

SENATE BILL 6006

By Haile

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 54, relative to the financing of transportation projects.

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

SECTION 1. Tennessee Code Annotated, Section 4-29-248(a), is amended by adding the following as a new subdivision:

() Tennessee transportation financing authority, created by § 54-8-102;

SECTION 2. Tennessee Code Annotated, Title 4, Chapter 3, Part 3, is amended by adding the following as a new section:

4-3-309. Tennessee Transportation Financing Authority.

The Tennessee transportation financing authority created by § 54-8-102 is attached to the office of the comptroller of the treasury for all administrative purposes.

SECTION 3. Tennessee Code Annotated, Title 54, is amended by adding the following as a new chapter:

54-8-101. Chapter definitions.

As used in this chapter:

(1) "Authority" means the Tennessee transportation financing authority;

(2) "Board" means the governing board of the authority established by § 54-8-102(b);

(3) "Bonds" means bonds, notes, renewal notes, refunding bonds, interim certificates, certificates of indebtedness, debentures, warrants, commercial paper, or other obligations or other evidence of indebtedness or obligations of the authority;

(4) "Cost":

(A) Means, as applied to transportation facilities:

(i) The cost of construction;

(ii) The cost of acquisition of all lands, structures, fixtures, rights-of-way, franchises, easements, and other property rights and interests;

(iii) The cost of demolishing, removing, or relocating any buildings, structures, or fixtures on acquired lands, including the cost of acquiring any lands to which such buildings, structures, or fixtures may be moved or relocated;

(iv) The cost of all labor, materials, machinery, and equipment;

(v) Financing charges and expenses, and interest on all bonds prior to and during construction and for one (1) year after completion of construction;

(vi) The cost of engineering, financial, and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, and other expenses incidental to determining the feasibility of acquiring, constructing, operating, or maintaining transportation facilities;

(vii) Administrative expenses, working capital, and reserves for principal and interest on bonds and for extensions, enlargements, additions, and improvements; and

(viii) Costs and expenses of bond trustees or other fiduciaries and such other expenses as may be necessary or incidental to the acquisition, construction, financing, operations, and maintenance of transportation facilities, including, in the case of all of the enumerated costs in this subdivision (4), reimbursements of prior expenditures; and

(B) Includes any obligation or expense incurred by the state or any agency thereof for studies, surveys, borings, preparation of plans and specifications, or other work or materials in the acquisition or construction of transportation facilities. Such obligation or expense is eligible to be reimbursed to the state or such agency out of the proceeds of the bonds issued for such transportation facilities as authorized in this chapter;

(5) "Department" means the department of transportation;

(6) "Lender" means any federal- or state-chartered bank, federal land bank, production credit association, bank for cooperatives, federal- or state-chartered savings institution, building and loan association, small business investment company, or any other financial institution qualified within the state to originate and service loans, including insurance companies, credit unions, investment banking or brokerage companies, and mortgage loan companies;

(7) "Loan" means any loan made by the authority in furtherance of the purposes of this chapter from the proceeds of the issuance and sale of the authority's bonds and from any of its revenues or other moneys available to it as provided in this chapter;

(8) "Revenues" means user fee revenue and any revenues or receipts of the authority or any other moneys or income collected by, payable to, or otherwise derived by the authority;

(9) "State" means the state of Tennessee;

(10) "Transportation facilities" means the assets consisting of the real, personal, or mixed property, or any interest in that property, whether tangible or intangible, that are determined to be necessary or convenient for transportation in this state, including, but not limited to, highways, bridges, tunnels, parking lots or garages, or other paved

surfaces or structures that are designed to carry or contain transportation vehicles, and transit, railway, port, airport, or multimodal transportation facilities; and

(11) "User fee revenue" has the same the meaning as defined in § 54-3-103.

54-8-102. Authority created; purpose; composition of board.

(a) There is hereby created the Tennessee transportation financing authority to provide financing and refinancing for the development, maintenance, and improvement of transportation facilities within the state, which authority is a public body corporate and an instrumentality of the state.

(b) The powers of the Tennessee transportation financing authority are vested in and exercised by a board, which shall be composed of the governor, the commissioner of finance and administration, the state treasurer, the secretary of state, and the comptroller of the treasury. The governor shall serve as the chair, and the comptroller shall serve as the vice chair and secretary. The board has the power to prescribe its bylaws, guidelines, rules, and regulations and govern its meetings and procedures as it deems advisable. A majority of the board constitutes a quorum and the confirming vote of at least three (3) members of the board is required.

54-8-103. Powers of the authority.

The authority, in addition to other powers enumerated in this chapter, is hereby granted and has and may exercise all powers necessary or convenient for the carrying out of its statutory purposes, including, but not limited to, the power to:

(1) Make, adopt, amend, and repeal bylaws, guidelines, policies and procedures, and rules and regulations not inconsistent with this chapter, to regulate its affairs and to carry into effect the powers and purposes of the authority and for the conduct of its business;

(2) Borrow money and issue bonds to finance and refinance transportation facilities pursuant to this chapter, and pledge or otherwise encumber revenues as security for all or any of the bonds of the authority as well as any payment obligations under any agreements entered into in connection with any such bonds, subject to the limitations of § 54-8-104(I);

(3) Make and enter into contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this chapter upon such terms and conditions it deems appropriate, including agreements with any person, entity, federal agency, the state or other state, or any political subdivision of either;

(4) Receive and accept from any federal or private agency, foundation, corporation, association, or person grants, donations of money or real or personal property for the benefit of the authority, and receive and accept from the state or any other state, and any political subdivision of either and from any other source, aid or contributions of either money, property, or other things of value to be held, used, and applied for the purposes for which such grants and contributions may be made; provided, that any federal moneys so received and accepted must be accepted and expended by the authority upon such terms and conditions as are prescribed by the United States or any department or agency thereof and as are consistent with the laws of the state, and any state moneys so received must be accepted and expended by the authority upon such terms and conditions as are prescribed by the state not inconsistent with such federal terms and conditions;

(5) Accept loans from the federal government, the state government, regional authorities, localities, and private sources; provided, that any federal

moneys must be accepted and expended by the authority upon such terms and conditions as are prescribed by the United States or any department or agency thereof and as are consistent with laws of the state, and any state moneys must be accepted and expended by the authority upon such terms and conditions as are prescribed by the state;

(6) Make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of this chapter and enter into such contracts, instruments, and agreements as may be expedient to provide for the repayment of such loans and any security therefor, including to pledge or otherwise encumber revenues, subject to the limitations of § 54-8-104(l);

(7) Create and establish such funds and accounts as may be necessary or desirable for the authority's purposes;

(8) Direct to any fund of the authority any of its property, including, but not limited to, moneys appropriated by the state, premiums, fees and any other amounts received by the authority with respect to financial assistance provided by the authority, proceeds from the sale of bonds of the authority, proceeds as designated by the authority from the loan or other disposition of property held or acquired by the authority, income from investments that were made by the authority or on behalf of the authority from moneys in one (1) or more of its funds, or any other moneys made available to the authority consistent with this chapter;

(9) Collect such fees and charges, if any, as the authority determines to be reasonable in connection with its loans and commitments and administration thereof;

(10) Apply for, execute, and endorse applications submitted by private entities or political subdivisions of the state to obtain federal credit assistance for one (1) or more transportation facilities; provided, that any such application, agreement, and endorsement must not financially obligate the state or be construed to implicate the credit of the state as security for any such federal credit assistance;

(11) Pursue or otherwise apply for, and execute, an agreement to obtain financing using a federal credit instrument for project financings otherwise authorized by this chapter;

(12) Undertake all actions necessary and convenient to carry out the powers granted in this chapter or reasonably implied from them;

(13) Notwithstanding this section, the authority shall not directly operate any transportation facility; and

(14) Enter into loan agreements with others with respect to one (1) or more transportation facilities or for activities, costs, debt restructuring, or working capital associated with transportation facilities for such payments or deferrals and upon such terms and conditions as the board of the authority deems advisable in accordance with this chapter.

54-8-104. Bond issues, authorization, funding, terms and conditions, form, and signatures.

(a)

(1) The authority may issue bonds, without limitation as to amount, for the purpose of financing or refinancing costs associated with the development of transportation facilities.

(2) The bonds must be authorized by resolution of the authority and must be issued in such principal amounts; must be dated; must bear interest at such rate or rates payable at such time or times and at such place or places; must mature at such time or times; must be payable in such medium of payment; and are subject to such terms and conditions, as may be determined by the authority.

(3) The bonds may be made redeemable before maturity at the option of the authority at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds.

(4) The authority shall determine the form of the bonds, and may provide for interest coupons and the form thereof at such time or in the future, and the manner of execution or authentication of the bonds and coupons, and shall fix the denomination or denominations of the bonds and the place or places of payment of the principal and interest, which may be at any bank or trust company within or without the state.

(5) The authority may issue refunding bonds for the purpose of refunding any bonds then outstanding that were issued under this chapter, including the payment of principal, redemption premium, and accrued interest on the bonds to be refunded, expenses related to the issuance of the refunding bonds, including discount and costs of issuance, and expenses related to the payment of the refunded bonds.

(b) If any member or officer of the authority whose signature or facsimile signature thereof appears on the bonds or coupons ceases to be a member or officer of the authority before the delivery thereof, then the signature or facsimile signature nevertheless is valid and sufficient for all purposes, the same as if the person had remained a member or officer of the authority until after such delivery.

(c) The authority is authorized and empowered to offer for sale any bonds to be issued by the authority at such times, in such manner, either by competitive or negotiated public sale or private sale, and at such prices, as is determined by the authority.

(d) For bonds issued by the authority, all statutory limitations regarding maximum interest rates are hereby expressly removed.

(e) With respect to any portion of any issue of bonds issued under this chapter, the authority may authorize and enter into interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, and other interest rate hedging agreements under such terms and agreements as the authority may determine, including, without limitation, provisions permitting the authority to pay to or receive from any person or entity any loss of benefits under such agreement upon early termination thereof or default under such agreement.

(f) When entering into any contracts or agreements facilitating the issuance and sale of bonds, including contracts or agreements providing for liquidity and credit enhancement and reimbursement agreements relating thereto, interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, other interest rate hedging agreements, and agreements with the purchaser of the bonds authorized under this section evidencing a transaction bearing a reasonable relationship to the state and also to another state or nation, the authority may agree in the written contract or agreement that the rights and remedies of the parties thereto are to be governed by the laws of this state or the laws of such other state or nation; provided, that jurisdiction over the authority against which an action on such a contract or agreement is brought lies solely in a court in this state that would otherwise have jurisdiction of actions brought in contract against the authority.

(g) A resolution authorizing bonds may provide that the bonds contain a recital that they are issued pursuant to this chapter, which recital is conclusive evidence of their validity and the regularity of their issuance. The validity of the authorization and issuance of bonds is not dependent on or affected in any way by proceedings taken for, or contracts or agreements made in connection with, the development of transportation facilities.

(h) All expenses of the authority incurred in carrying out this chapter must be payable solely from revenues, and liability must not be incurred by the authority under this chapter beyond the extent to which moneys were provided or received under this chapter.

(i) Except as may otherwise be expressly provided by the authority in proceedings relating to a particular issue of bonds, every issue of its bonds are payable solely out of any revenues and are not a debt of, and do not constitute a general obligation or pledge of the full faith and credit of, the state or of any county, municipality, taxing entity, or other political subdivision thereof and may be secured by a pledge of revenues as authorized by § 54-8-103(2).

(j) Any pledge made by the authority is valid and binding from the time when the pledge was made. The revenues or properties so pledged and thereafter received by the authority are immediately subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created needs to be recorded. The Perfection, Priority and Enforcement of Public Pledges and Liens Act, compiled in title 9, chapter 22, applies to any pledge of the authority.

(k) In order to secure the payment of the principal of and interest on the bonds and any payment obligations under any agreements entered into in connection with any bonds, in addition to the other powers set forth in this chapter, the authority has the power to:

(1) Pledge all or any part of the revenues, or other moneys on deposit in funds established pursuant to § 54-8-103, or any rights to receive the revenues, to the punctual payment of the principal of and interest on the bonds and obligations under any such agreements, and covenant against thereafter pledging any such revenues or other monies to any other bonds or obligations;

(2) Covenant as to establishment and maintenance and collection of revenues;

(3) Provide for the terms, form, payment, registration, exchange, execution, and authentication of the bonds in a manner not inconsistent with this chapter, which may include the appointment of trustees, paying agents, registrars, and authenticating agents within or outside the state;

(4) Secure the bonds and payment obligations by a trust indenture or agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside the state, which agreement also may take the form of a resolution of authority accepted by the trustee;

(5) Covenant as to limitations on the issuance of additional bonds to finance transportation facilities projects and on the lien on revenues or other moneys for the payment and security of the additional bonds;

(6) Covenant as to the amount and kind of insurance to be maintained on transportation facilities projects, and the use and disposition of insurance moneys;

(7) Covenant as to the operation of transportation facilities projects;

(8) Covenant to set aside or pay over reserves and sinking funds for the bonds and as to the disposition of the reserves and sinking funds;

(9) Covenant as to the use and disposition of the proceeds from the sale of the bonds in a manner not inconsistent with this chapter;

(10) Redeem the bonds, and covenant for their redemption and to provide the terms and conditions of the redemption;

(11) Covenant as to books of account, as to the inspection and audit of the books of account, and as to the accounting methods;

(12) Covenant as to the investment of moneys on deposit in any funds or accounts held under the resolutions or indentures securing the bonds;

(13) Covenant and prescribe as to what occurrences constitute events of default and the terms and conditions upon which any or all of the bonds become, or may be declared, due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived or rescinded;

(14) Covenant as to the rights, remedies, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(15) Provide with respect to the enforcement of obligations of the authority, which may include limitations on bondholders' rights in favor of trustee enforcement;

(16) Make such covenants and do any acts and things as may be necessary, convenient, or desirable in order to secure the bonds and payment

obligations, or in the discretion of the authority, to make the bonds more marketable, notwithstanding that the covenants, acts, or things may not be enumerated in this section, it being the purpose of this section to give the authority power to do all things in the issuance of the bonds and incurrence of related payment obligations and for their security that may be consistent with this chapter and the Constitution of Tennessee;

(17) Vest in a trustee or trustees, which may be located within or without the state, powers and duties, including the right to enforce any covenants made to secure, or to pay, the bonds, limitations on liabilities, and the terms and conditions upon which the holders of the bonds or any portion or percentage of them may enforce any covenants under the bonds or duties imposed by the bonds;

(18) Prescribe a procedure by which the terms of any resolution authorizing bonds, or any other contract with bondholders, including, but not limited to, an indenture of trust or similar instrument, may be amended or abrogated and as to the amount of bonds the holders of which must consent to the amendment or abrogation, and the manner in which the consent must be given;

(19) Covenant and provide for the discharge and satisfaction and defeasance of all or any part of bonds and the indebtedness evidenced by the bonds; and

(20) Execute all instruments and perform such other acts as are necessary, convenient, or desirable in the exercise of the powers granted in this chapter, or in the performance of the covenants or duties of the authority.

(l) Any bond of the authority or payment obligation under any agreement entered into in connection with a bond must not be deemed to constitute a debt, or pledge of the faith and credit, of the state or of any other political subdivision thereof but is payable solely from the revenues pledged thereto. All such bonds and related payment obligations must contain a prominent statement to the effect that the state, any political subdivision thereof, and the authority is not obligated to pay the same or the interest thereon except from revenues pledged thereto, and that neither the faith and credit nor the taxing power of the state or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds or related payment obligations.

(m) The bonds and the interest on the bonds are exempt from taxation by the state and by any county, municipality, or taxing entity of the state, except for inheritance, transfer, and estate taxes.

(n) The members of the board and any person executing the bonds is not liable personally on the bonds by reason of the issuance thereof.

(o) The authority may delegate to any member or officer of the authority the power to establish the terms of any bonds and any payment obligations under any agreements to be entered into in connection with any bonds within parameters determined by the authority and to approve the forms of any documents to be executed in connection therewith.

54-8-105. Public hearing and approval.

(a) Whenever federal law requires public hearings and public approval as a prerequisite to obtaining federal tax exemption for the interest paid on private activity bonds under § 147(f) of the Internal Revenue Code (26 U.S.C. § 147(f)), as amended, unless otherwise specified by federal law or regulation, the public hearing for private activity bonds of the authority must be conducted by the board or any one (1) or more

officers or members of the authority after prior notice, all as required by § 147(f) and applicable regulations and revenue rulings under that section.

(b) For public approval, the governor shall serve as the applicable elected representative within the meaning of § 147(f)(2)(E) of the Internal Revenue Code (26 U.S.C. § 147(f)(2)(E)).

54-8-106. Bondholder protection.

This chapter does not impair the obligation of any contract made by the authority upon any bonds or any payment obligations under any agreements entered into in connection with any bonds. The state covenants and agrees with the holders of the bonds that so long as the bonds are outstanding and unpaid, the state must not limit nor alter the rights vested in the authority with respect to any agreements made with, or remedies available to, the holders of bonds issued under this chapter until the bonds, together with all interest thereon, and all costs and expenses in connection with any proceeding by or on behalf of the holders, are fully met and discharged. The authority may include this pledge and agreement of the state in any agreement with the holders of the bonds.

54-8-107. Right to performance of covenants and pledges.

The holders of all bonds of the authority and all persons who may hereafter purchase the bonds or to whom the authority has incurred a payment obligation under any agreement entered into in connection with any bond have, and are hereby declared to have, a vested right in the performance of the covenants and pledges contained in this chapter, and the performance of the duties imposed upon any officer or member of the authority by or pursuant to this chapter may be enforced by the holder of any such bond subject to any limitation imposed on the right to do so pursuant to § 54-8-104(k)(15) or other payment obligation by appropriate proceedings.

54-8-108. Deposit and investment of funds.

All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking and investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any of the bonds, and the bonds must be authorized security for all public deposits. This section, with regard to legal investments, does not relieve any person of any duty of exercising reasonable care in selecting securities.

54-8-109. Revenues of the authority.

All moneys received by the authority pursuant to this chapter, whether as proceeds from the sale of bonds or as revenues, are deemed to be trust funds to be held and applied solely as provided in this chapter. The resolution authorizing the bonds of any issue or the trust indenture or agreement or resolution securing such bonds must provide that any officer with whom, or any bank or trust company with which, such moneys are deposited must act as a trustee of the moneys and must hold and apply the same for the purposes hereof, subject to such regulations as this chapter and such trust indenture or agreement or resolution may provide.

54-8-110. Recordkeeping.

(a) The secretary of the board shall keep, or cause to be kept, appropriate records concerning the payment of bonds issued under this chapter and any payment obligations under any agreements entered into in connection with any such bonds, including information regarding items redeemed.

(b) The accounts and records of the authority showing the receipt and disbursement of funds from whatever source derived must be in a form prescribed by governmental generally accepted accounting principles. Such accounts must correspond as nearly as possible to the accounts and records for such matters maintained by enterprises.

(c) The secretary of the board shall maintain an aggregate listing of its current debt in accordance with guidelines approved by the state funding board. At the end of each fiscal year, the authority shall file the listing, and any other information required by the guidelines, with the state funding board. The authority shall file with the state funding board notice of default on any of its debt obligations within five (5) days of the event.

54-8-111. Implementation; advice, opinions, and financial assistance; necessary expenses.

The authority may procure such legal and technical advice, approving opinions, and such financial assistance as it may consider necessary in connection with the carrying into effect of this chapter, and may pay all necessary expenses, including costs of advertisement, printing bonds, certificates and coupons, publication of all releases, purchases of all necessary books and records, and all other incidental expenses as may be necessary. All such expenses, as well as the amount of any discount at which bonds issued under this chapter are sold, may be funded by bonds issued under this chapter.

54-8-112. Exemption from taxation.

The authority is declared to be performing a public function and to be a public body corporate and an instrumentality of the state. Accordingly, the principal of and interest on the bonds must not be taxed by the state or by any county or municipality or taxing district of the state, except inheritance, transfer, and estate taxes.

54-8-113. Disposition of assets upon dissolution.

After all bonds of the authority and any payment obligations under any agreements entered into in connection with any such bonds are discharged and the authority is dissolved, its remaining assets must inure to the benefit of the state.

54-8-114. Proprietary records; trade secrets.

Records received or possessed by the authority that have been determined to be proprietary by the department under § 54-3-115 or § 54-6-107, or by another responsible public entity under § 54-6-107, must remain confidential and are not subject to public inspection under § 10-7-503, but only upon request by the private person or entity to the authority with proof that the department or other responsible public entity has made a determination that the records are proprietary.

54-8-115. Liberal construction.

In order to effectuate the purposes and policies described in this chapter, this chapter must be liberally construed. The powers conferred by this chapter are in addition and supplementary to any other law, whether general, special, or local. Except as may be otherwise explicitly provided in this chapter, the issuance of bonds under this chapter do not need to comply with the requirements of any other law of the state applicable to the issuance of bonds.

54-8-116. Immunity.

This chapter does not waive the immunity of the state from suit or extend its consent to be sued.

SECTION 4. Tennessee Code Annotated, Section 54-3-103, is amended by adding the following as a new, appropriately designated subdivision:

() "Authority" means the Tennessee transportation financing authority created by § 54-8-102(a);

SECTION 5. Tennessee Code Annotated, Section 54-3-105, is amended by adding the following as a new subsection:

(e) Notwithstanding another law to the contrary, user fee revenue derived from or related to a user fee facility developed pursuant to the terms of a concession agreement or other user fee facility development agreement, as applicable, must be deposited to such fund or funds as designated in the applicable concession agreement or user fee facility development agreement, including to a fund or funds created in connection with the issuance of bonds by the authority pursuant to § 54-8-103(7), as is provided for in such agreements or separate loan agreements. Unless otherwise expressly instructed to do so in writing by the department of transportation, the department of finance and administration shall not deposit any such user fee revenue into the state user fee fund.

SECTION 6. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 7. This act takes effect upon becoming a law, the public welfare requiring it.