

By: Shapleigh, et al.

S.B. No. 963

Substitute the following for S.B. No. 963:

By: Chavez

C.S.S.B. No. 963

A BILL TO BE ENTITLED

AN ACT

relating to border trade and transportation; granting the power to issue bonds and the power of eminent domain.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.6011 to read as follows:

Sec. 201.6011. TEXAS-MEXICO BORDER TRADE CORRIDOR PLAN.

The department shall coordinate an integrated trade transportation corridor plan for cross-border traffic. The plan must:

(1) include strategies and projects to aid the exchange of international trade using the system of multiple transportation modes in this state; and

(2) assign priorities based on the amount of international trade, measured by weight and value, using the transportation systems of this state, including:

(A) border ports of entry;

(B) commercial ports;

(C) inland ports;

(D) highways;

(E) pipelines;

(F) railroads; and

(G) deepwater gulf ports.

SECTION 2. Chapter 13, Title 112, Revised Statutes, is amended by adding Article 6550c-4 to read as follows:

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

2 Sec. 1. DEFINITIONS. In this article:

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

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

7 (3) "Border region" means the Texas-Louisiana border
8 region or the Texas-Mexico border region, as defined by Section
9 2056.002, Government Code.

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

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

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

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

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

25 Sec. 2. CREATION OF AUTHORITIES. The commission by order
26 may authorize the creation of an authority in each border region for
27 the purposes of financing, acquiring property for, constructing,

1 maintaining, and operating a high-speed rail system in each border
2 region.

3 Sec. 3. GOVERNING BODY. (a) The governing body of an
4 authority is a board of directors consisting of representatives of
5 each county in the border region for which the authority is created.
6 The board is composed of 11 members appointed by the governor.

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

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

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

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

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

22 Sec. 4. POWERS AND DUTIES OF AUTHORITY. (a) An authority
23 is a public body and a political subdivision of the state exercising
24 public and essential governmental functions and has all the powers
25 necessary or convenient to carry out the purposes of this article.
26 An authority, in the exercise of powers under this article, is
27 performing only governmental functions and is a governmental unit

1 within the meaning of Chapter 101, Civil Practice and Remedies
2 Code.

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

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

13 (d) An authority may acquire by grant, purchase, gift,
14 devise, lease, or otherwise and may hold, use, sell, lease, or
15 dispose of real and personal property, licenses, patents, rights,
16 and interests necessary, convenient, or useful for the full
17 exercise of its powers.

18 (e) An authority may acquire, construct, develop, own,
19 operate, and maintain intermodal and high-speed rail facilities to
20 connect political subdivisions in the applicable border region.
21 For this purpose and with the consent of a municipality, county, or
22 other political subdivision, an authority may use streets, alleys,
23 roads, highways, and other public ways of the municipality, county,
24 or other political subdivision and may relocate, raise, reroute,
25 change the grade of, or alter, at the expense of the authority, the
26 construction of any street, alley, highway, road, railroad,
27 electric lines and facilities, telegraph and telephone properties

1 and facilities, pipelines and facilities, conduits and facilities,
2 and other properties, whether publicly or privately owned, as
3 necessary or useful in the construction, reconstruction, repair,
4 maintenance, and operation of the system. An authority may not use
5 or alter a road or highway that is part of the state highway system
6 without the permission of the commission or a railroad without
7 permission of the railroad. An authority may acquire by purchase
8 any interest in real property for the acquisition, construction, or
9 operation of a high-speed rail facility on terms and at a price as
10 agreed to between the authority and the owner. The governing body
11 of a municipality, county, other political subdivision, or public
12 agency may convey title or rights and easements to any property
13 needed by an authority to effect its purposes in connection with the
14 acquisition, construction, or operation of the system.

15 (f) An authority has the right of eminent domain to acquire
16 real property in fee simple or an interest in real property less
17 than fee simple in, on, under, or above land, including an easement,
18 right-of-way, or right of use of airspace or subsurface space. The
19 power of eminent domain under this section does not apply to land
20 under the jurisdiction of the department or a rail line owned by a
21 common carrier or municipality. An authority shall, to the extent
22 possible, use existing rail or intermodal transportation corridors
23 for the alignment of its system. A proceeding for the exercise of
24 the power of eminent domain is begun by the adoption by the board of
25 a resolution declaring the public necessity for the acquisition by
26 an authority of the property or interest described in the
27 resolution and that the acquisition is necessary and proper for the

1 construction, extension, improvement, or development of high-speed
2 rail facilities and is in the public interest. The resolution of an
3 authority is conclusive evidence of the public necessity of the
4 proposed acquisition and that the real or personal property or
5 interest in property is necessary for public use.

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

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

18 (i) An authority may enter into a joint ownership agreement
19 with any person.

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

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

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

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

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

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

23 (m) An authority may lease all or part of the high-speed
24 rail facilities to, or contract for the use or operation of all or
25 part of the high-speed rail facilities by, an operator. An
26 authority shall encourage to the maximum extent practicable the
27 participation of private enterprise in the operation of high-speed

1 rail facilities. The term of an operating contract under this
2 subsection may not exceed 20 years.

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

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

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

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

25 (r) The board shall by resolution name one or more banks for
26 the deposit of authority funds. Authority funds are public funds
27 and may be invested in securities permitted by Chapter 2256,

1 Government Code. To the extent funds of an authority are not
2 insured by the Federal Deposit Insurance Corporation or its
3 successor, they shall be collateralized in the manner provided for
4 county funds.

5 (s) To provide tax benefits to another party that are
6 available with respect to property under the laws of a foreign
7 country or to encourage private investment with a transportation
8 authority in the United States, and notwithstanding any other
9 provision of this chapter, an authority may enter into and execute,
10 as it considers appropriate, contracts, agreements, notes,
11 security agreements, conveyances, bills of sale, deeds, leases as
12 lessee or lessor, and currency hedges, swap transactions, or
13 agreements relating to foreign and domestic currency. The
14 agreements or instruments may have the terms, maturities, duration,
15 provisions as to governing law, indemnities, and other provisions
16 that are approved by the board. In connection with any transaction
17 authorized by this subsection, the authority shall deposit in
18 trust, escrow, or similar arrangement cash or lawful investments or
19 securities, or shall enter into one or more payment agreements,
20 financial guarantees, or insurance contracts with counterparties
21 having either a corporate credit or debt rating in any form, a
22 claims-paying ability, or a rating for financial strength of "AA"
23 or better by Moody's Investors Service, Inc., or by Standard &
24 Poor's Corporation or "A-" or better by BEST's rating system that,
25 by their terms, including interest to be earned on any cash or
26 securities, are sufficient in amount to pay when due all amounts
27 required to be paid by the authority as rent over the full term of

1 the transaction plus any optional purchase price due under the
2 transaction. A certification in advance by an independent
3 financial expert, banker, or certified public accountant, who is
4 not an employee of the authority, certifying compliance with this
5 requirement constitutes conclusive evidence of compliance.
6 Property sold, acquired, or otherwise transferred under this
7 subsection is considered for all purposes to be property owned and
8 held by the authority and used for public purposes.

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

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

1 (c) To secure the payment of the bond or note, an authority
2 may encumber and pledge all or any part of the revenues of its
3 high-speed rail facilities, may mortgage and encumber all or part
4 of the property of the high-speed rail facilities and anything
5 pertaining to them that is acquired or to be acquired, and may
6 prescribe the terms and provisions of the bond or note in any manner
7 not inconsistent with this article. If not prohibited by the
8 resolution or indenture relating to outstanding bonds or notes, an
9 authority may encumber separately any item of real or personal
10 property.

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

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

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

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

11 SECTION 3. Not later than September 1, 2004, the Texas
12 Transportation Commission shall create the border region
13 high-speed rail authorities as required by this Act.

14 SECTION 4. This Act takes effect September 1, 2003.