cooperate and work directly with property owners
2-65 and governmental entities and officials to support an activity
2-66 required to promote or develop a transportation project;

2-67 (8) employ and set the compensation and benefits of
2-68 administrators, consulting engineers, attorneys, accountants,
2-69 construction and financial experts, superintendents, managers,

3-1 full-time and part-time employees, agents, consultants, and other
 3-2 persons as the authority considers necessary or useful;

3-3 (8-a) participate in the state travel management
 3-4 program administered by the comptroller for the purpose of
 3-5 obtaining reduced airline fares and reduced travel agent fees,
 3-6 provided that the comptroller may charge the authority a fee not to
 3-7 exceed the costs incurred by the comptroller in providing services
 3-8 to the authority;

3-9 (9) notwithstanding Sections 221.003 and 222.031 and
 3-10 subject to Subsections (j) and (m), apply for, directly or
 3-11 indirectly receive and spend loans, gifts, grants, and other
 3-12 contributions for any purpose of this chapter, including the
 3-13 construction of a transportation project, and receive and spend
 3-14 contributions of money, property, labor, or other things of value
 3-15 from any source, including the United States, a state of the United
 3-16 States, the United Mexican States, a state of the United Mexican
 3-17 States, the commission, the department, a subdivision of this
 3-18 state, or a governmental entity or private entity, to be used for
 3-19 the purposes for which the grants, loans, or contributions are
 3-20 made, and enter into any agreement necessary for the grants, loans,
 3-21 or contributions;

3-22 (10) install, construct, or contract for the
 3-23 construction of public utility facilities, direct the time and
 3-24 manner of construction of a public utility facility in, on, along,
 3-25 over, or under a transportation project, or request the removal or
 3-26 relocation of a public utility facility in, on, along, over, or
 3-27 under a transportation project;

3-28 (11) organize a corporation under Chapter 431 for the
 3-29 promotion and development of transportation projects;

3-30 (12) adopt and enforce rules not inconsistent with
 3-31 this chapter for the use of any transportation project, including
 3-32 tolls, fares, or other user fees, speed and weight limits, and
 3-33 traffic and other public safety rules, provided that an authority
 3-34 must consider the same factors that the Texas Turnpike Authority
 3-35 division of the department must consider in altering a prima facie
 3-36 speed limit under Section 545.354;

3-37 (13) enter into leases, operating agreements, service
 3-38 agreements, licenses, franchises, and similar agreements with a
 3-39 public or private party governing the party's use of all or any
 3-40 portion of a transportation project and the rights and obligations
 3-41 of the authority with respect to a transportation project;

3-42 (14) borrow money from or enter into a loan agreement
 3-43 or other arrangement with the state infrastructure bank, the
 3-44 department, the commission, or any other public or private entity;
 3-45 and

3-46 (15) do all things necessary or appropriate to carry
 3-47 out the powers and duties expressly granted or imposed by this
 3-48 chapter.

3-49 (f) An authority and a governmental entity may enter into a
 3-50 contract, agreement, interlocal agreement, or other similar
 3-51 arrangement under which the authority may plan, design, construct,
 3-52 or operate a transportation project on behalf of the governmental
 3-53 entity. An authority may enter into a contract or agreement with
 3-54 the department under which the authority will plan, develop,
 3-55 operate, or maintain a transportation project on behalf of the
 3-56 department, subject to the transportation project being in the
 3-57 authority's area of jurisdiction. A contract or agreement under
 3-58 this subsection may contain terms and conditions as may be approved
 3-59 by an authority, including payment obligations of the governmental
 3-60 entity and the authority.

3-61 (g) Payments to be made to an authority under a contract or
 3-62 agreement described by Subsection (f) constitute operating
 3-63 expenses of the transportation project or system that is to be
 3-64 operated under the contract or agreement. The contract or
 3-65 agreement may extend for the number of years as agreed to by the
 3-66 parties.

3-67 SECTION 4. Sections 370.071(a) and (b), Transportation
 3-68 Code, are amended to read as follows:

3-69 (a) An authority may pay the expenses of studying the cost

4-1 and feasibility of a transportation project, the design and
4-2 engineering of a transportation project, and any other expenses
4-3 relating to the preparation and issuance of bonds for a proposed
4-4 transportation project by:

4-5 (1) using legally available revenue derived from an
4-6 existing transportation project;

4-7 (2) borrowing money and issuing bonds or entering into
4-8 a loan agreement payable out of legally available revenue
4-9 anticipated to be derived from the operation of an existing
4-10 transportation project; ~~or~~

4-11 (3) pledging to the payment of the bonds or a loan
4-12 agreement legally available revenue anticipated to be derived from
4-13 the operation of transportation projects or revenue legally
4-14 available to the authority from another source; or

4-15 (4) pledging to the payment of the bonds or a loan
4-16 agreement the proceeds from the sale of other bonds.

4-17 (b) Money spent under this section for a proposed
4-18 transportation project must be reimbursed to the transportation
4-19 project from which the money was spent from the proceeds of bonds
4-20 issued for the acquisition and construction of the proposed
4-21 transportation project, unless the transportation projects are or
4-22 become part of a system under Section 370.034.

4-23 SECTION 5. Section 370.072(c), Transportation Code, is
4-24 amended to read as follows:

4-25 (c) Money in the feasibility study fund may be used only to
4-26 pay the expenses of studying the cost and feasibility of a
4-27 transportation project, the design and engineering of a
4-28 transportation project, and any other expenses relating to:

4-29 (1) the preparation and issuance of bonds for the
4-30 acquisition and construction of a proposed transportation project;

4-31 (2) the financing of the improvement, extension, or
4-32 expansion of an existing transportation project; and

4-33 (3) private participation, as authorized by law, in
4-34 the financing of a proposed transportation project, the refinancing
4-35 of an existing transportation project or system, or the
4-36 improvement, extension, or expansion of a transportation project.

4-37 SECTION 6. Section 370.073(a), Transportation Code, is
4-38 amended to read as follows:

4-39 (a) One or more municipalities, counties, or other
4-40 governmental entities, a combination of municipalities, counties,
4-41 and other governmental entities, or a private group or combination
4-42 of individuals in this state may pay all or part of the expenses of
4-43 studying the cost and feasibility of a transportation project, the
4-44 design and engineering of a transportation project, and any other
4-45 expenses relating to:

4-46 (1) the preparation and issuance of bonds for the
4-47 acquisition or construction of a proposed transportation project by
4-48 an authority;

4-49 (2) the improvement, extension, or expansion of an
4-50 existing transportation project of the authority; or

4-51 (3) the use of private participation under applicable
4-52 law in connection with the acquisition, construction, improvement,
4-53 expansion, extension, maintenance, repair, or operation of a
4-54 transportation project by an authority.

4-55 SECTION 7. Section 370.113(a), Transportation Code, is
4-56 amended to read as follows:

4-57 (a) The principal of, interest on, and any redemption
4-58 premium on bonds issued by an authority are payable solely from:

4-59 (1) the revenue of the transportation project for
4-60 which the bonds are issued;

4-61 (2) payments made under an agreement with the
4-62 commission, the department, or other governmental entity as
4-63 authorized ~~provided~~ by this chapter ~~[Subchapter C];~~

4-64 (3) money derived from any other source available to
4-65 the authority, other than money derived from a transportation
4-66 project that is not part of the same system or money derived from a
4-67 different system, except to the extent that the surplus revenue of a
4-68 transportation project or system has been pledged for that purpose;
4-69 ~~and~~

5-1 (4) amounts received under a credit agreement relating
5-2 to the transportation project for which the bonds are issued; and
5-3 (5) the proceeds of the sale of other bonds.

5-4 SECTION 8. Section 370.114, Transportation Code, is amended
5-5 to read as follows:

5-6 Sec. 370.114. EFFECT OF LIEN. (a) A lien on or a pledge of
5-7 revenue from a transportation project under this chapter or on a
5-8 reserve, replacement, or other fund established in connection with
5-9 a bond issued under this chapter or a contract or agreement entered
5-10 into under this chapter:

5-11 (1) is enforceable at the time of payment for and
5-12 delivery of the bond or on the effective date of the contract or
5-13 agreement;

5-14 (2) applies to each item on hand or subsequently
5-15 received;

5-16 (3) applies without physical delivery of an item or
5-17 other act; and

5-18 (4) is enforceable against any person having a claim,
5-19 in tort, contract, or other remedy, against the applicable
5-20 authority without regard to whether the person has notice of the
5-21 lien or pledge.

5-22 (b) A copy of any bond resolution shall ~~[is not required to]~~
5-23 be maintained ~~[recorded except]~~ in the regular records of the
5-24 authority.

5-25 SECTION 9. Section 370.172, Transportation Code, is amended
5-26 by amending Subsection (b) and adding Subsection (k) to read as
5-27 follows:

5-28 (b) Tolls, fees, fares, or other charges must be set at
5-29 rates or amounts so that the aggregate of tolls, fees, fares, or
5-30 other charges from an authority's transportation project, together
5-31 with other revenue of the transportation project:

5-32 (1) provides revenue sufficient to pay:

5-33 (A) the cost of maintaining, repairing, and
5-34 operating the transportation project; ~~[and]~~

5-35 (B) the principal of and interest on any bonds
5-36 issued for the transportation project as those bonds become due and
5-37 payable; and

5-38 (C) any other payment obligations of an authority
5-39 under a contract or agreement authorized under this chapter; and

5-40 (2) creates reserves for a purpose listed under
5-41 Subdivision (1).

5-42 (k) Notwithstanding any other provision of this chapter, an
5-43 authority may pledge all or any part of its revenues and any other
5-44 funds available to the authority to the payment of any obligations
5-45 of the authority under a contract or agreement authorized by this
5-46 chapter.

5-47 SECTION 10. Section 370.173(c), Transportation Code, is
5-48 amended to read as follows:

5-49 (c) The authority may use money in the revolving fund to:

5-50 (1) finance the acquisition, construction,
5-51 maintenance, or operation of a transportation project, including
5-52 the extension, expansion, or improvement of a transportation
5-53 project;

5-54 (2) provide matching money required in connection with
5-55 any federal, state, local, or private aid, grant, or other funding,
5-56 including aid or funding by or with public-private partnerships;

5-57 (3) provide credit enhancement either directly or
5-58 indirectly for bonds issued to acquire, construct, extend, expand,
5-59 or improve a transportation project;

5-60 (4) provide security for or payment of future or
5-61 existing debt for the design, acquisition, construction,
5-62 operation, maintenance, extension, expansion, or improvement of a
5-63 transportation project or system;

5-64 (5) borrow money and issue bonds, promissory notes, or
5-65 other indebtedness payable out of the revolving fund for any
5-66 purpose authorized by this chapter; and

5-67 (6) provide for any other reasonable purpose that
5-68 assists in the financing of an authority as authorized by this
5-69 chapter.

6-1 SECTION 11. Section 370.177, Transportation Code, is
 6-2 amended by adding Subsection (1) to read as follows:

6-3 (1) In addition to the other powers and duties provided by
 6-4 this chapter, with regard to its toll collection and enforcement
 6-5 powers for its turnpike projects or other toll projects developed,
 6-6 financed, constructed, and operated under an agreement with the
 6-7 authority or another entity, an authority has the same powers and
 6-8 duties as the department under Chapter 228, a county under Chapter
 6-9 284, and a regional tollway authority under Chapter 366.

6-10 SECTION 12. Sections 370.251(a) and (b), Transportation
 6-11 Code, are amended to read as follows:

6-12 (a) Except as provided by Subsection (a-1), the governing
 6-13 body of an authority is a board of directors consisting of
 6-14 representatives of each county in which a transportation project of
 6-15 the authority is located or is proposed to be located. The
 6-16 commissioners court of each county that initially forms the
 6-17 authority shall appoint at least two directors to the board.
 6-18 Additional directors may be appointed to the board at the time of
 6-19 initial formation by agreement of the counties creating the
 6-20 authority to ensure fair representation of political subdivisions
 6-21 in the counties of the authority that will be affected by a
 6-22 transportation project of the authority, provided that the number
 6-23 of directors must be an odd number. The commissioners court of a
 6-24 county that is subsequently added to the authority shall appoint at
 6-25 least one director to the board. The governor shall appoint one
 6-26 director to the board who shall serve as the presiding officer of
 6-27 the board and shall appoint an additional director to the board if
 6-28 an appointment is necessary to maintain an odd number of directors
 6-29 on the board.

6-30 (b) The appointment [Unless the commissioners courts] of
 6-31 additional directors from a county subsequently added to an [the
 6-32 counties of the] authority or from a [unanimously agree otherwise,
 6-33 the commissioners court of each] county of an authority that
 6-34 contains an operating transportation project of the authority shall
 6-35 be by a process unanimously agreed to by the commissioners courts of
 6-36 all the counties of the authority [appoint one additional
 6-37 director].

6-38 SECTION 13. Subchapter F, Chapter 370, Transportation Code,
 6-39 is amended by adding Section 370.2511 to read as follows:

6-40 Sec. 370.2511. BOARD OF DIRECTORS: CERTAIN AUTHORITIES.

6-41 (a) This section applies only to an authority created by a
 6-42 municipality.

6-43 (b) The governing body of a municipality by order may
 6-44 establish the governing body as the board of directors of an
 6-45 authority.

6-46 (c) The governor shall designate one director to serve as
 6-47 the presiding officer of a board under this section.

6-48 (d) Each director of a board under this section has equal
 6-49 status and may vote.

6-50 (e) The vote of a majority attending a board meeting is
 6-51 necessary for any action taken by a board under this section. If a
 6-52 vacancy exists on a board, the majority of directors serving on the
 6-53 board is a quorum.

6-54 (f) The governing body of a municipality that becomes the
 6-55 board of an existing authority under this section shall by
 6-56 resolution provide for the transfer process that establishes the
 6-57 governing body as the board of the authority.

6-58 (g) If the board of directors of an authority created by a
 6-59 municipality consists of the members of the governing body of the
 6-60 municipality, Sections 370.251, 370.2515, 370.252, 370.2521,
 6-61 370.2522, 370.2523, 370.253, 370.254, and 370.255 do not apply to
 6-62 the board.

6-63 SECTION 14. Section 370.303, Transportation Code, is
 6-64 amended by amending Subsections (a) and (b) and adding Subsections
 6-65 (b-1) and (g) to read as follows:

6-66 (a) A governmental entity ~~[other than a nonprofit~~
 6-67 ~~corporation]~~ may, consistent with the Texas Constitution, issue
 6-68 bonds, notes, or other obligations or enter into and make payments
 6-69 under agreements with an authority in connection with the

7-1 financing, acquisition, construction, [to acquire, construct,
7-2 maintain,] or operation of [operate] a transportation project by an
7-3 authority, whether inside or outside the geographic boundaries of
7-4 the governmental entity, including agreements to pay the principal
7-5 of, and interest on, bonds, notes, or other obligations issued by
7-6 the authority and make payments under any related credit
7-7 agreements. The entity may impose and collect taxes to pay the
7-8 interest on the bonds and to provide a sinking fund for the
7-9 redemption of the bonds.

7-10 (b) In addition to the powers provided by Subsection (a), a
7-11 governmental entity may, to the extent constitutionally permitted,
7-12 agree with an authority to:

7-13 (1) issue bonds, notes, or other obligations;

7-14 (2) [7] create:

7-15 (A) a taxing district;

7-16 (B) a transportation reinvestment zone under
7-17 Subchapter E, Chapter 222; or

7-18 (C) an entity to promote economic development;

7-19 (3) collect and remit to an authority taxes, fees, or
7-20 assessments collected for purposes of developing transportation
7-21 projects;

7-22 (4) [7] fund public improvements to promote economic
7-23 development; [7] or

7-24 (5) enter into and make payments under an agreement to
7-25 acquire, construct, maintain, or operate any portion of a
7-26 transportation project of the authority.

7-27 (b-1) An agreement under Subsection (b) may include a means
7-28 for a local governmental entity to pledge or otherwise provide
7-29 funds for a transportation project that benefits the governmental
7-30 entity to be developed by the authority.

7-31 (g) An agreement under this section may contain repayment or
7-32 reimbursement obligations of an authority.

7-33 SECTION 15. Section 370.304, Transportation Code, is
7-34 amended to read as follows:

7-35 Sec. 370.304. ADDITIONAL AGREEMENTS OF AUTHORITY. An
7-36 authority may enter into any contract, loan agreement, or other
7-37 agreement necessary or convenient to achieve the purposes of this
7-38 subchapter.

7-39 SECTION 16. Section 370.317(d), Transportation Code, is
7-40 repealed.

7-41 SECTION 17. This Act takes effect immediately if it
7-42 receives a vote of two-thirds of all the members elected to each
7-43 house, as provided by Section 39, Article III, Texas Constitution.
7-44 If this Act does not receive the vote necessary for immediate
7-45 effect, this Act takes effect September 1, 2011.

7-46 * * * * *