

HOUSE BILL No. 4794

May 30, 2013, Introduced by Reps. Zemke, Irwin, Banks, Singh, Schor, Driskell, Rutledge, Kosowski, Lane, Durhal, Talabi, Dillon, Brinks, Yanez, Geiss, Segal, Kandrevas, Lipton, Haugh, Darany, Townsend, Faris, Dianda, Kivela, Knezek, Slavens, Hovey-Wright, Greimel, Hobbs, Santana and Switalski and referred to the Committee on Transportation and Infrastructure.

A bill to amend 2012 PA 387, entitled
"Regional transit authority act,"
by amending section 6 (MCL 124.546).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6. (1) Within 30 days after the appointment of the
2 members of a board under section 5, the board shall hold its first
3 meeting at a date and time to be determined by the governor's
4 representative. The governor's representative shall serve without
5 vote and shall serve as chairperson of the board. The board members
6 shall elect officers as necessary. The board shall elect all
7 officers annually.

8 (2) The business of a board shall be conducted at a public
9 meeting held in compliance with the open meetings act, 1976 PA 267,
10 MCL 15.261 to 15.275. Public notice of the date, time, and place of

1 the meeting shall be given in the manner required by the open
2 meetings act, 1976 PA 267, MCL 15.261 to 15.275. A board shall
3 adopt bylaws consistent with the open meetings act, 1976 PA 267,
4 MCL 15.261 to 15.275. After organization, a board shall adopt a
5 schedule of regular meetings. A board shall meet at least once each
6 quarter. A special meeting of a board may be called by the
7 chairperson of the board or as provided in the bylaws of the board.

8 (3) A majority of the voting members of a board constitute a
9 quorum for the transaction of the business of an authority. Actions
10 of a board shall be by simple majority vote of all voting members
11 of the board, except as follows:

12 (a) A board shall provide in its bylaws that the following
13 actions require the approval of 7/9 of the voting members, and the
14 7/9 must include the affirmative vote of at least 1 member from
15 each participating county and a member appointed under section
16 5(1)(f):

17 (i) The placing of a question of the levy of an assessment
18 under section 10(2) on the ballot by an authority.

19 (ii) The determination of the rate of, or amount of, any
20 assessment to be requested by an authority at an election.

21 (iii) The placing of a question of approving a motor vehicle
22 registration tax on the ballot by an authority.

23 (iv) The determination of the rate of, or amount of, any motor
24 vehicle registration tax to be requested by an authority at an
25 election.

26 (b) A board shall provide in its bylaws that the following
27 actions require the unanimous approval of all voting members of the

board:

~~—— (i) A determination to acquire, construct, operate, or maintain any form of rail passenger service within a public transit region.~~

(i) ~~(ii)~~ A determination to acquire a public transportation provider. Unless an authority secures the affirmative vote of a majority of the electors of each member county in the public transit region as provided in section 7(2), the authority shall not acquire a public transportation provider that does business in a public transit region unless both of the following conditions are satisfied:

(A) All accrued liabilities, funded and unfunded, of the public transportation provider being acquired have been paid or are required to be paid by a person other than the authority.

(B) The board unanimously agrees to comply with all requirements for obtaining federal operating and capital assistance grants under the moving ahead for progress in the 21st century act, Public Law 112-141, and the regulations promulgated under ~~the moving ahead for progress in the 21st century~~ **THAT** act, ~~Public Law 112-141,~~ with respect to the public transportation provider being acquired.

(ii) ~~(iii)~~ A determination to place on a ballot the question of acquiring, accepting responsibility for, or obligating itself to assume liability for or to pay any legacy costs, including, but not limited to, costs associated with litigation, claims, assessments, worker's compensation awards or charges, swap losses, pensions, health care, or other postemployment benefits, of a public transportation provider that may be purchased, merged with,

1 assumed, or otherwise acquired by an authority.

2 (4) A board shall keep a written or printed record of each
3 meeting. A written or printed record of each meeting and any other
4 document or record prepared, owned, used, in the possession of, or
5 retained by an authority in the performance of an official function
6 shall be made available to the public under the freedom of
7 information act, 1976 PA 442, MCL 15.231 to 15.246.

8 (5) A board shall provide for a uniform system of accounts for
9 an authority to conform to and for the auditing of the authority's
10 accounts. The board shall obtain an annual audit of an authority by
11 an independent certified public accountant and report on the audit
12 and auditing procedures under sections 6 to 13 of the uniform
13 budgeting and accounting act, 1968 PA 2, MCL 141.426 to 141.433.
14 The audit shall be in accordance with generally accepted government
15 auditing standards and shall satisfy federal regulations regarding
16 federal grant compliance audit requirements. An audit obtained
17 under this subsection shall be filed with the state treasurer and
18 the department.

19 (6) Within 90 days after the first board meeting, a board
20 shall adopt and maintain a budget for the fiscal year in accordance
21 with the uniform budget and accounting act, 1968 PA 2, MCL 141.421
22 to 141.440a.

23 (7) Within 90 days after the first board meeting, a board
24 shall establish policies and procedures for the purchase of, the
25 contracting for, and the providing of supplies, materials,
26 services, insurance, utilities, third-party financing, equipment,
27 printing, and all other items as needed by an authority to

1 efficiently and effectively meet its needs using competitive
2 procurement methods to secure the best value for the authority. A
3 board shall make all discretionary decisions concerning the
4 solicitation, award, amendment, cancellation, and appeal of
5 authority contracts. In establishing policies and procedures under
6 this subsection, a board shall provide for the acquisition of
7 professional services, including, but not limited to, architectural
8 services, consulting services, engineering services, surveying
9 services, accounting services, services related to the issuance of
10 bonds, and legal services, in accordance with a competitive,
11 qualifications-based selection process and procedure for the type
12 of professional service required by an authority.

13 (8) Beginning 1 calendar year after the creation of an
14 authority under this act, the board shall submit a report to the
15 house of representatives and senate appropriations subcommittees on
16 transportation and the house of representatives and senate
17 committees on transportation on March 31 of each year that includes
18 all of the following information from the preceding calendar year:

19 (a) Financial status of the authority.

20 (b) Financial status of public transportation providers within
21 the public transit region.

22 (c) Operating costs of the authority.

23 (d) The status of any rolling rapid transit system.

24 (e) The average daily and annual ridership of a rolling rapid
25 transit system.

26 (f) The dashboard developed by the authority under subsection

27 (9) (d) .

1 (g) The number and severity of any accidents that occur that
2 involve a rolling rapid transit system.

3 (9) Within 120 days after the first board meeting, a board
4 shall establish a website for the authority and the authority shall
5 post on the website its budget, policies and procedures, and
6 updates on authority activities and transactions and the progress
7 of any project, including, but not limited to, a proposed rolling
8 rapid transit system, as they become available. An authority shall
9 also post all of the following information on a website established
10 under this subsection:

11 (a) An asset management plan for all revenue vehicles and
12 facilities, major facility components, and major pieces of
13 equipment as defined by the department. An authority shall update
14 the asset management plan annually.

15 (b) The method used by the authority to determine the
16 percentage of operating costs that will be funded with local funds
17 and the percentage that will be funded with fares. An authority
18 shall update this information every 3 years.

19 (c) A plan and a commitment to conduct a survey of user
20 satisfaction and a survey of general public satisfaction with the
21 services and performance of the authority once every 3 years. An
22 authority shall provide results for the most recent completed
23 surveys under this subdivision to the department.

24 (d) A dashboard of the authority's performance that includes,
25 at a minimum, the information required under subdivisions (a)
26 ~~through~~ **TO** (c). The dashboard shall also include annual performance
27 indicators for the authority that have been established by the

1 board. The dashboard shall be readily available to the public, and
2 the authority shall update the dashboard annually.

3 (10) A board may not enter into a cost plus construction
4 contract unless all of the following apply:

5 (a) The contract cost is less than \$50,000.00.

6 (b) The contract is for emergency repair or construction
7 caused by unforeseen circumstances.

8 (c) The repair or construction is necessary to protect life or
9 property.

10 (d) The contract complies with state and federal law.

11 (11) Within 90 days after the first board meeting, a board
12 shall adopt a procurement policy consistent with the requirements
13 of this act and federal and state laws relating to procurement.
14 Preference shall be given to firms based in a public transit region
15 and each county within a public transit region, consistent with
16 applicable law.

17 (12) Nothing in this section shall be construed as creating a
18 quota or set-aside for any city or any county in a public transit
19 region, and no quota or set-aside shall be created.

20 (13) An authority shall issue an annual report to the board
21 and each member jurisdiction within a public transit region
22 detailing all contracts entered into and listing the names and
23 headquarters of all authority vendors with whom the authority has
24 contracted for services during the previous fiscal year.

25 (14) Within 90 days after the first board meeting, a board
26 shall establish and adopt all of the following:

27 (a) A policy to govern the control, supervision, management,

1 and oversight of each contract to which an authority is a party.

2 (b) Procedures to monitor the performance of each contract to
3 assure execution of the contract within the budget and time periods
4 provided under the contract. The monitoring shall include oversight
5 as to whether the contract is being performed in compliance with
6 the terms of the contract, this act, and federal and state law. The
7 chief executive officer or other authorized employee of an
8 authority shall not sign or execute a contract until the contract
9 is approved by the board.

10 (c) Policies to ensure that an authority does not enter into a
11 procurement or employment contract with a person who has been
12 convicted of a criminal offense related to the application for or
13 performance of a contract or subcontract with a governmental entity
14 in any state. As used in this subdivision and subdivision (d),
15 "person" includes affiliates, subsidiaries, officers, directors,
16 and managerial employees of a business entity, or an individual or
17 entity who, indirectly or directly, holds a pecuniary interest in a
18 business entity of 20% or more.

19 (d) Policies to ensure that the authority does not enter into a
20 procurement or employment contract with a person who has been
21 convicted of a criminal offense, or held liable in a civil
22 proceeding, in this state or any other state, that negatively
23 reflects on the person's business integrity, based on a finding of
24 embezzlement, theft, forgery, bribery, falsification or destruction
25 of records, receiving stolen property, violation of state or
26 federal antitrust statutes, or similar laws.

27 (15) An authority is not required to use competitive bidding

1 when acquiring proprietary services, equipment, or information
2 available from a single source, such as a software license
3 agreement. An authority may enter into a competitive purchasing
4 agreement with the federal government, this state, or other public
5 entities for the purchase of necessary goods or services. An
6 authority may enter into lease purchases or installment purchases
7 for periods not exceeding the useful life of the items purchased
8 unless otherwise prohibited by law. In all purchases made by an
9 authority, if consistent with applicable federal and state law,
10 preference shall be given first to products manufactured or
11 services offered by firms based in the authority's public transit
12 region, including, but not limited to, the cities and counties in a
13 public transit region, and second to firms based in this state. An
14 authority shall actively solicit lists of potential bidders for
15 authority contracts from each city and each county in a public
16 transit region. Except as otherwise provided in this section, an
17 authority shall utilize competitive solicitation for all purchases
18 authorized under this act unless 1 or more of the following apply:

19 (a) An emergency directly and immediately affecting service or
20 public health, safety, or welfare requires the immediate
21 procurement of supplies, materials, equipment, or services to
22 mitigate an imminent threat to public health, safety, or welfare,
23 as determined by an authority or its chief executive officer.

24 (b) Procurement of goods or services is for emergency repair
25 or construction caused by unforeseen circumstances when the repair
26 or construction is necessary to protect life or property.

27 (c) Procurement of goods or services is in response to a

1 declared state of emergency or state of disaster under the
2 emergency management act, 1976 PA 390, MCL 30.401 to 30.421.

3 (d) Procurement of goods or services is in response to a
4 declared state of emergency under 1945 PA 302, MCL 10.31 to 10.33.

5 (e) Procurement of goods or services is in response to a
6 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
7 10.89.

8 (f) Procurement of goods or services is under a cooperative
9 purchasing agreement with the federal government, this state, or
10 another public entity for the purchase of necessary goods and
11 services at fair and reasonable prices using a competitive
12 procurement method for authority operations.

13 (g) The value of the procurement is less than \$25,000.00, and
14 the board has established policies or procedures to ensure that
15 goods or services with a value of less than \$25,000.00 are
16 purchased by the board at fair and reasonable prices, including a
17 requirement that for purchases and sales of \$25,000.00 or less, but
18 over \$5,000.00, written price quotations from at least 3 qualified
19 and responsible vendors shall be obtained or a memorandum shall be
20 kept on file showing that fewer than 3 qualified and responsible
21 vendors exist in the market area within which it is practicable to
22 obtain quotations. Procurement of goods or services with a value of
23 less than \$5,000.00 may be negotiated with or without using
24 competitive bidding as authorized in a procurement policy adopted
25 by the board.

26 (16) Notwithstanding any other requirement of this act, if an
27 authority applies for and receives state or federal funds that

1 require the authority to comply with procurement or contracting
2 requirements that are in conflict with this act, the state or
3 federal requirements ~~shall~~ take precedence over the requirements of
4 this act.

5 (17) A board may employ personnel as it considers necessary to
6 assist the board in performing the powers, duties, and
7 jurisdictions of the authority, including, but not limited to,
8 employment of a chief executive officer and other senior executive
9 and administrative staff. A board shall hire a chief executive
10 officer and any necessary support staff for the chief executive
11 officer. Individual board members shall not hire or be assigned
12 personal staff.

13 (18) A board shall establish policies to ensure that the board
14 and an authority do not do either of the following:

15 (a) Fail or refuse to hire, recruit, or promote; demote;
16 discharge; or otherwise discriminate against an individual with
17 respect to employment, compensation, or a term, condition, or
18 privilege of employment, or a contract with the authority in a
19 manner that is not in compliance with state or federal law.

20 (b) Limit, segregate, or classify an employee, a contractor,
21 or an applicant for employment or a contract in a way that deprives
22 or tends to deprive the employee, contractor, or applicant of an
23 employment opportunity or otherwise adversely affects the status of
24 an employee, contractor, or applicant in a manner that is not in
25 compliance with state or federal law.

26 (19) A board shall create a citizens' advisory committee that
27 consists of public transit region residents. The citizens' advisory

1 committee shall be composed as follows:

2 (a) Forty percent of the committee shall be made up of users
3 of public transportation, as follows:

4 (i) At least 25% of the users of public transportation on the
5 committee shall be senior citizens or persons with disabilities.

6 (ii) Two users of public transportation from each of the
7 following counties within the public transit region for the
8 authority:

9 (A) The qualified county.

10 (B) The county with the second largest population according to
11 the most recent decennial census.

12 (C) The county with the third largest population according to
13 the most recent decennial census.

14 (D) The county with the fourth largest population according to
15 the most recent decennial census.

16 (iii) Two users of public transportation from the city in the
17 qualified county with the largest population according to the most
18 recent decennial census.

19 (iv) Two users of public transportation from each additional
20 county participating in the authority under section 4 and not
21 listed in subparagraph (ii).

22 (b) Twenty percent of the committee shall be made up of
23 individuals from organizations representing senior citizens and
24 persons with disabilities.

25 (c) Forty percent of the committee shall be made up of
26 individuals representing business, labor, community, and faith-
27 based organizations.

1 (20) A citizens' advisory committee created under subsection
2 (19) may meet at least once every quarter. The citizens' advisory
3 committee may make reports to a board, including recommendations,
4 at each board meeting. A citizens' advisory committee may do all of
5 the following:

6 (a) Review and comment on the comprehensive regional public
7 transit service plan for a public transit region and all annual
8 updates.

9 (b) Advise a board regarding the coordination of functions
10 between different owners and operators of public transportation
11 facilities within a public transit region.

12 (c) Review and comment on a specialized services coordination
13 plan required by section 10e of 1951 PA 51, MCL 247.660e.

14 (d) Upon request of a board, provide recommendations on other
15 matters that concern public transportation in a public transit
16 region.

17 (21) A board shall create a public transportation provider
18 advisory council that consists of 2 members appointed by each
19 public transportation provider in the public transit region. The
20 public transportation provider advisory council may make reports to
21 a board, including recommendations, at each board meeting. The
22 public transportation provider advisory council shall only make
23 recommendations to a board on the following issues:

24 (a) Coordination of service.

25 (b) Funding.

26 (c) Plans.

27 (d) Specialized services.

- 1 (e) Other matters as requested by a board.