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SFA



BILL ANALYSIS

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House Bill 4297 (Substitute H-2 as passed by the House)
Sponsor: Representative Glenn Oxender
House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 11-10-98

CONTENT

The bill would create the “Cultural and Recreational Authorities Act” to allow two or more “municipalities” to establish a cultural and recreational authority; allow the authority, with voter approval, to levy up to three mills for up to 20 years; allow the authority to issue bonds and notes with and without voter approval (depending upon the type of bond); and prescribe the powers and duties of an authority. “Municipality” would mean a city, township, or village located in a county with a population of less than 300,000, as determined by the most recent Federal decennial census.

Establishment of Authority

To initiate the establishment of an authority, articles of incorporation would have to be prepared. Before the articles or amendments to the articles were adopted, they would have to be published at least once in a newspaper generally circulated within the participating municipalities. A municipality's adoption of articles or amendments would have to be evidenced by an endorsement on them by the clerk of a municipality. Upon adoption of the articles or amendments to the articles by each of the participating municipalities, a printed copy of the articles or the amended articles would have to be filed with the Secretary of State by the clerk of the last participating municipality to adopt the articles or amendments, at which time the articles would take effect. The articles would have to be adopted and could be amended by an affirmative vote of a majority of the members serving on the legislative body of each participating municipality. Unless the articles provided otherwise, this requirement would not apply to an amendment to the articles to allow a municipality to become a participating municipality in, or to allow a participating municipality to withdraw from, an existing authority.

The articles of incorporation would have to include the following:

- The name of the authority and the name of the participating municipalities.
- A description of the territory of the authority. The articles could provide that only a portion of the territory of a participating municipality was included in the authority's territory.
- The size of the authority's board, which would have to be composed of an odd number of members; the qualifications, method of selection, and terms of office of board members; and the filling of vacancies in the office of board member. If board members were elected in at-large elections by the qualified and registered electors of the participating municipalities, voting collectively, the election of board members would have to be conducted according to the same procedures that would govern an election for a tax levy (described below).
- The purposes for which the authority was established, which would have to be the acquisition, construction, operation, maintenance, or improvement of a public swimming pool; a public recreational facility; a public auditorium; a public conference center; or a public park.
- The procedure and requirements for a municipality to become a participating municipality in, and for a participating municipality to withdraw from, an existing authority. To become a participating municipality in an existing authority, a majority of the electors of the municipality, residing in territory of the municipality proposed to be included in the territory of the

authority and voting on the question, would have to approve the tax that the authority had been authorized to levy by a vote of the electors of the authority. A municipality could not withdraw from an authority during the period for which it had been authorized to levy a tax by the electors of the authority.

- Any other matters considered advisable.

A cultural and recreational authority would be considered to be an authority under Article IX, Section 6 of the State Constitution, which provides that constitutional limitations placed on total ad valorem taxes do not apply to voter-approved millages levied in certain local units and authorities.

Authority Board

A majority of the members of the board would constitute a quorum for the purpose of conducting business and exercising the powers of an authority. Official action could be taken by an authority upon the vote of a majority of the board members present, unless the authority adopted bylaws requiring a larger number. A member of the board could not receive compensation for services as a member, but would be entitled to reimbursement for reasonable expenses, including expenses for travel previously authorized by the board, incurred in the discharge of his or her duties. An authority would be subject to the Open Meetings Act and the Freedom of Information Act.

At its first meeting, a board would have to elect a chairperson, a secretary, a treasurer, and any other officers it considered necessary. A board would have to meet at least quarterly, and adopt bylaws.

Appointed members of the board, if any, could be removed by the appointing authority for good cause after a public hearing. Vacancies would have to be filled in the same manner as an original appointment.

Authority Powers

An authority would have all the powers necessary to carry out the purposes for which it was established, including, but not limited to, powers to do the following:

- Acquire and hold, by purchase, lease with or without option to purchase, grant, gift, devise, land contract, installment purchase contract,

bequest, or other legal means, real and personal property inside or outside the territory of the authority. The property could include franchises, easements, or rights-of-way on, under, or above any property. The authority could pay for the property from, or pledge for the payment of the property, revenue of the authority; however, an authority could acquire and hold the property by condemnation only with the approval of the governing body of the municipality in which the property was located.

- Apply for and accept grants or contributions from individuals, the Federal government or any of its agencies, the State, a municipality, or other public or private agencies to be used for any of the purposes of the authority.
- Hire full-time or part-time employees and retain professional services.
- Provide for the maintenance of all of the real and personal property of the authority.
- Assess and collect fees for services provided by and expenses incurred by the authority.
- Receive revenue as appropriated by the Legislature or a participating municipality.
- Enter into contracts incidental to or necessary for the accomplishment of the authority's purposes.

Tax Levy/Election

To the extent authorized by its articles, an authority could levy a tax of up to three mills for a period of up to 20 years on all of the taxable property within the territory of the authority, for the purposes of acquiring, operating, maintaining, or improving a public swimming pool, public recreational facility, public auditorium or conference center, or public park. The authority could levy the tax only upon the approval of a majority of the electors of the authority voting collectively on the tax at a general or special election. The question would have to be submitted to a vote of the electors of the authority by resolution of the board. The ballot proposal would have to state the amount and duration of the millage and the general purposes for which it could be used. The proposal could not be placed on the ballot unless it was adopted by a resolution of the board and certified by the board, within 60 days before the election, to the county clerk of each county in which all or part of the territory of the authority was located for inclusion on the ballot. The proposal would have to be certified for inclusion on the ballot at the next general election, the State primary immediately preceding the general election, or a special election not occurring

within 45 days of a State primary or a general election, as specified by the board's resolution. If a special election were proposed, within 10 days after receiving the proposal, the clerk of the county having the greatest population would have to request approval of a special election date from the election scheduling committee of that county. The proposal would have to be submitted to the electors of the authority on the date approved by that committee.

If a majority of the electors of the authority voting collectively on the question of a tax approved the proposal, the tax levy would be authorized. Not more than two elections could be held in a calendar year on a proposal for a tax.

The election commission of each county in which all or part of a participating municipality was located would have to provide ballots for an election for each participating municipality or part of a participating municipality. An election would have to be conducted by the city and township clerks and election officials of the municipalities located within the territory of the authority. If an election for a tax were to be held in conjunction with a general election or State primary election, and if a participating village were located within a nonparticipating township, the township clerk and election officials would have to conduct the election. On the 45th day preceding the election, the village clerk would have to give to the township clerk a list containing the name, address, and birth date of each qualified and registered elector of the village residing in the territory of the authority. Not later than 15 days before the election, the village clerk would have to give to the township clerk information updating the list as of the close of registration. A person appearing on the list as updated would be eligible to vote in the election by special ballot. If a tax were to be voted on at a special election not held in conjunction with a general election or State primary election and if a participating village were located within a nonparticipating township, the village clerk and election officials would have to conduct the election. If an election were to be held in conjunction with a general election or a State primary election, the notices of close of registration and election would have to be published as provided for by State election laws. Otherwise, the county clerk of the largest county would have to publish the notices of close of registration and election. The notice of close of registration would have to include the ballot language of the proposal.

The results of the election would have to be canvassed by the board of county canvassers of

each county in which a participating municipality was located. The board of county canvassers of a county containing a participating municipality that was not the largest county, would have to certify the result of the election to the board of county canvassers of the largest county. The board of county canvassers of the largest county would have to make the final canvass of the election based on the returns of the election inspectors of the participating municipalities in that county, and the certified results of the canvassers of every other county in which a participating municipality was located. The board of county canvassers of the largest county would have to certify the results of the election to the board of the authority.

A county clerk would have to charge the authority, and the authority would have to reimburse the county, for the actual costs the county incurred in the election. If a participating municipality conducted the election, the clerk of that municipality would have to charge the authority, and the authority would have to reimburse the participating municipality, for the actual costs it incurred in conducting the election if the election were not held in conjunction with a regularly scheduled election in that municipality, and/or only a portion of the territory of the participating municipality were included in the territory of the authority. In addition to these costs, a county or municipality would have to charge the authority, and the authority would have to reimburse the county or municipality, for actual costs that the county or municipality incurred and that were exclusively attributable to the election.

The tax would have to be collected with county taxes, and distributed by the local tax collecting unit under the General Property Tax Act.

Authority Bonds

An authority could borrow money and issue bonds or notes to finance the acquisition, construction, or improvement of a public swimming pool, a public recreational facility, a public auditorium, a public conference center, or a public park, including the acquisition of sites and the acquisition and installation of furnishings and equipment for those purposes. The authority could pledge any admission fees and charges generated by the public project to the repayment of the debt. The authority could not borrow money or issue bonds or notes for a sum that, together with the total outstanding bonded indebtedness of the authority, exceeded two mills of the taxable value of the taxable property within the district. Bonds or notes issued by an authority would be a debt of the

authority and not of the participating municipalities, and would be subject to the Municipal Finance Act.

An authority could issue general obligation *unlimited* tax bonds upon approval of a majority of the electors of the authority voting collectively on the question. The proposal would have to be submitted to a vote of the electors of the authority by resolution of the board. The election would have to be conducted in the same manner required under the bill for an election for a tax. Not more than two elections on the question of issuing unlimited tax bonds could be held in a calendar year. If an authority issued unlimited tax bonds the board, by resolution, would have to authorize and levy the taxes necessary to pay the principal and interest on the bonds.

Further, an authority could issue general obligation *limited* tax bonds, by resolution of the board, without submitting the question to the electors of the authority. The board could not authorize or levy a tax to pay the principal of and interest on the limited tax bonds that exceeded the tax levy authorized by a vote of the qualified electors under the bill.

An authority could borrow money and issue its negotiable bonds and notes for the purpose of refunding outstanding debt obligations of the district by resolution of the board, without submitting the question to the electors of the authority. Refunding bonds or the refunding part of a bond issue could not be considered to be within the two-mill limitation, but would have to be considered to be authorized in addition to the two-mill limitation.

Other Provisions

The board of an authority would have to obtain an annual audit of the authority, report the audit and auditing procedures, and prepare budgets and appropriations as provided in the Uniform Budgeting and Accounting Act.

If an authority ended a fiscal year in a deficit, it would have to file a financial plan to correct the condition in the same manner as provided in the State Revenue Sharing Act.

The board could authorize funds of the authority to be invested or deposited in any investment or depository authorized under Public Act 20 of 1943, which prescribes investments that local units of government may make with their funds.

Legislative Analyst: G. Towne

FISCAL IMPACT

This bill would have no State fiscal impact.

By simplifying the process to create cultural and recreational facilities, the bill could enable more local units to obtain public facilities with voter approval.

Fiscal Analyst: R. Ross

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.