

PUBLIC CHAPTER NO. 426**SENATE BILL NO. 2141****By Lowe Finney, Herron, Marrero, Tate, Kilby****Substituted for: House Bill No. 2172****By Mr. Speaker Naifeh, Fitzhugh**

AN ACT to amend Tennessee Code Annotated, Title 64, relative to regional authorities.

WHEREAS, the process to identify sites with large available acreage suitable for locating large industrial and manufacturing enterprises is complex and lengthy; and

WHEREAS, successful recruitment of economic development depends upon informed development planning and cooperation for multi-county areas of the state, allowing for timely and efficient response to potential investment in the area; and

WHEREAS, such multi-county efforts should enhance and not supplant local development efforts; and

WHEREAS, the State of Tennessee has a strong commitment to maintaining and improving its reputation as a world-class business location in supporting multi-county efforts; now, therefore,

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

SECTION 1. Tennessee Code Annotated, Title 64, is amended by adding the following language as a new chapter:

Section 64-12-101. This chapter shall be known and may be cited as the "Tennessee Regional Megasite Authority Act of 2007". A regional authority may be established and created as a "regional megasite authority" pursuant to this chapter. The provisions of § 7-53-104(b) shall apply to a regional megasite authority which shall have the same powers and authority granted to a corporation under Chapter 53, Title 7, except as otherwise provided herein. Notwithstanding anything in Chapter 53, Title 7, to the contrary, in the event of a conflict, the provisions of this chapter shall control. A regional megasite authority may be established for the purpose of acquiring land, improving, financing, operating, maintaining, and marketing a megasite and created by two (2) or more participating municipalities provided that at least one (1) of the municipalities must include the location of the megasite.

Section 64-12-102. As used in this chapter, terms shall be as defined as such terms are defined in § 7-53-101, except as provided below or unless the context otherwise requires:

(1) "Authority" means a regional megasite authority created pursuant to this chapter;

(2) "Governing body" means the legislative body of a county or the legislative body of an incorporated municipality;

(3) "Megasite" means a site certified as provided in § 64-12-103 as being suitable and available for development for significant economic and industrial investment; and

(4) "Project" means all or any part of, or any interest in any land and building, including office building, any facility or other improvement on the land, and all real and personal properties located either on a megasite or off a megasite deemed necessary in connection therewith, whether or not now in existence, that shall be suitable for any industrial or commercial enterprises or any combination of the foregoing located at the megasite.

Section 64-12-103.

(a) In order for a site to be considered for certification as a "megasite", the site should generally consist of a minimum of one thousand (1,000) contiguous acres. Certification of a site must be pursuant to a process approved by the Commissioner of Economic and Community Development.

(b) The Commissioner of Economic and Community Development may approve a proposed megasite certification process as being consistent with this act when the determination of suitability and availability of a site for development is based upon, but not limited to, consideration of: zoning, location, transportation access, utilities access, topography, geotechnical characteristics, environmental review, title and community support.

(c) Certification of a site as constituting a "megasite" pursuant to an approved process must be filed with the commissioner and shall be deemed conclusive.

Section 64-12-104.

(a) For the purposes of this chapter, for a county or an incorporated municipality to be a "participating municipality", such county or incorporated municipality may, upon approval by a majority vote of its governing body, elect to participate in such authority as set out in this chapter. In the event such an election is made, the provisions of this chapter apply to all counties and incorporated municipalities making such an election; provided that participation shall be limited to any county or incorporated municipality:

(1) which includes all or part of a megasite within such county or incorporated municipality, or is an incorporated municipality within the county in which the megasite is wholly or partially located;

(2) which is contiguous, or is within a county contiguous, to the county in which the megasite is wholly or partially located; or

(3) which is determined by its governing body to be in the economic best interests of the county or incorporated municipality because such county or incorporated municipality will be the source of significant number of employees at the megasite or is the source of potential suppliers to the industrial users located at the megasite.

(b) A participating municipality may sell, lease, give, provide or otherwise supply such personnel or services and may appropriate funds to the authority, as may be within its legal power to furnish.

(c) If the governing body of a county or an incorporated municipality, by appropriate resolution duly adopted, finds and determines that it is wise, expedient, necessary or advisable that the authority be formed, elects to participate, and approves the form of certificate of incorporation proposed to be used in organizing the authority, then the governing body shall designate a person as an incorporator to assist with the execution, acknowledgement and filing of a certificate of incorporation for the authority. Additionally, the governing body shall identify each incorporated municipality and industrial development board within its county as provided in § 64-12-105(a)(2) and (3). No authority may be formed unless the listing of initial participating municipalities shall have first been filed with the governing body of each participating municipality.

(d) The certificate of incorporation shall set forth:

(1) The name of the authority;

(2) The participating municipalities and the dates of elections by the governing bodies;

(3) The names of each incorporated municipality with a population in excess of ten thousand (10,000) according to the latest federal census for each county in which a participating municipality is located;

(4) The names of the industrial development board in each of the participating municipalities, or if no industrial development board has been incorporated pursuant to authority granted by the participating municipality pursuant to § 7-53-201, then the industrial development board of the participating municipality's county seat;

(5) The number of voting directors;

(6) The names and residences of the designated incorporators;

(7) The location of the principal office of the corporation;

(8) The purposes for which the authority is organized;

(9) The period, if any, for the duration of the authority; and

(10) Any other matter deemed appropriate and consistent with the provisions of this chapter and the laws of the State of Tennessee.

(e) When executed and acknowledged by the incorporators, the certificate shall be filed with the secretary of state, and may be subsequently amended or the authority dissolved, all consistent with Chapter 53, Title 7.

(f) Within thirty (30) days of filing the certificate with the secretary of state, the incorporators shall meet in an organizational meeting, adopt temporary bylaws, identify the United States Representative as contemplated in § 64-12-104, and notify ex officio members and appointing authorities of the organizational activities and set the meeting date by which members are to be appointed, which date shall provide sufficient time for such appointments.

Section 64-12-105.

(a) The authority shall be governed by a board of directors in which all powers of the corporation shall be vested. The membership of the board shall include the following:

(1) The mayor of each participating municipality or their designee;

(2) The mayor of each incorporated municipality with a population in excess of ten thousand (10,000) according to the latest federal census for each county in which a participating municipality is located or their designee; and

(3) A member of the industrial development board, if any, in each of the participating municipalities, elected by its members to serve on the authority board for a term of two (2) years. If no industrial development board has been incorporated pursuant to authority granted by the participating municipality pursuant to § 7-53-201, then the industrial development board of the participating municipality's county seat shall elect one (1) of its members to serve on the authority board for a term of two (2) years.

In addition to the voting members of the authority, two non-voting members may be appointed, each serving for a term of two (2) years. One (1) may be appointed by and serve at the pleasure of the United States Representative representing either all or the greatest number of the people of the participating municipalities; and the other may be appointed by and serve at the pleasure of the Tennessee Valley Authority.

(b) The directors shall serve as such without compensation, except that they shall be reimbursed for their actual expenses incurred in and about the performance of their duties, unless otherwise authorized by local ordinance or resolution.

(c) The board shall elect such officers and adopt such bylaws as deemed appropriate.

(d) A director who can designate a representative must make the designation in writing addressed to the chair of the authority specifying the

meeting for which the designation is effective to be filed in advance of the meeting.

Section 64-12-106.

(a) In addition to powers and authority granted to a corporation under Chapter 53, Title 7, the authority is authorized and empowered to:

(1) accept any gifts or grants or loans of funds or financial or other aid in any form from the federal government or any agency or instrumentality thereof or from the state or a municipality, including a participating municipality, or from any other source and to comply, subject to the provisions of this chapter, with the terms and conditions thereof; and

(2) provide technical assistance to participating municipalities in planning for the development of the megasite.

(b) The authority is authorized and empowered to issue bonds from time to time. All provisions of Chapter 53, Title 7 regarding bonds shall apply to the authority and any bonds issued by the authority. Any resolution of the authority authorizing the sale of bonds shall be submitted to the State Funding Board established by § 9-9-101, and such resolution shall only become effective upon receiving the approval of the State Funding Board. The State Funding Board, upon rejecting any resolution of the board authorizing any bond issue, shall state in writing the reasons for this action.

Section 64-12-107.

(a) The authority is declared to be performing a public function on behalf of the participating municipalities and to be a public instrumentality of such municipalities. Accordingly, the authority and all properties at any time owned by it and the income and revenues therefrom and all bonds issued by it and the income therefrom shall be exempt from all taxation in the State of Tennessee.

For purposes of the Securities Act of 1980, compiled in Title 48, Chapter 2, Part 1, and any amendment thereto or substitution therefor, 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.

(b)(1) A participating municipality in which a portion of a megasite is located, may delegate to the authority the power to negotiate and enter into with an authority's lessees, payments in lieu of ad valorem taxes; provided, that such authorization shall be granted only upon a finding that such payments are deemed to be in furtherance of the authority's public purposes as defined in this subsection. No contract, lease, understanding, or other agreement of any kind, including any renewal or extension of the agreement, entered into by the authority to which such power has been delegated shall permit payment in lieu of taxes to be waived or otherwise not assessed for a period of greater than twenty (20) years from the date of such contract, lease, understanding or other

agreement, unless both the Commissioner of Economic and Community Development and the comptroller of the treasury have made a written determination that such agreement is in the best interest of the state. The authority shall attach to each agreement an analysis of the costs and benefits of the agreement, in such manner and under such conditions as shall be prescribed by the Commissioner of Economic and Community Development or the commissioner's designee. The legislative body of a participating municipality making such delegation may, in its sole discretion, require the authority to submit any such agreement to the applicable legislative body for its approval.

(2) If the project is located within the corporate limits of a municipality, then payments shall be shared between the incorporated municipality and the county in which the megasite is located proportionate to their property tax levies in effect on the date of execution of the agreement for payments in lieu of taxes.

(3) The trustee shall bill and collect all in lieu of tax payments based on the agreement and the apportioned taxes.

(c) An agreement for payment in lieu of taxes shall contain such terms and conditions as the authority may determine, which may include, but shall not be limited to, provisions to:

(1) Defer and subordinate or defer or subordinate payment of all or a portion of the payment in lieu of taxes to such future time as the authority may determine; and

(2) Require interest to accrue on such deferred amount.

(d)(1) Before October 1 of each year, each lessee of the authority shall submit to the state board of equalization an annual report containing:

(A) A list of all the real and personal property owned by the authority and its associated entities and subsidiaries;

(B) The value of each listed property as estimated by the lessee;

(C) The date and term of the lease for each listed property;

(D) The amount of payments made in lieu of property taxes for each listed property;

(E) The date each listed property is scheduled to return to the regular tax rolls; and

(F) A calculation of the taxes which would have been due for each listed property if the properties were privately owned or otherwise subject to taxation.

(2) Each lessee of the authority shall be responsible for the timely completion and filing of the report, and failure to timely complete and file the report shall subject such lessees to a penalty; provided, that no lessee shall be liable who has provided the state board of equalization information required by this section insofar as may be pertinent to property leased by the lessee from the authority. The penalty for late filing shall be fifty dollars (\$50.00) for each day the report is late up to a maximum of five hundred dollars (\$500), and the maximum penalty shall accrue interest at the rate of one and one-half percent (1.5%) per month, plus any cost of collection.

Section 64-12-108.

(a) The authority is authorized to prepare and submit to the participating municipalities for approval an economic impact plan in the manner described in this section.

(b) An economic impact plan shall be a written document and shall specifically identify the area to be included in the plan. The area to be included in the plan must be located in the participating municipalities and must also include the county in which the megasite is located. In addition to the megasite, the area that is the subject of the economic impact plan may also include such other properties that the authority determines will be directly improved or benefited due to the undertaking of the megasite. The economic impact plan shall:

(1) Identify the boundaries of the area subject to the plan;

(2) Discuss the expected benefits to the participating counties from the development of the area subject to the plan, including anticipated tax receipts and jobs created; and

(3) Provide that the property taxes imposed on the property, including the personal property, located within the area subject to the plan will be distributable in the manner described in subsection (c) for a period of time specified in the plan.

(c) Upon the approval by the participating municipalities of an economic impact plan with respect to an area, all property taxes levied upon property located within such area by any taxing agency after the effective date of the plan shall be divided as follows:

(1) That portion of the taxes that is equal to the amount of taxes, if any, that were payable with respect to the property for the year prior to the date the economic impact plan was approved, the "base tax amount", to the participating municipalities shall be allocated to and, when collected, shall be paid to the respective taxing agencies as taxes levied by such taxing agencies on all other property are paid; provided, that in any year in which the taxes on any property are less than the base tax amount, there shall be allocated and paid to the respective taxing agencies only those taxes actually imposed; and

(2) Any excess of taxes over the base tax amount shall be allocated to and, when collected, shall be paid into a separate fund of the authority established to hold such payments until applied for the purposes described in subsection (h).

(d) Notwithstanding any provision in subsection (a) to the contrary, the authority may prepare, and the participating municipalities may approve, an economic impact plan that allocates an amount greater than the base tax amount to the taxing agencies.

(e) An economic impact plan shall not provide for an allocation of taxes to the authority for a period in excess of thirty (30) years.

(f) The governing bodies of the participating municipalities may approve an economic impact plan by resolution, notwithstanding any local charter provision or other provision to the contrary. If the area subject to an economic impact plan is located within the corporate limits of a municipality, the taxes that would otherwise be payable to the municipality or county shall not be paid to the authority unless such city, town or county has also approved the economic impact plan.

(g) Before the authority submits an economic impact plan for approval to the governing bodies of the participating municipalities or to any other municipality, the authority shall hold a public hearing relating to the proposed plan after publishing adequate public notice of such public hearing at least two (2) weeks prior to the date of such public hearing. Such notice shall include the time, place and purpose of the public hearing, and notice of how a map of the area subject to the plan can be viewed by the public.

(h) All taxes allocated to the authority pursuant to this section shall only be applied by the authority to pay expenses of the board in furtherance of promoting economic development in the participating municipalities, to pay the cost of projects, or to pay debt service on bonds or other obligations issued by the authority to pay the cost of the projects. The authority is authorized to pledge any or all amounts received by the authority pursuant to this section to the payment of such bonds or other obligations.

(i) After the approval by a municipality of an economic impact plan, the clerk or other recording official of such municipality shall transmit to the appropriate tax assessors and to each taxing agency to be affected, a copy of the description of all property within the area subject to the economic impact plan and a copy of the resolution approving that plan. If the plan is approved by any taxing agency other than the municipality, the clerk or other recording official of that taxing agency shall also provide a copy of the resolution approving the plan to such tax assessors and taxing agencies.

(j) Notwithstanding anything to the contrary in this section, taxes levied upon property within an economic impact area by any taxing agency for the payment of principal of and interest on all bonds, loans, or other indebtedness of such taxing agency, and taxes levied by or for the benefit of the State of Tennessee, shall not be subject to allocation as provided in subsection (c), but

may still be levied against such property and, when collected, paid to such taxing agency as taxes levied by such taxing agency on all other property are paid and collected.

Section 64-12-109. Any authority established shall be subject to the governmental entity review law, compiled in Title 4, Chapter 29, and reviewed pursuant to § 4-29-119.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: May 31, 2007



RON RAMSEY
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 13th day of June 2007



PHIL BREDESEN, GOVERNOR