

CHAPTER 72-655
House Bill No. 3854

AN ACT establishing the Pensacola downtown improvement board as a body corporate; prescribing the boundaries of the downtown area, the method of changing those boundaries; prescribing the number, qualifications, term, and methods of appointment and removal of members; providing for filling vacancies in office, for service without compensation, for reimbursement of expenses, for bonding, and for personal liability in certain instances; providing for bylaws and internal governance of the board; prescribing its functions and powers, including powers to acquire, own, lease, and dispose of property; requesting the City of Pensacola to exercise its eminent domain power for public purposes; providing for issuing, selling and providing security for revenue certificates; providing for borrowing on short term, fixing, regulating, and collecting rates and charges; providing for maintenance of offices; providing for employment and prescribing the duties, authority, tenure, compensation, and expense reimbursement of a director and other staff ; providing for the exercise of **all** necessary incidental powers; providing for the city to levy in each fiscal year an ad valorem property tax of not more than one (1) mill on nonhomestead property to finance board operations; providing for assessment and collection thereof by the county; requiring maintenance of records, budget and fiscal control; forbidding participation on behalf of the board by personnel financially interested in the matter involved; providing for succession by the city to the property and certain functions of the board if it ceases to exist or operate; regulating issuance of board revenue certificates and providing for validations of bonds; prescribing scope of this act; providing for a referendum election; specifying policy as to who is eligible voter and clarifying intent as to millage limitation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Short title. -This act shall be known and may be cited as the "Pensacola downtown improvement board act."

Section 2. Definitions and rules of construction. -Unless qualified in the text, the following definitions, and rules of construction shall apply hereto:

- (1) "Board" means the Pensacola downtown improvement board hereby created, and any successor to its functions, authority, rights, and obligations.
- (2) "City" and "Pensacola" mean the City of Pensacola, Florida.
- (3) "City council" means the Pensacola city council and any succeeding governing body of the city.
- (4) "Downtown" and "downtown area" mean the area established by section 4 and to which this act primarily relates, including the central business district and its environs and any areas added thereunder.
- (5) "Herein," "hereby," "hereof,," and similar compounds refer to the entire act.
- (6) "Including" shall be construed as merely introducing illustrative examples and not as limiting in any way the generality of the inclusive term.
- (7) "Majority" without qualification means a majority of voting board members.
- (8) "Mayor" means the mayor of the City of Pensacola.
- (9) "State" means the State of Florida.

Section 3. Statement of policy and legislative findings. -

- (1) It is the policy of the state to make it possible for the city to revitalize and preserve property values and prevent deterioration in the downtown area by a system of self-help to correct the commercial blight of such deterioration as has developed there. The board hereby created is intended to provide a vehicle whereby property owners who will benefit directly from the results of such a program will bear the substantial cost thereof and thereby local problems may be solved on the local level through the use of machinery provided by local government.
- (2) The legislature hereby finds and declares that among the many causes of such commercial blight in the

downtown area are the following: automobile traffic flow is strangled by outmoded street patterns, proliferation of uncoordinated uses and parking areas, faulty lot layouts, fragmentation of land uses and parking areas necessitating frequent automobile movement, lack of separation of pedestrian areas from auto traffic, lack of separation of vehicle traffic lanes and railroad traffic, and excessive noise levels from strangled auto traffic. Voluntary cooperation for coordinated development has limitations because of fragmentary ownership, distant absentee ownership and unusual conditions of title and other conditions.

- (3) The downtown area is plagued with vacant and deteriorating buildings which are neglected and produce a depressing atmosphere. Many businesses of all types have left the area for new locations in suburban shopping centers and few businesses have entered to take their places. The oldest commercial structures in the city are in this area and some are obsolete, of inferior construction and incompatible with modern functional design as is featured in competitive shopping centers.
- (4) The area now has few residences and many of the residences which do exist are undersized and of inferior construction which would not be permitted for new construction under the city's building code. It is in some instances a proper function of government to remove blight and blighting influences from commercial areas. The police power may be inadequate to accomplish this purpose. One effective device for removal of the blight of the downtown area is the planning and implementation of planning for appropriate land use, beautification, continuity of planning and aesthetic and technical design concepts, and removal of deteriorated and obsolescent structures.
- (5) The legislature further finds and declares that the provisions of this act and the powers afforded to the board are desirable to guide and accomplish the coordinated, balanced and harmonious development of the downtown area in accordance with existing and future needs, to promote the health, safety and general welfare of the area and its inhabitants, visitors, property owners, and workers, to establish, maintain and preserve aesthetic values and preserve and foster the development and display of attractiveness, to prevent overcrowding and congestion, to improve auto traffic and provide pedestrian safety, and to provide a way of life which combines the conveniences and amenities of modern living with the traditions and pleasures of the past.

Section 4. Downtown area description. -The downtown area includes the central business district and its environs, being all lands lying within boundaries described by the city council in accordance with the following: the city council shall set a date for the public hearing on the adoption of an ordinance describing the downtown area, such hearing to be held within one hundred and eighty (180) days from passage of this act. Upon the adoption of a resolution, the city council shall cause a notice of the public hearing to be published in a newspaper of general circulation published in the city, which notice shall be published one (1) time not less than thirty (30) nor more than sixty (60) days from the date of the hearing. The notice shall set forth the date, time and place of the hearing and shall describe the boundaries of the downtown area. Additionally, the board shall cause to be mailed, by certified United States mail, to each owner of property within the proposed downtown improvement area according to the current tax roll prepared by the Escambia County tax collector, a copy of the notice as published in the newspaper. Any citizen, taxpayer or property owner shall have the right to be heard in favor or opposition to the creation of the downtown district. After the public hearing, the city council shall in the manner authorized by its charter, adopt an ordinance establishing and defining the downtown area. The city council shall not incorporate land into the district not included in the description contained in the notice of public hearing, but it may eliminate any lands from the area, as published, in the final determination of the boundaries. Such eliminated lands shall be free from any additional tax imposed herein. From and after the effective date of the ordinance, it shall have existence as herein provided. The city council may from time to time, by the procedure herein provided, alter or amend the boundaries of the downtown area by the inclusion of additional territory or the exclusion of lands from the limits of the district; provided, however, that no real property included within the boundaries of the downtown area as established herein shall be removed from the area without the consent of the electors as provided in section 13.

Section 5. Creation of the board, composition, and provisions relating to members. -There is hereby created, a board composed of five (5) members to be known officially as the "Pensacola downtown improvement board." It

is hereby constituted a body corporate and an agency of the city; and performance by the board of its duties and exercise of its powers are hereby designated municipal functions and shall be so construed.

- (1) The mayor shall appoint the members of the board, with the concurrence of the city council. By majority vote of its entire membership, the city council may remove a member of the board for cause. A member of both the city and county commissions, appointed by the mayor and chairman respectively, shall serve as ex-officio members of the board. A representative of the city planning department, designated by the executive head of the planning department, shall also serve as an ex-officio member of the board.
- (2) Of the initial members, one (1) shall be appointed for a term expiring July 1, 1973, two (2) for terms expiring July 1, 1974, and two (2) for terms expiring July 1, 1975. Thereafter each succeeding member shall be appointed by the mayor, with the concurrence of the city council, for a term of three (3) years.
- (3) To qualify for appointment to the board and to remain qualified for service on it, a prospective member or a member already appointed shall be an owner of realty within the downtown area, subject to ad valorem taxation, a lessee thereof required by lease to pay taxes thereon, or a director, officer, or managing agent of an owner or of a lessee thereof so required to pay taxes thereon, but no two (2) shall be affiliates of the same corporation, partnership or other business entity, nor shall any member be serving as a city officer or employee.
- (4) Vacancy in office, which shall be filled in the manner hereinabove provided within thirty (30) days of its occurrence for the remainder of the unexpired term, shall occur whenever a member is removed from office, becomes disqualified or is otherwise unable to serve or resigns.

Each member of the board shall serve without compensation for services rendered as a member, but may be reimbursed by the board for necessary and reasonable expenses actually incurred in the performance of duty. The board may require that all its members or any or all of its officers or employees be required to post bond for faithful performance of duty. The board shall require such bond of all persons authorized to sign on accounts of the board, and the board shall pay bonding costs. No member of the board shall be personally liable for any action taken in attempting in good faith to perform his duty, or for a decision not to act, except in instances of fraud or willful neglect of duty.

Section 6. Board bylaws and internal governance. -The board shall formulate and may amend its own rules of procedure and written bylaws not inconsistent herewith, and such rules of procedure and written bylaws, and amendments thereto, shall not become effective until approved by the city council. A majority of its entire membership shall constitute a quorum for the transaction of business, but fewer than a quorum may adjourn from time to time and may compel the attendance of absent members. All action shall be taken by vote of at least a majority of the board. The board shall select one (1) of its members as chairman and another as vice-chairman and shall prescribe their duties, powers and terms of serving. It shall hold regular meetings at least once a month and shall provide in its bylaws for holding special meetings. All meetings shall be given public notice and shall be open to the public. In time for submission to the governing body as required of all departments of the city, the board shall prepare and submit for the approval of the board a budget for the operation of the board for the ensuing fiscal year, the same to conform to the fiscal year of the city. The budget shall be prepared in the manner and contain the information required of all departments. However, when approved by the city council it shall not require approval of any officer or body of the city other than the governing body. No funds of the city may be included in the budget of the board except those funds herein authorized and the board shall not expend any funds other than those authorized by the approved budget.

Section 7. Functions of the board. -The board shall perform the following functions:
Prepare and maintain on a current basis an analysis of the economic conditions and changes occurring in the downtown area, including the effect thereon of such factors as metropolitan growth, traffic congestion, lack of adequate parking and other access facilities, and structural obsolescence and deterioration

- (1) Formulate and maintain on a current basis both short- range and long-range plans for improving the attractiveness and accessibility to the public of downtown facilities, promoting efficient use thereof, remedying the deterioration of downtown property values and developing the downtown area.
- (2) Recommend to the city council for its consideration and approval the actions deemed most suitable for implementing the downtown development plans, including removal, razing, repair, renovation, reconstruction, remodeling, and improvement of existing structures, addition of new structures and facilities, relocation of those existing, and changes in facilities for getting thereto and therefrom.
- (3) Participate actively in the implementation and execution of approved downtown development plans, including establishment, acquisition, construction, ownership, financing, leasing, licensing, operation, and management of publicly owned or leased facilities deemed feasible and beneficial in effecting implementation for public purposes, but this subsection shall not give the board any power or control over any city property unless and until assigned to it by the city council under the provisions of subsection (5).
- (4) Carry on all other projects and undertakings authorized by law and within the limits of the powers granted to it by law, and such additional lawful projects and undertakings related to the downtown area as the city council may assign to the board with its consent.

Section 8. Powers of the board. -In the performance of the functions vested in or assigned to the board, it is granted the following powers:

- (1) To enter into contracts and agreements, and to sue and be sued as a body corporate;
- (2) To have and use a corporate seal;
- (3) To acquire, own, convey or otherwise dispose of, lease as lessor or lessee; construct, maintain, improve, enlarge, raze, relocate, operate, and manage property and facilities of whatever type to which it holds title; and to grant and acquire licenses, easements, and options with respect thereto; provided, however, any property owned by the board will be subject to the applicable state and local taxes imposed thereon;
- (4) To accept grants and donations of any type of property, labor, or other thing of value from any public or private source;
- (5) To receive the proceeds of the tax hereby imposed upon it by trusts or other agreements validly entered into by it;
- (6) To have exclusive control of funds legally available to it, subject to limitations imposed upon it by law or by any agreement validly entered into by it;
- (7) To cooperate and enter into agreements with other governmental agencies or other public bodies;
- (8) To make to or receive from the city or Escambia County conveyances, leaseholds, grants, contributions, loans and other rights and privileges;
- (9) To request by resolution that the city exercise its powers of eminent domain to acquire any real property for public purposes. If the property involved is acquired, the board shall take over and assume control of the property on terms mutually agreed upon between the city and the board, but the board shall not thereafter be authorized to sell, lease, or otherwise dispose of the property so acquired without the formal consent of the city council; ·
- (10) To issue and sell revenue certificates as hereinafter provided, or in any other manner permitted by law and not inconsistent with the provisions hereof, and to take all steps necessary for efficient preparation and marketing of the certificates at public or private sale at the best price obtainable, including the entry into agreements with corporate trustees, underwriters, and the holders of certificates, and the employment and payment, as a necessary expense of issuance, for the service of consultants on valuations, costs and feasibility of undertaking, revenues to be anticipated and other financial matters, architecture, engineering, legal matters, accounting matters, and any other fields in which expert advice may be needed to effectuate advantageous issuance and marketing; To fix,

regulate, and collect rents, fees, rates and charges for facilities or projects or any parts thereof or services furnished by it or under its control and to pledge the revenue to the payment of revenue certificates issued by it;

- (11) To borrow money, after approval of the city council on its unsecured notes, for a period not exceeding nine (9) months in an aggregate amount for all outstanding unsecured notes not exceeding fifty percent (50%) of the unpledged proceeds received during the immediately prior fiscal year from the tax hereby imposed, and at an annual rate of interest not exceeding the rate being charged at the time of the loan by banks in the city on unsecured short-term loans to local businesses;
- (12) To acquire by rental or otherwise and to equip and maintain a principal office for the conduct of its business and such branch offices as may be necessary;
- (13) To employ and prescribe the duties, authority, compensation not to exceed the highest salary paid to other nonelective city employees and reimbursement of expenses of the executive director of the board, who shall act as its chief executive officer; a general counsel, who shall be an attorney in active Florida practice and so engaged at the time of appointment; and such other personnel as may be necessary from time to time ; provided, its personnel shall not be under civil service regulations, and shall be employed to serve at its pleasure, and with the exception of its secretary, shall not while employed by it serve as a member of the board ;
- (14) To exercise all powers incidental to the effective and expedient exercise of the foregoing powers to the extent not in conflict herewith or inconsistent herewith; To establish development and taxing subdistricts within the downtown area for sectional development in accordance with the comprehensive plan; taxes acquired from said subdistricts to be utilized solely within the subdistrict area, said area not to be less than one (1) city block in size; provided, however, that no subdistrict shall be established nor any tax imposed without the written approval of the electors located therein. No limitation shall be placed on the amount of the taxes imposed under this subsection, said taxes to be levied only on the real property within the subdistrict area.

Section 9. Levy of ad valorem tax. -

- (1) For the fiscal year of the board beginning with October 1, 1972, and for each fiscal year thereafter, an ad valorem tax in addition to all other ad valorem taxes may be levied annually by the city council upon request of the board for the purposes of financing the operation of the board on all property in the downtown area that is subject to ad valorem taxation for city operating expenses. The tax base shall be the assessed valuation made annually by the county tax assessor. The rate shall not exceed one (1) mill on each dollar of tax base in 1972 and each year thereafter; provided, however, that the one (1) mill limitation can be increased in a referendum election called by the board and held in accordance with section 13 of this act. Such a referendum shall be solely on the question of any increase in millage and shall not be construed to be a repeal of the original referendum. The County tax collector shall collect the tax, when and in the same manner in which he collects the city ad valorem taxes, with the same discounts for early payment, and shall pay the proceeds into the city treasury for the account of the board. For the purpose of this legislation, the downtown area shall constitute a special taxing district to be administered as such.
- (2) This act provides for the establishment of a special taxing district under Article VII, Section 9 of the Florida Constitution and the millage limitations are specified within this act as authorized by the constitution. However, the amount of millage levied pursuant to this act shall be deemed and construed to be within the ten (10) mill limitation specified therein for levy by municipalities. If, at any time, the millage levied pursuant to this act combined with the other millage levied by the City of Pensacola pursuant to Article VII, Section 9 exceeds the ten (10) mill limitation, then that portion exceeding ten (10) mills levied by this act shall become null and void unless approved by a referendum election pursuant to the terms of this act.

Section 10. Board records and fiscal management. -

- (1) The fiscal year of the board shall coincide with that of the city.
- (2) All funds of the board shall be received, held and secured like other public funds by the

appropriate fiscal officers of the city. The funds of the board shall be maintained under a separate account, shall be used for purposes herein authorized and shall be disbursed only by direction of or with the approval of the board pursuant to requisitions signed by the director or other designated chief fiscal officer of the board and counter-signed by at least one (1) other person who shall be a member of the board.

(3) The board bylaws shall provide for maintenance of minutes and other official records of its proceedings and actions, for preparation and adoption of an annual budget for each ensuing fiscal year, for internal supervision and control of its accounts, which function the appropriate city fiscal officers may perform for at its request, and for an external audit at least annually by an independent certified accountant who has no personal interest, direct or indirect, in its fiscal affairs. A copy of the external audit shall be filed with the city clerk within ninety (90) days after the end of each fiscal year. The bylaws shall specify the means by which each of these functions is to be performed, and, as to those functions assigned to board personnel, the manner and schedule of performance.

(4) No member or employee of the board shall participate by vote or otherwise on behalf of the board in any matter in which he has a direct financial interest or an indirect financial interest other than of the benefits to be derived generally from the development of the downtown area. Participation with knowledge of such interest shall constitute malfeasance and shall result, as regards a member, in automatic forfeiture of office, or as regards an employee, in prompt dismissal.

Section 11. Provisions governing issuance of certificate.- Issuance of revenue certificates by the board shall be governed by the following general provisions:

- (1) Revenue certificates for purposes hereof are limited to obligations that are secured solely by pledge of revenues produced by the facility or facilities for the benefit of which the certificates are issued and the sale proceeds used, that do not constitute a lien or encumbrance legal or equitable, on any real property of the board or on any of its personal property other than the revenues pledged to secure payment of the certificates.
- (2) The faith and credit of the city shall not be pledged and the city shall not be obligated directly or indirectly to make any payments on or appropriate any funds for certificates issued by the board.
- (3) The rate or rates of interest and the sale price of the certificates by the board shall be such that the true interest cost to it on the proceeds received from the sale shall not exceed the rate authorized by law for the city.
- (4) Before issuing any revenue certificates the board shall as to each issue:
 - a. Prepare or procure from a reputable source detailed estimates of the total cost of the undertaking for which the certificates are contemplated and of the annual revenues to be obtained therefrom and pledged as security for payment of the certificates;
 - b. Determine that the anticipated net proceeds from the sale, together with any other funds available and intended for the purposes of the issue, will be sufficient to cover all costs of the undertaking and of preparing and marketing the issues connected therewith ;
 - c. Determine that the annual revenues anticipated from the undertaking will be sufficient to pay the estimated annual cost of maintaining, repairing, operating, and replacing, to any necessary extent, not only the undertaking but also the punctual payment of the principal of, and interest on, the contemplated certificates; and
 - d. Specify these determinations in and include the supporting estimates as parts of the resolution providing for the issue.
- (5) The board may, as to any issue of revenue certificates, engage the services of a corporate trustee for the issue and may treat any or all costs of carrying out the trust agreement as part of the operating costs of the undertaking for which the certificates are issued.
- (6) The board shall from time to time establish such rentals, rates, and charges, or shall by agreement maintain such control thereof, as to meet punctually all payments on the undertaking and its maintenance and repair, including reserves therefor and for depreciation and replacement.

(7) Revenue certificates may be issued for the purposes of funding, refunding, or both.

(8) All revenue certificates issued pursuant hereto shall be negotiable instruments for all purposes.

Section 12. Transfer upon cessation of the board.--Should the board cease to exist or to operate for whatever reason, all property of whatever kind shall forthwith become the property of the city, subject to the outstanding obligations of the board incurred in conformity with all of the foregoing provisions, and the city shall use this property to the maximum extent then practicable for effectuating the purposes hereof and shall succeed to and exercise only such powers of the board as shall be necessary to meet outstanding obligations of the board and effect an orderly cessation of its powers and functions.

Section 13. Referendum. - The power of the board to call for a referendum election for the levy of an ad valorem tax in addition to the one (1) mill tax previously authorized pursuant to section 9 of this act, any changes of boundaries of the downtown area, and any abolishment of the Pensacola downtown improvement board shall be determined by referendum elections in accordance with the provisions of this section as follows:

- (1) **ELECTION SUPERVISOR.** -For the purposes of this section the city clerk shall act as election supervisor and do all things necessary to carry out the provisions of this section.
- (2) **ELECTORS.** - Any elector who is the owner of a freehold not wholly exempt from taxation within the downtown area established pursuant to section 4 of this act shall be eligible to vote in any referendum election provided for in this act. The owner of such freeholds shall be determined by the city clerk from the most recent real property assessment roll prepared by the property appraiser pursuant to general law prior to the scheduled referendum election. However, the grantee by conveyance of a freehold in the downtown area subsequent to the most recent real property assessment roll may present evidence of such conveyance to the city clerk not later than 60 days prior to the date of a referendum election, whereupon the clerk, after verifying such conveyance, shall substitute the name of the grantee as an elector in place of the owner appearing on the real property assessment roll. No more than one (1) ballot per freehold shall be cast in any referendum election.
- (3) **ELECTION PROCEDURES AND RESULTS.** -The board shall determine by rule procedures for notice of referendum elections, the time and duration of the referendum and balloting periods, and the form of the ballots. The outcome of any referendum shall be determined by the majority of votes cast by eligible electors casting mail ballots delivered by the board to electors. The city clerk shall determine and certify the results of the referendum to the city council.
- (4) **ADDITIONAL ELECTIONS FOR BOUNDARY CHANGES.** - Additional elections called after increasing or de- creasing the boundaries of the downtown area in accordance with section 4 of this act shall be held in accordance with the referendum provisions for initial approval of this act; provided however, that no provision of this act shall require the approval of electors in an area which has previously approved of the provisions of this act by any referendum held hereinunder.
- (5) **ABOLISHMENT REFERENDUM.** -A referendum election may be called by petition of twenty percent (20%) of the electors in the downtown area, for the purpose of ceasing the activity of the district and seeking repeal of the act from the Legislature. Upon receipt of such a petition for an abolishment referendum by the city clerk, a referendum election shall be called by the city. The procedure shall be the same as provided for other referendum elections provided for in of this act, except that if an abolishment referendum is defeated, then additional abolishment referenda may be petitioned at any time after one (1) year from the certification of the results of a previous abolishment referendum by the clerk. The proposition shall be put on a ballot permitting a vote for abolishment of the Pensacola downtown improvement board or against abolishment repeal. If the abolishment referendum is approved, then the city clerk shall transmit the referendum results to the chair of the local legislative delegation within 30 days of the certification of the referendum results. Following certification of the referendum results, the Pensacola downtown improvement board shall continue to function until the act is repealed by the Legislature.

Section 14. City and county authority.-The city and Escambia County are hereby authorized to furnish personnel,

services and material to the board without reimbursement therefor, to specifically include the services of the Pensacola-Escambia regional planning department and the city attorney.

Section 15. Liberal construction.-The provisions of this act, being desirable for the welfare of the city and its inhabitants, shall be liberally construed to effect its purposes and shall be deemed cumulative, supplemental and alternative authority for the exercise of the powers provided herein.

Section 16. If any section, clause, sentence or provision of this act or the application of such section, clause, sentence or provision to any person or bodies or under any circumstances shall be held to be inoperative, invalid, or unconstitutional, the invalidity of such section, clause, sentence or provision shall not be deemed, held or taken to affect the validity or constitutionality of any of the remaining parts of this act, or the application of any of the provisions of this act to persons, bodies or in circumstances other than those as to which it or any part thereof shall have been held inoperative, invalid or unconstitutional, and it is intended that this act shall be construed and applied as if any section, clause, sentence or provision held inoperative, invalid or unconstitutional had not been included in this act.

Section 17. It is found and determined that notice of intention to apply for this legislation was given in the time, form and manner required by the constitution and by law. Said notice is found to be sufficient and is hereby validated and approved.

Section 18. This act shall take effect upon becoming a law; provided, that the provisions of this act which authorize the levy of ad valorem taxation shall take effect only upon its approval by a vote of the electors as provided in section 13.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor June 10, 2003.

Filed in Office Secretary of State June 10, 2003.