

Bill changing Cap Metro labor situation clears Senate

By [Ben Wear](#) | Thursday, April 14, 2011, 11:46 AM

Legislation that could force Capital Metro to privatize all of its bus service today completed half its journey through the Capitol, passing unanimously in the Senate. The Capital Metro “sunset” bill — 2009 legislation required a sunset review of the agency, but it is not subject to actually being eliminated — now moves on to the House.

Senate Bill 650, sponsored by state Sen. Glenn Hegar, R-Katy, would put into law several recommendations of the Texas Sunset Advisory Commission, including a requirement that Capital Metro maintain financial reserves equal to two months of operating costs. The agency’s reserves, depleted by MetroRail spending and other capital projects, fell almost to zero in 2009. The agency’s savings are still at least \$10 million below what SB 650 would require.

But the most meaningful provision of the bill would stipulate that all bus drivers, mechanics and service workers must either work directly for Capital Metro, or for a private company selected through competitive bidding. Most of those workers now are employed by StarTran, a subsidiary of Capital Metro that is in theory an independent contractor. That allows the agency to satisfy a federal requirement that the workers have collective bargaining rights, something that state law does not allow for government workers.

Many of the agency’s bus routes, including the University of Texas shuttle service, currently are handled by two private contractors, who tend to pay their workers several dollars less per hour.

The union representing Capital Metro workers has in the past rebuffed attempts to bring all workers in-house because it would mean the loss of full bargaining rights, particularly the ability to go on strike. On the other hand, the union also opposes outsourcing routes to private companies because of the lower wages

ENGROSSED

A BILL TO BE ENTITLED

1 AN ACT

2 relating to management of certain metropolitan rapid transit
3 authorities.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 451, Transportation Code, is amended by
6 adding Subchapter C-1 to read as follows:

7 SUBCHAPTER C-1. ADDITIONAL MANAGEMENT PROVISIONS FOR CERTAIN
8 AUTHORITIES

9 Sec. 451.131. APPLICABILITY. This subchapter applies only
10 to an authority confirmed before July 1, 1985, in which the
11 principal municipality has a population of less than one million.

12 Sec. 451.132. FIVE-YEAR CAPITAL IMPROVEMENT PLAN. (a) The
13 board shall adopt a five-year plan for capital improvement projects
14 that supports the strategic goals outlined in Section 451.135 and
15 that:

16 (1) describes planned projects, including type and
17 scope;

18 (2) prioritizes the projects;

19 (3) addresses proposed project financing, including
20 any effect a project may have on ongoing operational costs;

21 (4) identifies sources of funding for projects,
22 including local and federal funds; and

23 (5) establishes policies for projects, including
24 policies on:

- 1 (A) planning;
2 (B) approval;
3 (C) cost estimation;
4 (D) project reports; and
5 (E) expense tracking.

6 (b) The board shall hold a public meeting on a proposed
7 capital improvement plan before adopting the plan and must make the
8 proposed plan available to the public for review and comment.

9 (c) The board shall annually reevaluate and, if necessary,
10 amend the capital improvement plan to ensure compliance with this
11 section.

12 (d) The capital improvement plan should, as appropriate,
13 align with the long-range transportation plan of the metropolitan
14 planning organization that serves the area of the authority.

15 Sec. 451.133. OPERATING EXPENSES AND CAPITAL EXPENDITURES.

16 (a) An authority may not spend for capital improvements money in
17 excess of the total amount allocated for major capital expenditures
18 in the annual budget.

19 (b) The board shall adopt rules requiring each major
20 department of the authority to report quarterly on operating
21 expenses and capital expenditures of the department.

22 (c) The board shall establish a system for tracking the
23 progress of the authority's capital improvement projects.

24 Sec. 451.134. OPERATING RESERVE ACCOUNT. (a) The board
25 shall establish, in an account separate from other funds, a reserve
26 account in an amount that is not less than an amount equal to
27 budgeted operating expenses for two months.

1 (b) Except as provided by Subsection (c), the board must
2 maintain in the reserve account a balance that is not less than the
3 amount in the account at the beginning of the fiscal year.

4 (c) The board may make an expenditure from the reserve
5 account that causes the balance in the account to be less than the
6 amount required under Subsection (b) only if the board considers
7 the expense necessary to address circumstances that could not have
8 been planned for or anticipated. The board shall adopt criteria for
9 expenditures under this subsection.

10 (d) If reserve funds are spent under Subsection (c), the
11 board shall, as soon as practicable, restore the balance of the
12 reserve account to at least the amount in the account at the
13 beginning of the fiscal year in which the spending occurred.

14 (e) The board shall maintain, update, and post on the
15 authority's Internet website accounting records of the reserve
16 account's:

- 17 (1) balance at the end of the fiscal year;
18 (2) deposits;
19 (3) expenditures; and
20 (4) interest income.

21 Sec. 451.135. STRATEGIC PLAN. (a) The board shall adopt a
22 strategic plan that establishes the authority's mission and goals
23 and summarizes planned activities to achieve the mission and goals.

24 (b) The plan must set policies and service priorities to
25 guide the authority in developing a budget and allocating
26 resources.

27 (c) The plan should, as appropriate, align with the

1 long-range transportation plan of the metropolitan planning
2 organization that serves the area of the authority.

3 (d) The board shall annually reevaluate and, if necessary,
4 amend the plan to ensure compliance with this section.

5 Sec. 451.136. RAIL SAFETY PLAN AND REPORTS. (a) The board
6 shall adopt and the general manager shall implement a rail safety
7 plan in accordance with federal and industry standards for all
8 authority rail activities, including commuter and freight rail
9 activities.

10 (b) The plan must address and emphasize ongoing maintenance
11 and safety of the authority's railroad bridges.

12 (c) To ensure that contractor services on the authority's
13 rail system meet safety obligations, the plan must include
14 specifics regarding monitoring of contractors for safety-related
15 performance, including regular:

- 16 (1) hazard analyses;
17 (2) risk assessments; and
18 (3) safety audits.

19 (d) The general manager shall report quarterly to the board
20 on the safety of the authority's rail system. The authority shall
21 provide to the Texas Department of Transportation all reports
22 provided to the Federal Railroad Administration or Federal Transit
23 Administration regarding any aspect of the rail system's safety at
24 the time the reports are delivered to the Federal Railroad
25 Administration or Federal Transit Administration.

26 Sec. 451.137. COMPETITIVE BIDS FOR AND PURCHASE OF TRANSIT
27 SERVICES. (a) Except as provided by Subsection (f), after

1 providing notice of a proposal, a board must submit to competitive
2 bids a contract for and must purchase transit services that:

3 (1) include:

4 (A) administration of motor bus or sedan transit
5 services;

6 (B) motor bus or sedan driving, maintenance, or
7 repair;

8 (C) transit services for persons who have
9 disabilities, including through a program established under
10 Section 451.254; or

11 (D) rail transit services; and

12 (2) are not provided wholly by an employee of the
13 authority who is directly paid by the authority and works under the
14 daily supervision of the authority's general manager.

15 (b) For the purposes of Subsection (a)(2), services are not
16 provided wholly by an employee of the authority if the person is an
17 employee of an entity incorporated as a state nonprofit by the board
18 of the authority and with which the authority contracts for transit
19 or employee services.

20 (c) Notice under Subsection (a) must be published in a
21 newspaper of general circulation in the area in which the authority
22 is located at least once each week for two consecutive weeks before
23 the date set for receiving the bids. The first notice must be
24 published at least 15 days before the date set for receiving bids.

25 (d) A contract let under this section must include:

26 (1) performance control measures;

27 (2) incentives for performance;

1 (3) penalties for noncompliance; and

2 (4) a contract termination date.

3 (e) The board shall adopt rules on:

4 (1) the taking of bids;

5 (2) the awarding of contracts; and

6 (3) the waiver of the competitive bidding requirement

7 if there is:

8 (A) an emergency; or

9 (B) only one source for the service or purchase.

10 (f) Subsection (a) does not apply to a contract or purchase:

11 (1) in an amount of \$25,000 or less;

12 (2) for personal or professional services; or

13 (3) for the acquisition of an existing transit system.

14 Sec. 451.138. PUBLIC INVOLVEMENT POLICY. (a) The board

15 shall adopt a policy of involving the public in board decisions

16 regarding authority policies. The policy must:

17 (1) ensure that the public has an opportunity to

18 comment on board matters before a vote on the matters;

19 (2) ensure that any consent agenda or expedition of

20 consideration of board matters at board meetings is used only for

21 routine, noncontroversial matters;

22 (3) establish a time frame and mechanism for the board

23 to obtain public input throughout the year; and

24 (4) plan for dissemination of information on how the

25 public can be involved in board matters.

26 (b) The board shall post the policy adopted under this

27 section on the authority's Internet website.

1 Sec. 451.139. ISSUANCE OF BONDS FOR SELF-INSURANCE OR
2 RETIREMENT OR PENSION FUND RESERVES. (a) An authority may issue
3 bonds at any time and for any amounts it considers necessary or
4 appropriate for managing or funding self-insurance or for
5 retirement or pension fund reserves for pension plans existing as
6 of January 1, 2011.

7 (b) Section 451.352(c) does not apply to bonds described by
8 Subsection (a).

9 SECTION 2. Subsection (a), Section 451.133, Transportation
10 Code, as added by this Act, applies only to a budget adopted on or
11 after September 1, 2012.

12 SECTION 3. Not later than September 1, 2016, a metropolitan
13 rapid transit authority required to establish a reserve account
14 under Section 451.134, Transportation Code, as added by this Act,
15 shall establish the account.

16 SECTION 4. Not later than September 30, 2012, a
17 metropolitan rapid transit authority required by Section 451.132,
18 Subsection (c), Section 451.133, and Sections 451.135, 451.136, and
19 451.138, Transportation Code, as added by this Act, to establish a
20 five-year capital improvement plan, a capital improvement projects
21 tracking system, a strategic plan, a rail safety plan, and a public
22 involvement policy, respectively, shall develop the plans, policy,
23 and system.

24 SECTION 5. Not later than September 1, 2012, individuals
25 providing for a metropolitan rapid transit authority transit
26 services described by Section 451.137, Transportation Code, as
27 added by this Act, must be providing those services as employees of

1 the authority or under a contract or agreement that complies with
2 the competitive bidding and purchase requirements of that section.

3 SECTION 6. Not later than September 30, 2012, a
4 metropolitan rapid transit authority required to adopt rules under
5 Subsection (b), Section 451.133, Transportation Code, as added by
6 this Act, shall adopt those rules.

7 SECTION 7. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2011.