

House Bill 1052 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Jacobs of the 80th, Riley of the 50th, Lindsey of the 54th, Geisinger of the 48th, Taylor of the 79th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend an Act known as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965,"
2 approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, so as to reconstitute the board
3 of directors; to provide for staggered terms for board members; provide for a limit on
4 re-appointment of board members; to provide for a method for nonparticipating counties to
5 join the Authority; to provide for per diem payments; to provide for restriction on contracts
6 for professional services; to provide for a suspension of restrictions on the use of sales and
7 use tax proceeds; to provide for related matters; to repeal conflicting laws; and for other
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 An Act known as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," approved
12 March 10, 1965 (Ga. L. 1965, p. 2243), as amended, is amended by revising subsections (a)
13 through (h) of Section 6 as follows:

14 "(a) The Board of Directors of the Authority shall be composed of ~~18~~ 11 voting members
15 and one nonvoting member. ~~Four~~ Three members shall be residents of the City of Atlanta
16 to be nominated by the Mayor and elected by the City Council; ~~five~~ four members shall be
17 residents of DeKalb County with three of the four appointees to be appointed by the ~~local~~
18 ~~governing body thereof~~ Board of Commissioners of DeKalb County and at least one of
19 such appointees shall be a resident of that portion of DeKalb County lying south of the
20 southernmost corporate boundaries of the City of Decatur and at least one of such
21 appointees shall be a resident of that portion of DeKalb County lying north of the
22 southernmost corporate boundaries of the City of Decatur and the fourth appointee to be
23 appointed by a majority vote of a caucus of mayors of the municipalities located wholly
24 in DeKalb County; three members shall be residents of Fulton County ~~to be appointed by~~
25 ~~the local governing body thereof, and at least~~ and one of such ~~appointees~~ members shall
26 be a resident of that portion of Fulton County lying south of the corporate limits of the City

27 of Atlanta to be appointed by the local governing body of Fulton County and two of such
 28 members shall be residents of that portion of Fulton County lying north of the corporate
 29 limits of the City of Atlanta to be appointed by a majority vote of a caucus of mayors of
 30 the municipalities of Fulton County lying north of the City of Atlanta; one member shall
 31 be the executive director of the Georgia Regional Transportation Authority; and one
 32 nonvoting member shall be the planning director of the Department of Transportation.
 33 Those board members appointed by a local governing authority as described in this section
 34 in office as of January 1, 2013, shall serve initial terms of office as follows: two of the
 35 three appointees of the DeKalb County Board of Commissioners, two of the three
 36 appointees of the mayor and city council of Atlanta, and one of the two appointees of the
 37 caucus of mayors from municipalities lying north of the City of Atlanta shall serve a term
 38 of two years, and the remaining appointees shall serve for terms of four years. Each local
 39 governing authority or caucus shall designate which board members shall serve an initial
 40 term of two years no later than November 1, 2012. ~~and that membership position held by~~
 41 ~~a Fulton County resident, appointed by the local governing body of that county, the term~~
 42 ~~of which position expires December 31, 1988, shall, beginning on and after January 1,~~
 43 ~~1989, be filled by the local governing body of Fulton County appointing a person who is~~
 44 ~~a resident of that portion of Fulton County lying north of the corporate limits of the City~~
 45 ~~of Atlanta; one member shall be a resident of Clayton County to be appointed by the local~~
 46 ~~governing body thereof; and one member shall be a resident of Gwinnett County to be~~
 47 ~~appointed by the local governing body thereof. Four members, representing the State, shall~~
 48 ~~be as follows: the Commissioner of the Department of Transportation who shall be an ex~~
 49 ~~officio member; the State Revenue Commissioner who shall be an ex officio member; the~~
 50 ~~Executive Director of the State Properties Commission who shall be an ex officio member;~~
 51 ~~and the Executive Director of the Georgia Regional Transportation Authority who shall be~~
 52 ~~an ex officio member. The first member who must be a resident of that portion of Fulton~~
 53 ~~County lying south of the corporate limits of the City of Atlanta shall be appointed by the~~
 54 ~~governing body of Fulton County to take office on July 1, 1985, for an initial term ending~~
 55 ~~December 31, 1986. The two members who are DeKalb County residents and appointed~~
 56 ~~by the governing authority thereof and who are added by this paragraph shall each be~~
 57 ~~appointed by the governing body of DeKalb County to take office on July 1, 1985, for an~~
 58 ~~initial term ending December 31, 1986. After the initial terms of those three members~~
 59 ~~added to the Board in 1985, After the initial two-year terms of those five board members~~
 60 described in this subsection, that governing body which appointed the member for that
 61 initial term to that office shall appoint successors thereto for terms of office of four years
 62 in the same manner that such governing body makes its other appointments to the Board.

63 ~~The initial terms of the four members added in 1976 by the above paragraph shall be as~~
 64 ~~follows: the member from DeKalb County to be appointed by the local governing body of~~
 65 ~~DeKalb County shall be appointed no later than sixty days after the effective date of this~~
 66 ~~subsection for a term ending December 31, 1978, and shall take office immediately upon~~
 67 ~~appointment; the Commissioner of the Department of Transportation, the State Revenue~~
 68 ~~Commissioner and the Executive Director of the State Properties Commission shall become~~
 69 ~~members of the Board on the effective date of this subsection and shall serve while holding~~
 70 ~~their State offices.~~

71 The Executive Director of the Georgia Regional Transportation Authority shall become a
 72 voting member of the Board on the effective date of this sentence and shall serve while
 73 holding his or her State office. The planning director of the Department of Transportation
 74 shall become a nonvoting member of the Board on the effective date of this sentence and
 75 shall serve while holding his or her State office.

76 Except as provided above, all appointments shall be for terms of four years except that a
 77 vacancy caused otherwise than by expiration shall be filled for the unexpired portion thereof
 78 by the local governing body which made the original appointment to the vacant position, or
 79 its successor in office. A member of the Board may be appointed to succeed himself or
 80 herself for one four-year term; provided, however, that board membership prior to January
 81 1, 2013, shall not be considered in calculating limits on length of service. Appointments to
 82 fill expiring terms shall be made by the local governing body prior to the expiration of the
 83 term, but such appointments shall not be made more than thirty days prior to the expiration
 84 of the term. Members appointed to the Board shall serve for the terms of office specified in
 85 this section and until their respective successors are appointed and qualified.

86 ~~(b) Having initially declined membership on the Board and further participation in the~~
 87 ~~Authority, Cobb County may at any time reclaim its membership on the Board and~~
 88 ~~participate further in the Authority as provided in this subsection (b).~~ The local governing
 89 body bodies of Clayton, Cobb, and Gwinnett County counties may, any other provision of
 90 this Act to the contrary notwithstanding, negotiate, enter into, and submit to the qualified
 91 voters of their respective counties Cobb County the question of approval of a rapid transit
 92 contract between Cobb County the county submitting the question and the Authority, all in
 93 accordance with the provisions of Section 24 of this Act. The local governing body bodies
 94 of Cobb County these counties shall be authorized to execute such rapid transit contract prior
 95 to the holding of the referendum provided for in said Section 24; provided, however, that
 96 such rapid transit contract shall not become valid and binding unless the same is approved
 97 by a majority of those voting in said referendum, which approval shall also be deemed
 98 approval of further participation in the Authority. Upon approval of such rapid transit
 99 contract, Cobb County the county entering into such contract shall be a participant in the

100 Authority, and its rights and responsibilities shall, insofar as possible, be the same as if it had
 101 participated in the Authority from its beginning, and the local governing body of ~~Cobb~~
 102 ~~County~~ the county may then appoint two residents of ~~Cobb County~~ the county to the Board
 103 of Directors of the Authority, to serve a term ending on the 31st day of December in the
 104 fourth full year after the year in which the referendum approving said rapid transit contract
 105 was held, in which event the Board of Directors of the Authority shall, subsection (a) of this
 106 Section 6 to the contrary notwithstanding, be composed of ~~16~~ such additional members.

107 (c) Reserved.

108 (d) ~~Except for the ex officio members of the Board, no~~ Except for the Executive Director of
 109 the Georgia Regional Transportation Authority and the planning director of the Department
 110 of Transportation, no person shall be appointed as a member of the Board who holds any
 111 other public office or public employment except an office in the reserves of the armed forces
 112 of the United States or the National Guard; any member who accepts or enters upon any
 113 other public office or public employment shall be disqualified thereby to serve as a member.

114 (e) A local governing body may remove any member of the Board appointed by it for cause.
 115 No member shall be thus removed unless he or she has been given a copy of the charges
 116 against him or her and an opportunity to be publicly heard in his or her own defense in
 117 person or by counsel with at least ten days' written notice to the member. A member thus
 118 removed from office shall have the right to a judicial review of ~~his~~ the member's removal by
 119 an appeal to the superior court of the county of the local governing body which appointed
 120 ~~him~~ the member, but only on the ground of error of law or abuse of discretion. In case of
 121 abandonment of ~~his~~ the member's office, conviction of a crime involving moral turpitude or
 122 a plea of nolo contendere thereto, removal from office, or disqualification under subsection
 123 (d) hereof, the office of a member shall be vacant upon the declaration of the Board. A
 124 member shall be deemed to have abandoned ~~his~~ the member's office upon failure to attend
 125 any regular or special meeting of the Board for a period of four months without excuse
 126 approved by a resolution of the Board, or upon removal of ~~his~~ the member's residence from
 127 the territory of the local governing body which appointed ~~him~~ the member.

128 (f) Each appointed member of the Board, except the ~~Chairman~~ Chairperson, shall be paid
 129 by the Authority a per diem allowance, in an amount equal to that provided by Code Section
 130 45-7-21 of the Official Code of Georgia Annotated, as now in effect or as it may hereafter
 131 be amended, for each day on which that member attends an official meeting of the Board, of
 132 any committee of the Board, or of the Authority's Pension Committee; or Board of Ethics;
 133 ~~or Arts Council~~; provided, however, that said per diem allowance shall not be paid to any
 134 such member for more than ~~130~~ 52 days in any one calendar year. If the ~~Chairman~~
 135 Chairperson of the Board is an appointed member of the Board, the ~~Chairman~~ Chairperson
 136 shall be paid by the Authority a per diem allowance in the same amount for each day in

137 which the ~~Chairman~~ Chairperson engages in official business of the Authority, including but
 138 not limited to attendance of any of the aforesaid meetings. A member of the Board shall also
 139 be reimbursed for actual expenses incurred by that member in the performance of that
 140 ~~members~~ member's duties as authorized by the Board. A Board member shall not be allowed
 141 employee benefits authorized under Section 8(b).

142 (g) The Board shall elect one of its members as ~~chairman~~ chairperson and another as
 143 ~~vice-chairman~~ vice-chairperson for terms to expire on December 31 of each year to preside
 144 at meetings and perform such other duties as the Board may prescribe. The presiding officer
 145 of the Board may continue to vote as any other member, notwithstanding ~~his~~ the member's
 146 duties as presiding officer, if he or she so desires. The Board shall also elect from its
 147 membership a secretary and a treasurer who shall serve terms expiring on December 31 of
 148 each year. A member of the Board may hold only one office on the Board at any one time.

149 (h) The Board shall hold at least one meeting each month. The Secretary of the Board shall
 150 give written notice to each member of the Board at least two days prior to any called meeting
 151 that may be scheduled, and said Secretary shall be informed of the call of such meeting
 152 sufficiently in advance so as to provide for ~~his~~ giving notice as above. A majority of the total
 153 membership of the Board, as it may exist at the time, shall constitute a quorum. On any
 154 question presented, the number of members present shall be recorded. By affirmative vote
 155 of a majority of the members present, the Board may exercise all the powers and perform all
 156 the duties of the Board, except as otherwise hereinafter provided or as limited by its bylaws,
 157 and no vacancy on the original membership of the Board, or thereafter, shall impair the
 158 power of the Board to act. All meetings of the Board, its Executive Committee, or any
 159 committee appointed by the Board shall be subject to ~~all provisions, except for Section 2(a),~~
 160 ~~of an Act providing that all meetings of certain public bodies shall be open to the public,~~
 161 ~~approved March 28, 1972 (Ga. L. 1972, p. 575), as now or hereafter amended~~ Chapter 14 of
 162 Title 50 of the Official Code of Georgia Annotated."

163 **SECTION 2.**

164 Said Act is further amended by revising subsections (a) and (k) of Section 14 as follows:

165 "(a) Except in the acquisition of unique property which for any reason is unobtainable in
 166 the open market, and except as hereinafter otherwise provided, competitive bids shall be
 167 secured before any acquisition or disposition of properties by contract or otherwise is made
 168 by the Authority, or before any contract is awarded for construction, alterations, supplies,
 169 equipment, repairs or maintenance, or for rendering any services to the Authority,
 170 acquisitions shall be made from, and contracts awarded to, the lowest responsible bidder,
 171 and dispositions of property shall be made to the highest responsible bidder. No
 172 acquisition of any unique property unobtainable in the open market shall be made without

173 the express approval of the Board where the amount involved is \$25,000.00 or more.
 174 Nothing in this Section shall apply to contracts for professional services or to contracts for
 175 services of individuals or organizations not employed full time by the Authority but who
 176 are engaged primarily in the rendition of personal services and not the sale of goods and
 177 merchandise, such as but not limited to the services of attorneys, accountants, engineers,
 178 architects, consultants, and advisors; provided, however, that such contracts for
 179 professional services shall be solicited and awarded through a request for proposals
 180 following generally accepted government procurement standards or through procedures
 181 otherwise required by applicable federal law."

182 ~~"(k) If the Authority issues an invitation to bid pursuant to this Section, and if the~~
 183 ~~Authority then fails to receive at least one bid that conforms to the terms of its invitation~~
 184 ~~for bids and which is also reasonable in price, then the Authority may negotiate an~~
 185 ~~acquisition, disposition or contract where the amount involved is \$5,000 or more. No such~~
 186 ~~negotiated acquisition, disposition or contract shall be made without the express approval~~
 187 ~~of the Board and unless the negotiated price is reasonable. Reserved."~~

188 SECTION 3.

189 Said Act is further amended by revising subsection (a) of Section 16 as follows:

190 "(a) The Board shall make provision for a system of financial accounting and controls,
 191 audits and reports. All accounting systems and records, auditing procedures and standards,
 192 and financial reporting shall conform to generally accepted principles of governmental
 193 accounting. Copies of each financial report required under this Section shall be ~~furnished~~
 194 posted on the website of the Authority and notice of such publication shall be delivered by
 195 electronic format to each local governing body of each participating local government in
 196 the metropolitan area as described in Section 6. All financial records, reports and
 197 documents of the Authority shall be public records and open to public inspection under
 198 reasonable regulations prescribed by the Board."

199 SECTION 4.

200 Said Act is further amended by revising subsection (c) of Section 17 as follows:

201 "(c) At the time and in the manner prescribed in subsection (b), insofar as applicable, the
 202 Board shall propose and adopt an annual capital improvements budget. The proposed
 203 capital improvements budget shall show all capital improvement projects in process of
 204 completion, those to be undertaken during the ensuing fiscal year and those anticipated to
 205 be undertaken during the ensuing ten years. The proposed capital improvements budget
 206 shall show all capital improvement projects completed during the preceding ten years as
 207 compared to those capital improvement projects that were planned and budgeted for in the

208 capital improvement budgets from the preceding ten years. The proposed budget shall also
 209 show the proposed method of financing each proposed project and the effect thereof on the
 210 debt structure of the Authority. After a public hearing the Board shall review its proposed
 211 budget and on or before the last day of the fiscal year it shall adopt an annual capital
 212 improvements budget for the ensuing fiscal year. No contract for the purchase or
 213 construction of any capital improvement project shall be authorized, except to meet a
 214 public emergency certified as such by the Board, unless it is included in the annual capital
 215 improvements budget; however, the Board may propose and adopt an amendment to the
 216 annual capital improvements budget by following the procedure herein prescribed for
 217 adopting the original budget."

218 SECTION 5.

219 Said Act is further amended by revising subsection (i) of Section 25 as follows:

220 "(i) Use of Proceeds. The proceeds of the tax levied pursuant to this Act shall be used
 221 solely by each local government to fulfill the obligations incurred in the contracts entered
 222 into with the Metropolitan Atlanta Rapid Transit Authority as contemplated in the
 223 Metropolitan Atlanta Rapid Transit Authority Act of 1965, as amended; provided,
 224 however, that no more than fifty percent (50%) of the annual proceeds of the tax shall be
 225 used to subsidize the operating costs of the system, exclusive of depreciation, amortization,
 226 and other costs and charges as provided in this subsection, until January 1, 2002. For the
 227 period beginning January 1, 2002, and ending June 30, 2002; and for each fiscal year
 228 commencing thereafter until December 31, 2008, no more than fifty-five percent (55%)
 229 of the proceeds of the tax shall be used to subsidize the operating costs of the system,
 230 exclusive of depreciation, amortization, and other costs and charges as provided in this
 231 subsection; and for the period beginning January 1, 2009, and ending June 30, 2009, and
 232 each fiscal year commencing thereafter until July 1, 2032, no more than fifty percent (50%)
 233 of the proceeds of the tax shall be used to subsidize the operating costs of the system,
 234 exclusive of depreciation, amortization, and other costs and charges as provided in this
 235 subsection; Such restrictions on the use of annual proceeds from local sales and use taxes
 236 shall be suspended beginning June 2, 2010, for a period of three years. Further extensions
 237 of suspensions on restrictions described in this subsection may be granted as provided by
 238 general law. Newly unrestricted funds shall be utilized, subject to total funding, to
 239 maintain the level of service for the transit system as it existed on January 1, 2010.
 240 Furthermore, except as had been previously contracted to by the Authority prior to January
 241 1, 2010, no funds newly unrestricted during this suspended period shall be used by the
 242 Authority to benefit any person or other entity for any of the following: annual
 243 cost-of-living or merit based salary raises or increases in hourly wages; increased overtime

244 due to such wage increases; payment of bonuses; or to increase the level of benefits of any
245 kind. ~~except that if~~ If the Board of the Metropolitan Atlanta Rapid Transit Authority shall
246 fail to file with the Metropolitan Atlanta Rapid Transit Overview Committee annually; the
247 original and 14 copies of a report of the findings of a completed management performance
248 audit of the Authority's current operations, ~~which audit~~ that was performed under contract
249 with and at the expense of the Authority, along with any auditor's recommendations based
250 thereon and the auditor's signed written verification that the Metropolitan Atlanta Rapid
251 Transit Authority fully cooperated with such audit and allowed access to all its books,
252 records, and documents to the extent the auditor deemed necessary, then for the period
253 beginning January 1, 2003, and ending June 30, 2003, and each fiscal year commencing
254 thereafter until July 1, 2032, no more than fifty percent (50%) of the proceeds of the tax
255 shall be used to subsidize the operating costs of the system, exclusive of depreciation,
256 amortization, and other costs and charges as provided in this subsection. For each fiscal
257 year commencing on or after July 1, 2032, no more than sixty percent (60%) of the annual
258 proceeds of the tax shall be used to subsidize the operating costs of the system, exclusive
259 of depreciation, amortization, and other costs and charges as provided in this subsection;
260 and commencing with July 1, 2032, and for every year thereafter, the proceeds of the tax
261 shall not be used to subsidize operations of the transportation system to an extent greater
262 than fifty percent (50%) of the operating costs of the system, exclusive of depreciation,
263 amortization, and other costs and charges as provided in this subsection. In adopting its
264 annual budget, the Board of the Metropolitan Atlanta Rapid Transit Authority shall be
265 authorized to rely upon estimates of all revenues, operating costs, patronage, and other
266 factors which may affect the amount of the fare required to limit the operating subsidy
267 herein provided for. If the results of any year's operations reflect that the proceeds of the
268 tax were used to subsidize operations to an extent greater than herein provided, the Board
269 shall adjust fares in order to make up the deficit in operations during a period of not to
270 exceed three (3) succeeding years. If the results of operations in the Authority's fiscal year
271 commencing July 1, 1980, or in any subsequent fiscal year reflect that the proceeds of the
272 tax were not used to subsidize operations to the maximum extent herein provided, the
273 Board shall reserve any amounts that could have been used to subsidize operations in that
274 fiscal year and later use said reserved amounts and any interest earned on said reserved
275 amounts to provide an additional subsidy for operations in any future fiscal year or years.
276 The words 'operating costs of the system' for purposes of this subsection 25(i) are defined
277 to include all of the costs of that division of the Authority directly involved and that portion
278 of the nonoperating administrative costs of those divisions of the Authority indirectly
279 involved, through the provision of support services, in providing mass transportation
280 services for the metropolitan area, but exclusive of the costs of the division or divisions

281 directly involved and that portion of the nonoperating administrative costs of those
282 divisions indirectly involved, in the planning, design, acquisition, construction, and
283 improvement of the rapid transit system, according to accepted principles of accounting,
284 and also exclusive of the following costs:

285 (1) Nonrecurring costs and charges incurred in order to comply with any statute or
286 regulation concerning either the protection or cleaning up of the environment, or
287 accessibility by handicapped or disabled persons, or occupational health or safety, or
288 compliance with any national or state emergencies, or with any judgment, decree, or
289 order of any court or regulatory agency in implementation of any such statute or
290 regulation; and

291 (2) In the case of leases of equipment or facilities that, according to generally accepted
292 principles of accounting, would not be classified as capital leases, payments of rent, and
293 other payments for the property subject to such leases or for the use thereof; provided that
294 any costs for regular maintenance or repair of such equipment or facilities shall not be
295 excluded.

296 If any proceeds of the tax levied pursuant to this Act are held for the purpose of planning,
297 designing, acquiring, or constructing additional facilities or equipment for or improvements
298 to the rapid transit system and are invested, then all interest earned from such investments
299 shall be used only for such purposes or for paying the principal of or interest on bonds or
300 certificates issued for such purposes. Commencing July 1, 1988, and until June 30, 2008,
301 and only if expressly authorized by the board, interest earned on reserve funds set aside for
302 rebuilding, repairing, or renovating facilities of the rapid transit system; for replacing,
303 repairing, or renovating equipment or other capital assets thereof; or from the sale or other
304 disposition of real property, may, without regard to the original source of the funds so
305 reserved, be used to pay the operating costs of the system as such costs are defined in this
306 subsection."

307 **SECTION 6.**

308 This Act shall become effective on January 1, 2013.

309 **SECTION 7.**

310 All laws and parts of laws in conflict with this Act are repealed.