

1-1 By: Nichols S.B. No. 1669
1-2 (In the Senate - Filed March 10, 2009; March 20, 2009, read
1-3 first time and referred to Committee on Transportation and Homeland
1-4 Security; April 8, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 April 8, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1669 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. Subdivisions (12) and (14), Section 370.003,
1-14 Transportation 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 SECTION 2. Subsection (a), Section 370.004, Transportation
 2-4 Code, is amended to read as follows:

2-5 (a) The cost of acquisition, construction, improvement,
 2-6 extension, or expansion of a transportation project under this
 2-7 chapter includes the cost of:

2-8 (1) the actual acquisition, construction,
 2-9 improvement, extension, or expansion of the transportation
 2-10 project;

2-11 (2) the acquisition of real property, rights-of-way,
 2-12 property rights, easements, and other interests in real property;

2-13 (3) machinery and equipment;

2-14 (4) interest payable before, during, and for not more
 2-15 than three years after acquisition, construction, improvement,
 2-16 extension, or expansion as provided in the bond proceedings;

2-17 (5) traffic estimates, revenue estimates, engineering
 2-18 and legal services, plans, specifications, surveys, appraisals,
 2-19 construction cost estimates, and other expenses necessary or
 2-20 incidental to determining the feasibility of the acquisition,
 2-21 construction, improvement, extension, or expansion;

2-22 (6) necessary or incidental administrative, legal,
 2-23 and other expenses;

2-24 (7) compliance with laws, regulations, and
 2-25 administrative rulings, including any costs associated with
 2-26 necessary environmental mitigation measures;

2-27 (8) financing;

2-28 (9) the assumption of debts, obligations, and
 2-29 liabilities of an entity relating to a transportation project
 2-30 transferred to an authority by that entity; ~~[and]~~

2-31 (10) expenses related to the initial operation of the
 2-32 transportation project; and

2-33 (11) payment obligations of an authority under a
 2-34 contract or agreement authorized by this chapter in connection with
 2-35 the acquisition, construction, improvement, extension, expansion,
 2-36 or financing of the transportation project.

2-37 SECTION 3. Subsections (a), (f), and (g), Section 370.033,
 2-38 Transportation Code, are amended to read as follows:

2-39 (a) An authority, through its board, may:

2-40 (1) adopt rules for the regulation of its affairs and
 2-41 the conduct of its business;

2-42 (2) adopt an official seal;

2-43 (3) study, evaluate, design, finance, acquire,
 2-44 construct, maintain, repair, and operate transportation projects,
 2-45 individually or as one or more systems, provided that a
 2-46 transportation project that is subject to Subpart C, 23 C.F.R. Part
 2-47 450, is:

2-48 (A) included in the plan approved by the
 2-49 applicable metropolitan planning organization; and

2-50 (B) consistent with the statewide transportation
 2-51 plan and the statewide transportation improvement program;

2-52 (4) acquire, hold, and dispose of property in the
 2-53 exercise of its powers and the performance of its duties under this
 2-54 chapter;

2-55 (5) enter into contracts or operating agreements with
 2-56 a similar authority, another governmental entity, or an agency of
 2-57 the United States, a state of the United States, the United Mexican
 2-58 States, or a state of the United Mexican States;

2-59 (6) enter into contracts or agreements necessary or
 2-60 incidental to its powers and duties under this chapter;

2-61 (7) cooperate and work directly with property owners
 2-62 and governmental entities and officials to support an activity
 2-63 required to promote or develop a transportation project;

2-64 (8) employ and set the compensation and benefits of
 2-65 administrators, consulting engineers, attorneys, accountants,
 2-66 construction and financial experts, superintendents, managers,
 2-67 full-time and part-time employees, agents, consultants, and other
 2-68 persons as the authority considers necessary or useful;

2-69 (8-a) participate in the state travel management

3-1 program administered by the comptroller for the purpose of
 3-2 obtaining reduced airline fares and reduced travel agent fees,
 3-3 provided that the comptroller may charge the authority a fee not to
 3-4 exceed the costs incurred by the comptroller in providing services
 3-5 to the authority;

3-6 (9) notwithstanding Sections 221.003 and 222.031 and
 3-7 subject to Subsections (j) and (m), apply for, directly or
 3-8 indirectly receive and spend loans, gifts, grants, and other
 3-9 contributions for any purpose of this chapter, including the
 3-10 construction of a transportation project, and receive and spend
 3-11 contributions of money, property, labor, or other things of value
 3-12 from any source, including the United States, a state of the United
 3-13 States, the United Mexican States, a state of the United Mexican
 3-14 States, the commission, the department, a subdivision of this
 3-15 state, or a governmental entity or private entity, to be used for
 3-16 the purposes for which the grants, loans, or contributions are
 3-17 made, and enter into any agreement necessary for the grants, loans,
 3-18 or contributions;

3-19 (10) install, construct, or contract for the
 3-20 construction of public utility facilities, direct the time and
 3-21 manner of construction of a public utility facility in, on, along,
 3-22 over, or under a transportation project, or request the removal or
 3-23 relocation of a public utility facility in, on, along, over, or
 3-24 under a transportation project;

3-25 (11) organize a corporation under Chapter 431 for the
 3-26 promotion and development of transportation projects;

3-27 (12) adopt and enforce rules not inconsistent with
 3-28 this chapter for the use of any transportation project, including
 3-29 tolls, fares, or other user fees, speed and weight limits, and
 3-30 traffic and other public safety rules, provided that an authority
 3-31 must consider the same factors that the Texas Turnpike Authority
 3-32 division of the department must consider in altering a *prima facie*
 3-33 speed limit under Section 545.354;

3-34 (13) enter into leases, operating agreements, service
 3-35 agreements, licenses, franchises, and similar agreements with a
 3-36 public or private party governing the party's use of all or any
 3-37 portion of a transportation project and the rights and obligations
 3-38 of the authority with respect to a transportation project;

3-39 (14) borrow money from or enter into a loan agreement
 3-40 or other arrangement with the state infrastructure bank, the
3-41 department, the commission, or any other public or private entity;
 3-42 and

3-43 (15) do all things necessary or appropriate to carry
 3-44 out the powers and duties expressly granted or imposed by this
 3-45 chapter.

3-46 (f) An authority and a governmental entity may enter into a
 3-47 contract, agreement, interlocal agreement, or other similar
 3-48 arrangement under which the authority may plan, design, construct,
 3-49 or operate a transportation project on behalf of the governmental
 3-50 entity. An authority may enter into a contract with the department
 3-51 under which the authority will plan, develop, operate, or maintain
 3-52 a transportation project on behalf of the department, subject to
 3-53 the transportation project being in the authority's area of
 3-54 jurisdiction. A contract or agreement under this subsection may
3-55 contain terms and conditions as may be approved by an authority,
3-56 including payment obligations of the governmental entity and the
3-57 authority.

3-58 (g) Payments to be made to an authority under a contract or
 3-59 agreement described by Subsection (f) constitute operating
 3-60 expenses of the transportation project or system that is to be
 3-61 operated under the contract. The contract may extend for the number
 3-62 of years as agreed to by the parties.

3-63 SECTION 4. Subchapter B, Chapter 370, Transportation Code,
 3-64 is amended by adding Section 370.040 to read as follows:

3-65 Sec. 370.040. TOLL COLLECTION. (a) In this section,
 3-66 "tolling services" means the tolling services normally provided
 3-67 through an authority's customer service center or through
 3-68 contracted services provided to the authority, including customer
 3-69 service, customer account maintenance, transponder supply, and

4-1 toll collection and enforcement.

4-2 (b) An authority shall provide, for reasonable
 4-3 compensation, tolling services for a toll project in the geographic
 4-4 boundaries of the authority, regardless of whether the toll project
 4-5 is developed, financed, constructed, and operated under an
 4-6 agreement, including a comprehensive development agreement, with
 4-7 the authority or another entity. Nothing contained in this section
 4-8 shall restrict an authority from agreeing to additional tolling
 4-9 services in an agreement described in Subsection (d). Any such
 4-10 additional tolling services shall be subject to the same provisions
 4-11 that apply to tolling services under this section.

4-12 (c) An authority may not provide financial security,
 4-13 including a cash collateral account, for the performance of tolling
 4-14 services it provides under this section if:

4-15 (1) the authority determines that providing security
 4-16 could restrict the amount or increase the cost of bonds or other
 4-17 debt obligations the authority may subsequently issue under this
 4-18 chapter; or

4-19 (2) the authority is not reimbursed its cost of
 4-20 providing the security.

4-21 (d) Before providing tolling services for a toll project
 4-22 under this section, an authority must enter into a written
 4-23 agreement that sets out the terms and conditions for the tolling
 4-24 services to be provided and the terms of compensation for those
 4-25 services.

4-26 (e) Toll revenues are the property of the entity that is
 4-27 entitled to the revenues under a tolling services agreement for the
 4-28 toll project, regardless of who holds or collects the revenues.
 4-29 Toll revenues that are held or collected by an authority under a
 4-30 tolling services agreement that are not the property of the
 4-31 authority are not subject to a claim adverse to the authority or a
 4-32 lien on or encumbrance against property of the authority. Toll
 4-33 revenues that are the property of the authority are not subject to a
 4-34 claim adverse to any other entity or a lien on or encumbrance
 4-35 against property of any other entity.

4-36 (f) An authority may agree in a tolling services agreement
 4-37 that its right and obligation to provide services for that toll
 4-38 project under this section are subject to termination for default,
 4-39 and that after any such termination, this section no longer applies
 4-40 to that toll project.

4-41 (g) Any public or private entity, including an authority or
 4-42 the department, may agree to fund a cash collateral account for the
 4-43 purpose of providing funds that may be withdrawn as provided in the
 4-44 tolling services agreement because of an authority's failure to
 4-45 make any payment as required by the tolling services agreement. An
 4-46 authority's written commitment to fully or partially fund a cash
 4-47 collateral account conclusively evidences its determination that
 4-48 the commitment does not violate Subsection (c). The department may
 4-49 expend money from any available source for this purpose.

4-50 (h) Subsection (b) may be waived by the authority under a
 4-51 written agreement between the authority and the entity developing
 4-52 the toll project.

4-53 SECTION 5. Subsections (a) and (b), Section 370.071,
 4-54 Transportation Code, are amended to read as follows:

4-55 (a) An authority may pay the expenses of studying the cost
 4-56 and feasibility of a transportation project, the design and
 4-57 engineering of a transportation project, and any other expenses
 4-58 relating to the preparation and issuance of bonds for a proposed
 4-59 transportation project by:

4-60 (1) using legally available revenue derived from an
 4-61 existing transportation project;

4-62 (2) borrowing money and issuing bonds or entering into
 4-63 a loan agreement payable out of legally available revenue
 4-64 anticipated to be derived from the operation of an existing
 4-65 transportation project; [or]

4-66 (3) pledging to the payment of the bonds or a loan
 4-67 agreement legally available revenue anticipated to be derived from
 4-68 the operation of transportation projects or revenue legally
 4-69 available to the authority from another source; or

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

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

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

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

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

(2) the financing of the improvement, extension, or

(2) the financing of the implementation, extension, or expansion of an existing transportation project; and
(3) private participation, as authorized by law, in

the financing of a proposed transportation project, the refinancing of an existing transportation project or system, or the improvement, extension, or expansion of a transportation project.

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

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

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

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

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

SECTION 8. Subsection (a), Section 370.113, Transportation Code, is amended to read as follows:

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

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

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

the authority, other than money derived from a transportation project that is not part of the same system or money derived from a different system, except to the extent that the surplus revenue of a transportation project or system has been pledged for that purpose; [and]

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

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

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

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

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

(2) applies to each item on hand or subsequently received;

(3) applies without physical delivery of an item or

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

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

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

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

(1) provides revenue sufficient to pay:

(A) the cost of maintaining, repairing, and operating the transportation project; [and]

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

(C) any other payment obligations of an authority
under a contract or agreement authorized under this chapter; and
(2) creates reserves for a purpose listed under
Subdivision (1).

Subdivision (1).

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

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

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

(1) finance the acquisition,

maintenance, or operation of a transportation project, including the provision of information, advice, and assistance.

the extension, expansion, or improvement of a transportation project;

any federal, state, local, or private aid, grant, or other funding, including aid or funding by or with public-private partnerships;

(3) provide credit enhancement either directly or

indirectly for bonds issued to acquire, construct, extend, expand, or improve a transportation project;

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

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

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

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

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

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

(a) Except as provided by Subsection (a-1), the governing body of an authority is a board of directors consisting of representatives of each county in which a transportation project of

7-1 the authority is located or is proposed to be located. The
 7-2 commissioners court of each county that initially forms the
 7-3 authority shall appoint at least two directors to the board.
 7-4 Additional directors may be appointed to the board at the time of
 7-5 initial formation by agreement of the counties creating the
 7-6 authority to ensure fair representation of political subdivisions
 7-7 in the counties of the authority that will be affected by a
 7-8 transportation project of the authority, provided that the number
 7-9 of directors must be an odd number. The commissioners court of a
 7-10 county that is subsequently added to the authority shall appoint at
 7-11 least one director to the board. The governor shall appoint one
 7-12 director to the board who shall serve as the presiding officer of
 7-13 the board and shall appoint an additional director to the board if
 7-14 an appointment is necessary to maintain an odd number of directors
 7-15 on the board.

7-16 (b) The appointment [Unless the commissioners courts] of
 7-17 additional directors from a county subsequently added to an [the]
 7-18 counties of the] authority or from a [unanimously agree otherwise,
 7-19 the commissioners court of each] county of an authority that
 7-20 contains an operating transportation project of the authority shall
 7-21 be by a process unanimously agreed to by the commissioners courts of
 7-22 all the counties of the authority [appoint one additional
 7-23 director].

7-24 SECTION 14. Section 370.303, Transportation Code, is
 7-25 amended by amending Subsections (a) and (b) and adding Subsections
 7-26 (b-1) and (g) to read as follows:

7-27 (a) A governmental entity [other than a nonprofit
 7-28 corporation] may, consistent with the Texas Constitution, issue
 7-29 bonds, notes, or other obligations or enter into and make payments
 7-30 under agreements with an authority in connection with the
 7-31 financing, acquisition, construction, [to acquire, construct,
 7-32 maintain,] or operation of [operate] a transportation project by an
 7-33 authority, whether inside or outside the geographic boundaries of
 7-34 the governmental entity, including agreements to pay the principal
 7-35 of, and interest on, bonds, notes, or other obligations issued by
 7-36 the authority and make payments under any related credit
 7-37 agreements. The entity may impose and collect taxes to pay the
 7-38 interest on the bonds and to provide a sinking fund for the
 7-39 redemption of the bonds.

7-40 (b) In addition to the powers provided by Subsection (a), a
 7-41 governmental entity may, to the extent constitutionally permitted,
 7-42 agree with an authority to:

7-43 (1) issue bonds, notes, or other obligations;
 7-44 (2) [T] create:
 7-45 (A) a taxing district;
 7-46 (B) a transportation reinvestment zone under
 7-47 Subchapter E, Chapter 222; or
 7-48 (C) an entity to promote economic development;
 7-49 (3) collect and remit to an authority taxes, fees, or
 7-50 assessments collected for purposes of developing transportation
 7-51 projects;
 7-52 (4) [T] fund public improvements to promote economic
 7-53 development; [T] or
 7-54 (5) enter into and make payments under an agreement to
 7-55 acquire, construct, maintain, or operate any portion of a
 7-56 transportation project of the authority.

7-57 (b-1) An agreement under Subsection (b) may include a means
 7-58 for a local governmental entity to pledge or otherwise provide
 7-59 funds for a transportation project that benefits the governmental
 7-60 entity to be developed by the authority.

7-61 (g) An agreement under this section may contain repayment or
 7-62 reimbursement obligations of an authority.

7-63 SECTION 15. Section 370.304, Transportation Code, is
 7-64 amended to read as follows:

7-65 Sec. 370.304. ADDITIONAL AGREEMENTS OF AUTHORITY. An
 7-66 authority may enter into any contract, loan agreement, or other
 7-67 agreement necessary or convenient to achieve the purposes of this
 7-68 subchapter.

7-69 SECTION 16. Subsection (a), Section 371.051,

8-1 Transportation Code, as added by Chapter 103 (H.B. 570), Acts of the
8-2 80th Legislature, Regular Session, 2007, is amended to read as
8-3 follows:

8-4 (a) A toll project entity may not use motor vehicle
8-5 registration or other information derived from a license plate on a
8-6 vehicle using a toll project, including information obtained by the
8-7 use of automated enforcement technology described by Section
8-8 228.058, for purposes other than those related to:

8-9 (1) toll collection, ~~and~~ toll collection
8-10 enforcement, ~~and toll project development and operation~~; and

8-11 (2) law enforcement purposes on request by a law
8-12 enforcement agency~~, subject to Section 228.058(d)~~.

8-13 SECTION 17. Subsection (d), Section 370.317,
8-14 Transportation Code, is repealed.

8-15 SECTION 18. This Act takes effect immediately if it
8-16 receives a vote of two-thirds of all the members elected to each
8-17 house, as provided by Section 39, Article III, Texas Constitution.
8-18 If this Act does not receive the vote necessary for immediate
8-19 effect, this Act takes effect September 1, 2009.

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