

Amend CSHB 3588 by adding the following appropriately numbered article and sections and renumbering subsequent articles and sections accordingly:

ARTICLE ____ . BORDER REGION HIGH-SPEED

RAIL AUTHORITIES

SECTION __.01. Chapter 13, Title 112, Revised Statutes, is amended by adding Article 6550c-4 to read as follows:

Art. 6550c-4. BORDER REGION HIGH-SPEED RAIL AUTHORITIES

Sec. 1. DEFINITIONS. In this article:

(1) "Authority" means a border region high-speed rail authority created under this article.

(2) "Authority property" means all property an authority owns or leases under a long-term lease.

(3) "Border region" means the Texas-Louisiana border region or the Texas-Mexico border region, as defined by Section 2056.002, Government Code.

(4) "Commission" means the Texas Transportation Commission.

(5) "Department" means the Texas Department of Transportation.

(6) "High-speed rail" means the rail technology that permits the operation of rolling stock between scheduled stops at speeds greater than 80 miles per hour.

(7) "High-speed rail facility" means any property necessary for the transportation of passengers and baggage between points in a border region by high-speed rail. The term includes rolling stock, locomotives, stations, parking areas, and rail lines.

(8) "System" means all of the high-speed rail and intermodal facilities leased or owned by or operated on behalf of an authority.

Sec. 2. CREATION OF AUTHORITIES. The commission by order may authorize the creation of an authority in each border region for the purposes of financing, acquiring property for, constructing, maintaining, and operating a high-speed rail system in each border region.

Sec. 3. GOVERNING BODY. (a) The governing body of an

authority is a board of directors consisting of representatives of each county in the border region for which the authority is created. The board is composed of 11 members appointed by the governor.

(b) The members of the board shall elect one member as presiding officer. The presiding officer may select another member to preside in the absence of the presiding officer.

(c) The presiding officer shall call at least one meeting of the board each year and may call other meetings as the presiding officer determines are appropriate.

(d) A member of the board is not entitled to compensation for serving as a member but is entitled to reimbursement for reasonable expenses incurred while serving as a member.

(e) The board shall adopt rules for its proceedings and appoint an executive committee. The board may employ and compensate persons to carry out the powers and duties of the authority.

(f) Chapter 171, Local Government Code, applies to a member of the board.

Sec. 4. POWERS AND DUTIES OF AUTHORITY. (a) An authority is a public body and a political subdivision of the state exercising public and essential governmental functions and has all the powers necessary or convenient to carry out the purposes of this article. An authority, in the exercise of powers under this article, is performing only governmental functions and is a governmental unit within the meaning of Chapter 101, Civil Practice and Remedies Code.

(b) An authority is subject every 12th year to review under Chapter 325, Government Code (Texas Sunset Act).

(c) An authority may sue and be sued in all courts, may institute and prosecute suits without giving security for costs, and may appeal from a judgment without giving a supersedeas or cost bond. An action at law or in equity against an authority must be brought in the county in which a principal office of the authority is located, except that in an eminent domain proceeding involving an interest in land, suit must be brought in the county in which the land is located.

(d) An authority may acquire by grant, purchase, gift,

devise, lease, or otherwise and may hold, use, sell, lease, or dispose of real and personal property, licenses, patents, rights, and interests necessary, convenient, or useful for the full exercise of its powers.

(e) An authority may acquire, construct, develop, own, operate, and maintain intermodal and high-speed rail facilities to connect political subdivisions in the applicable border region. For this purpose and with the consent of a municipality, county, or other political subdivision, an authority may use streets, alleys, roads, highways, and other public ways of the municipality, county, or other political subdivision and may relocate, raise, reroute, change the grade of, or alter, at the expense of the authority, the construction of any street, alley, highway, road, railroad, electric lines and facilities, telegraph and telephone properties and facilities, pipelines and facilities, conduits and facilities, and other properties, whether publicly or privately owned, as necessary or useful in the construction, reconstruction, repair, maintenance, and operation of the system. An authority may not use or alter a road or highway that is part of the state highway system without the permission of the commission or a railroad without permission of the railroad. An authority may acquire by purchase any interest in real property for the acquisition, construction, or operation of a high-speed rail facility on terms and at a price as agreed to between the authority and the owner. The governing body of a municipality, county, other political subdivision, or public agency may convey title or rights and easements to any property needed by an authority to effect its purposes in connection with the acquisition, construction, or operation of the system.

(f) An authority has the right of eminent domain to acquire real property in fee simple or an interest in real property less than fee simple in, on, under, or above land, including an easement, right-of-way, or right of use of airspace or subsurface space. The power of eminent domain under this section does not apply to land under the jurisdiction of the department or a rail line owned by a common carrier or municipality. An authority shall, to the extent possible, use existing rail or intermodal transportation corridors for the alignment of its system. A proceeding for the exercise of

the power of eminent domain is begun by the adoption by the board of a resolution declaring the public necessity for the acquisition by an authority of the property or interest described in the resolution and that the acquisition is necessary and proper for the construction, extension, improvement, or development of high-speed rail facilities and is in the public interest. The resolution of an authority is conclusive evidence of the public necessity of the proposed acquisition and that the real or personal property or interest in property is necessary for public use.

(g) With the consent of the property owner, instead of paying for real property with a single fixed payment, an authority may pay the owner in the form of:

(1) an intangible legal right to receive a percentage of identified fees related to the applicable segment of the system;
or

(2) an exclusive or nonexclusive right to use or operate a part of the system.

(h) An authority may make agreements with a public utility, private utility, communication system, common carrier, state agency, or transportation system for the joint use of facilities, installations, or properties inside or outside the border region and establish through routes and joint fares.

(i) An authority may adopt rules to govern the operation of the authority, its employees, the system, service provided by the authority, and any other necessary matter concerning its purposes, including rules relating to health, safety, alcohol or beverage service, food service, and telephone and utility services, to protect the health, safety, and general welfare of residents of the border region and people who use the authority's services.

(j) An authority may enter into a joint ownership agreement with any person.

(k) An authority shall establish and maintain rates or other compensation for the use of the facilities of the system acquired, constructed, operated, regulated, or maintained by the authority that is reasonable and nondiscriminatory and, together with grants received by the authority, is sufficient to produce revenues adequate:

(1) to pay all expenses necessary for the operation and maintenance of the properties and facilities of the authority;

(2) to pay the interest on and principal of bonds issued by the authority and payable in whole or in part from the revenues, as they become due and payable; and

(3) to comply with the terms of an agreement made with the holders of bonds or with any person in their behalf.

(1) An authority may make contracts, leases, and agreements with, and accept grants and loans from, the United States, this state, agencies and political subdivisions of this state, and other persons and entities and may perform any act necessary for the full exercise of the powers vested in it. The commission may enter into an interlocal agreement with an authority under which the authority may exercise a power or duty of the commission for the development and efficient operation of an intermodal corridor in the border region. An authority may acquire rolling stock or other property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement. A revenue bond indenture may limit the exercise of the powers granted by this section, and a limit applies as long as the revenue bonds issued under the indenture are outstanding and unpaid.

(m) An authority by resolution may adopt rules governing the use, operation, and maintenance of the system and may determine or change a routing as the board considers advisable.

(n) An authority may lease all or part of the high-speed rail facilities to, or contract for the use or operation of all or part of the high-speed rail facilities by, an operator. An authority shall encourage to the maximum extent practicable the participation of private enterprise in the operation of high-speed rail facilities. The term of an operating contract under this subsection may not exceed 20 years.

(o) An authority may contract with a county or other political subdivision of this state for the authority to provide high-speed rail transportation services to an area outside the border region on the terms and conditions agreed to by the parties.

(p) An authority may purchase an additional insured provision to any liability insurance contract.

(g) Before beginning the operation of high-speed rail facilities, the board shall adopt an annual operating budget specifying the anticipated revenues and expenses of the authority for the remainder of the fiscal year. Each year the board shall adopt an operating budget for the authority. The fiscal year of an authority ends September 30 unless changed by the board. The board shall hold a public hearing before adopting a budget other than the initial budget. Notice of each hearing must be published at least seven days before the date of the hearing in a newspaper of general circulation in each county in the applicable border region. A budget may be amended at any time if notice of the proposed amendment is given in the notice of the meeting at which the amendment will be considered. An expenditure that is not budgeted may not be made.

(r) An authority is eligible to participate in the Texas County and District Retirement System.

(s) The board shall by resolution name one or more banks for the deposit of authority funds. Authority funds are public funds and may be invested in securities permitted by Chapter 2256, Government Code. To the extent funds of an authority are not insured by the Federal Deposit Insurance Corporation or its successor, they shall be collateralized in the manner provided for county funds.

(t) To provide tax benefits to another party that are available with respect to property under the laws of a foreign country or to encourage private investment with a transportation authority in the United States, and notwithstanding any other provision of this article, an authority may enter into and execute, as it considers appropriate, contracts, agreements, notes, security agreements, conveyances, bills of sale, deeds, leases as lessee or lessor, and currency hedges, swap transactions, or agreements relating to foreign and domestic currency. The agreements or instruments may have the terms, maturities, duration, provisions as to governing law, indemnities, and other provisions that are approved by the board. In connection with any transaction authorized by this subsection, the authority shall deposit in trust, escrow, or similar arrangement cash or lawful investments or

securities, or shall enter into one or more payment agreements, financial guarantees, or insurance contracts with counterparties having either a corporate credit or debt rating in any form, a claims-paying ability, or a rating for financial strength of "AA" or better by Moody's Investors Service, Inc., or by Standard & Poor's Corporation or "A-" or better by Best's rating system that, by their terms, including interest to be earned on any cash or securities, are sufficient in amount to pay when due all amounts required to be paid by the authority as rent over the full term of the transaction plus any optional purchase price due under the transaction. A certification in advance by an independent financial expert, banker, or certified public accountant, who is not an employee of the authority, certifying compliance with this requirement constitutes conclusive evidence of compliance. Property sold, acquired, or otherwise transferred under this subsection is considered for all purposes to be property owned and held by the authority and used for public purposes.

Sec. 5. BONDS AND NOTES. (a) An authority may issue revenue bonds and notes in amounts the board considers necessary or appropriate for the acquisition, purchase, construction, reconstruction, repair, equipping, improvement, or extension of the authority's high-speed rail facilities. A bond or note is fully negotiable and may be made redeemable before maturity, at the option of the authority and at the price and under the terms the board determines in the resolution authorizing the bond or note and may be sold at public or private sale, as the board determines.

(b) An authority shall submit all bonds and notes and the record of proceedings relating to their issuance to the attorney general for examination before delivery. If the attorney general determines that they have been issued in accordance with the constitution and this article and that they will be binding obligations of the authority, the attorney general shall approve them, and the comptroller shall register them. A bond or note issued under this article is incontestable after approval, registration, and sale and delivery of the bond or note to the purchaser.

(c) To secure the payment of the bond or note, an authority

may encumber and pledge all or any part of the revenues of its high-speed rail facilities, may mortgage and encumber all or part of the property of the high-speed rail facilities and any thing pertaining to them that is acquired or to be acquired, and may prescribe the terms and provisions of the bond or note in any manner not inconsistent with this article. If not prohibited by the resolution or indenture relating to outstanding bonds or notes, an authority may encumber separately any item of real or personal property.

(d) A bond or note is a legal and authorized investment for banks, trust companies, savings and loan associations, and insurance companies. The bond or note is eligible to secure the deposit of public funds of this state or a municipality, county, school district, or other political corporation or subdivision of this state. The bond or note is lawful and sufficient security for the deposits to the extent of the principal amount or market value of the bond or note, whichever is less.

Sec. 6. COMPETITIVE BIDS. A contract in the amount of more than \$15,000 for the construction of improvements or the purchase of material, machinery, equipment, supplies, or any other property other than real property may be let only on competitive bids after notice published, at least 15 days before the date set for receiving bids, in a newspaper of general circulation in each county in the applicable border region. The board may adopt rules governing the taking of bids and the awarding of contracts. This section does not apply to:

- (1) personal or professional services;
- (2) the acquisition of an existing rail transportation system; or
- (3) a contract with a common carrier to construct lines or to operate high-speed rail service on lines owned in whole or in part by the carrier.

Sec. 7. EXEMPTION FROM TAXES. The property, material purchases, revenues, and income of an authority and the interest on a bond or note issued by an authority are exempt from all taxes imposed by this state or a political subdivision of this state.

(b) The comptroller shall administer, collect, and enforce

a tax imposed under this article. Chapter 321, Tax Code, governs the computation, administration, governance, and use of the tax except as inconsistent with this article.

(c) An authority shall notify the comptroller in writing by registered or certified mail of the authority's creation and of its intent to impose the sales and use tax under this article. The authority shall provide to the comptroller all information required to implement the tax, including:

(1) an adequate map showing the property boundaries of the authority; and

(2) a certified copy of the resolution of the authority board adopting the tax.

(d) Not later than the 30th day after the date the comptroller receives the notice, map, and other information, the comptroller shall inform the authority of whether the comptroller is prepared to administer the tax.

(e) At the same time an authority notifies the comptroller under Subsection (c) of this section, the authority shall notify each affected local governmental unit of the authority's creation and provide each with an adequate map showing the property boundaries of the authority.

(f) Not later than the 30th day after the date an authority adds territory to the authority, the authority shall notify the comptroller and each affected local governmental unit of the addition. The authority must include with each notification an adequate map showing the new boundaries of the authority and the date the additional territory was added. Not later than the 30th day after the date the comptroller receives the notice under this subsection, the comptroller shall inform the authority of whether the comptroller is prepared to administer the tax in the additional territory.

(g) A tax imposed under this section or the abolition of a tax under Subsection (a) of this section takes effect on the first day of the first complete calendar quarter that occurs after the expiration of the first complete calendar quarter that occurs after the date the comptroller receives a notice of the action as required by this section.

SECTION __.02. Not later than September 1, 2004, the Texas Transportation Commission shall create the border region high-speed rail authorities as required by this Act.