

Act No. 246
Public Acts of 2014
Approved by the Governor
June 21, 2014
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

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

ENROLLED HOUSE BILL No. 5168

AN ACT to amend 2012 PA 387, entitled “An act to provide for certain regional transit authorities; to provide regional public transportation; to prescribe certain powers and duties of a regional transit authority and of certain state agencies and officials; to authorize the levy of an assessment and to provide for the issuance of bonds and notes; to collect certain taxes; to make appropriations; to provide for the pledge of assessment revenues and other funds for bond and note payments; and to repeal acts and parts of acts,” by amending section 6 (MCL 124.546).

The People of the State of Michigan enact:

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

(2) The business of a board shall be conducted at a public meeting held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the date, time, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A board shall adopt bylaws consistent with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. After organization, a board shall adopt a schedule of regular meetings. A board shall meet at least once each quarter. A special meeting of a board may be called by the chairperson of the board or as provided in the bylaws of the board.

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

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

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

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

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

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

(v) Beginning on July 1, 2024, approval of an agreement for the transfer to the authority of assets of a nonprofit street railway corporation organized under the nonprofit street railway act, 1867 PA 35, MCL 472.1 to 472.27.

(vi) A determination to acquire, construct, operate, or maintain a commuter rail line operating between the city with the largest population within a county described in section 5(1)(d) and a city described in section 5(1)(f).

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

(i) Except as otherwise provided in subdivision (a)(vi), a determination to acquire, construct, operate, or maintain any form of rail passenger service within a public transit region. Beginning on July 1, 2024, this subparagraph does not apply to a street railway system organized under the nonprofit street railway act, 1867 PA 35, MCL 472.1 to 472.27.

(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 act, Public Law 112-141, with respect to the public transportation provider being acquired.

(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, assumed, or otherwise acquired by an authority.

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

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

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

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

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

(a) Financial status of the authority.

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

(c) Operating costs of the authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) Notwithstanding any other requirement of this act, if an authority applies for and receives state or federal money that requires the authority to comply with procurement or contracting requirements that are in conflict with this act, the state or federal requirements shall take precedence over the requirements of this act.

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

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

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

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

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

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

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

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

(A) The qualified county.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) To secure federal money for an authority or activities of an authority under this act, the board may enter into an agreement with a street railway organized under the nonprofit street railway act, 1867 PA 35, MCL 472.1 to 472.27, or take other action necessary for the recognition by the United States department of transportation of activities or functions of the authority or the street railway as a connected project.

(23) The board shall ensure that 100% of federal matching money or aid received by the authority for the construction or operation of a street railway system under the nonprofit street railway act, 1867 PA 35, MCL 472.1 to 472.27, within a public transit region is expended on public transportation service routes located in the county or counties in which the street railway system was constructed. If the authority accepts a transfer of assets of a street railway organized under the nonprofit street railway act, 1867 PA 35, MCL 472.1 to 472.27, as provided in subsection (3)(a)(v) and the street railway operates exclusively on routes located within a qualified county, the authority shall ensure that any operational deficit related to the operation of that street railway is paid with money raised in the qualified county or a member jurisdiction within the qualified county.

(24) The authority shall ensure that any operational deficit related to the operation of a commuter rail line described in subsection (3)(a)(vi) is paid with money raised in each county or a member jurisdiction of each county within which the commuter rail line operates.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor