

HOUSE BILL No. 5168

December 4, 2013, Introduced by Reps. Walsh, Schmidt, Driskell, Rutledge, Greimel, Zemke, Schor and Townsend 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,

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

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

13 (a) A board shall provide in its bylaws that the following
14 actions require the approval of 7/9 of the voting members, and the
15 7/9 must include the affirmative vote of at least 1 member from
16 each participating county and a member appointed under section
17 5(1)(f):

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

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

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

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

27 (v) **APPROVAL OF AN AGREEMENT FOR THE TRANSFER TO THE AUTHORITY**

1 OF ASSETS OF A NONPROFIT STREET RAILWAY CORPORATION ORGANIZED UNDER
2 THE NONPROFIT STREET RAILWAY ACT, 1867 PA 35, MCL 472.1 TO 472.27.

3 (b) A board shall provide in its bylaws that the following
4 actions require the unanimous approval of all voting members of the
5 board:

6 (i) A determination to acquire, construct, operate, or maintain
7 any form of rail passenger service within a public transit region,
8 OTHER THAN A STREET RAILWAY SYSTEM ORGANIZED UNDER THE NONPROFIT
9 STREET RAILWAY ACT, 1867 PA 35, MCL 472.1 TO 472.27.

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

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

20 (B) The board unanimously agrees to comply with all
21 requirements for obtaining federal operating and capital assistance
22 grants under the moving ahead for progress in the 21st century act,
23 Public Law 112-141, and the regulations promulgated under the
24 moving ahead for progress in the 21st century act, Public Law 112-
25 141, with respect to the public transportation provider being
26 acquired.

27 (iii) A determination to place on a ballot the question of

1 acquiring, accepting responsibility for, or obligating itself to
2 assume liability for or to pay any legacy costs, including, but not
3 limited to, costs associated with litigation, claims, assessments,
4 worker's compensation awards or charges, swap losses, pensions,
5 health care, or other postemployment benefits, of a public
6 transportation provider that may be purchased, merged with,
7 assumed, or otherwise acquired by an authority.

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

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

25 (6) Within 90 days after the first board meeting, a board
26 shall adopt and maintain a budget for the fiscal year in accordance
27 with the uniform budget and accounting act, 1968 PA 2, MCL 141.421

1 to 141.440a.

2 (7) Within 90 days after the first board meeting, a board
3 shall establish policies and procedures for the purchase of, the
4 contracting for, and the providing of supplies, materials,
5 services, insurance, utilities, third-party financing, equipment,
6 printing, and all other items as needed by an authority to
7 efficiently and effectively meet its needs using competitive
8 procurement methods to secure the best value for the authority. A
9 board shall make all discretionary decisions concerning the
10 solicitation, award, amendment, cancellation, and appeal of
11 authority contracts. In establishing policies and procedures under
12 this subsection, a board shall provide for the acquisition of
13 professional services, including, but not limited to, architectural
14 services, consulting services, engineering services, surveying
15 services, accounting services, services related to the issuance of
16 bonds, and legal services, in accordance with a competitive,
17 qualifications-based selection process and procedure for the type
18 of professional service required by an authority.

19 (8) Beginning 1 calendar year after the creation of an
20 authority under this act, the board shall submit a report to the
21 house of representatives and senate appropriations subcommittees on
22 transportation and the house of representatives and senate
23 committees on transportation on March 31 of each year that includes
24 all of the following information from the preceding calendar year:

25 (a) Financial status of the authority.

26 (b) Financial status of public transportation providers within
27 the public transit region.

1 (c) Operating costs of the authority.

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

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

5 (f) The dashboard developed by the authority under subsection
6 (9) (d).

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

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

17 (a) An asset management plan for all revenue vehicles and
18 facilities, major facility components, and major pieces of
19 equipment as defined by the department. An authority shall update
20 the asset management plan annually.

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

25 (c) A plan and a commitment to conduct a survey of user
26 satisfaction and a survey of general public satisfaction with the
27 services and performance of the authority once every 3 years. An

1 authority shall provide results for the most recent completed
2 surveys under this subdivision to the department.

3 (d) A dashboard of the authority's performance that includes,
4 at a minimum, the information required under subdivisions (a)
5 through (c). The dashboard shall also include annual performance
6 indicators for the authority that have been established by the
7 board. The dashboard shall be readily available to the public, and
8 the authority shall update the dashboard annually.

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

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

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

14 (c) The repair or construction is necessary to protect life or
15 property.

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

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

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

26 (13) An authority shall issue an annual report to the board
27 and each member jurisdiction within a public transit region

1 detailing all contracts entered into and listing the names and
2 headquarters of all authority vendors with whom the authority has
3 contracted for services during the previous fiscal year.

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

6 (a) A policy to govern the control, supervision, management,
7 and oversight of each contract to which an authority is a party.

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

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

25 (d) Policies to ensure that the authority does not enter into a
26 procurement or employment contract with a person who has been
27 convicted of a criminal offense, or held liable in a civil

1 proceeding, in this state or any other state, that negatively
2 reflects on the person's business integrity, based on a finding of
3 embezzlement, theft, forgery, bribery, falsification or destruction
4 of records, receiving stolen property, violation of state or
5 federal antitrust statutes, or similar laws.

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

25 (a) An emergency directly and immediately affecting service or
26 public health, safety, or welfare requires the immediate
27 procurement of supplies, materials, equipment, or services to

1 mitigate an imminent threat to public health, safety, or welfare,
2 as determined by an authority or its chief executive officer.

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

6 (c) Procurement of goods or services is in response to a
7 declared state of emergency or state of disaster under the
8 emergency management act, 1976 PA 390, MCL 30.401 to 30.421.

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

11 (e) Procurement of goods or services is in response to a
12 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
13 10.89.

14 (f) Procurement of goods or services is under a cooperative
15 purchasing agreement with the federal government, this state, or
16 another public entity for the purchase of necessary goods and
17 services at fair and reasonable prices using a competitive
18 procurement method for authority operations.

19 (g) The value of the procurement is less than \$25,000.00, and
20 the board has established policies or procedures to ensure that
21 goods or services with a value of less than \$25,000.00 are
22 purchased by the board at fair and reasonable prices, including a
23 requirement that for purchases and sales of \$25,000.00 or less, but
24 over \$5,000.00, written price quotations from at least 3 qualified
25 and responsible vendors shall be obtained or a memorandum shall be
26 kept on file showing that fewer than 3 qualified and responsible
27 vendors exist in the market area within which it is practicable to

1 obtain quotations. Procurement of goods or services with a value of
2 less than \$5,000.00 may be negotiated with or without using
3 competitive bidding as authorized in a procurement policy adopted
4 by the board.

5 (16) Notwithstanding any other requirement of this act, if an
6 authority applies for and receives state or federal ~~funds~~**MONEY**
7 that ~~require~~**REQUIRES** the authority to comply with procurement or
8 contracting requirements that are in conflict with this act, the
9 state or federal requirements shall take precedence over the
10 requirements of this act.

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

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

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

26 (b) Limit, segregate, or classify an employee, a contractor,
27 or an applicant for employment or a contract in a way that deprives

1 or tends to deprive the employee, contractor, or applicant of an
2 employment opportunity or otherwise adversely affects the status of
3 an employee, contractor, or applicant in a manner that is not in
4 compliance with state or federal law.

5 (19) A board shall create a citizens' advisory committee that
6 consists of public transit region residents. The citizens' advisory
7 committee shall be composed as follows:

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

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

12 (ii) Two users of public transportation from each of the
13 following counties within the public transit region for the
14 authority:

15 (A) The qualified county.

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

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

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

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

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

1 (b) Twenty percent of the committee shall be made up of
2 individuals from organizations representing senior citizens and
3 persons with disabilities.

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

7 (20) A citizens' advisory committee created under subsection
8 (19) may meet at least once every quarter. The citizens' advisory
9 committee may make reports to a board, including recommendations,
10 at each board meeting. A citizens' advisory committee may do all of
11 the following:

12 (a) Review and comment on the comprehensive regional public
13 transit service plan for a public transit region and all annual
14 updates.

15 (b) Advise a board regarding the coordination of functions
16 between different owners and operators of public transportation
17 facilities within a public transit region.

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

20 (d) Upon request of a board, provide recommendations on other
21 matters that concern public transportation in a public transit
22 region.

23 (21) A board shall create a public transportation provider
24 advisory council that consists of 2 members appointed by each
25 public transportation provider in the public transit region. The
26 public transportation provider advisory council may make reports to
27 a board, including recommendations, at each board meeting. The

1 public transportation provider advisory council shall only make
2 recommendations to a board on the following issues:

- 3 (a) Coordination of service.
- 4 (b) Funding.
- 5 (c) Plans.
- 6 (d) Specialized services.
- 7 (e) Other matters as requested by a board.

8 (22) TO SECURE FEDERAL MONEY FOR AN AUTHORITY OR ACTIVITIES OF
9 AN AUTHORITY UNDER THIS ACT, THE BOARD MAY ENTER INTO AN AGREEMENT
10 WITH A STREET RAILWAY ORGANIZED UNDER THE NONPROFIT STREET RAILWAY
11 ACT, 1867 PA 35, MCL 472.1 TO 472.27, OR TAKE OTHER ACTION
12 NECESSARY FOR THE RECOGNITION BY THE UNITED STATES DEPARTMENT OF
13 TRANSPORTATION OF ACTIVITIES OR FUNCTIONS OF THE AUTHORITY OR THE
14 STREET RAILWAY AS A CONNECTED PROJECT.

15 (23) THE BOARD SHALL ENSURE THAT 100% OF FEDERAL MATCHING
16 MONEY OR AID RECEIVED BY THE AUTHORITY FOR THE CONSTRUCTION OR
17 OPERATION OF A STREET RAILWAY SYSTEM UNDER THE NONPROFIT STREET
18 RAILWAY ACT, 1867 PA 35, MCL 472.1 TO 472.27, WITHIN A PUBLIC
19 TRANSIT REGION IS EXPENDED ON PUBLIC TRANSPORTATION SERVICE ROUTES
20 LOCATED IN THE COUNTY OR COUNTIES IN WHICH THE STREET RAILWAY
21 SYSTEM WAS CONSTRUCTED. IF THE AUTHORITY ACCEPTS A TRANSFER OF
22 ASSETS OF A STREET RAILWAY ORGANIZED UNDER THE NONPROFIT STREET
23 RAILWAY ACT, 1867 PA 35, MCL 472.1 TO 472.27, AS PROVIDED IN
24 SUBSECTION (3) (A) (v) AND THE STREET RAILWAY OPERATES EXCLUSIVELY ON
25 ROUTES LOCATED WITHIN A QUALIFIED COUNTY, THE AUTHORITY SHALL
26 ENSURE THAT ANY OPERATIONAL DEFICIT RELATED TO THE OPERATION OF
27 THAT STREET RAILWAY IS PAID WITH MONEY RAISED IN THE QUALIFIED

1 COUNTY OR A MEMBER JURISDICTION WITHIN THE QUALIFIED COUNTY.