

CHAPTER 49-17.2 REGIONAL RAILROAD AUTHORITIES

49-17.2-01. Definitions. As used in this chapter, unless the context plainly otherwise requires:

1. "Bonds" means any bonds, notes, interim certificates, debentures, or similar obligations issued by an authority pursuant to this chapter.
2. "Governing body" means the official or officials authorized by law to exercise ordinance making or other lawmaking powers of a political subdivision.
3. "Political subdivision" or "subdivision" means any county, municipality, or other body politic of this state.
4. "Project" means any railroad or related facilities operated or owned by an authority, including all real and personal property, structures, machinery, equipment, and appurtenances or facilities which are part of the railroad and useful in connection therewith, including facilities for the convenience of handling passengers and freight or as part of railroad operations.
5. "Railroad authority" or "authority" means an authority created pursuant to this chapter.
6. "Real property" means lands, structures, and interests in land, including lands under water and riparian rights, and including any and all lesser interests, legal or equitable, pertaining to real property.

49-17.2-02. Creation of authority by agreement of subdivisions. Two or more political subdivisions may form a regional railroad authority by execution of an agreement authorized by resolution of the governing body of each subdivision and approved by a sixty percent majority of the electors of the subdivisions voting on the question of adoption of the resolution.

49-17.2-03. Contents of agreement creating authority. The agreement authorized in section 49-17.2-02 shall state all of the following:

1. That the railroad authority is created and incorporated under the provisions of this chapter as a political subdivision of this state.
2. The name of the authority which shall include the words "regional railroad authority".
3. The names of the subdivisions which have approved the agreement and are the initial members of the regional railroad authority.
4. The names and addresses of the persons initially appointed by the resolutions approving the agreement to act as the representatives or alternate representatives of the subdivisions.
5. The address of the registered office of the authority and the name of its registered agent at such office.
6. That the subdivisions which are members of the regional railroad authority and its commissioners, officers, and agents are not liable for its obligations.
7. Any other provision for regulating the business of the regional railroad authority which may be agreed upon by the subdivisions.

49-17.2-04. Filing of agreement and resolutions - Certificate of incorporation - Beginning of corporate existence. The agreement and a certified copy of the resolution of each subdivision shall be filed with the secretary of state. If the agreement conforms to the requirements of this chapter, the secretary of state shall file it and issue a certificate of incorporation, which shall state the name of the authority and the date of incorporation. The existence of the authority as a political subdivision of this state shall begin upon the issuance of the certificate of incorporation. The certificate of incorporation shall be conclusive evidence of the existence of the authority.

49-17.2-05. Hearing before adoption of resolution - Publication of notice. No resolution authorized by section 49-17.2-02 or 49-17.2-11 shall be adopted without a public hearing in each subdivision involved. Notice of such hearing shall be given at least ten days prior thereto in the official newspaper of the subdivision, or if the subdivision has no official newspaper, then in a newspaper having general circulation in the subdivision.

49-17.2-06. Appointment of commissioners of authority - Terms of office - Vacancies. The governing bodies of the subdivisions participating in a regional railroad authority shall appoint not less than five persons as commissioners of the regional railroad authority. The number to be appointed and their representation shall be provided for in the agreement. All commissioners of a regional railroad authority shall be appointed for a term of one year. Vacancies shall be filled for the unexpired term in the same manner as the original appointments. Each commissioner shall hold office until a successor has been appointed and qualified.

49-17.2-07. Power vested in commissioners - Rules for operation. The power of each regional authority is vested in the commissioners. Each authority may adopt and amend rules for its own operations subject to the agreement of the subdivisions establishing the authority and subject to the provisions of this chapter.

49-17.2-08. Chairman and secretary-treasurer of authority. Each regional authority shall elect a chairman and a secretary-treasurer from among the commissioners.

49-17.2-09. Executive director and other agents - Delegation of powers and duties. A regional authority may appoint or elect an executive director, and such other officers, agents, and employees as it may determine. An authority may delegate its powers and duties to one or more of its officers, agents, or employees.

49-17.2-10. Reimbursement of commissioners' expenses. A commissioner shall receive no compensation for services but shall be reimbursed for the necessary expenses incurred in the discharge of the commissioner's duties at the rates provided in sections 44-08-04 and 54-06-09.

49-17.2-11. Addition of subdivisions to authority. A regional authority may be increased to serve one or more additional subdivisions upon the approval by resolution of each such additional subdivision and of each of the subdivisions then parties to the agreement, and upon approval of a sixty percent majority of the electors, of each of the subdivisions to be added, voting on the question of the adoption of the resolution.

49-17.2-12. Withdrawal of subdivision from authority - Disposition of assets and liabilities. A member subdivision may withdraw from the authority if the commissioners of the authority consent to the withdrawal. In such event, the commissioners shall provide for the retention or disposition of its assets and liabilities. However, if the authority has any bonds outstanding no withdrawal shall be effected unless one hundred percent of the holders of the bonds consent in writing to the withdrawal.

49-17.2-13. Filing of resolution increasing or decreasing authority - Amended certificate of incorporation. If the number of subdivisions participating in a regional authority is increased or decreased pursuant to section 49-17.2-11 or 49-17.2-12, it shall forward to the secretary of state a certified copy of each resolution adopted pursuant thereto. Upon receipt of

the resolution or resolutions, the secretary of state shall issue an amended certificate of incorporation.

49-17.2-14. Powers of political subdivisions in aid of regional authority. Any subdivision participating in an authority may:

1. Lend or donate money to the authority.
2. Provide that all or a portion of the taxes or funds available to the subdivision for railroad purposes be transferred or paid directly to the authority.
3. Cause water, sewer, or drainage facilities, or any other facilities which it is authorized to provide, to be furnished adjacent to or in connection with railroads or facilities.
4. Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to the authority.
5. Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan, to the extent allowed by title 24, streets, roads, roadways, and walks from established streets or roads to such railroad facilities.
6. Aid and cooperate with the authority in the planning, undertaking, construction, or operation of railroad facilities.
7. Enter into agreements with the authority regarding action to be taken by the subdivision pursuant to the provisions of this section.

49-17.2-15. Corporate powers of authority. A regional authority may:

1. Sue and be sued, have a seal, and have perpetual succession.
2. Execute such contracts, other instruments, and take such action as may be necessary to carry out the purposes of this chapter.

Every authority may exercise such powers as are necessary or incidental to carry out the purposes of this chapter.

49-17.2-16. Planning, acquisition, and operation of railroads and facilities - Acquisition of property. A regional authority may plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect its railroads, and railroad facilities used or useful in the operation of a railroad. For these purposes an authority may acquire by purchase, gift, devise, lease, or condemnation any real or personal property or any interest therein.

49-17.2-17. Use of public waters by authority - Buildings, roadways, and bridges. A regional authority may establish or acquire and maintain railroads over any public waters of this state and any submerged lands under such public waters. It may construct and maintain terminal buildings, causeways, roadways, and bridges for approaches to or connecting with any such railroads.

49-17.2-18. Power of eminent domain - Restrictions on acquisition of public or railroad property. An authority may acquire all real or personal property that it deems necessary for carrying out the purposes of this chapter, whether in fee simple absolute or lesser interest, by condemnation and the exercise of the power of eminent domain subject to chapter 32-15 and in accordance with chapter 49-09. An authority shall have no power of eminent domain with respect to property owned by another authority or subdivision or public agency of this or any other state without the consent of such authority, subdivision, or public agency. The authority may not condemn property owned or used by a railroad corporation unless the

interstate commerce commission, or other authority with power to make the finding, has found that the public convenience and necessity permit discontinuance of the rail service on the property.

49-17.2-19. Public purpose and necessity for acquisitions. All land and other property and privileges acquired and used by or on behalf of any authority are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

49-17.2-20. Exemption from taxation of property and income of authority. Any property acquired by an authority and any income derived by the authority shall be exempt from taxation.

49-17.2-21. Annual certification of tax levy for authority - Levy of tax - Collection. An authority may certify annually to the governing bodies the amount of tax to be levied by said governing bodies for railroad purposes. Each subdivision shall levy the amount certified, pursuant to provisions of law authorizing political subdivisions of this state to levy property taxes. The levy may not exceed the maximum levy permitted by section 57-15-28.1. Each subdivision shall collect the taxes certified by a railroad authority in the same manner as other taxes are levied and collected and shall pay the revenues to the railroad authority.

49-17.2-22. Zones of benefit - Tax levy applied. The authority may, in connection with the certification of an annual tax levy pursuant to section 49-17.2-21, designate various zones of benefit or geographical portions of the member subdivisions which, in the judgment of the authority, will be or have been benefited by projects. The authority may then certify that such annual levy be applied only to such benefited area.

49-17.2-23. Maximum tax levy - County levy not applied in subdivision making levy. In subdivisions which are parties to an agreement creating a regional railroad authority, a levy, not exceeding the limitation in section 57-15-28.1 may be made for such purposes. A county levy pursuant to section 49-17.2-21 shall not apply to any other subdivision within that county making a levy under section 49-17.2-21.

49-17.2-24. Deposit of tax proceeds - Expenditure. The proceeds of taxes for support of a railroad authority shall be deposited in such account or accounts in which other revenues of the authority are deposited and may be expended by the authority as provided in this chapter.

49-17.2-25. Covenant to levy taxes until bonds paid. Prior to the issuance of bonds, the authority may by resolution covenant and agree that the total amount of such taxes authorized or any portion thereof will be certified, levied, and deposited annually as herein provided, until the bonds and interest thereon are fully paid.

49-17.2-26. Acceptance and expenditure of federal and other grants and loans. An authority may accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both, to accomplish, in whole or in part, any of the purposes of this chapter.

49-17.2-27. Designation of director of department of transportation as agent of authority - Funds held in separate account. An authority may designate the director of the department of transportation as its agent to accept, receive, receipt for, and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan or both, to accomplish in whole or in part, any of the purposes of this chapter. It may designate the director of the department of transportation as its agent to contract for and supervise the planning, acquisition, development, construction, improvement, maintenance, equipping, or operation of any railroad or railroad facility.

All funds received by the director of the department of transportation pursuant to this section shall be deposited in the state treasury. Unless otherwise prescribed by the agency from which such funds were received, the funds shall be kept in separate accounts according to the purposes for which the funds were made available. Such funds shall be held by the state in trust

for such purposes and paid out only when approved by the director of the department of transportation.

49-17.2-28. Issuance of bonds and notes - Purposes for which proceeds used. An authority may from time to time issue its bonds or notes in such principal amounts as the authority shall deem necessary to carry out any of its corporate purposes and powers, including, but not limited to the funding or refunding of the principal of or interest or redemption premiums on, any bonds or notes issued by it whether or not the bonds or notes or interest to be funded or refunded have or have not become due, the establishment or increase of reserves to secure or to pay the bonds or notes or interest thereon, and the payment of or establishment of reserves for all other costs or expenses of the authority incident to and necessary to carry out its corporate purposes and powers.

49-17.2-29. Revenues and funds pledged to payment of bonds and notes - Negotiability. Every issue of bonds or notes of the authority shall be payable out of revenues or funds of the authority, subject only to agreements with the holders of particular bonds or notes pledging any particular revenues or funds. An authority may issue types of bonds or notes as it may determine, including those payable as to principal and interest solely from one or more revenue-producing contracts made by the authority or from its revenues generally. Any bonds or notes may additionally be secured by a pledge of any grant, subsidy, or contribution from any public agency, or other person, or a pledge of revenue, income, or funds from any source whatsoever. All such bonds and notes shall be negotiable within the meaning of the Uniform Commercial Code, subject only to any registration requirement.

49-17.2-30. Resolutions for bonds or notes - Security agreement - Terms and conditions. Bonds or notes of the authority shall be authorized by resolution of the commissioners and may be issued under the resolution or under a trust indenture or other security agreement, in one or more series, and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such conversion, exchange, and registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place or places within or outside the state, be subject to such terms of redemption with or without premium, and contain or be subject to such other terms as the resolution, trust indenture, or security agreement may provide, and shall not be restricted by any other law limiting amounts, maturities, interest rates, or other terms or obligations of public agencies or private persons.

49-17.2-31. Mortgages and deeds of trust to secure obligations - Filing. Repealed by S.L. 1997, ch. 284, § 8.

49-17.2-32. Bond recital conclusive as to authority and purpose. Any bond reciting that it has been issued by the authority pursuant to the provisions and for the purposes of this chapter shall be conclusively deemed to have been issued pursuant to such provisions and for such purposes.

49-17.2-33. Continuing validity of signatures on bonds and notes - Temporary bonds. Any bonds or notes may be issued and delivered notwithstanding that any of the commissioners or officers executing them shall have ceased to hold office at the time of actual delivery. Pending preparation of definitive bonds, an authority may issue temporary bonds which shall be exchanged for definitive bonds.

49-17.2-34. Sale of bonds. Bonds issued shall be sold at public or private sale for a price and in a manner determined by the authority.

49-17.2-35. Bonds exempt from taxation. Bonds issued by an authority pursuant to the provisions of this chapter, together with interest and income therefrom, shall be exempt from all taxes.

49-17.2-36. Persons executing bonds not personally liable. The commissioners of an authority or any person executing such bonds shall not be liable personally by reason of their issuance.

49-17.2-37. Arrangements for operating and providing railroad service. The authority may enter into contracts, leases, and other arrangements for such term as the authority may determine with any persons:

1. Granting the privilege of using or improving the railroad or any portion or facility or space for commercial purposes.
2. Conferring the privilege of supplying goods, commodities, things, services, or facilities along the railroad.
3. Making available services to be furnished by the authority or its agents.

In each case the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service.

49-17.2-38. Grant of operating privileges and use of railroad and facilities. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by this chapter, an authority may by contract, lease, or otherwise, for such consideration and term as it may determine, grant to any person the privilege of operating or using any railroad or railroad facilities or property, owned or controlled by the authority. No person may be granted any authority to operate a railroad other than as a common carrier.

49-17.2-39. Payments in lieu of property taxes by contractors using railroad and facilities. All contracts, leases, or other arrangements entered into by an authority pursuant to sections 49-17.2-37 and 49-17.2-38 shall provide for payment of a sum equal to the amount of property taxes which would be due if the property were owned by the person contracting with the authority, to be prorated by the authority among the taxing districts involved, which payment shall be limited, however, so as not to exceed the net income earned by such person from the use of such property.

49-17.2-40. Disposition of property of authority. Except as may be limited by the terms and conditions of any grant, loan, or agreement, made or received by the authority, an authority may, by sale, lease, or otherwise, dispose of any of its property, or portion thereof or interest therein.