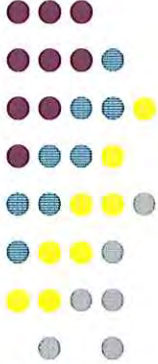




# Regional Transit Authorities

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# Regional Transit Authorities

Provisions for the creation of several regional transit authorities (RTAs), which have either tax or fee authority within their jurisdiction, were included in 2009 Act 28. Specifically, Act 28 created the Southeastern RTA, which has the authority to impose a vehicle rental fee for the construction, management, and operation of the Kenosha-Racine-Milwaukee (KRM) commuter rail project. Further, Act 28 allows Dane County, Chequamegon Bay, and Chippewa Valley RTAs to be created. Each of these three has the authority to impose sales and use taxes to manage or contract for the provision of transit services within its jurisdiction.

This paper describes the statutory authority specific to each of the four RTAs allowed under Act 28. It also provides information on the powers and duties that are common to the Dane County, Chequamegon Bay, and Chippewa Valley RTAs.

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## **Southeastern RTA**

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Effective July 1, 2009, Act 28 created the southeastern regional transit authority (SERTA), a public body corporate and politic, comprised of Kenosha, Milwaukee, and Racine counties. The jurisdictional area of SERTA is the territorial boundaries of the member counties. The powers of the Authority are limited to those necessary and convenient for the creation, construction, and management of a KRM commuter rail line, defined as a commuter rail transit system connecting the cities of Kenosha, Racine, and Milwaukee. SERTA effectively replaced the previous Southeastern Wisconsin RTA, created under 2005 Act 5, which was terminated under Act 28.

## **Board of Directors**

The powers of SERTA are vested in a board of directors and a majority of the board's full authorized membership constitutes a quorum for the purpose of conducting the authority's business and exercising its powers. Also, any action may be taken by the board upon a vote of a majority of the directors present and voting, unless the bylaws of SERTA require a larger number.

The SERTA board consists of the following members: (a) two members from Milwaukee County appointed by the Milwaukee County board chair; (b) two members from the City of Milwaukee appointed by the mayor of the City of Milwaukee; (c) one member from Racine County appointed by the Racine County board chair; (d) one member from the City of Racine appointed by the mayor of the City of Racine; (e) one member from Kenosha County appointed by the Kenosha County board chair; (f) one member from the City of Kenosha appointed by the mayor of the City of Kenosha; and (g) one member, who must reside within the RTA's jurisdictional area, appointed by the Governor.

The SERTA board was established in late 2009, and held its first board meeting on November 23, 2009. The board adopted SERTA's bylaws on December 18, 2009. Southeastern Wisconsin Regional Planning Commission staff serve as temporary staff to the SERTA Board.

## **Vehicle Rental Fee**

The SERTA board has the authority to impose up to an \$18 per transaction vehicle rental fee in its jurisdictional area. The board also has the authority to annually index the vehicle rental fee by the average, annual change in the consumer price

index for all urban consumers (the CPI-U) for the twelve months ending on September 30 in the year before the adjustment. The indexed rate must be rounded to the next highest quarter-dollar amount. To date, the SERTA board has not imposed a vehicle rental fee.

If SERTA imposes a vehicle rental fee, the administration and collection of the fee will be carried out by the Department of Revenue (DOR). The SERTA board is required to notify DOR of the fee and any indexed fee adjustment at least 90 days before it becomes effective and DOR must publish the adjusted fee at least 30 days before it becomes effective.

For administering the fee, DOR can retain 2.55% of the fee revenues to cover its costs associated with collecting the fee. However, at the end of each fiscal year, any unencumbered balance in DOR's administrative appropriation account that exceeds 10% of the expenditures from the appropriation during the fiscal year will be distributed to the RTA.

The SERTA board is allowed to retain revenues equivalent to up to \$2 of the vehicle rental fee to be used for SERTA administration. The remaining revenues from the vehicle rental fee can be used for costs related to the KRM commuter rail project, including the planning, engineering, construction, maintenance, and operation of the project

In addition, Act 28 required that the balance of funds from the previous Southeastern Wisconsin RTA's \$2 per transaction vehicle rental fee be transferred to SERTA to assist in the planning of the KRM commuter rail project. This fee ended in October, 2009, when the Southeastern Wisconsin RTA was terminated. Approximately \$1.5 million in funds were transferred to SERTA under this provision.

### **Bonding Authority and State Funding**

The SERTA board has the authority to issue up to \$50 million in bonds, excluding refunding

bonds, for the anticipated local funding share required for initiating KRM commuter rail link service. SERTA is also an eligible applicant for up to \$50 million in state funding under the southeastern Wisconsin transit capital assistance program that was created under Act 28. The KRM commuter rail project is enumerated as a major transit capital improvement project in the statutes, which makes the project eligible for the state funding.

### **KRM Commuter Rail Project**

The SERTA board is the only entity in Kenosha, Milwaukee, and Racine counties that can apply to the Federal Transit Administration (FTA) for federal new starts funding for the KRM commuter rail project. The proposed KRM project would be a 33-mile long, commuter transit service that would run on what is currently the Union Pacific North freight line. The service would connect with the Metra rail line that currently runs between Chicago and Kenosha. The KRM project would involve new transit service that would extend to Milwaukee's Amtrak station, with potential intermediate stops in Kenosha, Somers, Racine, Caledonia, Oak Creek, South Milwaukee, and Cudahy-St. Francis. The service would consist of 14 weekday trains in each direction between Kenosha and Milwaukee. In addition, certain trains could also run to and from Waukegan, IL. The proposed service would be coordinated with the existing Metra commuter rail service to allow for timed transfers at Kenosha or Waukegan with Metra trains to and from Chicago. The new starts/preliminary engineering application indicates a projected ridership of 8,300 daily trips by 2035.

The board was required to submit an application to the FTA to enter the preliminary engineering phase of the federal new starts grant program for the KRM commuter rail line no later than July 1, 2010. In May, 2010, the SERTA board voted to submit the KRM commuter rail project new starts application for consideration of discretionary funding to enter into preliminary engineering. The application was formally submitted on June 24, 2010. Any FTA decision on preliminary engineering

would not entail a full funding grant agreement, which could only occur after final engineering and design are complete.

The estimated construction cost of the proposed KRM commuter rail project is \$233.1 million (2009 dollars), with the annual operating costs associated with the project estimated at \$13.4 million (2009 dollars). The proposed funding plan for the capital costs of the project outlined by SERTA was approximated as follows: (a) \$140 million in FTA new starts funding; (b) \$18 million from the Federal Highway Administration's congestion mitigation and air quality improvement program; and (c) \$35 million to \$40 million each in state and local funds.

The August, 2009, draft environment impact statement indicated the following general schedule for the KRM commuter rail project.

| <b>Stage/Task</b>                       | <b>Completion</b> |
|---|-------------------|
| FTA Decision on Preliminary Engineering | Winter, 2010-11   |
| Conduct Preliminary Engineering         | Summer, 2011      |
| Apply for FTA Final Design Funding      | Summer, 2011      |
| FTA Decision on Final Design            | Winter, 2012-13   |
| Conduct Final Design                    | Winter, 2013-14   |
| FTA Decision on Full Funding            | Fall, 2014        |
| Construction/Service Implementation     | Spring, 2016      |

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### **Dane County, Chequamegon Bay, and Chippewa Valley RTAs**

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Act 28 allows three specific RTAs to be created, in separate geographic areas of the state, each with the authority to impose sales and use taxes for transit. The Dane County, Chequamegon Bay, and Chippewa Valley RTAs each have a jurisdictional area and governing board makeup specific to the RTA. However, the RTAs generally have the same powers and authority. This section of the paper discusses the Act 28 provisions on jurisdiction and governance that are unique to each of these RTAs, as well as the powers and authorities that are common to all three RTAs.

### **Dane County RTA**

Under Act 28, the Dane County board may adopt a resolution to create a Dane County RTA with a jurisdictional area that is the geographic area formed by the Madison metropolitan planning area. Only those municipalities wholly or partly included in the Madison metropolitan planning area on January 1, 2003, would be members of the Dane County RTA. However, annexed territory subject to an unresolved challenge on January 1, 2003, is not considered part of the annexing municipality or the Madison metropolitan planning area (this excludes the Village of Waunakee from the Dane County RTA's jurisdictional area, unless the Village joins the RTA).

The Dane County board established the Dane County RTA on November 6, 2009. Under Act 28, the initial municipalities located wholly or partly within the Dane County RTA's jurisdictional area include: (a) the cities of Fitchburg, Madison, Middleton, Monona, Stoughton, Sun Prairie, and Verona; (b) the villages of Cottage Grove, Maple Bluff, McFarland, Shorewood Hills, and Waunakee; and (c) the towns of Blooming Grove, Bristol, Burke, Cottage Grove, Dunn, Dunkirk, Madison, Middleton, Pleasant Springs, Rutland, Springfield, Sun Prairie, Verona, Westport, and Windsor.

In addition, any municipality located in whole or in part within Dane County, that is not part of the Madison metropolitan planning area, may join the Dane County RTA if the governing body of the municipality adopts a resolution to join the authority and the RTA board approves the municipality's request to join the RTA. To date, no municipality has adopted a resolution to join the Dane County RTA.

The Dane County RTA board of directors consists of the following members who, unless noted otherwise, serve four-year terms: (a) two members from the Madison metropolitan planning area, both of whom have an initial term of two years, to be appointed by the county executive and approved by the county board; (b) two members ap-

pointed by the mayor of the City of Madison and approved by the common council; (c) one member appointed by the Governor; (d) one member from each city, other than the City of Madison, with a population of more than 15,000 located in Dane County, whose initial terms are two years, and who are appointed by the mayor and approved by the common council of each city (based on current population estimates this provision applies to the cities of Fitchburg, Middleton, and Sun Prairie); and (e) one member from a city or village within the jurisdictional area of the authority that does not have a separate statutory representative on the board, appointed for a two-year term by the Dane County Cities and Villages Association (this member is a rotating member among these eligible cities and villages and a city or village can not have a subsequent appointee until an appointee from each eligible city or village has served a term in that rotation). If a municipality with an appointment to the RTA is not governed by an elected executive, the board or council chairperson of the governing body of the appointing authority has the power to appoint that municipal representative to the RTA board. Local governments have been providing staff assistance to the RTA board on a temporary basis.

### **Chequamegon Bay RTA**

If the Ashland and Bayfield county boards each adopt a resolution to be a member of the Chequamegon Bay RTA, the RTA is created and the jurisdictional area of the RTA is the combined territorial boundaries of Ashland and Bayfield counties. Once the RTA is created, the governing body of any other county may vote to join the RTA. The RTA board must approve the county's joinder before the county could be a member. If a county joins the RTA, the jurisdictional area of the RTA is the combined territorial boundary of Ashland County, Bayfield County, and any other county that joins the RTA. To date, the Chequamegon Bay RTA has not been created.

If the Chequamegon Bay RTA is created, the board of directors of the authority would be

determined by resolution of the governing body of each county and the bylaws of the RTA would have to include the approved board composition. However, the RTA board could not consist of more than 17 members and would have to include the following members:

- a. at least three members from each county, appointed by the county executive and approved by the county board of each county;
- b. at least one member from the most populous city of each county (the cities of Ashland and Washburn), appointed by the mayor of the city and approved by the common council; and
- c. at least one member from the RTA's jurisdictional area, appointed by the Governor.

If a municipality with an appointment to the RTA is not governed by an elected executive, the board or council chairperson of the governing body of the appointing authority has the power to appoint that municipal representative to the RTA board. If the governing bodies of the counties are unable to agree upon the composition of the board of directors, the board is limited to the minimum membership described above. The length of terms for the Chequamegon Bay RTA board members is four years, except the initial term is two years for the following members: (a) one of the members appointed by the county executives of each county; and (b) each member appointed by the mayors of the most populous city in each member county.

In addition, any county that joins the Chequamegon Bay RTA would have three members on the RTA board, to be appointed by the county executive of the county and approved by the county board. Any county that joins the RTA is allowed to determine the makeup of the RTA board along with Ashland and Bayfield counties. The most populous city in any county that joins the RTA is allowed one member, who is to be appointed by the mayor of the city and approved by the common council of the city.

## **Chippewa Valley RTA**

If the Eau Claire County board adopts a resolution to be a member of the Chippewa Valley RTA, the RTA is created and the jurisdictional area of the RTA is the territorial boundary of Eau Claire County. If the RTA is created, any municipality located in whole or in part in Eau Claire County would be a member of the RTA. In addition, once the RTA is created, the governing body of Chippewa County may vote to join the RTA. If the county joins the RTA, the jurisdictional area of the RTA is the combined territorial boundaries of Eau Claire County and Chippewa County. If Chippewa County joins the RTA, any municipality located in whole or in part in Chippewa County would be a member of the RTA. To date, the Chippewa Valley RTA has not been created.

If the Chippewa Valley RTA is created, the board of directors of the authority would be determined by resolution of the governing body of Eau Claire County or, if Chippewa County also joins the authority, by resolution of the governing bodies of Eau Claire County and Chippewa County. The bylaws of the RTA would have to include the approved board composition. However, the RTA board could not consist of more than 17 members and would have to include the following members:

- a. at least three members from Eau Claire County, appointed by the county executive and approved by the county board;
- b. if Chippewa County joins the RTA, at least three members from Chippewa County, appointed by the county executive and approved by the county board;
- c. at least one member from the most populous city of each member county (the cities of Eau Claire and Chippewa Falls), appointed by the mayor of the city and approved by the common council; and

- d. at least one member from the RTA's jurisdictional area, appointed by the Governor.

If a municipality with an appointment to the RTA is not governed by an elected executive, the board or council chairperson of the governing body of the appointing authority has the power to appoint that municipal representative to the RTA board. If Chippewa County joins the RTA, and the governing bodies of Eau Claire County and Chippewa County are unable to agree upon the composition of the board of directors, the board is limited to the minimum membership described above.

The length of terms for Chippewa Valley RTA board members is four years, except the initial term is two years for the following members: (a) one of the members appointed by the Eau Claire County executive; (b) one of the members appointed by the Chippewa County executive, if Chippewa County joins the RTA; and (c) each member appointed by the mayors of the most populous city in each member county.

### **Common Powers and Authority**

Once created, an RTA has the authority to transact business and exercise any of its powers. The powers of the RTA are vested in its board of directors. A majority of the board's full authorized membership constitutes a quorum for the purpose of conducting the authority's business and exercising its powers. Any action may be taken by an RTA board upon a vote of a majority of the directors present and voting, unless the bylaws of the authority require a larger number.

The bylaws of an RTA govern its management, operations, and administration and must include provisions that specify all of the following: (a) the functions or services to be provided by the authority; (b) the powers, duties, and limitations of the authority; and (c) the maximum rate of the sales and use taxes that may be imposed by the RTA, which could not exceed a statutory maximum rate of 0.5%.

## **Imposition of Taxes**

An RTA board has the authority to impose, by the adoption of a resolution, a sales tax and a use tax at a rate not to exceed 0.5% of the gross receipts or sales price. The taxes would be imposed on the same base of products and services as the state and county sales and use taxes. An RTA may, by adoption of a resolution, repeal the imposition of the sales and use taxes. Upon adopting a resolution to either impose or repeal the sales and use taxes, an RTA must deliver a certified copy of the resolution to DOR at least 120 days before its effective date.

DOR has the authority to administer any RTA sales and use taxes on behalf of the RTA and make distributions to the authority imposing the tax and has all the powers necessary to levy, enforce, and collect the taxes that it is provided under current law for the county and special district sales and use taxes. DOR is required to distribute 98.5% of the taxes reported for each transit authority that has imposed the taxes, minus the transit authority portion of the retailers' discount, to the RTA. After the distributions are made, DOR retains the remaining 1.5% of the revenues in an appropriation to cover its costs of administering the taxes. However, at the end of each fiscal year, the unencumbered balance in this DOR administrative appropriation is transferred to the appropriation created for the receipt and distribution of the transit authority sales and use taxes.

To date, the Dane County RTA, the only one of these RTAs that has been created, has not imposed the 0.5% sales and use taxes.

## **Duties of an RTA**

An RTA is required to provide, or contract for the provision of, transit service within its jurisdictional area. The RTA board must annually prepare a budget for the authority. Any rates and other charges received by the RTA can only be used for the general expenses and capital expenditures of the authority, to pay interest, amortization, and retirement charges on bonds, and for specific pur-

poses of the authority and may not be transferred to any county or municipality. The RTA must maintain an accounting system in accordance with generally accepted accounting principles and have its financial statements and debt covenants audited annually by an independent, certified public accountant.

## **Powers of an RTA**

An RTA has the power to do all of the following to the extent authorized in its bylaws:

a. Establish, maintain, and operate a comprehensive unified local transportation system primarily for the transportation of persons.

b. Acquire a comprehensive unified local transportation system and provide funds for the operation and maintenance of the system.

c. Upon the acquisition of a comprehensive unified local transportation system, the authority may: (1) operate and maintain it or lease it to an operator or contract for its use by an operator; (2) contract for superintendence of the system with an organization that has personnel with the requisite experience and skill; (3) delegate responsibility for the operation and maintenance of the system to an appropriate administrative officer, board, or commission of a participating political subdivision (defined as a county or municipality that is a member of an RTA); and (4) maintain and improve railroad rights-of-way and improvements on these rights-of-way for future use.

d. Contract with a public or private organization to provide transportation services in lieu of directly providing these services.

e. Purchase and lease transportation facilities to public or private transit companies that operate within and outside the jurisdictional area.

f. Apply for federal aids to purchase transportation facilities considered essential for the authority's operation.



g. Coordinate either publicly or privately owned specialized transportation services that provide general or special service to elderly or disabled persons on a regular and continuing basis in a designated service area, for residents of the authority's jurisdictional area who are disabled or aged 60, or older. This includes services funded from federal funds, the medical assistance program, the Department of Transportation's (DOT's) specialized transportation assistance program for counties, and from other public funds administered by the county. An authority can contract with a county that is a participating political subdivision for that RTA to provide specialized transportation services, but the authority would not be an eligible applicant under, or receive direct payments from, DOT's elderly and disabled assistance programs.

h. Acquire, own, hold, use, lease as lessor or lessee, sell or otherwise dispose of, mortgage, pledge, or grant a security interest in any real or personal property or service.

i. Condemn property, if the authority determines the taking is a necessity, as required of local units of government. The authority to acquire property by condemnation is subject to the procedure used by the state, local units of government, and others for condemnations related to sewer and transportation facilities.

j. Enter upon any state, county, or municipal street, road, or alley, or any public highway, for the purpose of installing, maintaining, and operating the authority's facilities. Whenever the work is to be done in a state, county, or municipal highway, street, road, or alley, the RTA has to notify the controlling public authority, and the highway, street, road, or alley must be restored to as good a condition as existed before the commencement of the work, with all costs incident to the work to be borne by the authority.

k. Fix, maintain, and revise fees, rates, rents, and charges for functions, facilities, and services provided by the authority.

l. Make, and from time to time amend and repeal, bylaws, rules, and regulations to carry into effect the powers and purposes of the authority.

m. Sue and be sued in its own name.

n. Have and use a corporate seal.

o. Employ agents, consultants, and employees, engage professional services, and purchase such furniture, stationery, and other supplies and materials as are reasonably necessary to perform its duties and exercise its powers.

p. Incur debts, liabilities, or obligations, including the borrowing of money and the issuance of bonds.

q. Invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities, and other investments as the authority deems proper in accordance with investment requirements for counties, municipalities, and other local districts.

r. Do and perform any acts and things authorized of an RTA under, through, or by means of an agent or by contracts with any person.

s. Exercise any other powers that the board of directors considers necessary and convenient to effectuate the purposes of the authority, including providing for passenger safety.

#### **Limitations on RTA Powers**

Notwithstanding its related powers, no RTA, and no public or private organization with which an RTA has contracted for service, can provide service outside its jurisdictional area unless one of the following occurs: (a) the RTA receives financial support for the service under a contract with a public or private organization; or (b) it is necessary in order to provide service to connect residents within the authority's jurisdictional area to transit systems in adjacent counties.

Whenever the proposed operations of an RTA would be competitive with the operations of a common carrier (a motor carrier, contract motor carrier, railroad, or water carrier) in existence prior to the time the RTA commences operations, the RTA must coordinate the proposed operations with the common carrier to eliminate the adverse financial impact for the carrier. This coordination may include route overlapping, transfers, transfer points, schedule coordination, joint use of facilities, lease of route service, and the acquisition of route and corollary equipment. If this coordination does not result in mutual agreement, the RTA proposals, and those of the common carrier, must be submitted to the Department of Transportation for arbitration.

In exercising its powers, an RTA is to consider any plan of a metropolitan planning organization that covers any portion of its jurisdictional area.

### **Withdrawal from an RTA**

Any participating county or municipality that has joined an RTA can withdraw if both of the following conditions are met: (a) the governing body of the county or municipality adopts a resolution requesting their withdrawal from the RTA; and (b) the county or municipality has paid, or made provision for the payment of, all obligations it has to the RTA. The ability to withdraw from an RTA does not apply to municipalities participating in the Dane County RTA that are within the Madison metropolitan planning area. Also, any municipality located in Ashland or Bayfield county can not withdraw from the Chequamegon Bay RTA if their county is a member of the RTA. Similarly, any municipality located in Eau Claire or Chippewa county can not withdraw from the Chippewa Valley RTA if their county is a member of the RTA. However, if Chippewa County withdraws from the Chippewa Valley RTA, the municipalities of Chippewa County also have to withdraw from the RTA.

### **RTA Obligations to Employees of Mass Transportation Systems**

Any RTA taking an action to acquire a comprehensive unified local transportation system for the purpose of the authority's operation of the system must assume all of the employer's obligations under any contract between the employees and management of the system, to the extent allowed by law. In addition, any RTA taking action to acquire, construct, control, or operate a comprehensive unified local transportation system must negotiate an agreement with the representative of the labor organization that covers the employees affected by the RTA action in order to protect the interests of those employees. The agreement must include all provisions required for agreements negotiated when a county board acquires a transportation system. Such agreements may also include a provision for the submission of labor disputes to binding arbitration by an umpire or board of arbitration acceptable to both parties. Further, an affected employee has all the rights and the same status under the municipal employee relations statutes that he or she enjoyed immediately before the RTA action and may not be required to serve a probationary period if he or she attained permanent status before the RTA's action. In all such negotiations, a senior executive officer of the RTA must be a member of the authority's negotiating body.

### **Bonding Authority**

An RTA has the authority to issue bonds, the principal and interest on which would be payable exclusively from all or a portion of any revenues received by the authority. An RTA can issue bonds in such principal amounts as the authority deems necessary and secure its bonds by a pledge of any income or revenues from any operations, rent, aids, grants, subsidies, contributions, or other source of moneys. An RTA may also issue refunding bonds for the purpose of paying any of its bonds at, or prior to, maturity or upon acceleration or redemption.

The following restrictions must be included on the face of any bonds that an RTA issues: (a) neither the members of the board of directors of the RTA nor any person executing the bonds is personally liable on the bonds by reason of the issuance of the bonds; (b) the bonds are not a debt of the participating counties and municipalities; (c) neither the participating counties and municipalities nor the state are liable for the payment of the bonds; and (d) the bonds are payable only out of funds or properties of the authority

### Other Provisions

2009 Act 28 also specified the following relative to these RTAs:

a. The creation of an RTA does not limit the powers of counties or municipalities to enter into intergovernmental cooperation or contracts to establish separate legal entities related to intergovernmental cooperation and municipal transit commissions or any other applicable law.

b. The creation of an RTA does not limit the powers of counties or municipalities to otherwise carry out their statutory powers.

c. An RTA is not subject to the existing requirement that a municipality attempting to provide, acquire, own, operate, or engage in a municipal bus transportation system where no bus, rail, or other local transportation system currently exists can only do so following an action of its governing body and a referendum vote.

d. An RTA is considered an employer for purposes of the Wisconsin Retirement System (WRS) and its employees would be participatory

employees of that system if the RTA elects to join the WRS.

e. An RTA is defined as a municipality as it relates to municipal borrowing and municipal bonds and intergovernmental cooperation statutes.

f. The property of an RTA is exempt from property taxation.

g. The income received by an RTA is exempt from income taxation.

h. Sales to an RTA are exempt from sales taxes.

i. Upon completion of a required planning study, or to the satisfaction of the DOT, a multimodal transportation study, an RTA can apply to DOT for a grant for property acquisition for an urban rail system (this grant program is not currently funded).

j. An RTA is considered a political subdivision that is eligible for DOT's commuter rail transit grant program (this grant program is not currently funded).

k. Statutory provisions relating to claims and liability for persons injured due to the negligent operation of a motor vehicle owned and operated by a municipality or other political subdivision are extended to an RTA.

l. RTAs are included in the list of governments that can participate in organizing municipal insurance mutuals for the provision of workers' compensation, liability, and property insurance and risk management services.