

SENATE SUBSTITUTE TO HB 1052:

AS PASSED SENATE

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; to provide for
 8 effective dates; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

13 "(a) On and after January 1, 2013, the Board of Directors of the Authority shall be
 14 reconstituted and composed of 11 voting members and one nonvoting member. Four
 15 Three members shall be residents of the City of Atlanta to be nominated by the Mayor
 16 and elected by the City Council; ~~five~~ four members shall be residents of DeKalb County
 17 with three of the four appointees to be appointed by the ~~local governing body thereof~~
 18 Board of Commissioners of DeKalb County and at least one of such appointees shall be
 19 a resident of that portion of DeKalb County lying south of the southernmost corporate
 20 boundaries of the City of Decatur and at least one of such appointees shall be a resident
 21 of that portion of DeKalb County lying north of the southernmost corporate boundaries
 22 of the City of Decatur and the fourth appointee to be appointed by a majority vote of a
 23 caucus of mayors of the municipalities located wholly in DeKalb County; three members
 24 shall be residents of Fulton County ~~to be appointed by the local governing body thereof;~~
 25 ~~and at least~~ and one of such ~~appointees~~ members shall be a resident of that portion of
 26 Fulton County lying south of the corporate limits of the City of Atlanta to be appointed
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28 by the local governing body of Fulton County and two of such members shall be residents
29 of that portion of Fulton County lying north of the corporate limits of the City of Atlanta
30 to be appointed by a majority vote of a caucus of mayors of the municipalities of Fulton
31 County lying north of the City of Atlanta; one member shall be the executive director of
32 the Georgia Regional Transportation Authority; and one nonvoting member shall be the
33 planning director of the Department of Transportation. Those board members appointed
34 by a local governing authority as described in this section in office as of January 1, 2013,
35 shall serve initial terms of office as follows: two of the three appointees of the DeKalb
36 County Board of Commissioners, two of the three appointees of the mayor and city
37 council of Atlanta, and one of the two appointees of the caucus of mayors from
38 municipalities lying north of the City of Atlanta shall serve a term of two years, and the
39 remaining appointees shall serve for terms of four years. Each local governing authority
40 or caucus shall designate which board members shall serve an initial term of two years
41 no later than November 1, 2012. ~~and that membership position held by a Fulton County~~
42 ~~resident, appointed by the local governing body of that county, the term of which position~~
43 ~~expires December 31, 1988, shall, beginning on and after January 1, 1989, be filled by~~
44 ~~the local governing body of Fulton County appointing a person who is a resident of that~~
45 ~~portion of Fulton County lying north of the corporate limits of the City of Atlanta; one~~
46 ~~member shall be a resident of Clayton County to be appointed by the local governing~~
47 ~~body thereof; and one member shall be a resident of Gwinnett County to be appointed by~~
48 ~~the local governing body thereof. Four members, representing the State, shall be as~~
49 ~~follows: the Commissioner of the Department of Transportation who shall be an ex~~
50 ~~officio member; the State Revenue Commissioner who shall be an ex officio member; the~~
51 ~~Executive Director of the State Properties Commission who shall be an ex officio~~
52 ~~member; and the Executive Director of the Georgia Regional Transportation Authority~~
53 ~~who shall be an ex officio member. The first member who must be a resident of that~~
54 ~~portion of Fulton County lying south of the corporate limits of the City of Atlanta shall~~
55 ~~be appointed by the governing body of Fulton County to take office on July 1, 1985, for~~
56 ~~an initial term ending December 31, 1986. The two members who are DeKalb County~~
57 ~~residents and appointed by the governing authority thereof and who are added by this~~
58 ~~paragraph shall each be appointed by the governing body of DeKalb County to take office~~
59 ~~on July 1, 1985, for an initial term ending December 31, 1986. After the initial terms of~~
60 ~~those three members added to the Board in 1985, After the initial two-year terms of those~~
61 five board members described in this subsection, that governing body which appointed
62 the member for that initial term to that office shall appoint successors thereto for terms
63 of office of four years in the same manner that such governing body makes its other
64 appointments to the Board.

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

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

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

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

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

111 (c) Reserved.

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

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

134 (f) Each appointed member of the Board, except the ~~Chairman~~ Chairperson, shall be paid
 135 by the Authority a per diem allowance, in an amount equal to that provided by Code
 136 Section 45-7-21 of the Official Code of Georgia Annotated, as now in effect or as it may
 137 hereafter be amended, for each day on which that member attends an official meeting of
 138 the Board, of any committee of the Board, or of the Authority's Pension Committee; or

139 Board of Ethics, ~~or Arts Council~~; provided, however, that said per diem allowance shall not
 140 be paid to any such member for more than 130 days in any one calendar year for the
 141 Chairperson and 75 days in any one calendar year for other members of the Board. If the
 142 ~~Chairman~~ Chairperson of the Board is an appointed member of the Board, the ~~Chairman~~
 143 Chairperson shall be paid by the Authority a per diem allowance in the same amount for
 144 each day in which the ~~Chairman~~ Chairperson engages in official business of the Authority,
 145 including but not limited to attendance of any of the aforesaid meetings. A member of the
 146 Board shall also be reimbursed for actual expenses incurred by that member in the
 147 performance of that ~~members~~ member's duties as authorized by the Board. A Board
 148 member shall not be allowed employee benefits authorized under Section 8(b).

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

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

171 SECTION 2.

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

173 "(a) Except in the acquisition of unique property which for any reason is unobtainable in
 174 the open market, and except as hereinafter otherwise provided, competitive bids shall be

175 secured before any acquisition or disposition of properties by contract or otherwise is made
 176 by the Authority, or before any contract is awarded for construction, alterations, supplies,
 177 equipment, repairs or maintenance, or for rendering any services to the Authority,
 178 acquisitions shall be made from, and contracts awarded to, the lowest responsible bidder,
 179 and dispositions of property shall be made to the highest responsible bidder. No
 180 acquisition of any unique property unobtainable in the open market shall be made without
 181 the express approval of the Board where the amount involved is \$25,000.00 or more.
 182 Nothing in this Section shall apply to contracts for professional services or to contracts for
 183 services of individuals or organizations not employed full time by the Authority but who
 184 are engaged primarily in the rendition of personal services and not the sale of goods and
 185 merchandise, such as but not limited to the services of attorneys, accountants, engineers,
 186 architects, consultants, and advisors; provided, however, that such contracts for
 187 professional services where the amount involved is \$5,000.00 or more in any one-year
 188 period shall be solicited and awarded through a request for proposals following generally
 189 accepted government procurement standards or through procedures otherwise required by
 190 applicable federal law."

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

197 SECTION 3.

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

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

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SECTION 4.

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

"(c) At the time and in the manner prescribed in subsection (b), insofar as applicable, the Board shall propose and adopt an annual capital improvements budget. The proposed capital improvements budget shall show all capital improvement projects in process of completion, those to be undertaken during the ensuing fiscal year and those anticipated to be undertaken during the ensuing ten years. The proposed capital improvements budget shall show all capital improvement projects completed during the preceding ten years as compared to those capital improvement projects that were planned and budgeted for in the capital improvement budgets from the preceding ten years. The proposed budget shall also show the proposed method of financing each proposed project and the effect thereof on the debt structure of the Authority. After a public hearing the Board shall review its proposed budget and on or before the last day of the fiscal year it shall adopt an annual capital improvements budget for the ensuing fiscal year. No contract for the purchase or construction of any capital improvement project shall be authorized, except to meet a public emergency certified as such by the Board, unless it is included in the annual capital improvements budget; however, the Board may propose and adopt an amendment to the annual capital improvements budget by following the procedure herein prescribed for adopting the original budget."

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SECTION 5.

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

"(i) Use of Proceeds. The proceeds of the tax levied pursuant to this Act shall be used solely by each local government to fulfill the obligations incurred in the contracts entered into with the Metropolitan Atlanta Rapid Transit Authority as contemplated in the Metropolitan Atlanta Rapid Transit Authority Act of 1965, as amended; provided, however, that no more than fifty percent (50%) of the annual proceeds of the tax shall be used to subsidize the operating costs of the system, exclusive of depreciation, amortization, and other costs and charges as provided in this subsection, until January 1, 2002. For the period beginning January 1, 2002, and ending June 30, 2002; and for each fiscal year commencing thereafter until December 31, 2008, no more than fifty-five percent (55%) of the proceeds of the tax shall be used to subsidize the operating costs of the system, exclusive of depreciation, amortization, and other costs and charges as provided in this subsection; and for the period beginning January 1, 2009, and ending June 30, 2009, and each fiscal year commencing thereafter until July 1, 2032, no more than fifty percent (50%) of the proceeds of the tax shall be used to subsidize the operating costs of the system, exclusive of depreciation, amortization, and other costs and charges as provided in this

244 subsection; Such restrictions on the use of annual proceeds from local sales and use taxes
 245 shall be suspended through June 30, 2016. Newly unrestricted funds shall be utilized,
 246 subject to total funding, to maintain the level of service for the transit system as it existed
 247 on January 1, 2010. Furthermore, except as had been previously contracted to by the
 248 Authority prior to January 1, 2010, no funds newly unrestricted during this suspended
 249 period shall be used by the Authority to benefit any person or other entity for any of the
 250 following: annual cost-of-living or merit based salary raises or increases in hourly wages;
 251 increased overtime due to such wage increases; payment of bonuses; or to increase the
 252 level of benefits of any kind. ~~except that if~~ If the Board of the Metropolitan Atlanta Rapid
 253 Transit Authority shall fail to file with the Metropolitan Atlanta Rapid Transit Overview
 254 Committee annually; the original and 14 copies of a report of the findings of a completed
 255 management performance audit of the Authority's current operations, ~~which audit that~~ that was
 256 performed under contract with and at the expense of the Authority, along with any auditor's
 257 recommendations based thereon and the auditor's signed written verification that the
 258 Metropolitan Atlanta Rapid Transit Authority fully cooperated with such audit and allowed
 259 access to all its books, records, and documents to the extent the auditor deemed necessary,
 260 then for the period beginning January 1, 2003, and ending June 30, 2003, and each fiscal
 261 year commencing thereafter until July 1, 2032, no more than fifty percent (50%) of the
 262 proceeds of the tax shall be used to subsidize the operating costs of the system, exclusive
 263 of depreciation, amortization, and other costs and charges as provided in this subsection.
 264 For each fiscal year commencing on or after July 1, 2032, no more than sixty percent
 265 (60%) of the annual proceeds of the tax shall be used to subsidize the operating costs of the
 266 system, exclusive of depreciation, amortization, and other costs and charges as provided
 267 in this subsection; and commencing with July 1, 2032, and for every year thereafter, the
 268 proceeds of the tax shall not be used to subsidize operations of the transportation system
 269 to an extent greater than fifty percent (50%) of the operating costs of the system, exclusive
 270 of depreciation, amortization, and other costs and charges as provided in this subsection.
 271 In adopting its annual budget, the Board of the Metropolitan Atlanta Rapid Transit
 272 Authority shall be authorized to rely upon estimates of all revenues, operating costs,
 273 patronage, and other factors which may affect the amount of the fare required to limit the
 274 operating subsidy herein provided for. If the results of any year's operations reflect that the
 275 proceeds of the tax were used to subsidize operations to an extent greater than herein
 276 provided, the Board shall adjust fares in order to make up the deficit in operations during
 277 a period of not to exceed three (3) succeeding years. If the results of operations in the
 278 Authority's fiscal year commencing July 1, 1980, or in any subsequent fiscal year reflect
 279 that the proceeds of the tax were not used to subsidize operations to the maximum extent
 280 herein provided, the Board shall reserve any amounts that could have been used to

281 subsidize operations in that fiscal year and later use said reserved amounts and any interest
 282 earned on said reserved amounts to provide an additional subsidy for operations in any
 283 future fiscal year or years. The words 'operating costs of the system' for purposes of this
 284 subsection 25(i) are defined to include all of the costs of that division of the Authority
 285 directly involved and that portion of the nonoperating administrative costs of those
 286 divisions of the Authority indirectly involved, through the provision of support services,
 287 in providing mass transportation services for the metropolitan area, but exclusive of the
 288 costs of the division or divisions directly involved and that portion of the nonoperating
 289 administrative costs of those divisions indirectly involved, in the planning, design,
 290 acquisition, construction, and improvement of the rapid transit system, according to
 291 accepted principles of accounting, and also exclusive of the following costs:

292 (1) Nonrecurring costs and charges incurred in order to comply with any statute or
 293 regulation concerning either the protection or cleaning up of the environment, or
 294 accessibility by handicapped or disabled persons, or occupational health or safety, or
 295 compliance with any national or state emergencies, or with any judgment, decree, or
 296 order of any court or regulatory agency in implementation of any such statute or
 297 regulation; and

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

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

314 **SECTION 6.**

315 This Act shall become effective on January 1, 2013; provided, however, that for purposes of
 316 making appointments to the Board of Directors of the Authority, Section 1 shall become

317 effective on July 1, 2012, and shall become effective for all other purposes on January 1,
318 2013.

319 **SECTION 7.**

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