

CHAPTER NO. 396

HOUSE BILL NO. 2171

By Representatives Winningham, Baird, Hackworth

Substituted for: Senate Bill No. 2221

By Senators McNally, Kilby,

AN ACT to amend Tennessee Code Annotated, Title 64, Chapter 2, relative to railroad authorities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 64, Chapter 2, is amended by adding Section 2 through Section 15 of this act as a new part thereto.

SECTION 2.

(a) There is hereby created the north east Tennessee railroad authority in the counties of Anderson, Campbell and Scott.

(b) This authority is intended to secure economic benefits to the above counties by providing for the continuation of railroad service in Anderson, Campbell, and Scott counties.

SECTION 3.

(a) This part shall take effect when:

(1) Two (2) or more of the counties of Anderson, Campbell, and Scott are authorized by a vote of two thirds (2/3) of their respective governing bodies to become members of the authority;

(2) Evidence of such authorization is proclaimed and countersigned by the presiding officer of each ratifying county certified by that presiding officer to the secretary of state; and

(3) The governing bodies of all governments voting to become members of the authority have indicated their willingness to appropriate sufficient funds to provide for the initial administration of the authority.

SECTION 4.

(a) Within the region of the authority, it may acquire, construct, operate, maintain and dispose of railroad facilities, properties and equipment, and may, in addition to continuing the above-mentioned railroad service, provide any other rail service in the region as it is needed and feasible.

(b) The acquisition, construction, operation and maintenance of such properties and facilities are hereby declared to be public and governmental functions. The powers granted in this part, in connection therewith, are declared to be public and corporate purposes and matters of public necessity.

(c) The authority may use any property, right-of-way, easement or other similar property right necessary or convenient in connection with the acquisition, improvement, operation or maintenance of the facilities authorized in this part, held by the state or any county or municipality in the state; provided, that such governmental agency consents to such use; and that there is compliance with all statutes, regulations and procedures regulating the use, management and disposition of state property.

SECTION 5. The organization of the authority shall be as follows:

(1) The authority shall be governed by a board of directors;

(2) Membership of the board of directors shall consist of:

(A) The county mayor of each county becoming a member of the authority, in accordance with section 3 of this act; and

(B) One (1) member to be selected by the governing body of each county becoming a member of the authority. The term of each selected member shall be prescribed by the governing body making the selection;

(3)

(A) In the event of failure to elect a successor to any member of the board, the member whose term has expired shall continue to serve until the member's successor has been duly elected as provided in this section;

(B) In the event of the death or resignation of a member, or the member's inability to serve prior to the expiration of the member's term, the member's successor shall be elected for the unexpired term by the remaining members of the board within thirty (30) days of the event;

(C) Any person at least twenty-five (25) years of age who has resided within the boundaries of the authority, for a period of at least one (1) year immediately preceding such person's election, shall be eligible to serve as a member. Any director who ceases to regularly reside within the boundaries of the authority shall automatically become ineligible to serve in such office;

(4) Before entering upon their duties, all directors shall take and subscribe to the oath of office, as provided by the constitution and law for county and city officers. Copies of the oath of each director shall be filed with the county clerk of the applicable county;

(5)

(A) A majority of the directors shall constitute a quorum and the directors shall act by vote of a majority present at any meeting attended by a quorum, and vacancies among the directors shall not affect their power and authority, so long

as a quorum remains. Within thirty (30) days after their election as provided in this section, the directors shall hold a meeting to elect a chair. The directors shall hold meetings at such times and places as the directors may determine;

(B) Special meetings may be called and held upon such notice and in such manner as the board may, by resolution, determine. Save as otherwise expressly provided, the board shall establish its own rules of procedure;

(6) The directors shall designate a secretary and a treasurer, or one (1) person as secretary-treasurer, and such person need not be a director. The secretary shall attend all regular and special meetings and keep minutes thereof. The minutes of meetings shall be available for inspection by the public at the office of the authority, at all reasonable times;

(7)

(A) The board, by resolution, shall require the treasurer or the secretary-treasurer, to execute a bond with an approved corporate surety, in such amount as the board may specify, for the faithful performance of the treasurer's or the secretary-treasurer's duties and the accounting of all moneys and revenues that may come into the treasurer's or the secretary-treasurer's hands. Such bond shall be filed with the secretary of state;

(B) The board, by resolution, may require all other subordinate officers, or employees, to execute such fidelity bonds for the faithful performance of their duties and the accounting of funds that may come to their hands, in such an amount, with such conditions and such sureties, as the board may determine;

(8) All directors shall serve without compensation, but may receive any per diem allowance that may be appropriated by the governing body of the county electing a director, for such director. Reasonable expenses incurred by members of the board while engaged in the business of the authority are subject to reimbursement by the authority;

(9) The directors shall be indemnified by the authority for any liability they might incur while acting in such capacity other than for culpable negligence; and

(10) Except as otherwise provided in this section, the directors shall be removable only for good cause, and after preferment of charges, as provided by law for county officers.

SECTION 6. The directors are authorized to employ and fix the compensation of architects, attorneys, engineers, superintendents, consultants, professional advisors and other subordinate officers and employees, as may be necessary for the efficient management and operation of the authority and its facilities. Such persons shall continue in the employment of the authority at the will and pleasure of the board of directors. Such employment or contracts shall conform to the statutes, regulations and procedures to which counties must generally adhere in making such transactions.

SECTION 7.

(a) The directors have the following duties and powers, and, in exercising such duties and powers, shall abide by all statutes, regulations and procedures to which counties must generally adhere in making such transactions:

(1) To acquire, construct, purchase, operate, maintain, replace, repair, rebuild, extend and improve within the boundaries of the authority the properties and facilities described in section 4, and to make such properties and facilities available to any firm, person, public or private corporation, or to any other shipper, consignee or carrier, and to charge for their use and for any and all services performed by the authority;

(2) To accept donations to the authority of cash, lands or other property to be used in the furtherance of the purpose of this part;

(3) To accept grants, loans or other financial assistance from any federal, state, county or municipal agency, or other aid for the acquisition or improvement of any of the facilities of the authority;

(4) To purchase, rent, lease or otherwise acquire any and all kinds of property, real, personal or mixed, tangible or intangible, whether or not subject to mortgages, liens, charges or other encumbrances, for the authority, that, in the judgment of the authority directors, is necessary or convenient to carry out the purpose of the authority. In exercising the powers granted in this subdivision (a)(4), the directors shall abide by all statutes, regulations and procedures to which counties must conform in such matters;

(5) To acquire property that is suitable for use by industries requiring access to any railroad track owned, operated or subsidized by the authority;

(6)

(A) To make contracts and execute instruments containing such covenants, terms and conditions as, in the judgment of the directors, may be necessary, proper or advisable for the purpose of obtaining grants, loans or other financial assistance from any federal or state agency for or in the aid of the acquisition or improvement of the facilities provided in this part;

(B) To make all other contracts and execute all other instruments including, without limitation, licenses, long or short term leases, mortgages and deeds of trust, and other agreements relating to property and facilities under its jurisdiction, and the construction, operation, maintenance, repair and improvement thereof, as in the judgment of the board of directors may be necessary, proper or advisable for the furtherance of the purpose of this part, and the full exercise of the powers granted in this section;

(C) To carry out and perform the covenants, terms and conditions of all such contracts or instruments; and

(D) In exercising the powers granted in subdivisions (a)(6)(A)-(C), the directors shall abide by all statutes, regulations and procedures to which counties must conform in such matters;

(7) To establish schedules of tolls, fees, rates, charges and rentals for the use of the properties and facilities under its jurisdiction, and for services that it may render;

(8) To enter upon any lands and premises for the purpose of making surveys, soundings and examination in connection with the acquisition, improvement, operation or maintenance of any of the facilities of the authority;

(9) To promulgate and enforce such rules and regulations as the board may deem proper for the orderly administration of the authority and the efficient operation of its facilities. In exercising the powers granted in this subdivision (a)(9), the directors shall abide by all statutes, regulations and procedures to which counties must conform in such matters; and

(10) To do all acts and things necessary, or deemed necessary or convenient, to carry out the powers expressly given in this part. This subdivision (a)(10) shall not be construed to authorize the directors, in doing all things necessary and convenient, to conduct the administrative and business affairs of the authority in a manner inconsistent with the statutes, regulations and procedures governing such matters in county government.

(b) Except as otherwise expressly provided in this part, the directors shall have full and exclusive control of and responsibility for the administration of properties and facilities constructed or acquired pursuant to this part. The authority may lease or license lands or facilities under its jurisdiction for operation by private persons or corporations. This subsection (b) shall not be construed to authorize the directors to exercise such authority in a manner inconsistent with the statutes, regulations and procedures governing such matters in county government.

SECTION 8.

(a) The authority is hereby authorized and empowered to condemn, in the name of the authority, any land, easements or rights-of-way in the boundaries of the authority that, in the opinion of the board of directors, are necessary or convenient to carry out the purposes of this part. Title to property so condemned shall be taken by and in the name of the authority, and the property shall thereafter be entrusted to the authority for the purposes of this part. Such condemnation proceedings shall be in accordance with title 29, chapters 16 and 17.

(b) Where title to any property sought to be condemned is defective, it shall be passed by the judgment or decree of the court. Where condemnation proceedings become necessary, the court in which any such proceedings are filed shall, upon application by the authority, and upon posting of a bond with a clerk of the court in such amount as the court may deem commensurate with the value of the property, order that a writ of possession shall issue immediately, or as soon and upon such terms as the court, in its discretion, may deem proper and just.

SECTION 9. The authority has the following powers with respect to finance as follows, and, in exercising such powers, shall abide by all statutes, regulations and procedures to which counties must generally adhere in such matters:

(1) To borrow money for any of its corporate purposes and issue its bonds for its corporate purposes, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including grants or contributions from the federal government or other sources, which bonds may be sold at public sale.

(A) Revenue bonds may be issued for the above purposes and the authority may pledge as security for such bonds all or any portion of the tolls, fees, rents, charges or any other revenues derived from the operation of the railroad and related uses of the properties. Any such fees, rents or charges so pledged that are fixed and established pursuant to the provisions of a lease or contract are not subject to revision or change except in such manner as is provided in such lease or contract.

(B) Any bonds issued pursuant to this part shall state on their face that they are payable as to principal and interest, solely from revenues of the authority and shall not constitute a debt of the state or any political subdivision thereof other than the authority, and shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Neither a director of the authority nor any person executing such bonds shall be liable personally thereon by reason of the issuance thereof.

(C) In case any of the directors or officers of the authority whose signatures appear on any bonds or coupons cease to be directors or officers after authorization but before the delivery of the bonds, their signatures shall be valid and sufficient for all purposes.

(D) Any provision of the law to the contrary notwithstanding, any bonds issued pursuant to this part are fully negotiable.

(E) Any bond reciting in substance that it has been issued by the authority pursuant to this part and for a purpose or purposes authorized by this part shall be conclusively deemed, in any suit, action or proceeding involving the validity or enforceability of the bond or the security for the bond, to have been issued pursuant to such provisions and for such purpose or purposes.

(F) Obligations issued by the authority pursuant to the provisions of this part are declared to be issued for an essential public and governmental purpose and shall be exempt from taxation by the state, or by any county, municipality or taxing district of the state, except inheritance, transfer and estate taxes.

(G) With respect to refunding bonds, the provisions of title 9, chapter 21 apply; with respect to funding bonds, the provisions of § 9-11-108 apply; and

(2) To receive funds from county or city governments for purposes of planning, the acquisition of properties and facilities, and the construction, operation, management and maintenance of all properties and facilities, to which end such governments are

authorized to provide funds for any of these purposes, upon grant or loan, and are empowered, but not required, to impose taxes to accomplish the purposes of this part.

SECTION 10.

(a) The revenues derived from the operation of the properties and facilities authorized, and the proceeds derived from the sale, transfer, lease or other disposition of any land or other facilities, shall be applied and used as follows:

(1) The payment of all operating expenses of the authority, except that the proceeds derived from the sale, transfer or other disposition of any land or other facilities shall not be used for this purpose; and

(2) The establishment of necessary reserves for contingencies, depreciation, maintenance, replacement of properties and facilities, storage and transfer facilities and any other facilities, or other purposes as may be required under any bond indenture or as the authority directors may deem necessary or desirable. This subdivision (a)(2) shall not be construed to authorize the authority to exercise these provisions in a manner inconsistent with statutes, regulations or procedures governing such matters in county government.

(b) Any revenue or proceeds remaining after all the above items have been provided for shall be held and used for the further development of and for additions to the authority facilities and for the acquisition or construction of new facilities that may become necessary or desirable to further the purposes of this part. None of such revenue shall go into the general funds of the participating counties, except as may be directed by the authority directors.

(c) Nothing in this section shall be construed to authorize the authority to administer these provisions in a manner inconsistent with statutes, regulations or procedures governing such transactions and activities carried out by county governments, and the authority shall assure that procedures and practices covered by this section conform with statutes, regulations and procedures to which county governments must adhere. All revenues shall be received, deposited and accounted for and all financial transactions shall be handled consistent with the requirements of statutes, regulations and procedures affecting county government.

SECTION 11. All contracts of the authority shall be entered into and executed in such manner as may be prescribed by statutes, regulations and procedures governing contracting by county governments, but no contract or acquisition by purchase of equipment, apparatus, materials or supplies involving more than five thousand dollars (\$5000), or for construction, installation, repair or improvement of the property or facilities involving more than five thousand dollars (\$5000) shall be made except after such contract has been advertised for bids. Advertisement is not required when an emergency arises and requires immediate delivery of the supplies or performance of the service.

SECTION 12.

(a) The board shall report annually to the department of transportation and to the governing bodies of the various counties and cities within the boundaries of the authority.

(b) Such reports shall include statements of financial receipts and expenditures, statements from operators, a summary of activities and accomplishments for the period and proposed plans for the next year and subsequent years.

SECTION 13.

(a) The board of directors of the authority shall cause an annual audit to be made of the books and records of the authority. Within thirty (30) days after receipt by the authority, a copy of the annual audit shall be filed with the clerk or recorder of the appropriate county or municipality who shall then distribute copies to members of the appropriate legislative body. Within thirty (30) days after receipt by the authority, a copy of the annual audit shall also be filed with the chief administrative officer of the appropriate county or municipality. The comptroller of the treasury, through the department of audit, shall be responsible for determining that such audits are prepared in accordance with generally accepted governmental auditing standards and that such audits meet the minimum standards prescribed by the comptroller of the treasury.

(b) These audits shall be prepared by certified public accountants or by the department of audit. If the board of directors of the authority shall fail or refuse to have the audit prepared, then the comptroller of the treasury may appoint a certified public accountant or direct the department of audit to prepare the audit, the cost of such audit to be paid by the authority.

(c) The comptroller of the treasury is authorized to modify the requirements for an audit as set out herein for the authority whose activity, in the comptroller of the treasury's judgment, is not sufficient to justify the expenses of a complete audit.

SECTION 14. This part is remedial in nature and shall be liberally construed to effect its purposes of promoting the movement and transfer of people, goods and merchandise to, from and through the boundaries of the authority; encouraging utilization of the natural resources therein; and promoting the growth and development of commerce and industry in the counties and cities. Such liberal construction shall not work to override the application of the general statutes, regulations or procedures to the administrative or financial management practices of the authority in the same manner as they apply to county governments.

SECTION 15. The powers, authority and rights conferred by this part are in addition and supplemental to, and the limitations imposed by this part do not affect the powers conferred by any other general, special or local law.

SECTION 16. Tennessee Code Annotated, Sections 64-2-208(1)(F) and 64-2-308(1)(F), are amended by deleting the subdivisions in their entirety and substituting instead the following:

(F) Obligations issued by the authority pursuant to the provisions of this part are declared to be issued for an essential public and governmental purpose and shall be exempt from taxation by the state, or by any county, municipality or taxing district of the state, except inheritance, transfer and estate taxes.

SECTION 17. Tennessee Code Annotated, Section 64-2-508(1)(F), is amended by deleting the first sentence of the subdivision and substituting instead the following:

Obligations issued by the authority pursuant to the provisions of this part are declared to be issued for an essential public and governmental purpose and shall be exempt from taxation by the state, or by any county, municipality or taxing district of the state, except inheritance, transfer and estate taxes.

SECTION 18. Tennessee Code Annotated, Sections 64-2-212, 64-2-312, and 64-2-512 are amended by deleting the existing language and substituting instead the following:

(a) The board of directors of the authority shall cause an annual audit to be made of the books and records of the authority. Within thirty (30) days after receipt by the authority, a copy of the annual audit shall be filed with the clerk or recorder of the appropriate county or municipality who shall then distribute copies to members of the appropriate legislative body. Within thirty (30) days after receipt by the authority, a copy of the annual audit shall also be filed with the chief administrative officer of the appropriate county or municipality. The comptroller of the treasury, through the department of audit, shall be responsible for determining that such audits are prepared in accordance with generally accepted governmental auditing standards and that such audits meet the minimum standards prescribed by the comptroller of the treasury.

(b) These audits shall be prepared by certified public accountants or by the department of audit. If the board of directors of the authority shall fail or refuse to have the audit prepared, then the comptroller of the treasury may appoint a certified public accountant or direct the department of audit to prepare the audit, the cost of such audit to be paid by the authority.

(c) The comptroller of the treasury is authorized to modify the requirements for an audit as set out herein for the authority whose activity, in the comptroller of the treasury's judgment, is not sufficient to justify the expenses of a complete audit.

SECTION 19. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: May 24, 2005


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 9th day of June 2005


PHIL BREDEESEN, GOVERNOR