

SENATE BILL 2968

By Campbell

AN ACT to create the East Bank development authority for the metropolitan government of Nashville and Davidson County.

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

WHEREAS, the purpose of this act is to establish a development authority as an agency, instrumentality, and part of the metropolitan government of Nashville and Davidson County known as the East Bank Development Authority, known as the Authority; and

WHEREAS, it is the intent of the General Assembly by the passage of this act to promote economic development within that certain area within the metropolitan government bounded on the west and south by the Cumberland River, bounded on the east by Interstate 24, and bounded on the north by Interstate 65, known as the East Bank, to generate high-quality jobs in the East Bank and surrounding areas, and in this State, and to encourage and promote the prompt and orderly development of the East Bank; and

WHEREAS, it is the intent of the General Assembly to establish the Authority for the purposes of developing, incentivizing, operating, managing, and promoting the East Bank, and to vest the Authority with all powers that may be necessary to or consistent with accomplishing such purposes; now, therefore,

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

SECTION 1. As used in this act, unless the context otherwise requires:

(a) "Authority" means the East Bank Development Authority;

(b) "Board" means the Authority's Board of Directors;

(c) "East Bank" means that area within the Metropolitan Government bounded on the west and south by the Cumberland River, bounded on the east by Interstate 24, and bounded on the north by Interstate 65;

(d) "Metropolitan Government" means the metropolitan government of Nashville and Davidson County; and

(e) "Project" means any or all of the following, whether or not now in existence, as determined by the Authority to be consistent with the purposes set forth in this act:

(i) All, any part of, or any interest in, land included within the East Bank; and

(ii) Any building, facility, structure, or other improvement on, through, over, or under the East Bank, including port facilities that may extend into the navigable waters of the Cumberland River.

SECTION 2.

(a) The Authority is vested with all powers necessary for and consistent with accomplishing the purposes of this act, including, but not limited to, the powers to:

(1) Adopt, amend, and repeal bylaws;

(2) Execute contracts;

(3) Employ individuals and create, combine, consolidate, or abolish divisions within the Authority as the Board deems necessary for the transaction of the Authority's business;

(4) Retain third-party contractors and agents as the Board deems necessary for the transaction of the Authority's business and require or waive the bond of a contractor or agent as the Board may deem appropriate;

(5) Enforce compliance with this act and the rules, policies, or land use regulations adopted by the Metropolitan Government in a court of competent jurisdiction and seek any remedy available under applicable law or in equity;

(6) Own, acquire, purchase, option, convey, exchange, donate, sell, gift, rent, lease, improve, maintain, operate, and equip real and personal property, without the need for separate approval from the Metropolitan Government or any

agency or instrumentality thereof. These powers include, but are not limited to, the power to:

(A) Acquire, whether by purchase, exchange, gift, lease, or otherwise, and develop, improve, maintain, equip, and furnish one (1) or more projects, including, but not limited to, all real and personal property that the Board may deem necessary in connection with the projects, regardless of whether or not such projects are then in existence;

(B) Lease to others one (1) or more projects and, in the Board's sole discretion, establish, charge, waive, and collect rent for the projects, and execute amendments to such leases, which amendments, among other things, may provide for extending the terms of such leases, and amending or extending rents or other payments due under the leases, together with all other terms and conditions as the Board may deem advisable. The Authority may include in a lease or amendment an option for the lessee to purchase all or a portion of the project with or without consideration;

(C) Sell to others one (1) or more projects for such payments and upon such terms and conditions as the Board may deem advisable;

(D) Develop, improve, and maintain the grounds within the East Bank, including, but not limited to, construction and maintenance of roads and buildings, utilities, signage, trash removal, vegetation control, and landscaping;

(E) Grant mortgages, deeds of trust, easements, or other encumbrances on all or a part of the East Bank, including, but not limited to, subordinating the Authority's ownership interest in all or a part of the East Bank;

(F) Have exclusive control of and responsibility for the administration of properties and facilities constructed or acquired pursuant to this act; and

(G) Dedicate, grant, or convey any public facility or public infrastructure to the appropriate governmental or private entity;

(7) Accept and distribute grants and other incentives to induce projects to locate at or expand operations at the East Bank or otherwise to further the purposes of this act;

(8) Borrow money and issue its bonds, notes, or other debt obligations pursuant to the provisions more fully set forth in this act;

(9) Exercise any and all powers provided by Tennessee Code Annotated, title 7, chapter 53, to industrial development boards and, if applicable, Tennessee Code Annotated, title 9, chapter 23;

(10) Exercise any and all powers provided by Tennessee Code Annotated, title 13, chapter 20, to development and housing agencies and, if applicable, Tennessee Code Annotated, title 9, chapter 23;

(11) Exercise any and all powers provided by Tennessee Code Annotated, title 7, chapter 65, to parking authorities;

(12) Exercise any and all powers provided by Tennessee Code Annotated, title 7, chapter 5, to metropolitan port authorities;

(13) Procure the delivery of goods and services in such manner as the Board shall direct, provided that procurement shall be conducted in a manner consistent with the laws of the state applicable to either industrial development boards, parking authorities, metropolitan port authorities, or development and housing authorities formed pursuant to Tennessee Code Annotated, title 7, chapter 53; title 7, chapter 65; title 7, chapter 5; or title 13, chapter 20, respectively;

(14) Subject to the approval of the Metropolitan Council of the Metropolitan Government, serve as a district management corporation in the manner contemplated by Tennessee Code Annotated, title 7, chapter 84, part 5; and

(15) Do and perform each and every act and thing and have and exercise each and every power that the Board, in the Board's sole discretion, deems necessary, convenient, or appropriate, to accomplish the purposes of this act. The inclusion of a specific power in this act does not limit the broad general powers granted to the Authority. The exercise of the Authority's powers, including, but not limited to, the powers with respect to the disposition, development, encumbrance, lease, sublease, or improvement of property, are exclusive and are not subject to further approval, except as expressly provided in this act.

(b) Except as otherwise expressly provided in this act, the powers of the Authority are exclusively vested in the Authority.

(c) Notwithstanding Section 2(a), the Authority does not have the power to operate any project or facility as a business pursuant to this act other than a "project" as defined by Tennessee Code Annotated, title 7, chapter 65.

SECTION 3.

(a) The Authority shall be governed by a Board of Directors, the members of which must reflect a broad range of skills and backgrounds necessary to supervise and carry out the work of the Authority, including, without limitation, law, commerce, and community development. The Board shall consist of seven (7) voting members, each of whom shall, by virtue of his or her appointment to the Board, be a county and public officer of the Metropolitan Government carrying out a county purpose, as follows:

(1) Five (5) members to be appointed by the Mayor of the Metropolitan Government; and

(2) Two (2) members to be appointed by the Metropolitan Council of the Metropolitan Government.

(b) Except as set forth in subsection (c) below for the initial terms of the members of the Board, the term for a Board member is four (4) years, commencing on July 1 and ending on June 30. A Board member is eligible for reappointment and may serve a maximum of two (2) full terms, in addition to the initial term; provided, however, that an appointment to fill an unexpired term as a result of a vacancy does not constitute a full term. At the expiration of a Board member's term, the member may continue to serve until a successor is appointed or until the member is reappointed.

(c) The terms for the initial board members begin upon the later of the appointment of five (5) Board members by the Mayor or the appointment of two (2) Board members by the Metropolitan Council. The initial terms of members appointed by:

(1) The Mayor expire as follows:

(A) One (1) member's term on June 30, 2025;

(B) One (1) member's term on June 30, 2026;

(C) One (1) member's term on June 30, 2027;

(D) One (1) member's term on June 30, 2028; and

(E) One (1) member's term on June 30, 2029; and

(2) The Metropolitan Council expire as follows:

(A) One (1) member's term on June 30, 2026; and

(B) One (1) member's term on June 30, 2027.

(d) In addition to subsection (c), the comptroller of the treasury, the state treasurer, and the secretary of state, or their designees, shall serve as non-voting ex officio members of the Board.

(e) Four (4) voting Board members constitute a quorum for the transaction of business.

(f) The Mayor shall appoint a member of the Board to serve as chair at the pleasure of the Mayor. The Board may elect other officers as the Board may deem appropriate.

(g) The Board shall meet at least quarterly, and at other times at the call of the chair.

(h) Board members shall not receive compensation for service as a Board member; however, they may be reimbursed for actual expenses reasonably incurred in the performance of their duties.

(i) A Board member who is absent from three (3) consecutive meetings may be removed from the Board by the Mayor or by a majority vote of the entire membership of the Board. The Mayor may remove a Board member appointed by either the Mayor or the Metropolitan Council for cause.

(j) All Board meetings must comply with the open meetings provisions compiled in Tennessee Code Annotated, title 8, chapter 44.

(k) Each appointed member of the Board shall disclose conflicts of interest in accordance with Tennessee Code Annotated, title 8, chapter 50, part 5.

(l) Each appointed member of the Board shall swear an oath in accordance with Tennessee Code Annotated, Section 8-18-109.

SECTION 4. There is established the office of the chief executive officer of the Authority. The first chief executive officer must be appointed by the Mayor. Thereafter, each subsequent chief executive officer must be appointed by the Board. All chief executive officers serve at the pleasure of the Board. For each chief executive officer, including the first chief executive officer, the Board shall enter into a contract with the chief executive officer establishing the chief executive officer's salary, duties, powers, and term of office.

SECTION 5.

(a) The Authority is hereby granted the authority and power to borrow money and issue bonds, notes, or other debt obligations for the purpose of funding:

(1) The costs of any "public works project," as such term is defined for purposes of the Local Government Public Obligations Act of 1986 (the "LGPOA"), compiled in Tennessee Code Annotated, title 9, chapter 21, that are located within the East Bank, whether through the direct funding of such costs or the reimbursement of other persons for the prior payment of such costs; and

(2) The refunding or refinancing of any such bonds, notes, or obligations, under and pursuant to all the procedures and requirements set forth in the LGPOA. Any such bonds or notes shall be issued in the manner required by the LGPOA for the issuance of revenue bonds or revenue bond anticipation notes, as applicable, as contemplated by the LGPOA in Tennessee Code Annotated, title 9, chapter 21, parts 3, 5, and 10, and the Authority shall have all of the powers related to the issuance of such bonds provided to local governments by the LGPOA.

(b) No bonds, notes, or other debt obligations shall be issued by the Authority without the prior adoption of a resolution of the Metropolitan Council approving the issuance of such bonds, notes, or other debt obligations.

(c) The Authority is hereby also granted the authority and power to borrow money and issue bonds, notes, or other debt obligations for the purposes and in the manner provided for industrial development boards, parking authorities, metropolitan port authorities, and development and housing authorities formed pursuant to Tennessee Code Annotated, title 7, chapter 53; title 7, chapter 65; title 7, chapter 5; or title 13, chapter 20, respectively.

(d) The Authority is further authorized to:

(1) Pledge to the payment of principal of and premium and interest on such bonds, notes, or other obligations, and use for the payment of the bonds, notes, or other obligations, all or any portion of its revenues; and

(2) Further secure the payment of principal of and premium and interest on such bonds, notes, or other obligations by mortgaging or pledging any or all of its properties for the benefit and security of such bonds, notes, or other obligations.

(e) The Authority is further authorized to make the proceeds of bonds issued pursuant to this section available to one (1) or more persons pursuant to one (1) or more loan agreements, and to assign and/or pledge the Authority's rights under such loan agreements to the holders of such bonds.

(f) The Authority is hereby declared to be performing a public function on behalf of the Metropolitan Government. Accordingly, all bonds issued by it, and the income from the bonds, shall be exempt from all taxation in the state of Tennessee. Also for purposes of the Tennessee Securities Act of 1980, compiled in Tennessee Code Annotated, title 48, chapter 1, part 1, bonds issued by the Authority shall be deemed to be securities issued by a public instrumentality or a political subdivision of the state of Tennessee.

SECTION 6. The property within the East Bank is subject to the land use regulations of the Metropolitan Government.

SECTION 7.

(a) The Authority's property interest in the East Bank is not subject to a lien recorded pursuant to Tennessee Code Annotated, title 66, chapter 11.

(b) A lease between the Authority and a third-party lessee for land within the East Bank must provide that, in the event that a lien is filed against the third-party lessee's leasehold interest pursuant to Tennessee Code Annotated, title 66, chapter 11, the third-party lessee must record a bond in accordance with Tennessee Code Annotated, Section 66-11-142 no later than thirty (30) days after the earlier of the date the third-party lessee receives notice of the claim of lien or the date the lien is recorded.

SECTION 8.

(a) The Metropolitan Government may aid or otherwise provide assistance to the Authority, on such term or terms and upon such conditions as may be determined by the Metropolitan Council of the Metropolitan Government, including by:

(1) Entering into leases of properties with the Authority;

(2) Granting, contributing, or pledging revenues of the Metropolitan Government to or for the benefit of the Authority derived from any source;

(3) Assigning or loaning any of its employees, including its engineering staff and facilities, and may provide necessary office space, equipment, and other facilities for the use of the Authority; and

(4) Making donations or conveyances of property, real or personal, or cash grants to the Authority, in such amount or amounts as the Metropolitan Government may deem proper and appropriate in aiding the Authority to accomplish its purpose.

(b) Notwithstanding this act to the contrary, the Authority may aid or otherwise provide assistance to the Metropolitan Government in connection with a development project located within the boundaries of the Metropolitan Government by:

(1) Assigning or loaning to the Metropolitan Government one (1) or more of its employees, including its procurement and other administrative staff and facilities; and

(2) Providing such property development and management services as the Metropolitan Government may request, as determined by the Board; provided, that this subsection (b) does not empower the Authority to acquire an interest in property located outside of the East Bank.

SECTION 9.

(a) The Board shall conduct an annual audit of the books and records of the Authority. The comptroller of the treasury, through the department of audit, is responsible for determining that such audits are prepared in accordance with generally

accepted governmental auditing standards and that such audits meet the minimum standards prescribed by the comptroller of the treasury. Such audits must be prepared by certified public accountants or by the department of audit. In the event that the Board fails or refuses to have the audit prepared, then the comptroller of the treasury may appoint a certified public accountant or direct the department of audit to prepare the audit, and the cost of such audit must be paid by the Authority. The requirements of this subsection (a) are satisfied when the audit of the books and records of the Authority are included with, and incorporated into, the audited financial statements of the Metropolitan Government.

(b) The Authority shall prepare an annual report or briefing of the activities, plans, and conditions of the facilities of the Authority. A copy of such report must be filed with the Metropolitan Council.

SECTION 10. Whenever the Board shall by resolution determine that there has been substantial compliance with the purposes for which the Authority was formed and all bonds issued and all obligations theretofore incurred by the Authority have been fully paid, the members of the Board shall then execute and file for record in the office of the secretary of state a certificate of dissolution reciting such facts and declaring the Authority to be dissolved. Upon the filing of such certificate of dissolution, the Authority shall stand dissolved, the title to all funds and properties owned by it at the time of such dissolution shall vest in the Metropolitan Government, and possession of such funds and properties shall forthwith be delivered to the Metropolitan Government.

SECTION 11. The powers conferred on the Authority by this act are in addition and supplementary to the powers conferred on the Authority by other law. This act must be liberally construed to effectuate its purposes.

SECTION 12. The provisions of this act shall in no way limit the powers of any industrial development board, parking authority, metropolitan port authority, or development and housing

authority formed by the Metropolitan Government pursuant to Tennessee Code Annotated, title 7, chapter 53; title 7, chapter 65; title 7, chapter 5; or title 13, chapter 20, respectively.

SECTION 13. If any provision of this act or the application thereof shall be held by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this act and the application of such provisions shall not be affected thereby, shall be enforced to the greatest extent permitted by law, and are declared to be severable.

SECTION 14. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of the Metropolitan Government of Nashville and Davidson County. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body and certified to the secretary of state.

SECTION 15. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective as provided in Section 14.