

SUBJECT: Revising provisions governing the Capital Metropolitan Transit Authority

COMMITTEE: Transportation — favorable, without amendment

VOTE: 10 ayes — Phillips, Darby, Bonnen, Y. Davis, Fletcher, Harper-Brown,
Lavender, Martinez, McClendon, Rodriguez

0 nays

1 absent — Pickett

SENATE VOTE: On final passage, April 14 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 3755:*)
For — (*Registered, but did not testify:* Ken Whalen, Texas Daily
Newspaper Association, Texas Press Association)

Against — None

BACKGROUND: Transportation Code, ch. 451 establishes metropolitan rapid transit authorities. The chapter requires an authority to impose reasonable and nondiscriminatory fares, tolls, charges, rents, and other compensation for the use of the system sufficient to produce revenue, together with tax revenue received by the authority, in an amount adequate to pay all necessary expenses, including outstanding debt. Four municipalities have established transit authorities under ch. 451: Houston, San Antonio, Austin, and Corpus Christi.

The Capital Metropolitan Transportation Authority (Capital Metro), which serves the Austin area, is the only state transportation authority established before July 1, 1985, in a municipality with fewer than 1 million people. Capital Metro provides bus and shuttle services to Austin and some outlying areas on regular routes, offers paratransit services for users with disabilities who cannot use regular service, and operates a commuter rail system from Austin to Leander and freight rail on track it owns and maintains.

The eight-member Capital Metro board includes two appointments from the city of Austin, one appointment each from Travis and Williamson Counties, three members appointed by the Capital Area Metropolitan Planning Organization (CAMPO), and one member appointed by small cities in the authority's service area. Three of the board members are elected officials, one member must have a financial or accounting background, and one must have executive managerial experience.

In fiscal 2009, Capital Metro received \$204 million, mostly from a one-percent sales tax on goods and services in its service area. It also received \$33 million in federal funds and \$14.4 million from freight rail operations. The authority employs about 200 staff, and it retains an in-house service provider, StarTran, which employs over 900 people, mostly drivers and some mechanics. For about one-third of its bus services, Capital Metro contracts with two private for-profit providers, First Transit and Veolia.

The 81st Legislature in 2009 enacted SB 1263 by Watson, which revised state statutes governing Capital Metro. The bill also subjected Capital Metro to Sunset review as if it were a state agency — without the possibility of being abolished — and called for another review in 2017. The bill charged the Sunset Advisory Commission with reviewing the governance, management, and operating structure of Capital Metro and its compliance with legislative requirements.

DIGEST:

SB 650 would modify state statutes governing metropolitan rapid transit authorities in a municipality with less than 1 million people (Capital Metro). The bill would require Capital Metro to hire in-house or to competitively bid labor for various transit services and would impose additional budgeting, planning, and reporting requirements.

Labor requirements. Unless the duties were performed by a directly paid employee, the Capital Metro board would have to competitively bid a contract for:

- the administration of bus or sedan transit services;
- bus or sedan driving, maintenance, or repair;
- transit services for people with disabilities; and
- rail transit services.

Bidding requirements would not apply to contracts less than \$25,000 or that were for personal or professional services or for the acquisition of an

existing transit system. An employee of an entity incorporated as a state nonprofit by the Capital Metro board that contracted for transit or employee services would not be considered a Capital Metro employee.

The bill would include public notice requirements for bids and other criteria for contracts. The board would have to adopt rules on taking bids, awarding contracts, and identifying extenuating circumstances for waiving the competitive bidding requirement.

Capital Metro could issue bonds as necessary for funding self-insurance, retirement, or pension reserves for plans existing as of January 1, 2011.

Budget revisions. The board would have to establish a reserve account with at least two months of budgeted operating expenses. The board would have to maintain in the account no less than the balance at the start of the year, unless it considered an expense necessary to address unexpected circumstances that met criteria it adopted. As soon as practicable, the board would have to restore the balance. The board would have to post to Capital Metro's website information about the reserve account.

Capital Metro could not exceed its budget for capital expenditures in a year. The board would have to adopt rules requiring each of Capital Metro's major departments to report on operating expenses and capital expenditures and to establish a system for tracking progress of capital improvement projects.

Plans and reports. The bill would require the board to adopt a five-year plan for capital improvement projects that met specific requirements. The board would have to hold a public meeting on the proposed plan prior to adoption and to re-evaluate and amend the plan as necessary. The board would have to adopt a strategic plan that established Capital Metro's mission and goals and activities in pursuit of those goals. The plan would have to set policies and service priorities to guide the authority in developing a budget and allocating resources.

The board would have to adopt a commuter and freight rail safety plan in accordance with federal and industry standards. The plan would have to include specifics on monitoring contractors for safety-related performance. Capital Metro's general manager would have to make quarterly reports to the board on the safety of the authority's rail system.

The board would have to adopt a policy for public involvement that met specific criteria outlined in the bill.

Effective dates. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011. Capital Metro would have to implement most of the changes no later by the end of September 2012. It would have to satisfy the requirements for the reserve account by September 1, 2016.

**SUPPORTERS
SAY:**

SB 650 would implement key recommendations from a Sunset Advisory Commission review that was ordered by the 81st Legislature. The bill would implement measures to increase transparency and to improve budgeting and contracting practices at Capital Metro.

The Sunset review stemmed from SB 1263 by Watson, which the 81st Legislature enacted in response to serious, ongoing issues with administrative and budgeting practices at Capital Metro in Austin. The review found serious issues with financial management at the authority, which left very little in a reserve account to offset any increases in operating costs or decreases in revenue. This financial mismanagement required Capital Metro to postpone some payments it owed to other entities, exacerbating its financial predicament in the near future.

SB 650 would take necessary measures to improve the financial status of Capital Metro in the long term. The bill would more closely align Capital Metro with Federal Transit Administration (FTA) recommendations by requiring the authority to retain two months (the FTA recommends three) of operating expenses in reserve. Requiring Capital Metro to adopt plans for capital expenditures and strategic planning would create important benchmarks that would inform good budgeting decisions.

The Sunset review also found that costs for Capital Metro's in-house transit service providers were excessive and unsustainable. This difficult situation results from a unique arrangement prohibiting Capital Metro from competitively bidding most of its work. When it was created in 1985, Capital Metro had to honor certain labor protections then in existence due to requirements in the U.S. Transportation Code attached to federal funding (49 USC 5333(b)). These protections included collective bargaining and the right to strike. In order to uphold these rights and not violate state prohibitions on collective bargaining, the Capital Metro board

organized StarTran — a private, nonprofit corporation to provide transit services and negotiate a contract with a union.

Currently, StarTran provides most of Capital Metro's transit services. The Sunset review found that costs associated with contracting with StarTran have grown rapidly in recent years and have been significantly higher than those of its local private transit service contractors, First Transit and Veolia, and service providers in comparable cities. The Sunset review determined that the unclear organizational relationship between Capital Metro and StarTran has provided the authority no clear control over transit services. The review also found that Capital Metro cannot effectively hold StarTran accountable for performance because the service agreement between those entities does not have specific measures and goals.

SB 650 would implement Sunset recommendations to require Capital Metro to competitively bid all transit services and to develop a competitive procurement plan for transit services. This measure is necessary in light of Capital Metro's current financial condition and the problematic arrangement it has with StarTran. Capital Metro is the only major transit authority in Texas that has this nonprofit contractor arrangement. SB 650, in prohibiting this arrangement, would allow transit service employees to either work for Capital Metro directly — similar to employees at transit authorities in Houston, San Antonio, and Dallas — or to competitively contract with Capital Metro — similar to employees at The T in Fort Worth.

This arrangement would retain transit workers' right to collectively bargain, provided they opted to do so as private contractors subject to competitive bids. Since transit workers still would have these labor rights through their status as contractors, as do the currently operating First Transit and Veolia contractors, the bill would not violate federal mandates. Making this change would enhance the accountability of performance in transit services at Capital Metro while protecting taxpayer money.

**OPPONENTS
SAY:**

SB 650 would undercut federally guaranteed collective bargaining rights for transit service providers, including bus drivers, mechanics, and others who have contracted with Capital Metro under a 25-year-old arrangement. The bill would violate a federal funding mandate in the U.S. Transportation Code that guaranteed collective bargaining rights for Capital Metro workers who enjoyed these rights when Austin transferred transit services to the authority in 1985.

Although Capital Metro has had serious financial management issues in recent years, the bulk of these issues have arisen from lapses that would not be addressed by SB 650. As the Sunset report acknowledges, Capital Metro was financially torpedoed by a commuter rail scheme that cost the authority \$140 million when it was originally estimated at \$60 million. While this added cost was pending, the Capital Metro board provided a regal compensation package to its general manager in 2009, offering a \$300,000 retirement deal and an \$88,000 ongoing pension liability each year. These expenses, in addition to other irresponsible budgeting practices, have put Capital Metro into the predicament it currently faces.

It would be unfair and misguided to punish Capital Metro workers for the oversights and excesses of past boards and management. Pay and benefits for StarTran workers, which are comparable to other cities when considering the increased costs of living in Austin, should not be treated as Capital Metro's sacrificial lamb. While SB 650 would make some minimal changes to improve budgeting practices, it would not address the ongoing structural costs of commuter rail and other expenses that were the true culprits behind the current fiscal straits.

SB 650 also would run afoul of federal mandates and could lead to protracted legal battles among federal agencies, StarTran, Capital Metro, and transit workers. Paying for mounting legal fees to wage this battle would be an exceptionally poor use of scarce resources at a time when the authority has few to spare.

State legislation, moreover, is not necessary to execute the proposed changes to the StarTran arrangement. Capital Metro's board could rescind or modify this agreement as it saw fit at any time. Legislatively imposing these requirements on Capital Metro could exacerbate legal issues and would be harder to change if the bill invited any unintended consequences.

NOTES:

The fiscal note estimates that while the bill would have no fiscal impact on the state, it would have a positive fiscal impact on Capital Metro due to competitive bidding requirements. The fiscal note estimates that the bill could lead to a net savings to Capital Metro of \$11.8 million in fiscal 2013, \$16.2 million in fiscal 2014-15, and \$22.2 million in fiscal 2016.

The House companion bill, HB 3755 by Cook, was considered in a public hearing by the House Transportation Committee on April 20 and left pending.