

By: Merritt

H.B. No. 2114

Substitute the following for H.B. No. 2114:

By: Phillips

C.S.H.B. No. 2114

A BILL TO BE ENTITLED

AN ACT

relating to the creation, administration, powers, duties, operations, and financing of a border region high-speed rail authority for the Texas-Louisiana and the Texas-Mexico border regions; granting the power to issue bonds; imposing a tax; granting the power of eminent domain.

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

SECTION 1. 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

1 speeds greater than 70 miles per hour.

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

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

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

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

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

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

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

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

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

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

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

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

25 (d) An authority may acquire by grant, purchase, gift,
26 devise, lease, or otherwise and may hold, use, sell, lease, or
27 dispose of real and personal property, licenses, patents, rights,

1 and interests necessary, convenient, or useful for the full
2 exercise of its powers.

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

1 system.

2 (f) An authority has the right of eminent domain to acquire
3 real property in fee simple or an interest in real property less
4 than fee simple in, on, under, or above land, including an easement,
5 right-of-way, or right of use of airspace or subsurface space. The
6 power of eminent domain under this section does not apply to land
7 under the jurisdiction of the department or a rail line owned by a
8 common carrier or municipality. An authority shall, to the extent
9 possible, use existing rail or intermodal transportation corridors
10 for the alignment of its system. A proceeding for the exercise of
11 the power of eminent domain is begun by the adoption by the board of
12 a resolution declaring the public necessity for the acquisition by
13 an authority of the property or interest described in the
14 resolution and that the acquisition is necessary and proper for the
15 construction, extension, improvement, or development of high-speed
16 rail facilities and is in the public interest. The resolution of an
17 authority is conclusive evidence of the public necessity of the
18 proposed acquisition and that the real or personal property or
19 interest in property is necessary for public use.

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (o) An authority may contract with a county or other

1 political subdivision of this state for the authority to provide
2 high-speed rail transportation services to an area outside the
3 border region on the terms and conditions agreed to by the parties.

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

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

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

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

1 county funds.

2 (t) To provide tax benefits to another party that are
3 available with respect to property under the laws of a foreign
4 country or to encourage private investment with a transportation
5 authority in the United States, and notwithstanding any other
6 provision of this chapter, an authority may enter into and execute,
7 as it considers appropriate, contracts, agreements, notes,
8 security agreements, conveyances, bills of sale, deeds, leases as
9 lessee or lessor, and currency hedges, swap transactions, or
10 agreements relating to foreign and domestic currency. The
11 agreements or instruments may have the terms, maturities, duration,
12 provisions as to governing law, indemnities, and other provisions
13 that are approved by the board. In connection with any transaction
14 authorized by this subsection, the authority shall deposit in
15 trust, escrow, or similar arrangement cash or lawful investments or
16 securities, or shall enter into one or more payment agreements,
17 financial guarantees, or insurance contracts with counterparties
18 having either a corporate credit or debt rating in any form, a
19 claims-paying ability, or a rating for financial strength of "AA"
20 or better by Moody's Investors Service, Inc., or by Standard &
21 Poor's Corporation or "A-" or better by BEST's rating system that,
22 by their terms, including interest to be earned on any cash or
23 securities, are sufficient in amount to pay when due all amounts
24 required to be paid by the authority as rent over the full term of
25 the transaction plus any optional purchase price due under the
26 transaction. A certification in advance by an independent
27 financial expert, banker, or certified public accountant, who is

1 not an employee of the authority, certifying compliance with this
2 requirement constitutes conclusive evidence of compliance.
3 Property sold, acquired, or otherwise transferred under this
4 subsection is considered for all purposes to be property owned and
5 held by the authority and used for public purposes.

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

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

25 (c) To secure the payment of the bond or note, an authority
26 may encumber and pledge all or any part of the revenues of its
27 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

1 (3) a contract with a common carrier to construct
2 lines or to operate high-speed rail service on lines owned in whole
3 or in part by the carrier.

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

8 Sec. 8. SALES AND USE TAX. (a) A sales and use tax is
9 imposed on items sold on authority property. The sales and use tax
10 shall be imposed at the rate of the highest combination of local
11 sales and use taxes imposed at the time of the authority's creation
12 in any local governmental jurisdiction in the applicable border
13 region. The comptroller shall remit to the authority the local
14 sales and use tax collected on the authority's property. All other
15 local sales and use taxes that would otherwise be imposed on
16 authority property are abolished by the imposition of this tax.

17 (b) The comptroller shall administer, collect, and enforce
18 a tax imposed under this article. Chapter 321, Tax Code, governs
19 the computation, administration, governance, and use of the tax
20 except as inconsistent with this article.

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

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

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

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

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

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

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

1 SECTION 2. This Act takes effect September 1, 2005.