

BILL ANALYSIS

Senate Research Center

C.S.H.B. 3323
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State Affairs
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Committee Report (Substituted)

DIGEST AND PURPOSE

Because of the increase in the state's population, counties adjacent to a county that contains a major municipality are adversely affected by an increase in traffic congestion on area roadways. To provide more efficient transportation and to reduce air pollution an alternative means of transportation in such counties needs to be developed. A county transportation authority could facilitate efforts to ameliorate traffic congestion and pollution. C.S.H.B. 3323 authorizes a county adjacent to a county with a population of one million or more and that does not contain a municipality that has a population of one million or more and is a member of a subregion of a regional transportation authority governed by a subregional board having a principal municipality with a population of more than 800,000 to create a coordinated county transportation authority.

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. Amends Title 6K, Transportation Code, by adding Chapter 460, as follows:

CHAPTER 460. COORDINATED COUNTY TRANSPORTATION AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 460.001. DEFINITIONS. Defines "authority," "balance of the county," "executive committee," and "service plan."

Sec. 460.002. APPLICABILITY. Provides that this chapter applies only to certain counties.

Sec. 460.003. INELIGIBILITY OF CERTAIN MUNICIPALITIES. Provides that a municipality that is a member of a subregion of a transportation authority governed by a board described in Chapter 452O, is not eligible to join or become a member of an authority created under this chapter except under certain circumstances. Prohibits a municipality that is not eligible under this section for membership in an authority created under this chapter from being added to or joining an authority under Section 460.302 or 460.303 until the municipality meets the requirements of this section.

[Sections 460.004-460.050 reserved for expansion]

SUBCHAPTER B. CREATION OF AUTHORITY

Sec. 460.051. CREATION OF AUTHORITY. Authorizes the commissioners court of a county to initiate the process to create a coordinated county transportation authority (authority) to provide public transportation and transportation-related services on adoption of a resolution

or order initiating the process to create an authority, or on receipt of a petition requesting creation of an authority signed by a number of registered voters of the county equal to or greater than five percent of the votes cast in the county in the most recent gubernatorial election. Requires the petition, if a petition described by this section is received by the commissioners court, to be verified by the county clerk, consistent with Chapter 277, Election Code, and returned to the commissioners court with a finding of verification.

Sec. 460.052. HEARING. Requires the commissioners court to hold a public hearing on creation of an authority not later than the 60th day after the date the commissioners court receives a petition described by Section 460.051, or adopts a resolution or order to initiate the process to create an authority. Requires the notice of the time and place of the public hearing on the creation of the authority to be published, beginning at least 30 days before the date of the hearing, once a week for two consecutive weeks in a newspaper of general circulation in the county. Requires each municipality in the county with a population of 12,000 or more to be notified of the public hearing by notice mailed to the governing body of the municipality. Authorizes any person to appear at a hearing and offer evidence on the creation of the authority, operation of the county transportation system, public interest served in the creation of the authority, or other facts relating to the creation of the authority. Authorizes a hearing to be continued until completed.

Sec. 460.053. RESOLUTION OR ORDER. Authorizes the commissioners court, after the hearing, to adopt a resolution or order designating the name of the authority and stating certain information.

Sec. 460.054. MEMBERSHIP OF INTERIM EXECUTIVE COMMITTEE. Requires the commissioners court and certain municipalities, as provided by this section, to appoint an interim executive committee for the authority, after adopting a resolution or order under Section 460.053. Provides that the interim executive committee is composed of certain members and requires the members to be designated in a certain manner.

Sec. 460.055. DUTIES OF INTERIM EXECUTIVE COMMITTEE. Requires the interim executive committee to elect three of its members to serve as the chair, vice chair, and secretary. Requires the interim executive committee to develop a service plan and determine a proposed tax not later than the 180th day after the date of the interim executive committee's first meeting. Requires the interim executive committee to hold at least one regular meeting a month for the purpose of developing a service plan and determining a proposed tax rate. Requires the interim executive committee to consider certain ideas in developing the service plan.

Sec. 460.056. APPROVAL OF SERVICE PLAN AND TAX RATE. Requires a copy of the plan and tax rate, on approval by the interim executive committee of the service plan and tax rate, to be provided to the commissioners court and the governing body of each municipality with a population of 12,000 or more located in the county. Requires notice of the interim executive committee's approval of the service plan and tax rate to be published in a newspaper of general circulation in the county and mailed to all governing bodies of municipalities with a population of more than 500 located in the county. Authorizes the governing body of a municipality with a population of 12,000 or more to approve by resolution or order the service plan and tax rate, not later than the 60th day after the date the interim executive committee approves the service plan and tax rate. Prohibits a municipality with a population of 12,000 or more located in the county that does not give its approval under this section from participating in the service plan or the confirmation election for the authority. Prohibits the commissioners court from ordering a confirmation election in a municipality with a population of 12,000 or more in which the governing body of the municipality does not approve the service plan and tax rate.

Sec. 460.057. CONFIRMATION ELECTION. Requires the interim executive committee to notify the commissioners court of the need to call a confirmation election. Requires the commissioners court in ordering the confirmation election to submit to the qualified voters in the county a certain proposition. Requires the notice of election, in addition to other information required by law, to include certain information. Requires the election to be held on a uniform election date.

Sec. 460.058. CONDUCT OF ELECTION. Requires a confirmation election to be conducted so that the votes are separately tabulated and canvassed in order to show the results for each municipality located in the county that passed a resolution or order approving the service plan and tax rate, and the qualified voters in the balance of the county. Requires the interim executive committee to canvass the returns and declare the results of the election.

Sec. 460.059. RESULTS OF ELECTION. Provides that if a majority of votes received in the county favor the proposition, the authority is confirmed, except that the authority does not include a municipality with a population of 12,000 or more located in the county in which a majority of the votes did not favor the proposition. Provides that the authority ceases under certain circumstances. Requires the interim executive committee, if the authority is confirmed, to record the results in its minutes and adopt an order containing certain information. Provides that on adoption of the order confirming the authority, the interim executive committee becomes the executive committee of the authority. Requires a certified copy of the order to be filed with the Texas Department of Transportation and the comptroller of public accounts.

Sec. 460.060. FAILURE TO CONFIRM AUTHORITY. Requires the interim executive committee, if the authority ceases, to record the results of the election in its minutes and adopt an order declaring that the authority is dissolved. Requires the county and each municipality that passed a resolution or order approving the service plan and tax rate to share the expenses of the election proportionately based on the population of the areas in which the election was conducted. Provides that an authority that has not been confirmed expires on the third anniversary of the effective date of the resolution or order initiating the process to create the authority.

[Sections 460.061-460.100 reserved for expansion]

SUBCHAPTER C. POWERS OF AUTHORITY

Sec. 460.101. POWERS APPLICABLE TO CONFIRMED AUTHORITY. Provides that this subchapter applies only to an authority that has been confirmed.

Sec. 460.102. NATURE OF AUTHORITY. Provides that an authority is a governmental body and a corporate body, has perpetual succession, and exercises public and essential governmental functions. Provides that an authority is a governmental unit under Chapter 101, Civil Practice and Remedies Code, and the operations of the authority are not proprietary functions for any purpose including the application of Chapter 101, Civil Practice and Remedies Code.

Sec. 460.103. GENERAL POWERS OF AUTHORITY. Provides that the authority has any power necessary or convenient to carry out this chapter or effect the purpose of this chapter. Authorizes an authority to sue and be sued. Prohibits an authority from being required to give security for costs in a suit brought or prosecuted by the authority and prohibits an authority from being required to post a supersedeas or cost bond in an appeal of a judgment. Authorizes an authority to hold, use, sell, lease, dispose of, and acquire, by any means, property and licenses, patents, rights and other interests necessary, convenient, or useful to the exercise of any power under this chapter. Authorizes an authority to sell, lease, or dispose of in another manner any right, interest, or property of the authority that is not necessary for the efficient operation and

maintenance of public transportation or at any time, surplus materials or other property that is not needed by the authority to carry out a power under this chapter.

Sec. 460.104. **POWER TO CONTRACT; GRANTS AND LOANS.** Authorizes an authority to contract with any person. Authorizes an authority to accept a gift, grant, donation, or loan from any person. Authorizes an authority to enter into an agreement, including an interlocal agreement, with a transportation or transit entity, including a municipality, that is consistent with and beneficial to the service plan approved by the authority.

Sec. 460.105. **OPERATION OF PUBLIC TRANSPORTATION SYSTEM.** Sets forth a list of authorizations given to an authority. Requires an authority to determine routes of the public transportation system or approve routes submitted to the authority.

Sec. 460.106. **AUTHORIZATION OF TAX LEVY.** Authorizes an authority to call an authorization election for a tax levy associated with the service plan developed by the interim executive committee or a tax rate that has been modified by action of the executive committee at any time after the confirmation election that creates the authority. Requires the executive committee in ordering the authorization election to submit to the qualified voters in the county located in an area participating in the authority a certain proposition. Requires an election authorizing a tax levy to be conducted in the same manner as a confirmation election under Subchapter B. Authorizes a service plan to be implemented in an area of the county participating in the authority only if a majority of votes received favor the authorization of a tax levy by the authority. Provides that an authority that does not authorize an initial tax levy at an authorization election expires on the second anniversary of the date the executive committee adopts an order declaring that the creation of the authority is confirmed.

Sec. 460.107. **ACQUISITION OF PROPERTY.** Authorizes an authority to use a public way, including an alley, as necessary or useful in the construction, repair, maintenance, or operation of a public transportation system. Authorizes an authority to acquire by eminent domain any interest in real property, including a fee simple interest and the use of air or subsurface space, except the right of eminent domain is prohibited from being exercised in a municipality without the approval of the proposed acquisition by the governing body of the municipality or in an unincorporated area without the approval of the proposed acquisition by the commissioners court of the county in which the property to be condemned is located. Requires the relocation costs to be paid by the authority, if an authority, through the exercise of eminent domain, makes any relocation necessary. Provides that an eminent domain proceeding by an authority is initiated by the adoption by the executive committee of a resolution authorizing the exercise that describes the property to be condemned, declares the public necessity for the acquisition, and declares that the acquisition is necessary for the construction, extension, improvement, or development of the public transportation system. Provides that a resolution adopted under this section and approved by the appropriate municipal governing body or commissioners court is conclusive evidence of the public necessity for the acquisition described in the resolution. Provides that Chapter 21, Property Code, applies to an eminent domain proceeding by an authority.

Sec. 460.108. **AGREEMENT WITH UTILITIES, CARRIERS.** Authorizes an authority to agree with any other public or private utility, communication system, common carrier, or transportation system for the joint use of the property or fixtures of the agreeing entities and the establishment of through routes, joint fares, or transfers of passengers between the agreeing entities. Requires the authority, if the exercise of a power granted to an authority under this subchapter requires a public utility facility to be relocated, adjusted, raised, lowered, rerouted, or changed as to grade or construction, to take the required action at the authority's expense. Prohibits an authority from imposing an impact fee or assessment on the property, equipment, or facilities of a utility.

Sec. 460.109. **FARES AND USE FEES.** Requires an authority to impose reasonable and nondiscriminatory fares, tolls, charges, rents, and other forms of compensation for the use of the public transportation system. Requires the fares and other forms of compensation to be sufficient to produce revenue, together with tax revenue and grants received by the authority, in an amount adequate to meet certain requirements. Authorizes fares for passenger transportation to be set according to a zone system or by any other classification system that the authority determines to be reasonable. Provides that this section does not limit the state's power to regulate taxes imposed by an authority. Provides that the state agrees not to alter the power granted to an authority under this section to impose taxes, fares, tolls, charges, rents, and other compensation sufficient to pay obligations incurred by the authority. Provides that the state agrees not to impair the rights and remedies of an authority bondholder, or a person acting on behalf of a bondholder, until the principal and interest on the bonds, the interest on unpaid installments of interest, costs, and expenses in connection with an action or proceeding by or on behalf of a bondholder are discharged.

Sec. 460.110. **INSURANCE.** Authorizes an authority to insure, through purchased insurance policies, self-insurance programs, or both, the legal liability of the authority and of its contractors and subcontractors arising from the acquisition, construction, or operation of the programs and facilities of the authority for personal or property damage, and officers' and employees' liability. Authorizes an authority to use contracts, rating plans, and risk management programs designed to encourage accident prevention. Authorizes an authority, in developing an insurance or self-insurance program, to consider the peculiar hazards, indemnity standards, and past and prospective loss and expense experience of the authority and similar authorities and of its contractors and subcontractors.

Sec. 460.111. **TAX EXEMPTION.** Provides that the property, revenue, and income of an authority are exempt from state and local taxes.

Sec. 460.112. **MASS TRANSIT RAIL SYSTEM; EXEMPTION.** Provides that an authority that constructs or operates or contracts with another entity to construct or operate a mass transit rail system is not subject to any state law regulating or governing the design, construction, or operation of a railroad, railway, street railway, streetcar, or interurban railway. Provides that for purposes of ownership or transfer of ownership of an interest in real property, a light rail mass transit system line operating on property previously used by a railroad, railway, street railway, or interurban railway is a continuation of existing rail use.

[Sections 460.113-460.200 reserved for expansion]

SUBCHAPTER D. PROVISIONS APPLICABLE TO EXECUTIVE COMMITTEE

Sec. 460.201. **TERMS; VACANCY.** Provides that each member of the executive committee serves a term of two years. Prohibits a member of the executive committee from serving more than three terms. Provides that a vacancy on the executive committee is filled in the same manner as the original appointment to the interim executive committee.

Sec. 460.202. **ELIGIBILITY.** Requires a person, in order to be eligible for appointment to the executive committee, to have professional experience in the field of transportation, business, government, engineering, or law.

Sec. 460.203. **CONFLICTS OF INTEREST.** Provides that members of the executive committee and officers and employees of the authority are subject to Chapter 171, Local Government Code.

Sec. 460.204. **MEETINGS.** Requires the executive committee to meet at least monthly to transact the business of an authority. Authorizes the chair to call special meetings as necessary.

Requires the executive committee by resolution to set the time, place, and date of regular meetings; and adopt rules and bylaws as necessary to conduct meetings.

Sec. 460.205. QUORUM; VOTING REQUIREMENTS. Provides that five members constitute a quorum of the executive committee. Provides that an action of the executive committee requires a vote of a majority of the members present unless the bylaws require a larger number for a specific action.

[Sections 460.206-460.300 reserved for expansion]

SUBCHAPTER E. ADDITION OF TERRITORY

Sec. 460.301. ADDITION OF TERRITORY BY MUNICIPAL ANNEXATION. Provides that when a municipality that is part of an authority annexes territory that before the annexation is not part of the authority, the annexed territory becomes part of the authority.

Sec. 460.302. ADDITION OF MUNICIPALITY BY ELECTION. Authorizes the territory of a municipality that is not initially part of an authority to be added to an authority under certain circumstances. Requires the governing body of the municipality to certify to the executive committee the result of an election in which the addition is approved.

Sec. 460.303. JOINING AUTHORITY; CERTAIN AUTHORITIES. Authorizes a municipality that has a population of more than 500,000 and that is located in a county with a population of more than one million to join a separate authority. Authorizes the municipality, if a municipality described by Subsection (a) joins an authority created under this chapter and another separate authority is subsequently established in the county in which the municipality is located, to remain in the authority that was created first, join the new authority in the county in which the municipality is located, or participate with both authorities. Requires a municipality that has requested, participated in, or received a benefit of capital improvements made by an authority to, on its transfer to a different authority or participation with more than one authority, continue to honor reimbursement obligations resulting from the improvements.

Sec. 460.304. TAX IMPOSED IN ADDED TERRITORY. Provides that a sales and use tax imposed by an authority takes effect in territory added to the authority under this subchapter on the first day of the first calendar quarter that begins after the addition of the territory. Requires an authority to send to the comptroller of public accounts certain documents. Requires the order to include the effective date of the tax.

[Sections 460.305-460.400 reserved for expansion]

SUBCHAPTER F. MANAGEMENT OF AUTHORITY

Sec. 460.401. MANAGEMENT OF AUTHORITY. Provides that the executive committee is responsible for the management, operation, and control of the authority and its properties.

Sec. 460.402. FINANCIAL AUDIT. Requires the executive committee of an authority to have an annual audit of the affairs of the authority prepared by an independent certified public accountant. Provides that the audit is a public record as defined by Chapter 552, Government Code. Requires the executive committee, on receipt of the audit prescribed by Subsection (a), to address on the record any deficiencies noted in the report at a regular meeting of the executive committee.

Sec. 460.403. BUDGET. Requires the executive committee to prepare an annual budget.

Sec. 460.404. FUNDING. Authorizes an authority to request funds for its operation from a

municipality, the commissioners court, or both a municipality and the commissioners court. Requires the request to be accompanied by a budget. Provides that funds appropriated to an authority are subject to audit. Authorizes federal funds or grants to be used to offset the authority's annual cost of debt service.

Sec. 460.405. PROHIBITIONS. Prohibits an employee, agent, or person receiving compensation from or on behalf of an authority from attempting to affect the outcome of proposed legislation. Provides that this section does not apply to a contested administrative matter, or pending or reasonably anticipated litigation.

Sec. 460.406. PURCHASES: COMPETITIVE BIDDING. Prohibits an authority, except as provided by Subsection (c), from awarding a contract for construction, services, or property, other than real property, except through the solicitation of competitive sealed bids or proposals ensuring full and open competition. Requires the authority to describe in a solicitation each factor to be used to evaluate a bid or proposal and give the factor's relative importance. Authorizes the executive committee to authorize the negotiation of a contract without competitive sealed bids or proposals under certain circumstances.

[Sections 460.407-460.500 reserved for expansion]

SUBCHAPTER G. BONDS AND NOTES

Sec. 460.501. DEFINITION. Defines "bond."

Sec. 460.502. POWER TO ISSUE BONDS. Authorizes an authority to issue bonds at any time and for amounts the executive committee determines are appropriate. Authorizes the bonds to be issued as necessary for the acquisition, construction, repair, improvement, or extension of an authority's public transportation system; or the creation or funding of self-insurance or retirement or pension fund reserves. Provides that a bond issued by the authority must have 20-year even principal and interest payback. Prohibits a bond, any portion of which is secured by a pledge of sales and use tax revenues and that has a maturity of five years or longer from the date of issuance, from being issued by an authority until an election has been held and the proposition proposing the issue has been approved by a majority of the votes received on the issue in accordance with the provisions established for the authorization of a tax levy under Subchapter C.

Sec. 460.503. BOND TERMS. Provides that the bonds of an authority are fully negotiable. Authorizes an authority to make the bonds redeemable before maturity.

Sec. 460.504. SALE. Authorizes an authority's bonds to be sold at a public or private sale as determined by the executive committee to be the more financially beneficial.

Sec. 460.505. INCONTESTABILITY. Provides that an authority's bonds are incontestable after the bonds are approved by the attorney general, registered by the comptroller of public accounts, and sold to the purchaser.

Sec. 460.506. SECURITY PLEDGED. Authorizes the authority, in order to secure the payment of an authority's bonds, to pledge all or part of revenue realized from any tax that is approved and levied, pledge any part of the revenue of the public transportation system, or mortgage any part of the public transportation system.

Sec. 460.507. REFUNDING BONDS. Authorizes an authority to issue refunding bonds at any time if the repayment savings from the refunding bonds exceeds the cost of issuance.

Sec. 460.508. NOTES. Authorizes an authority to issue negotiable notes payable from any of

the authority's sources of revenue to pay for any lawful expenditure, other than principal and interest on the authority's debt. Requires notes issued by an authority to be payable over a period not to exceed five years from the date of issuance. Provides that the Texas Natural Resource Conservation Commission is not required to approve notes issued under this section. Prohibits an authority from having outstanding notes in excess of \$1 million at any one time.

[Sections 460.509-460.550 reserved for expansion]

SUBCHAPTER H. TAXATION

Sec. 460.551. SALES AND USE TAX. Authorizes the executive committee to impose for an authority a sales and use tax at a certain rate. Requires the imposition of an authority's sales and use tax to be approved at an election and prohibits it from being imposed in an area that has not confirmed the authority. Authorizes a sales and use tax to be imposed, as prescribed by this section, by a municipality that participates in a transportation or transit authority other than an authority created under this chapter under certain circumstances. Requires the authority to impose a sales and use tax at a minimum uniform rate as determined by the executive committee if the tax is approved at an election in an area that has confirmed the authority. Authorizes a municipality with a population of 12,000 or more that has confirmed the authority to impose a sales and use tax at a rate higher than the minimum uniform rate established under this section on approval at an election if the authority will provide the municipality a higher level of service.

Sec. 460.552. MAXIMUM TAX RATE IN AUTHORITY AREA. Prohibits an authority from adopting a sales and use tax rate, including a rate increase, that when combined with the rates of all sales and use taxes imposed by other political subdivisions having territory in the authority exceeds two percent in any location in the authority. Provides that an increase in the tax rate to a higher rate must be approved by a majority of the voters at a confirmation election.

Sec. 460.553. INITIAL SALES TAX: EFFECTIVE DATE. Provides that the adoption of a sales and use tax takes effect on the first day of the first calendar quarter after the confirmation election.

Sec. 460.554. RATE DECREASE. Authorizes the executive committee by order to direct the comptroller of public accounts to collect the authority's sales and use tax at a rate that is lower than the rate approved by the voters at the confirmation hearing if the executive committee determines that it is in the best interest of the authority.

SECTION 2. Effective date: September 1, 2001.