

## **BILL ANALYSIS**

C.S.H.B. 3650  
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Border & Intergovernmental Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Higher-speed rail is a form of transportation that would provide a safer, faster, and more reliable means of transportation in the border regions, thus improving the quality of life for Texans. Such a system would also reduce air pollution and create a transportation system to support economic growth.

C.S.H.B. 3650 establishes the authority to create a border region higher-speed rail authority to finance, construct, maintain, and operate a higher-speed rail system in the Texas-Louisiana border region and in the Texas-Mexico border region.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3650 amends the Transportation Code to set forth standard language for the creation, administration, powers, duties, operations, and financing of higher-speed rail authorities in the Texas-Louisiana and Texas-Mexico border regions. The bill authorizes the Texas Transportation Commission to authorize the creation of an authority in each region. The bill establishes that the governing body of an authority is a board of directors, and specifies the composition of the board of directors of an authority in each border region. The bill requires the board to adopt rules for its proceeding, elect a presiding officer, and appoint an executive committee.

C.S.H.B. 3650 establishes an authority as a public body and a political subdivision of Texas exercising public and essential governmental functions and grants an authority all the powers necessary or convenient to carry out the purposes of a border-region higher-speed rail authority. The bill makes an authority subject to review under the Texas Sunset Act. The bill sets forth general provisions relating to the powers and duties of an authority, including the limited power of eminent domain, and the authority to make contracts, leases, and agreements with other persons and entities and perform any act necessary for the full exercise of the powers vested in it.

C.S.H.B. 3650 authorizes an authority to acquire, construct, develop, own, operate, maintain, and improve intermodal and higher-speed rail facilities to connect political subdivisions in the applicable border region. The bill provides that, 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, operation, and improvement of the system. The bill prohibits an authority from using or altering 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. The bill authorizes an authority to purchase any interest in real property for the acquisition, construction, operation, or improvement of a higher-speed rail facility on terms and at a price as agreed to between the authority and the owner. The bill authorizes the governing body of a municipality, county, other political subdivision, or public agency to convey title or rights and easements to any property needed by an authority to effect its purposes in connection with the acquisition, construction, operation, or improvement of the system.

C.S.H.B. 3650 authorizes an authority to 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.

C.S.H.B. 3650 authorizes an authority to enter into a joint ownership agreement with any person. The bill requires an authority to establish and maintain reasonable and nondiscriminatory rates or other compensation for the use of the facilities of the system acquired, constructed, operated, regulated, or maintained by the authority. The bill requires such rates or compensation, together with grants received by the authority, to be sufficient to produce revenues adequate to meet certain obligations.

C.S.H.B. 3650 authorizes an authority to 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 and by resolution to adopt rules governing the use, operation, and maintenance of the system and determine or change a routing as the board considers advisable.

C.S.H.B. 3650 authorizes an authority to lease all or part of the higher-speed rail facilities to, or contract for the use or operation of all or part of the higher-speed rail facilities by, an operator. The bill requires an authority to encourage to the maximum extent practicable the participation of private enterprise in the operation of higher-speed rail facilities. The bill establishes that the term of an operating contract under this subsection may not exceed 20 years. The bill authorizes an authority to contract with a county or other political subdivision of this state for the authority to provide higher-speed rail transportation services to an area outside the border region on the terms and conditions agreed to by the parties.

C.S.H.B. 3650 requires the authority to adopt an annual operating budget before beginning the operation of higher-speed rail facilities, sets forth requirements for the board to adopt the budget and makes the authority eligible to participate in the Texas County and District Retirement System. The bill requires the board by resolution to name one or more banks for the deposit of authority funds, which are public funds and authorized to be invested in securities permitted by the Public Funds Investment Act.

C.S.H.B. 3650 authorizes an authority, to provide to another party tax benefits 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, to enter into and execute, as it considers appropriate, contracts, agreements, notes, security agreements, conveyances, bills of sale, deeds, leases as lessee or lessor, currency hedges, swap transactions, or agreements relating to foreign and domestic currency. The bill authorizes the agreements or instruments to have the terms, maturities, duration, provisions as to governing law, indemnities, and other provisions that are approved by the board. The bill sets forth requirements, in connection with any authorized transaction under this provision, for the deposit of an authority's cash, lawful investments, or securities, or entrance into payment agreements, financial guarantees, or insurance contracts. The bill specifies that 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. The bill specifies that property sold, acquired, or otherwise transferred under the bill's provisions is considered for all purposes to be property owned and held by the authority and used for public purposes.

C.S.H.B. 3650 authorizes an authority to 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 higher-speed rail facilities and sets forth general financial provisions related to such bonds and notes. The bill sets forth requirements relating to competitive bidding for a contract in an amount more than \$15,000 and authorizes the board to adopt rules governing the taking of bids and the awarding of contracts. The bill specifies that its provisions relating to competitive bidding do not apply to personal or professional services, to the acquisition of an existing rail transportation system, or to a contract with a common carrier to construct lines or to operate higher-speed rail service on lines owned in whole or in part by the carrier.

C.S.H.B. 3650 exempts the property, material purchases, revenues, and income of an authority and the interest on a bond or note issued by an authority from all taxes imposed by this state or a political subdivision of Texas. The bill imposes a sales and use tax on items sold on authority property and requires the tax to be imposed at the rate of the highest combination of local sales and use taxes imposed at the time of the authority's creation in any local governmental jurisdiction in the applicable border region. The bill abolishes all other local sales and use taxes that would otherwise be imposed on authority property with the imposition of this tax. The bill requires the comptroller of public accounts to remit to the authority the local sales and use tax collected on the authority's property.

C.S.H.B. 3650 requires an authority to notify the comptroller in writing by registered or certified mail of the authority's creation and of its intent to impose a sales and use tax and to provide all information required to implement the tax. The bill requires the comptroller to inform the authority or whether the comptroller is prepared to administer the tax not later than the 30th day after the date the comptroller receives the information. The bill requires an authority, at the same time an authority notifies the comptroller of its creation, to 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. The bill requires the authority, not later than the 30th day after the date an authority adds territory to the authority, to notify the comptroller and each affected local governmental unit of the addition. The bill requires the authority to include with each notification an adequate map showing the new boundaries of the authority and the date the additional territory was added. The bill requires the comptroller, within a prescribed period after receiving the notice, to inform the authority of whether the comptroller is prepared to administer the tax in the additional territory. The bill specifies that a tax imposed by the bill or the abolition of a tax 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.

The bill defines "authority," "authority property," "board," "border region," "commission," "department," "director," "higher-speed rail," "higher-speed rail facility," and "system."

#### **EFFECTIVE DATE**

September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3650 differs from the original by creating a chapter in the Transportation Code, rather than creating an article in the Revised Statutes. The substitute refers to higher-, rather than high-speed rail, and defines "higher-speed rail" to mean rail technology permitting speeds greater than 70 miles per hour but less than 110 miles per hour, rather than defining "high-speed rail" without the maximum speed provision, as in the original. The substitute adds definitions not in the original to define "board," and "director." The substitute removes a provision from the original specifying that members of the board of directors are appointed by the governor and adds

provisions not in the original to set forth the composition of a board of directors of an authority in the Texas-Louisiana border region and in the Texas-Mexico boarder region, respectively. The substitute removes financial provisions in the original relating to the negotiability of bonds or notes issued by an authority, and the responsibilities of the attorney general in relation to such bonds.