

By: Merritt, et al.

H.B. No. 3819

Substitute the following for H.B. No. 3819:

By: Pickett

C.S.H.B. No. 3819

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the creation, administration, powers, duties,
3 operations, and financing of a border region high-speed rail
4 authority for the Texas-Louisiana and the Texas-Mexico border
5 regions; granting the power to issue bonds; imposing a tax.

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

7 SECTION 1. Chapter 13, Title 112, Revised Statutes, is
8 amended by adding Article 6550c-4 to read as follows:

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

10 Sec. 1. DEFINITIONS. In this article:

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

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

15 (3) "Border region" means the Texas-Louisiana border
16 region or the Texas-Mexico border region, as defined by Section
17 2056.002, Government Code.

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

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

22 (6) "High-speed rail" means the rail technology that
23 permits the operation of rolling stock between scheduled stops at
24 speeds greater than 70 miles per hour.

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

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

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

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

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

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

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

27 (e) The board shall adopt rules for its proceedings and

1 appoint an executive committee. The board may employ and
2 compensate persons to carry out the powers and duties of the
3 authority.

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

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

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

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

22 (d) An authority may acquire by grant, purchase, gift,
23 devise, lease, or otherwise and may hold, use, sell, lease, or
24 dispose of real and personal property, licenses, patents, rights,
25 and interests necessary, convenient, or useful for the full
26 exercise of its powers.

27 (e) An authority may acquire, construct, develop, own,

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

26 (f) An authority shall, to the extent possible, use existing
27 rail or intermodal transportation corridors for the alignment of

1 its system.

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

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

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

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

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

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

24 (k) An authority shall establish and maintain rates or other
25 compensation for the use of the facilities of the system acquired,
26 constructed, operated, regulated, or maintained by the authority
27 that is reasonable and nondiscriminatory and, together with grants

1 received by the authority, is sufficient to produce revenues
2 adequate:

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

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

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

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

26 (m) An authority by resolution may adopt rules governing the
27 use, operation, and maintenance of the system and may determine or

1 change a routing as the board considers advisable.

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

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

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

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

1 may not be made.

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

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

11 (t) To provide tax benefits to another party that are
12 available with respect to property under the laws of a foreign
13 country or to encourage private investment with a transportation
14 authority in the United States, and notwithstanding any other
15 provision of this chapter, an authority may enter into and execute,
16 as it considers appropriate, contracts, agreements, notes,
17 security agreements, conveyances, bills of sale, deeds, leases as
18 lessee or lessor, and currency hedges, swap transactions, or
19 agreements relating to foreign and domestic currency. The
20 agreements or instruments may have the terms, maturities, duration,
21 provisions as to governing law, indemnities, and other provisions
22 that are approved by the board. In connection with any transaction
23 authorized by this subsection, the authority shall deposit in
24 trust, escrow, or similar arrangement cash or lawful investments or
25 securities, or shall enter into one or more payment agreements,
26 financial guarantees, or insurance contracts with counterparties
27 having either a corporate credit or debt rating in any form, a

1 claims-paying ability, or a rating for financial strength of "AA"
2 or better by Moody's Investors Service, Inc., or by Standard &
3 Poor's Corporation or "A-" or better by BEST's rating system that,
4 by their terms, including interest to be earned on any cash or
5 securities, are sufficient in amount to pay when due all amounts
6 required to be paid by the authority as rent over the full term of
7 the transaction plus any optional purchase price due under the
8 transaction. A certification in advance by an independent
9 financial expert, banker, or certified public accountant, who is
10 not an employee of the authority, certifying compliance with this
11 requirement constitutes conclusive evidence of compliance.
12 Property sold, acquired, or otherwise transferred under this
13 subsection is considered for all purposes to be property owned and
14 held by the authority and used for public purposes.

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

24 (b) An authority shall submit all bonds and notes and the
25 record of proceedings relating to their issuance to the attorney
26 general for examination before delivery. If the attorney general
27 determines that they have been issued in accordance with the

1 constitution and this article and that they will be binding
2 obligations of the authority, the attorney general shall approve
3 them, and the comptroller shall register them. A bond or note
4 issued under this article is incontestable after approval,
5 registration, and sale and delivery of the bond or note to the
6 purchaser.

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

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

25 Sec. 6. COMPETITIVE BIDS. A contract in the amount of more
26 than \$15,000 for the construction of improvements or the purchase
27 of material, machinery, equipment, supplies, or any other property

1 other than real property may be let only on competitive bids after
2 notice is published, at least 15 days before the date set for
3 receiving bids, in a newspaper of general circulation in each
4 county in the applicable border region. The board may adopt rules
5 governing the taking of bids and the awarding of contracts. This
6 section does not apply to:

7 (1) personal or professional services;

8 (2) the acquisition of an existing rail transportation
9 system; or

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

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

17 Sec. 8. SALES AND USE TAX. (a) A sales and use tax is
18 imposed on items sold on authority property. The sales and use tax
19 shall be imposed at the rate of the highest combination of local
20 sales and use taxes imposed at the time of the authority's creation
21 in any local governmental jurisdiction in the applicable border
22 region. The comptroller shall remit to the authority the local
23 sales and use tax collected on the authority's property. All other
24 local sales and use taxes that would otherwise be imposed on
25 authority property are abolished by the imposition of this tax.

26 (b) The comptroller shall administer, collect, and enforce
27 a tax imposed under this article. Chapter 321, Tax Code, governs

1 the computation, administration, governance, and use of the tax
2 except as inconsistent with this article.

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

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

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

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

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

21 (f) Not later than the 30th day after the date an authority
22 adds territory to the authority, the authority shall notify the
23 comptroller and each affected local governmental unit of the
24 addition. The authority must include with each notification an
25 adequate map showing the new boundaries of the authority and the
26 date the additional territory was added. Not later than the 30th
27 day after the date the comptroller receives the notice under this

1 subsection, the comptroller shall inform the authority of whether
2 the comptroller is prepared to administer the tax in the additional
3 territory.

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

10 SECTION 2. This Act takes effect September 1, 2007.