House Finance, Ways, and Means Subcommittee Am. #1

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

Amendment No._____

_____
Signature of Sponsor

AMEND Senate Bill No. 279* **House Bill No. 327**

by deleting all language after the enacting clause and substituting instead:

SECTION 1. Tennessee Code Annotated, Section 4-32-103(e), is amended by deleting the subsection and substituting:

(e) A state employee shall not receive compensation from funds received by the nonprofit partner pursuant to subsection (d).

SECTION 2. Tennessee Code Annotated, Section 4-32-104(a), is amended by deleting the subsection.

SECTION 3. This act takes effect upon becoming a law, the public welfare requiring it.

House Finance, Ways, and Means Subcommittee Am. #1

Amendment No._____

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Signature of Sponsor

AMEND Senate Bill No. 273* **House Bill No. 321**

by deleting all language after the caption and substituting instead:

WHEREAS, Tennessee's policies have created immense economic opportunity, with more than 250,000 new jobs created since 2011; and

WHEREAS, Tennessee continues to be a highly sought after location to live, work, and raise a family, contributing to a population increase of nearly ten percent over the last decade alone; and

WHEREAS, this prosperity is outpacing the ability of the State's transportation system to provide for the necessary mobility of its citizens and visitors; and

WHEREAS, improvements to Tennessee's transportation system are vital to ensure the State's continued economic growth and success of its citizens and businesses; now, therefore, BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act is known and may be cited as the "Transportation Modernization Act of 2023."

SECTION 2. Tennessee Code Annotated, Section 54-1-119, is amended by deleting the section and substituting:

54-1-119. Design-build and performance-based asset maintenance contracts.

(a) As used in this section:

(1) "Design-build contract" means:

(A) An agreement that provides for the design and construction of a project under a single contract, which may include, but is not limited to, design, right-of-way acquisition, regulatory permit review and approvals,

or utility relocation, and the construction, reconstruction, repair, or maintenance of the project; or

(B) An agreement that provides for the design and reconstruction, repair, or maintenance of highway facilities under a single contract, which may include, but is not limited to, design, right-of-way acquisition, regulatory permit review and approvals, or utility relocation services, and the reconstruction, repair, or maintenance of highway facility components along specific roadway corridors or within a geographic area; and

(2) "Performance-based asset maintenance contract" means an agreement, typically long-term, that provides for managing and performing the inspection and reconstruction, repair, or maintenance of multiple highway facility components for specific roadway corridors or within a geographic area, where the contract sets specific performance standards, rather than prescriptive work tasks and deadlines, and may include incentive or disincentive provisions to promote achievement of the desired outcomes. Such contracts may also include third-party damage repair and claim management services, and may also provide for design, right-of-way acquisition, regulatory permit review and approvals, or utility relocation activities. Types of projects not suited for performance-based asset maintenance contracts include, but are not limited to, resurfacing and bridge repair projects.

(b) Notwithstanding another law to the contrary, the department may award design-build contracts and performance-based asset maintenance contracts in accordance with this section.

(c) Selection criteria for a design-build contract or a performance-based asset maintenance contract must include the cost, and may include qualifications, time of completion, innovation, design and construction quality, design innovation, or other technical or quality related criteria, as determined by the department.

(d) The department may award a stipulated fee to design-build firms that submit responsive proposals but are not awarded the design-build contract. The department is not required to award a stipulated fee, but if it elects to award the fee, the amount of the stipend and the terms under which stipends are to be paid must be stated in the request for proposals.

(e) Prior to executing a design-build contract under this section, the commissioner shall send written notice to the chair of the transportation and safety committee of the senate and the chair of the transportation committee of the house of representatives.

(f) If a proposed design-build contract has a total estimated contract amount in excess of one hundred million dollars ($100,000,000), the department shall specifically identify the project as a design-build project in the transportation improvement program submitted annually to the general assembly in support of the commissioner's annual funding recommendations.

(g) The department may establish agency policy, or the department may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, or both, in furtherance of this part.

SECTION 3. Tennessee Code Annotated, Section 54-1-501, is amended by deleting the section and substituting:

54-1-501. Use of construction manager/general contractor and progressive design-build services.

(a) Notwithstanding another law to the contrary, the department is authorized to use the construction manager/general contractor (CM/GC) method and progressive design-build (PDB) method as delivery methods for procuring transportation project services.

(b) The department shall select CM/GC and PDB projects based upon generally accepted industry criteria that include factors such as fostering innovation, mitigating

risk, improving design quality, improving cost control, and optimizing construction schedules.

(c) Types of projects suited for CM/GC and PDB methods include, but are not limited to, instances where the department needs feedback during the design phase due to complex components that require innovation, projects that have public involvement, projects that have third-party considerations such as acquisition of right-of-way or utility relocation issues, or situations where other factors impact the overall schedule. Types of projects not suited for the CM/GC or PDB methods include, but are not limited to, routine maintenance and resurfacing projects or other construction projects that present a low level of technical complexity, a low level of risk management, and simple traffic phasing, and that do not have a compelling need for project acceleration.

SECTION 4. Tennessee Code Annotated, Section 54-1-502(3), is amended by deleting the subdivision and substituting:

(3) "Construction manager/general contractor" or "CM/GC" means a business firm or joint venture, separate from the project designer, that is able to provide pre-construction services during the design and development phase of a transportation project, including, but not limited to, constructability review, scheduling, pricing, and phasing, and is able to construct the project if the department and firm or joint venture agree to a guaranteed maximum price;

SECTION 5. Tennessee Code Annotated, Section 54-1-502(6), is amended by deleting the subdivision and substituting:

(6) "Guaranteed maximum price" or "GMP" means the total dollar amount within which the CM/GC commits to complete construction of the project, or the PDB commits to complete the final design and construction of the project, including the CM/GC's or PDB's direct costs, overhead, and profit, plus any authorized contingency. The GMP may be supplemented at a later date to cover additional costs arising from changes in the scope of work as the department may subsequently direct in writing;

SECTION 6. Tennessee Code Annotated, Section 54-1-502, is amended by adding the following as new subdivisions:

( ) "Design-builder" means a business firm or joint venture that is able to provide both design and construction services for a transportation project, including, but not limited to, design, right-of-way acquisition, or utility relocation, as well as construction of the project;

( ) "Progressive design-builder" or "PDB" means a design-builder that is able to provide pre-construction services during the preliminary design and development phase of a transportation project, including, but not limited to, constructability review, scheduling, pricing, and phasing, and is able to complete the final design and construct the project if the department and the design-builder agree to a guaranteed maximum price;

( ) "Progressive design-build method" or "PDB method" means a transportation project delivery method in which the department procures a design-builder to provide pre-construction services and may subsequently complete the final design and construct the project, or part of the project, if the department and the design-builder reach agreement on a guaranteed maximum price;

SECTION 7. Tennessee Code Annotated, Section 54-1-503, is amended by deleting the section and substituting:

54-1-503. Notice of use of CM/GC or PDB method.

(a) Prior to executing a contract under this part, the commissioner shall send written notice to the chair of the transportation and safety committee of the senate and the chair of the transportation committee of the house of representatives.

(b) If a proposed CM/GC or PDB contract has a total estimated contract amount in excess of one hundred million dollars ($100,000,000), the department shall specifically identify the project as a CM/GC or PDB project in the transportation

improvement program submitted annually to the general assembly in support of the commissioner's annual funding recommendations.

SECTION 8. Tennessee Code Annotated, Section 54-1-504(b)(3), is amended by deleting the language "Phase 3 of the process, which may be known as the 'CM/GC Selection-Design Phase,' is as follows:" and substituting "Phase 3 of the process is the evaluation and selection phase, as follows:".

SECTION 9. Tennessee Code Annotated, Section 54-1-504, is amended by inserting the language "or PDB" after "CM/GC" wherever it appears, and by inserting "or PDB's" after "CM/GC's" wherever it appears.

SECTION 10. Tennessee Code Annotated, Section 54-1-504(b)(1), is amended by deleting subdivisions (B) and (C) and substituting:

(B) The selection committee consists of a total of five (5) members, to be appointed by the commissioner as follows:

(i) Three (3) department employees, including at least one (1) employee who is a licensed professional engineer in this state; and

(ii) Two (2) members who are not employees of the department, each of whom must be a resident of this state. At least one (1) of the members must have a minimum of ten (10) years of construction or highway engineering design experience, and at least one (1) of the members must be a licensed professional engineer in this state.

SECTION 11. Tennessee Code Annotated, Section 54-1-504(b)(3), is amended by deleting subdivisions (D) and (E) and substituting:

(D) Upon completion of the evaluation process, each member of the selection committee shall independently review and score the proposals. Each member shall score the proposals pursuant to the scoring matrix that the department provides in the RFP and based on the RFP's evaluation criteria. The scores must be tallied and averaged according to the procedure established in the RFP. Upon completion of the

scoring, the proposals must be ranked in order of the highest aggregate score to the lowest aggregate score. The proposer whose proposal receives the highest aggregate score must be identified as a first-tier proposer. In addition, another proposer whose proposal receives an aggregate score within five percent (5%) of the proposal with the highest aggregate score, where five percent (5%) is measured as a percentage of the highest aggregate score, must also be identified as a first-tier proposer. Notwithstanding another law to the contrary, this subdivision (b)(3)(D) expires on June 30, 2029;

(E) The proposals of the first-tier proposers must be submitted in alphabetical order to the commissioner without an evaluation ranking. The commissioner may select a first-tier proposer, or the commissioner may reject all proposals and proceed with construction of the project through a lawful method for procuring a construction services contract. The department shall send all proposers a written notice of award to the selected proposer, or a written notice that all proposals have been rejected. If the department issues a written notice of award, then the notice must include a copy of the scores from each member of the selection committee for each RFP proposal. Notwithstanding another law to the contrary, this subdivision (b)(3)(E) expires on June 30, 2029;

SECTION 12. Tennessee Code Annotated, Section 54-1-504(b)(3)(G), is amended by inserting the language "or joint venture" after "firm".

SECTION 13. Tennessee Code Annotated, Section 54-1-504(b)(4), is amended by deleting the subdivision and substituting:

(4) Phase 4 of the process is the potential award of the contract phase, as follows:

(A) Once the design has been completed, or has been sufficiently developed to allow the CM/GC or PDB to prepare a proposed GMP for construction, or for final design and construction, of the project, or a part of the

project, the department shall conduct the steps described in subdivision (b)(4)(B) before proceeding with construction or final design and construction;

(B) The department shall:

(i) Prepare and compile the contract plans, specifications, special provisions, or other requirements that will comprise the contract for construction, or final design and construction;

(ii) Prepare a detailed cost estimate to evaluate the appropriate price for construction or final design and construction; and

(iii) If directed by the commissioner, have an independent third-party estimator prepare a detailed cost estimate to confirm the appropriate price for construction or final design and construction;

(C) The department's detailed cost estimate, and a cost estimate prepared by an independent third-party estimator, must not be disclosed to the CM/GC or PDB, and must remain confidential and is not subject to public disclosure under § 10-7-503 or another law until after award of the contract for construction or final design and construction;

(D) The contract must require the CM/GC or PDB to self-perform a portion of the construction work comprising at least thirty percent (30%) of the total cost for construction, excluding specialty items. The cost for pre-construction services must not be considered part of the thirty percent (30%) but may be considered a specialty item;

(E) Based on the contract plans, specifications, special provisions, or other contract terms and conditions compiled by the department, the CM/GC or PDB shall prepare a GMP, including an authorized contingency, for construction or final design and construction. When completed, the CM/GC's or PDB's proposed GMP must be submitted to the department for review. The CM/GC's or

PDB's proposed GMP must otherwise remain confidential and is not subject to public disclosure until after award of the contract;

(F) The department shall compare the CM/GC's or PDB's proposed GMP with the department's own confidential cost estimate, and with a cost estimate prepared by an independent third-party estimator. If the GMP does not exceed the department's estimate, or the independent third-party estimate, by more than ten percent (10%), the commissioner may, but is not required to, award the contract to the CM/GC or PDB;

(G) If the commissioner rejects the proposed GMP, then the department may continue to conduct contract discussions with the CM/GC or PDB to develop an acceptable GMP for the project. Alternatively, the department may direct the CM/GC or PDB to provide additional pre-construction services as needed to assist in the further development of contract plans, terms, or specifications for the purpose of repeating the Phase 4 process established in this subdivision (b)(4); and

(H) If an agreement on the GMP is unable to be reached:

(i) For CM/GC, then the commissioner may proceed with construction of the project through the low bid procurement process; or

(ii) For PDB, then the PDB shall relinquish and assign ownership of its design work product to the department, the department shall take ownership of and assume liability for the design work product, and the commissioner may:

(*a*) Employ the PDB's design consultant or another design consultant to complete the final design and proceed with construction of the project through the low bid procurement process; or

(*b*) Use the PDB's design consultant's work product, or a part of it, to proceed with construction of the project through a design-build procurement process, and, if another design consultant or design-builder completes the final design, the other design consultant or design-builder shall assume responsibility for the final design.

SECTION 14. Tennessee Code Annotated, Section 54-1-505, is amended by inserting the language "or PDB" after "CM/GC" wherever it appears.

SECTION 15. Tennessee Code Annotated, Title 54, Chapter 2, is amended by adding the following as a new part:

54-2-201. Establishment of transportation modernization fund.

(a) There is established a fund to be known as the "transportation modernization fund." The fund is a segregated account within the state treasury and includes accounts and subaccounts in the fund.

(b) Notwithstanding another law to the contrary, and subject to appropriation in the general appropriations act, the fund is composed of:

(1) Effective July 1, 2023, a sum of three billion dollars ($3,000,000,000), to be divided as follows:

(A) Seven hundred fifty million dollars ($750,000,000) for projects within region 1 of the department;

(B) Seven hundred fifty million dollars ($750,000,000) for projects within region 2 of the department;

(C) Seven hundred fifty million dollars ($750,000,000) for projects within region 3 of the department; and

(D) Seven hundred fifty million dollars ($750,000,000) for projects within region 4 of the department;

(2) Effective July 1, 2023, a sum of three hundred million dollars ($300,000,000), to be distributed to local governments as grants, as determined by the commissioner; provided, that a local government shall not use grants distributed from the sum described in this subdivision (b)(2) to supplant other state or local moneys appropriated or allotted for building, maintaining, or improving county roads or bridges;

(3) Other revenues or moneys that the general assembly may appropriate to the fund; and

(4) Other moneys received by the department for the purposes of the fund that are not otherwise allocated to the department by law.

(c) The fund must be administered by the department of transportation and be kept separate and apart from all other funds, including the state highway fund. Any portion of the fund must not be transferred or otherwise diverted to another department or agency of state government and must only be drawn out of the state treasury as provided in this part.

(d) Amounts remaining in the fund at the end of each fiscal year must not revert to the general fund. Moneys in the fund must be invested by the state treasurer pursuant to title 9, chapter 4, part 6, for the sole benefit of the fund, and interest accruing on investments and deposits of the fund must be returned to and remain part of the fund.

(e) The fund may be used for the following purposes:

(1) To fund strategic transportation initiatives, including, but not limited to, congestion mitigation, rural interstate widening, and the accelerated delivery of strategic transportation improvements over and above the transportation improvements program generally supported by the state highway fund;

(2) To respond to a transportation system failure, an imminent threat of a failure, or other emergency as provided in § 54-1-135, which use may be eligible for reimbursement from the federal government; and

(3) Another purpose for which the state highway fund may be lawfully used.

54-2-202. Annual report to the general assembly.

(a) Prior to January 1, 2024, and prior to each January 1 thereafter, the department of transportation shall submit a report to the speakers of the senate and the house of representatives, the chair of the transportation and safety committee of the senate, and the chair of the transportation committee of the house of representatives, on the status of projects funded by the transportation modernization fund.

(b) The report must include for each project:

(1) The date on which engineering activities began, or are anticipated to begin, if known;

(2) The date on which right-of-way acquisition activities began, or are anticipated to begin, if known;

(3) The date on which construction activities began, or are anticipated to begin, if known; and

(4) The date on which construction was completed, as applicable.

SECTION 16. Tennessee Code Annotated, Section 54-3-101, is amended by deleting the section.

SECTION 17. Tennessee Code Annotated, Section 54-3-102, is amended by deleting the section and substituting:

(a) This chapter applies to the operation of user fee facilities on new facilities opened on or after July 1, 2023, and on existing facilities where one (1) or more new vehicle lanes is added to the facility on or after July 1, 2023.

(b) The development of a user fee facility project by or under the authority of the department must be in accordance with the department's long-range statewide transportation plan. The department shall specifically identify a proposed user fee facility or user fee facility project in the transportation improvement program furnished to

the general assembly in support of the commissioner's annual funding recommendations.

(c) Prior to submitting to the general assembly a transportation improvement plan in which a user fee facility project is included, the department shall submit the proposed user fee facility project to the board for approval, as provided in this chapter. Further development of the user fee facility project must not occur until the user fee facility project has been approved by the board and, if applicable, by the general assembly in accordance with this subsection (c). Prior to approval of the project, the board shall provide written notice of the proposed user fee facility project to the speakers of the senate and the house of representatives, the chairs of the finance, ways and means committees of the senate and the house of representatives, the chair of the transportation and safety committee of the senate, and the chair of the transportation committee of the house of representatives. If any state agency proposes to assist in funding the user fee facility project with state or federal-aid funds, then the project is subject to the approval of the general assembly pursuant to the express provisions of the general appropriations act in which the funds must be specifically appropriated by reference to the project.

(d) The development of a user fee facility project by or under the authority of the department must consider alternatives to the project; the economic, social, and environmental effects of the user fee facility project; and the findings of the environmental evaluation process and public comments, including comments from a metropolitan planning organization or rural planning organization, or both, in which the project is located, before developing final construction plans for the user fee facility. If the proposed project involves federal aid funding or constitutes a major federal action, then the department's environmental evaluation process is subject, as applicable, to the federal National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.). If the proposed project does not involve federal aid funding and does not otherwise constitute

a major federal action, then it is subject to environmental evaluation and documentation in accordance with such policies and procedures as the department may establish.

(e) The development of a user fee facility project by or under the authority of the department is subject to public hearings conducted in accordance with such procedures as the department may establish. The department shall hold the public hearings at convenient locations during the environmental evaluation of the project and prior to plans for the user fee facility project being finally adopted.

(f) The environmental evaluation and public hearing requirements of subsections (d) and (e) do not apply to the authorization, sale, or issuance of bonds under this chapter.

SECTION 18. Tennessee Code Annotated, Section 54-3-103, is amended by deleting the section and substituting:

As used in this chapter:

(1) "Ancillary agreements" means contracts or agreements facilitating the issuance and sale of bonds, including contracts or agreements providing for liquidity and credit enhancement and reimbursement agreements relating to the contracts or agreements providing for liquidity and credit enhancement;

(2) "Availability payments" means payments by a public entity to a private entity in connection with the development, maintenance, or operation of a user fee facility pursuant to a franchise agreement, concession agreement, or a combination of those agreements;

(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 evidence of borrowed money issued or entered into by or on behalf of the department to finance user fee facility projects;

(4) "Commissioner" means the commissioner of transportation;

(5) "Concession agreement" means an agreement between a public entity and a private entity, or a consortium of private entities, under which the private entity or consortium accepts responsibility for the design, construction, financing, operation, or maintenance of a user fee facility for a period of years, collects revenues from the user fee facility for that period, and accepts the risk of revenues being sufficient to support the private entity's or consortium's capital, operations, and maintenance costs for the user fee facility;

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

(7) "Develop" or "development" means a portion of the process of bringing a user fee facility project to completion, including, but not limited to, planning, feasibility analysis, environmental evaluation, preliminary engineering, design, acquisition of rights-of-way, relocation of utilities, permitting, environmental mitigation, contracting, funding, and construction;

(8) "Facility" means a highway, bridge, tunnel, parking lot or garage, or other paved surface or structure that is designed to carry or contain land transportation vehicles, or another transportation-related facility;

(9) "Franchise agreement" means an agreement between a public entity and a private entity, or a consortium of private entities, under which the private entity or consortium accepts responsibility for the design, construction, operation, or maintenance of a user fee facility for a period of years in exchange for payment from the public entity, which may include, but is not limited to, periodic availability payments from the public entity;

(10) "General purpose lane" means a traffic lane other than a high occupancy vehicle lane or other managed lane that is available for use by motorists without the payment of a user fee;

(11) "Hedging agreements" means interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings, or both, and other interest rate hedging agreements relating to bonds;

(12) "High occupancy user fee lane" means a high occupancy vehicle lane that may be used by an operator of a vehicle carrying fewer than the number of persons specified for the high occupancy vehicle lane if the operator pays a user fee;

(13) "High occupancy vehicle lane" or "HOV lane" has the same meaning as defined in § 55-8-188;

(14) "Managed lane" means a highway lane where operational strategies are proactively implemented and operated in response to changing traffic conditions, including, but not limited to, a user fee lane, high occupancy vehicle lane, or high occupancy user fee lane;

(15) "Open road user fee system" means a system for the collection of user fees via electronic means without the use of physical payment booths;

(16) "Operate" or "operation" means activity associated with the management, operation, and maintenance of a completed user fee project, including, but not limited to, collecting user fees; installing, repairing, or replacing equipment; maintaining, repairing, or improving the user fee facility; paying debt service on bonds, amounts payable under hedging agreements and ancillary agreements and other costs related thereto; paying salaries, benefits, and other costs of employees or employment necessary to the operation of the user fee facility, including the collection of user fees using an open road user fee system or other means and the payment of costs of operation and debt service; contracting or administering contracts related to any such activity; and funding or financing any such activity;

(17) "State funding board" means the state funding board established in § 9-9-101;

(18) "State user fee fund" or "fund" means each separate fund established in this chapter, or all such funds, as the context may require, and includes accounts and subaccounts in the fund or funds;

(19) "Transportation modernization board" or "board" means the board established in this chapter;

(20) "User fee" means a fee or charge for the use of a user fee facility;

(21) "User fee facility" means a facility where the development or operation of the facility is wholly or partially funded with user fees;

(22) "User fee facility development agreement":

(A) Means a contractual agreement between the department and a local governmental entity, other public entity, or a private entity that provides for the development, construction, reconstruction, financing, acquisition, maintenance, or operation of a user fee facility, or a combination thereof; and

(B) Includes, but is not limited to:

(i) Preliminary development agreements;

(ii) Design or construction agreements;

(iii) Operation or maintenance service agreements;

(iv) Franchise agreements, concession agreements, or a combination of those agreements;

(v) Agreements for the enforcement of user fees; and

(vi) Agreements between the department and a local governmental entity or other public entity to participate jointly in any of the agreements in this subdivision (22)(B);

(23) "User fee facility project" means a capital project involving the development or operation of a user fee facility;

(24) "User fee lane" means a highway lane that may be used by an operator of a vehicle if the operator pays a user fee; and

(25) "User fee revenue" means revenues or moneys received from the collection of user fees; from a lease, concession, franchise, license, or other agreement for the right to operate all or part of a user fee facility or an appurtenant facility; and other revenues or moneys received from the operation of a user fee facility.

SECTION 19. Tennessee Code Annotated, Section 54-3-104, is amended by deleting the section and substituting:

54-3-104. Development and operation of user fee facility projects – Funding – Setting and collecting user fees.

(a) The department may develop user fee facility projects and operate user fee facilities as provided in this chapter. The department may expend funds from the state user fee fund, the transportation modernization fund, and other funds, grants, or loans received from or made available by the federal government or another government agency that may be lawfully applied to a user fee facility project.

(b) Subsection (a) applies to:

(1) New transportation facilities constructed on or after July 1, 2023; provided, however, that a new transportation facility must include at least one (1) lane for use without payment of a user fee, and that at least one (1) lane for use without payment of a user fee must be operational in order to assess a user fee on any user fee lane within the transportation facility; and

(2) Existing transportation facilities where one (1) or more new vehicle travel lanes are added to the facility on or after July 1, 2023; provided, however, that the existing number of lanes available for use without payment of a user fee must not be reduced.

(c) The department may, subject to approval of the board, designate one (1) or more lanes of a highway, or portion of a highway, within the state as a user fee facility; provided, however, that such designation must not reduce the existing number of general purpose lanes and lanes available for use without payment of a user fee. In

making such designations, the department, subject to the approval of the board, shall specify the high occupancy requirement or other conditions for use of the lanes, which may include restricting vehicle types and implementing access controls.

(d) To establish a new user fee facility or to add a user fee facility on an existing facility, the department shall submit a proposal to the board. The proposal must include plans, feasibility analyses, and other such information as may be available to describe the proposed project and the need for such project, including:

(1) Projected traffic on the user fee facility;

(2) The anticipated amount of the user fee to be charged, or the method for setting variable user fees;

(3) Projected user fee revenue; and

(4) If applicable, the proposed use of a franchise agreement, concession agreement, or a combination of those agreements, to design, construct, finance, operate, or maintain the user fee facility.

(e) The department may, subject to approval of the board, set user fees or establish the method for setting variable user fees for the use of managed lanes, subject to resolutions or indentures authorizing bonds. Upon or prior to the issuance of any bonds, and until such time as the bonds are no longer outstanding under the resolution or indenture providing for the issuance of the bonds, the department shall collect, or shall cause to be collected, such user fees and shall revise the user fees from time to time whenever necessary, to produce revenue, together with other moneys that may be available, sufficient to:

(1) Provide for all costs of the development and operation of the user fee facility project, including reasonable reserves; and

(2) Pay when due all bonds and interest on the bonds, obligations under hedging agreements and ancillary agreements, and other indebtedness incurred by the state for the payment of which the user fees have been pledged, charged,

or otherwise encumbered, and interest thereon, including reasonable reserves therefor.

(f) A user fee, along with allowable increases, or the method for setting variable user fees on managed lanes, imposed or collected on a user fee facility on a state highway that is the subject of a user fee development agreement must be set in the user fee facility development agreement. The department shall obtain the approval of the board prior to modifying the user fee conditions set forth in the user fee facility development agreement.

(g) By July 1, 2024, and by July 1 annually thereafter, the department shall submit a report to the chairs of the finance, ways, and means committees of the house of representatives and the senate and the chairs of the transportation and safety committee of the senate and transportation committee of the house of representatives on the activities of the department under this chapter.

SECTION 20. Tennessee Code Annotated, Section 54-3-105, is amended as follows:

(1) By deleting "state tollway fund" wherever it appears and substituting instead "state user fee fund";

(2) By deleting "toll revenues" wherever it appears and substituting instead "user fee revenues";

(3) By deleting "tollway projects and toll facility projects" in subdivision (b)(3) and substituting instead "user fee facility projects";

(4) By deleting "tollway or toll facility" in subsection (c) and subdivisions (d)(2) and (3) and substituting instead "user fee facility"; and

(5) By deleting "tollways or toll facilities" in subdivision (d)(1) and substituting instead "user fee facilities".

SECTION 21. Tennessee Code Annotated, Section 54-3-105(c), is amended by inserting "as approved by the board," immediately after "commissioner,".

SECTION 22. Tennessee Code Annotated, Section 54-3-106, is amended by deleting the section and substituting:

54-3-106. Department contracting authority.

(a) In addition to other authority to enter into contracts as may be provided by law, the department may enter into user fee facility development agreements and other contracts with private entities, the federal government, or other governmental agencies for the purpose of developing or operating a user fee facility, or a part of a user fee facility, including, but not limited to, the following:

(1) Contracts with private entities using a project delivery method available to the department by law, pursuant to which all or part of the design, right-of-way acquisition, relocation of utilities, and construction of a user fee facility is accomplished by a private entity or entities on behalf of the department;

(2) Service agreements for the operation, or the operation and maintenance, of a user fee facility, or appurtenant facility, which may be procured on the basis of competitive sealed bids or the competitive selection of proposals, including the evaluation of qualifications and cost;

(3) Franchise agreements, concession agreements, or a combination thereof, in accordance with the following conditions:

(A) The department may procure such agreements in a manner consistent with § 54-6-106; except, that the department may, but is not required to, accept or evaluate unsolicited proposals for projects;

(B) The department may refer to § 54-6-110 for guidance on the content of such agreements and to § 54-6-109 for guidance on a preliminary development agreement related to such agreements; and

(C) The confidentiality provisions in § 54-6-107 apply to both solicited and unsolicited proposals received by the department for such agreements; provided, however, that a proposer submitting an unsolicited

proposal must include an executive summary covering the major elements of the proposal and must exclude information from the executive summary that the proposer intends to be kept confidential as proprietary information, as the executive summary is a public record under § 10-7-503, that may be used to solicit competing proposals; and

(4) Agreements with the federal government or other governmental agencies for the purpose of undertaking all or part of a user fee facility project.

(b) With respect to user fee facility development agreements entered into between the department and a private entity, the private entity may be allowed to lease a lane or lanes on the state highway system; provided, however, that the private entity is not allowed to own a lane or lanes on the state highway system.

(c) A contract or agreement must not be entered into for the operation of a user fee facility with a person or entity appearing on a sanctions list published under the authority of the United States department of the treasury, office of foreign assets control.

SECTION 23. Tennessee Code Annotated, Section 54-3-107, is amended by deleting the section and substituting:

54-3-107. User fees and other restrictions.

The commissioner may, subject to the approval of the board, establish user fees, vehicle restrictions, and other fees or restrictions applicable to the operation of user fee facilities as provided in this chapter. The commissioner may enforce fees or restrictions pursuant to this chapter.

SECTION 24. Tennessee Code Annotated, Section 54-3-108, is amended by deleting the section and substituting:

54-3-108. Traffic laws - Failure to pay user fee.

(a) The traffic laws of this state, including the applicable traffic laws of a municipality through which a user fee facility passes, and user fees and use restrictions established by the commissioner, govern the use of a user fee facility authorized under

this chapter. State and local law enforcement authorities may enforce the traffic laws and use restrictions.

(b) Except as provided in subsection (c), the operator of a vehicle that is driven through a user fee facility shall pay the user fee as established under this chapter.

(c) The following vehicles are exempt from payment of a user fee:

(1) Law enforcement or other authorized emergency vehicles as defined by § 55-8-101, regardless of whether the vehicle is responding to an emergency or displaying a flashing light;

(2) Multiple-passenger vehicles operated by a public transit authority; and

(3) On a high occupancy user fee lane, vehicles that have been authorized to use an HOV lane free of charge during the time period specified for HOV use.

(d) The department may, subject to approval of the board, prohibit certain classes of vehicles from operating in a user fee facility through the posting of appropriate signage, wherever the department determines, on the basis of an engineering and traffic investigation that the presence of those vehicles impairs the safe or efficient operation of the user fee facility.

(e) A person who uses a user fee facility and fails to pay the user fee within ninety (90) days of the person's notice of nonpayment under § 54-3-114, or a person who operates a prohibited vehicle on a user fee facility, commits a Class C misdemeanor and is subject to a fine of not more than fifty dollars ($50.00).

SECTION 25. Tennessee Code Annotated, Section 54-3-109, is amended as follows:

(1) By deleting "tollway projects and toll facility projects" in subsection (a) and subdivisions (n)(6) and (7) and substituting instead "user fee facility projects";

(2) By deleting "tollway projects or toll facility projects" in subsection (l) and subdivision (n)(5) and substituting instead "user fee facility projects";

(3) By deleting "state tollway fund" wherever it appears in subsections (c), (j), and (o) and subdivisions (n)(1) and (11) and substituting instead "state user fee fund";

(4) By deleting "toll revenues" wherever it appears in subdivisions (n)(1) and (5) and subsection (o) and substituting instead "user fee revenues"; and

(5) By deleting "tolls" in subdivision (n)(2) and subsection (o) and substituting instead "user fees".

SECTION 26. Tennessee Code Annotated, Section 54-3-109(a), is amended by inserting the language ", subject to approval of the board" following "commissioner" immediately preceding the period.

SECTION 27. Tennessee Code Annotated, Section 54-3-110, is amended by deleting the language "tollway" and "toll" wherever they appear and substituting "user fee".

SECTION 28. Tennessee Code Annotated, Section 54-3-113, is amended by deleting the section and substituting instead:

54-3-113. Transportation modernization board.

(a) There is established the transportation modernization board. The board consists of five (5) voting members as follows:

(1) One (1) member to be appointed by the governor;

(2) One (1) member to be appointed by the speaker of the house of representatives;

(3) One (1) member to be appointed by the speaker of the senate;

(4) The governor, ex officio, or the governor's designee; and

(5) The commissioner of transportation, ex officio, or the commissioner's designee.

(b) The terms for the initial board members who do not serve ex officio begin on October 1, 2023, and must be staggered as follows:

(1) The member appointed pursuant to subdivision (a)(1) shall serve an initial term of six (6) years;

(2) The member appointed pursuant to subdivision (a)(2) shall serve an initial term of five (5) years; and

(3) The member appointed pursuant to subdivision (a)(3) shall serve an initial term of four (4) years.

(c) Following the terms for initial board members as provided in subsection (b), the term for a board member who does not serve ex officio is four (4) years. A board member who does not serve ex officio is eligible for reappointment and may serve a maximum of two (2) full terms; provided, however, that an appointment to fill an unexpired term as a result of a vacancy does not count toward the term limit. 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.

(d) Three (3) board members constitute a quorum for the transaction of business. If a quorum is present, a vacancy on the board does not prevent the board from transacting business or otherwise taking an action authorized pursuant to this chapter.

(e) The commissioner of transportation or the commissioner's designee shall serve as chair. The board shall meet at the call of the chair. The board may elect other officers as the board deems appropriate.

(f) The department shall provide administrative support to the board.

(g) The board may exercise the powers and duties necessary to implement this chapter.

SECTION 29. Tennessee Code Annotated, Title 54, Chapter 3, Part 1, is amended by adding the following as a new section:

54-3-114. Enforcement of nonpayment.

(a) The operator of a vehicle that is driven through a user fee facility without payment of the user fee commits a violation of § 54-3-108(e) subject to enforcement

under this section. Each event of nonpayment is a separate violation. This subsection (a) does not apply to an operator of a vehicle exempt under § 54-3-108(c).

(b) The department or the department's contractor shall place signs on, or in advance of, a user fee facility that provide drivers with the following information:

(1) Notice that the driver is approaching a facility for which a user fee is required, with signs providing this information placed in advance of the location where the user fee is required;

(2) The methods by which the user fee may be paid; and

(3) If applicable, directions to the nearby user fee collection facility that accepts cash payment of the user fee.

(c) In the event of nonpayment of the user fee as required by subsection (a), and on the issuance of written notice of nonpayment by the department or its contractor, the registered owner of the vehicle is liable for the payment of the required user fee and any applicable administrative fee established under subsection (d).

(d) The department, subject to approval of the board, shall establish administrative fees for the collection of unpaid user fees and shall establish procedures for the collection of unpaid user fees and applicable administrative fees.

(e) It is an exception to the application of subsection (a) that the registered owner of the vehicle was a lessor of the vehicle at the time the user fee was incurred. Within thirty (30) days of the department or contractor mailing notice of nonpayment to the registered owner, the registered owner shall provide to the department or its contractor a copy of the rental, lease, or other contract, with the name and address of the lessee at the time the user fee was incurred clearly legible. If the lessor provides the required information under this subsection (e), the department or the department's contractor may send a notice of nonpayment to the lessee at the address provided by the lessor within thirty (30) days of receipt of the required information from the lessor and shall follow the procedures established under subsection (d). A lessee who is mailed a

written notice of nonpayment is liable for payment of the user fee and any applicable administrative fee.

(f) It is an exception to the application of subsection (a) that the registered owner of the vehicle transferred ownership of the vehicle to another person before the event of nonpayment under subsection (a) occurred and if within thirty (30) days after the date the department or the department's contractor mailed the notice of nonpayment, the registered owner provides to the department or its contractor the name and address of the person to whom the vehicle was transferred. If the former owner provides the required information under this subsection (f), the department or the department's contractor may send a notice of nonpayment to the subsequent owner at the address provided by the former owner within thirty (30) days of receipt of the required information from the former owner and shall follow the procedures established under subsection (d). A subsequent owner who is mailed a written notice of nonpayment is liable for payment of the user fee and any applicable administrative fee.

(g) The department or the department's contractor have sufficient proof of nonpayment under this section upon:

(1) Proof that a vehicle was driven through a user fee collection facility without payment of the user fee, which may include, but is not limited to, testimony of a law enforcement officer, or evidence obtained through the use of an open road user fee system installed by the department or its contractor; and

(2) Proof that the person was the registered owner, lessee, or subsequent owner, which may include, but is not limited to, records of the department of revenue or the analogous department of another state or country, or information provided under subsection (e) or (f).

(h) It is an exception to the application of subsection (a) that the vehicle was stolen before the event of nonpayment under subsection (a) occurred; provided, that the

theft was reported to the appropriate law enforcement authority before the earlier of the occurrence of nonpayment, or eight (8) hours after the discovery of the theft.

(i) Notwithstanding § 55-8-198, the department or the department's contractor may use an open road user fee system to monitor use of a user fee facility and collect payment under this section.

(j)

(1) A registered owner who commits three (3) or more violations of this section within the same twelve-month time period may be determined to be a habitual violator and may be subject to suspension or non-renewal of the registered owner's vehicle registration.

(2) No later than January 1, 2025, the department, subject to approval of the board, shall establish:

(A) The criteria for a determination by the department or the department's contractor that a registered owner is a habitual violator; and

(B) The process for the department or the department's contractor to notify the department of revenue of the determination that a registered owner is a habitual violator.

(3) The department shall notify the department of revenue upon the establishment of the criteria and process required by subdivision (j)(2).

(4) No later than eighteen (18) months following the department's notification of the establishment of criteria under subdivision (j)(2), the department of revenue shall promulgate rules to establish a process for suspending or non-renewing a habitual violator's vehicle registration. The rules must include, but are not limited to, a process for providing at least sixty (60) days' written notice to the registered owner of the department of revenue's intention to suspend or non-renew the registered owner's vehicle registration, which notice must include the reason for the proposed suspension or non-

renewal, an explanation of the process for a registered owner to challenge the suspension or non-renewal, which must include an opportunity for a hearing, the process by which the registered owner can avoid the suspension or non-renewal of the registered owner's vehicle registration through the payment of unpaid user fees and any applicable administrative fee, and the imposition of any administrative fees necessary to cover the department of revenue's cost in administering this section.

(k) This state may enter reciprocity agreements with other government entities or other toll authorities for the purpose of collecting user fees and any applicable administrative fees from non-Tennessee residents for violations of this section.

SECTION 30. Tennessee Code Annotated, Title 54, Chapter 3, Part 1, is amended by adding the following as a new section:

54-3-115. Proprietary records.

(a) Personal information or highly restricted personal information obtained in connection with a motor vehicle record, and thereafter obtained by the department or the department's contractor in connection with the collection of and enforcement of user fees on a user fee facility, is subject to disclosure limitations established in the federal Driver's Privacy Protection Act (18 U.S.C. § 2721) and the Uniform Motor Vehicle Records Disclosure Act, compiled in title 55, chapter 25, and must remain confidential as required by such federal and state laws and not be open for public inspection under title 10, chapter 7, nor discoverable in legal proceedings.

(b) Financial information, transaction history, and information generated by an open road user fee system on a user fee facility related to the collection of a user fee from a person, and which has been obtained by the department or the department's contractor for the purposes of collecting and enforcing user fees on a user fee facility must remain confidential and not be open for public inspection under § 10-7-503 or another law. The department or the department's contractor may use the account

information only for purposes of collecting and enforcing user fees. Notwithstanding another law to the contrary, this information is not open to public inspection under § 10-7-503 or another law; provided, however, that the user fee facility account holder may examine the account holder's own account information, and a third party by authority of a proper court order may inspect and examine confidential account information.

(c) Proposals received by the department for franchise agreements, concession agreements, or some combination of those agreements, related to the design, construction, financing, operation, or maintenance of user fee facilities, and documents used by the department to evaluate and accept or reject such proposals, must remain confidential, not be subject to disclosure to another proposer, and not be open for public inspection pursuant to § 10-7-503 or another law until after the department has selected a proposal and awarded a contract. Proprietary information contained in a proposal for such an agreement, whether a solicited or unsolicited proposal, must remain confidential, not be subject to disclosure to another proposer, and not be open for public inspection pursuant to § 10-7-503 or another law, as provided in § 54-6-107. For purposes of this subsection (c), "proprietary" has the same meaning as defined in § 54-6-102.

SECTION 31. Tennessee Code Annotated, Title 54, Chapter 1, is amended by adding the following as a new part:

54-1-601. Part definitions.

As used in this part, "alternative delivery contracts" means:

(1) Design-build contracts, as defined in § 54-1-119(a)(1);

(2) Contracts using the construction manager/general contractor method, as defined in § 54-1-502; and

(3) Contracts using the progressive design-build method, as defined in § 54-1-502.

54-1-602. Limitation on number of alternative delivery contracts per fiscal year.

(a) The department shall not procure more than twenty-eight (28) alternative delivery contracts per fiscal year.

(b) Subsection (a) only applies to projects funded by the state highway fund and does not apply to projects funded by the transportation modernization fund, discretionary funds, or federal grant program funds.

SECTION 32. Tennessee Code Annotated, Section 55-4-116, is amended by deleting the section and substituting:

(a) Beginning January 1, 2024, in addition to all other motor vehicle registration fees prescribed by law, there must be paid to the department at the time the vehicle registration is renewed an additional registration fee according to the following schedule, or in such other amount as adjusted pursuant to subsections (b) and (d):

(1) For all-electric vehicles:

(A) On or after January 1, 2024, and prior to January 1, 2027, two hundred dollars ($200); and

(B) On or after January 1, 2027, and prior to January 1, 2028, two hundred seventy-four dollars ($274);

(C) On or after January 1, 2028, and each subsequent year, two hundred seventy-four dollars ($274), adjusted by an amount each year to reflect the effect of annual inflation or deflation as calculated pursuant to subsection (b).

(2) For hybrid electric vehicles and plug-in hybrid electric vehicles:

(A) On or after January 1, 2024, and prior to January 1, 2028, one hundred dollars ($100); and

(B) On or after January 1, 2028, and each subsequent year, one hundred dollars ($100), adjusted by an amount each year to reflect the effect of annual inflation or deflation as calculated pursuant to subsection (b).

(b)

(1) On January 1, 2028, and on January 1 of each subsequent year, for the registration fees assessed pursuant to subdivisions (a)(1)(C) and (a)(2)(B), the department shall adjust the amount of the fee to reflect the effect of annual inflation or deflation for the cost of living that consumers in this state experienced on average during the immediately preceding fiscal year, as follows:

(A) If, based upon the chained consumer price index for all urban consumers rate published by the United States department of labor, bureau of labor statistics or another similar index established by the federal government for June of the previous year, the department determines that this federal index reflects the effect of inflation and deflation for the cost of living that consumers in this state experienced on average during the preceding fiscal year, and if the rate is less than three percent (3%), then the department shall adjust the amount of the fee by that rate; and

(B) If, based upon the chained consumer price index for all urban consumers rate published by the United States department of labor, bureau of labor statistics or another similar index established by the federal government for June of the previous year, the department determines that this federal index reflects the effect of inflation and deflation for the cost of living that consumers in this state experienced on average during the preceding fiscal year, and the rate is equal to or more than three percent (3%), then the department shall adjust the amount of the fee by three percent (3%).

(2) The adjustment made pursuant to subdivision (b)(1) must be rounded up to the nearest whole dollar figure. The department shall publish each adjusted registration fee amount on its website.

(c) Notwithstanding § 55-6-107 or another law to the contrary, the proceeds of the additional registration fees established in this section must be apportioned as follows:

(1) Sixty-three and four-tenths percent (63.4%) to the state highway fund;

(2) Eleven and eight-tenths percent (11.8%) to municipalities, as defined in § 54-4-201, on the basis set out in § 54-4-203;

(3) Twenty-two percent (22%) to counties on the basis set out in § 54-4-103; and

(4) Two and eight-tenths percent (2.8%) to the general fund.

(d)

(1) Notwithstanding another law to the contrary, beginning on January 1, 2027, if the federal government implements any taxes or fees on all-electric vehicles under title 26 of the United States Code and allocates those taxes or fees pursuant to chapter 98 of title 26 to the federal highway trust fund (26 U.S.C. § 9503), then the additional registration fee for all-electric vehicles assessed in subdivision (a)(1) also must be adjusted pursuant to this subsection (d) so as to account for the tax or fee assessed by the federal government.

(2) An adjustment in the additional registration fee pursuant to this subsection (d) becomes effective beginning January 1 of the calendar year following the implementation of the federal tax or fee on all-electric vehicles.

(3) The department shall adjust the additional registration fee on all-electric vehicles by subtracting the sum of federal tax or fee from the sum of the additional registration fee at the time of the adjustment.

(4) Notwithstanding the sum of the taxes or fees imposed by the federal government, the department's adjustment of the additional registration fee must not result in an additional registration fee for all-electric vehicles of less than two

hundred dollars ($200), adjusted for inflation pursuant to subsection (b), on or after January 1, 2028.

(5) If the federal government elects to decrease any or all taxes or fees on all-electric vehicles imposed by title 26 of the United States Code and allocated by chapter 98 of title 26 to the federal highway trust fund after it has implemented the taxes or fees, then the additional registration fee must be increased by an amount equal to the amount of the decrease by the federal government.

(e) As used in this section:

(1) "All-electric vehicle":

(A) Means a passenger or commercial motor vehicle with an electric motor as its sole means of propulsion; and

(B) Does not include a low speed vehicle or a medium speed vehicle;

(2) "Hybrid electric vehicle":

(A) Means a vehicle that is primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electric current and also operates on, or is capable of operating on, a nonelectrical source of power; and

(B) Does not include a low speed vehicle or a medium speed vehicle; and

(3) "Plug-in hybrid electric vehicle":

(A) Means a vehicle that can use batteries to power an electric motor and use another fuel, such as gasoline or diesel, to power an internal combustion engine or other propulsion source, and that may use electricity from the grid to run the vehicle some or all of the time; and

(B) Does not include a low speed vehicle or a medium speed vehicle.

SECTION 33. Tennessee Code Annotated, Section 55-6-107(a)(1), is amended by deleting the language "The proceeds" and substituting instead "Except as otherwise provided in § 55-4-116(c), the proceeds".

SECTION 34. Tennessee Code Annotated, Section 55-8-188, is amended by deleting the section and substituting:

(a) As used in this section:

(1) "Emergency vehicle" means a vehicle of a governmental department or public service corporation when responding to an emergency, a vehicle of a police or fire department, or an ambulance;

(2) "High occupancy vehicle" means a public transportation vehicle; privately owned bus; motorcycle; private passenger motor vehicle, including vans and pick-up trucks, carrying no fewer than two (2) passengers; or as otherwise determined by the commissioner or transportation; and

(3) "HOV lane" means a lane or set of lanes on a highway facility of any class, so designated by signing, pavement delineation or markings, or other means of positive guidance, that is reserved for the exclusive use of high occupancy vehicles during specified hours of specified days of the week, in order to provide preferential service over traditional, mixed vehicles on that remaining part of the same highway facility.

(b) Drivers shall obey the directions of every official traffic control device that is erected or placed to restrict usage of a lane designated for high occupancy vehicles.

(c) Operation of a vehicle other than a high occupancy vehicle in an HOV lane is an offense. Drivers of emergency vehicles are exempt from this subsection (c).

(d) A violation of this section is a Class C misdemeanor, subject only to imposition of a fine, not to exceed fifty dollars ($50.00), and court costs, not to exceed

ten dollars ($10.00), including, but not limited to, any statutory fees of officers. State or local litigation taxes are not applicable to a case prosecuted under this section.

SECTION 35. Tennessee Code Annotated, Section 12-2-112(a)(8)(A), is amended by deleting the language "seventy-five thousand dollars ($75,000)" wherever it appears and substituting "two hundred fifty thousand dollars ($250,000)".

SECTION 36. Tennessee Code Annotated, Section 12-2-112(a)(8)(C), is amended by deleting the language "ten thousand dollars ($10,000)" wherever it appears and substituting "twenty-five thousand dollars ($25,000)".

SECTION 37. Tennessee Code Annotated, Section 4-29-246(a), is amended by adding the following as a new subdivision:

( ) Transportation modernization board, created by § 54-3-113;

SECTION 38. 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 39. If any provision of this act, or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 40. This act takes effect upon becoming a law, the public welfare requiring it.

House Finance, Ways, and Means Subcommittee Am. #1

Amendment No._____

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

_____
Signature of Sponsor

AMEND Senate Bill No. 1134* **House Bill No. 1382**

by deleting "§ 7-85-205" in SECTION 3 and substituting instead "§ 7-86-205".

House Finance, Ways, and Means Subcommittee Am. #1

Amendment No._____

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

_____

Signature of Sponsor

AMEND Senate Bill No. 955* **House Bill No. 1286**

by deleting all language after the caption and substituting:

WHEREAS, through the state treasurer's investment and reinvestment of program funds, it is the state treasurer's duty to maximize investment returns for the programs under the state treasurer's responsibility and oversight; and

WHEREAS, while there is a global movement to make investment decisions based on environmental, social, and governance interests, the state treasurer shall make investment decisions based on financial factors; now, therefore,

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

SECTION 1. Tennessee Code Annotated, Title 9, Chapter 4, is amended by adding the following as a new part:

9-4-1401.

As used in this part:

(1) "Environmental, social, and governance interests" means interests that are not financial;

(2) "Financial":

(A) Means, with regard to a factor or reason, having been prudently determined to have a material effect on the financial risk or the financial return of an investment for a program based on the appropriate investment horizon consistent with the program's articulated funding and investment objectives for the exclusive benefit of the purposes of the program;

(B) Includes, but is not limited to, data-based economic decisions and forecasting based on financial trends or themes; and

(C) Does not include environmental, social, and governance interests that may not be material to the financial analysis of the investment; and

(3) "Program" means any of the following which are established by law and for which the state treasurer has, or has been delegated, investment authority, oversight, and responsibility:

(A) A trust fund;

(B) An endowment fund;

(C) Deferred or tax-sheltered compensation plan or plans, including profit sharing or salary reduction plans, established pursuant to title 8, chapter 25, parts 1, 2, and 3;

(D) Programs under the Tennessee College Savings Trust Act, compiled in title 49, chapter 7, part 8; and

(E) Programs under The Achieving a Better Life Experience (ABLE) Act, compiled in title 71, chapter 4, part 8.

9-4-1402.

Consistent with the prudent investor rule pursuant to § 35-14-103, the standard of care pursuant to § 35-14-104, and the exercise of reasonable care in delegation of investment and management functions pursuant to § 35-14-111 and § 8-37-112, the department of treasury investment division staff, under the supervision of the state treasurer, shall invest, reinvest, manage, and select investment options for program assets for financial reasons for the exclusive benefit of the beneficiaries of the programs while maximizing long-term shareholder value.

9-4-1403.

(a) Notwithstanding another law or policy to the contrary, the state treasurer has the sole authority to exercise, in person or by proxy, all voting rights with respect to securities held by a program and to give general or special proxies or powers of attorney with or without power of substitution.

(b) The authority conferred by subsection (a) must be exercised for financial reasons, impartially and solely in the interests of the beneficiaries of the program as determined from the purposes, terms, distribution requirements, and other circumstances of the program, and the terms of the respective program's investment and proxy voting policies or guidelines.

(c) The state treasurer may delegate the authority conferred by subsection (a), in whole or in part, to the department of treasury staff, which authority includes, but is not limited to, conducting research, providing due diligence, and casting votes.

9-4-1404.

(a) The state treasurer has final authority over an investment or proxy voting decision for a program.

(b) The state treasurer may make and enter into contracts, agreements, and other instruments with an individual or entity to effectuate this part, including, but not limited to, advisors, research providers, consultants, and other contractors, who must be compensated as the state treasurer may deem just.

(c) Notwithstanding another law to the contrary, in cases where the interest of the state treasurer requires additional legal counsel to effectuate this part and to advise on issues concerning the state treasurer's fiduciary obligations and responsibilities, the state treasurer, with the approval of the attorney general and reporter, may contract with additional counsel, who must be paid such compensation for services as the treasurer may deem just.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it, and applies to investments made on or after July 1, 2023.