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H.B. No. 3650

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the creation, administration, powers, duties,
3 operations, and financing of a border region higher-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 granting the power of eminent domain.

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

8 SECTION 1. Subtitle I, Title 5, Transportation Code, is
9 amended by adding Chapter 175 to read as follows:

10 CHAPTER 175. BORDER REGION HIGHER-SPEED RAIL AUTHORITIES

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 175.001. DEFINITIONS. In this chapter:

13 (1) "Authority" means a border region higher-speed
14 rail authority created under this chapter.

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

17 (3) "Board" means an authority's board of directors.

18 (4) "Border region" means the Texas-Louisiana border
19 region or the Texas-Mexico border region, as defined by Section
20 2056.002, Government Code.

21 (5) "Commission" means the Texas Transportation
22 Commission.

23 (6) "Department" means the Texas Department of
24 Transportation.

1 (7) "Director" means a board member.

2 (8) "Higher-speed rail" means the rail technology that
3 permits the operation of rolling stock between scheduled stops at
4 speeds greater than 70 miles per hour but less than 110 miles per
5 hour.

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

11 (10) "System" means all of the higher-speed rail and
12 intermodal facilities leased or owned by or operated on behalf of an
13 authority.

14 [Sections 175.002-175.050 reserved for expansion]

15 SUBCHAPTER B. CREATION

16 Sec. 175.051. CREATION OF AUTHORITIES. The commission by
17 order may authorize the creation of an authority in each border
18 region for the purposes of financing, acquiring property for,
19 constructing, maintaining, operating, and improving a higher-speed
20 rail system in each border region.

21 [Sections 175.052-175.100 reserved for expansion]

22 SUBCHAPTER C. GOVERNANCE

23 Sec. 175.101. COMPOSITION OF BOARDS. (a) The governing
24 body of an authority in the Texas-Louisiana border region is a board
25 of seven directors consisting of:

26 (1) the county judges of the five most populous
27 counties in the region; and

1 (2) two directors selected by the county judges to
2 represent the remaining counties in the region.

3 (b) The governing body of an authority in the Texas-Mexico
4 border region is a board of 11 directors consisting of:

5 (1) the county judges of the seven most populous
6 counties in the region; and

7 (2) four directors selected by the county judges to
8 represent the remaining counties in the region.

9 Sec. 175.102. PRESIDING OFFICER. (a) The directors shall
10 elect one director as presiding officer.

11 (b) The presiding officer may select another director to
12 preside in the absence of the presiding officer.

13 Sec. 175.103. MEETINGS. The presiding officer shall call
14 at least one meeting of the board each year and may call other
15 meetings as the presiding officer determines are appropriate.

16 Sec. 175.104. COMPENSATION; REIMBURSEMENT. A director is
17 not entitled to compensation for serving as a director but is
18 entitled to reimbursement for reasonable expenses incurred while
19 serving as a director.

20 Sec. 175.105. RULES FOR PROCEEDINGS. The board shall adopt
21 rules for its proceedings and appoint an executive committee.

22 Sec. 175.106. EMPLOYEES. The board may employ and
23 compensate persons to carry out the powers and duties of the
24 authority.

25 Sec. 175.107. CONFLICTS OF INTEREST. Chapter 171, Local
26 Government Code, applies to a director.

27 [Sections 175.108-175.150 reserved for expansion]

1 SUBCHAPTER D. POWERS AND DUTIES OF AUTHORITY

2 Sec. 175.151. NATURE OF AUTHORITY. (a) An authority is a
3 public body and a political subdivision of the state exercising
4 public and essential governmental functions.

5 (b) An authority, in the exercise of powers under this
6 chapter, is performing only governmental functions and is a
7 governmental unit within the meaning of Chapter 101, Civil Practice
8 and Remedies Code.

9 Sec. 175.152. GENERAL POWERS OF AUTHORITY. An authority
10 has all the powers necessary or convenient to carry out the purposes
11 of this chapter, including authority to:

12 (1) plan and develop a high-speed rail facility under
13 the authority in this chapter;

14 (2) solicit federal funding to be allocated to the
15 authority for the purposes of this chapter;

16 (3) coordinate with federal planners and
17 representatives from adjacent states for the interconnectivity of
18 high-speed rail systems in this state with systems developed in
19 federally designated high-speed rail corridors in other states;

20 (4) represent and negotiate on behalf of the authority
21 for the interconnectivity of high-speed rail with existing and
22 planned transportation systems, including airports, seaports,
23 transit systems, commuter rail systems, and highways; and

24 (5) coordinate with federal transportation planners
25 and officials at the United States Department of Defense or its
26 successor agency regarding issues related to the provision of
27 connectivity to military installations in this state.

1 Sec. 175.153. SUNSET REVIEW. An authority is subject every
2 12th year to review under Chapter 325, Government Code (Texas
3 Sunset Act).

4 Sec. 175.154. SUITS. (a) An authority may:

5 (1) sue and be sued;

6 (2) institute and prosecute suits without giving
7 security for costs; and

8 (3) appeal from a judgment without giving a
9 supersedeas or cost bond.

10 (b) An action at law or in equity against an authority must
11 be brought in the county in which a principal office of the
12 authority is located, except that in an eminent domain proceeding
13 involving an interest in land, suit must be brought in the county in
14 which the land is located.

15 Sec. 175.155. POWERS RELATED TO DISTRICT PROPERTY. An
16 authority may acquire by grant, purchase, gift, devise, lease, or
17 otherwise and may hold, use, sell, lease, or dispose of real and
18 personal property, licenses, patents, rights, and interests
19 necessary, convenient, or useful for the full exercise of its
20 powers.

21 Sec. 175.156. GENERAL AUTHORITY OVER HIGHER-SPEED RAIL
22 FACILITIES. An authority may acquire, construct, develop, own,
23 operate, maintain, and improve intermodal and higher-speed rail
24 facilities to connect political subdivisions in the applicable
25 border region.

26 Sec. 175.157. USE AND ALTERATION OF PROPERTY OF ANOTHER
27 POLITICAL SUBDIVISION. (a) For a purpose described by Section

1 175.156, as necessary or useful in the construction,
2 reconstruction, repair, maintenance, operation, and improvement of
3 the system, and with the consent of a municipality, county, or other
4 political subdivision, an authority may:

5 (1) use streets, alleys, roads, highways, and other
6 public ways of the municipality, county, or other political
7 subdivision; and

8 (2) relocate, raise, reroute, change the grade of, or
9 alter, at the authority's expense, the construction of any publicly
10 owned or privately owned street, alley, highway, road, railroad,
11 electric line or facility, telegraph or telephone property and
12 facility, pipeline or facility, conduit or facility, and other
13 property.

14 (b) An authority may not use or alter:

15 (1) a road or highway that is part of the state highway
16 system without the permission of the commission; or

17 (2) a railroad without permission of the railroad.

18 Sec. 175.158. ACQUISITION OF PROPERTY. (a) An authority
19 may purchase any interest in real property to acquire, construct,
20 operate, or improve a higher-speed rail facility on terms and at a
21 price to which the authority and the owner agree.

22 (b) The governing body of a municipality, a county, any
23 other political subdivision, or a public agency may convey the
24 title or the rights and easements to any property needed by an
25 authority for its purposes in connection with the acquisition,
26 construction, operation, or improvement of the system.

27 Sec. 175.159. EMINENT DOMAIN. (a) An authority may

1 exercise the power of eminent domain to acquire:

2 (1) real property in fee simple; or

3 (2) an interest in real property less than fee simple
4 in, on, under, or above land, including an easement, right-of-way,
5 or right of use of airspace or subsurface space.

6 (b) The power of eminent domain under this section does not
7 apply to:

8 (1) land under the jurisdiction of the department; or

9 (2) a rail line owned by a common carrier or
10 municipality.

11 (c) To the extent possible, an authority shall use existing
12 rail or intermodal transportation corridors for the alignment of
13 its system.

14 (d) An eminent domain proceeding is begun by the board's
15 adoption of a resolution declaring that the authority's acquisition
16 of the property or interest described in the resolution:

17 (1) is a public necessity; and

18 (2) is necessary and proper for the construction,
19 extension, improvement, or development of higher-speed rail
20 facilities and is in the public interest.

21 (e) The resolution is conclusive evidence of the public
22 necessity of the proposed acquisition and that the real property or
23 interest in property is necessary for public use.

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

27 (1) an intangible legal right to receive a percentage

1 of identified fees related to the applicable segment of the system;
2 or
3 (2) an exclusive or nonexclusive right to use or
4 operate a part of the system.

5 Sec. 175.160. AGREEMENTS WITH OTHER ENTITIES FOR JOINT USE.

6 An authority may:

7 (1) make agreements with a public utility, private
8 utility, communication system, common carrier, state agency, or
9 transportation system for the joint use of facilities,
10 installations, or properties inside or outside the border region;
11 and

12 (2) establish through routes and joint fares.

13 Sec. 175.161. RULES. To protect the health, safety, and
14 general welfare of residents of the border region and people who use
15 the authority's services, an authority may adopt rules to govern
16 the operation of the authority, its employees, the system, service
17 provided by the authority, and any other necessary matter
18 concerning its purposes, including rules relating to health,
19 safety, food service, and telephone and utility services. The
20 acquisition, taxation, sale, and service of alcoholic beverages in
21 or on any of the authority's system, high-speed rail facilities,
22 rolling stock, and intermodal facilities shall comply in all
23 respects with the provisions of the Texas Alcoholic Beverage Code,
24 the rules of the Alcoholic Beverage Commission, and Chapter 183,
25 Tax Code.

26 Sec. 175.162. JOINT OWNERSHIP AGREEMENTS. An authority may
27 enter into a joint ownership agreement with any person.

1 Sec. 175.163. COMPENSATION FOR USE OF SYSTEM FACILITIES.

2 (a) An authority shall establish and maintain reasonable and
3 nondiscriminatory rates or other compensation for the use of the
4 facilities of the system acquired, constructed, operated,
5 regulated, or maintained by the authority.

6 (b) Together with grants received by the authority, the
7 rates or other compensation must be sufficient to produce revenues
8 adequate to:

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

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

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

16 Sec. 175.164. AGREEMENTS GENERALLY. An authority may make
17 contracts, leases, and agreements with, and accept grants and loans
18 from, the United States, this state, agencies and political
19 subdivisions of this state or another state of the United States,
20 the United Mexican States, or a state of the United Mexican States,
21 and other persons and entities and may perform any act necessary for
22 the full exercise of the powers vested in it.

23 Sec. 175.165. INTERLOCAL AGREEMENTS WITH COMMISSION. The
24 commission may enter into an interlocal agreement with an authority
25 under which the authority may exercise a power or duty of the
26 commission for the development and efficient operation of an
27 intermodal corridor in the applicable border region.

1 Sec. 175.166. ACQUISITION OF ROLLING STOCK AND OTHER
2 PROPERTY. An authority may acquire rolling stock or other property
3 under conditional sales contracts, leases, equipment trust
4 certificates, or any other form of contract or trust agreement.

5 Sec. 175.167. LIMIT ON POWER. A revenue bond indenture may
6 limit the exercise of the powers granted by this subchapter, and a
7 limit applies as long as the revenue bonds issued under the
8 indenture are outstanding and unpaid.

9 Sec. 175.168. RULES GOVERNING SYSTEM AND ROUTINGS. An
10 authority by resolution may adopt rules governing the use,
11 operation, and maintenance of the system and may determine all
12 routings and change them as the board considers advisable.

13 Sec. 175.169. OPERATION OR USE CONTRACTS. (a) An authority
14 may:

15 (1) lease all or part of the higher-speed rail
16 facilities to an operator; or

17 (2) contract for the use or operation of all or part of
18 the higher-speed rail facilities by an operator.

19 (b) To the maximum extent practicable, an authority shall
20 encourage the participation of private enterprise in the operation
21 of higher-speed rail facilities.

22 (c) The term of an operating contract under this section may
23 not exceed 20 years.

24 Sec. 175.170. RAIL TRANSPORTATION SERVICES AGREEMENTS WITH
25 OTHER POLITICAL SUBDIVISIONS. (a) Except as provided in
26 Subsection (b), an authority may contract with a county or other
27 political subdivision of this state for the authority to provide

1 higher-speed rail transportation services to an area outside the
2 border region on the terms and conditions to which the parties
3 agree.

4 (b) An authority may not undertake any project or provide
5 any services, or contract to undertake any project or provide any
6 services, in an area that includes a county with a population of 3.3
7 million or more and any county adjacent to that county if the area
8 is served by a district created under Chapter 171, unless the
9 district and the authority enter into a written agreement
10 specifying the terms and conditions under which the project or
11 services will be undertaken or provided.

12 [Sections 175.171-175.200 reserved for expansion]

13 SUBCHAPTER E. FINANCIAL PROVISIONS

14 Sec. 175.201. PURCHASE OF ADDITIONAL INSURED PROVISIONS.

15 An authority may purchase an additional insured provision to any
16 liability insurance contract.

17 Sec. 175.202. FISCAL YEAR. Unless the board changes the
18 fiscal year, the fiscal year of an authority ends September 30.

19 Sec. 175.203. ANNUAL BUDGET. (a) Before beginning the
20 operation of higher-speed rail facilities, the board shall adopt an
21 annual operating budget specifying the authority's anticipated
22 revenues and expenses for the remainder of the fiscal year. The
23 board shall adopt an operating budget for each succeeding fiscal
24 year.

25 (b) The board shall hold a public hearing before adopting a
26 budget other than the initial budget. Notice of each hearing must
27 be published at least seven days before the date of the hearing in a

1 newspaper of general circulation in each county in the applicable
2 border region.

3 (c) A budget may be amended at any time if notice of the
4 proposed amendment is given in the notice of the meeting.

5 (d) An expenditure that is not budgeted may not be made.

6 Sec. 175.204. RETIREMENT BENEFITS. An authority is
7 eligible to participate in the Texas County and District Retirement
8 System.

9 Sec. 175.205. DEPOSITORY. (a) The board by resolution
10 shall name one or more banks for the deposit of authority funds.

11 (b) Authority funds are public funds and may be invested in
12 securities permitted by Chapter 2256, Government Code.

13 (c) To the extent funds of an authority are not insured by
14 the Federal Deposit Insurance Corporation or its successor, they
15 shall be collateralized in the manner provided for county funds.

16 Sec. 175.206. AGREEMENTS RELATED TO FOREIGN AND DOMESTIC
17 CURRENCY. (a) To provide tax benefits to another party that are
18 available with respect to property under the laws of a foreign
19 country or to encourage private investment with a transportation
20 authority in the United States, and notwithstanding any other
21 provision of this chapter, an authority may enter into and execute,
22 as it considers appropriate, contracts, agreements, notes,
23 security agreements, conveyances, bills of sale, deeds, leases as
24 lessee or lessor, and currency hedges, swap transactions, or
25 agreements relating to foreign and domestic currency.

26 (b) The agreements or instruments may have the terms,
27 maturities, duration, provisions as to governing law, indemnities,

1 and other provisions that are approved by the board.

2 (c) In connection with any transaction authorized by this
3 section, the authority shall deposit in trust, escrow, or similar
4 arrangement cash or lawful investments or securities, or shall
5 enter into one or more payment agreements, financial guarantees, or
6 insurance contracts that, by their terms, including interest to be
7 earned on any cash or securities, are sufficient in amount to pay
8 when due all amounts required to be paid by the authority as rent
9 over the full term of the transaction plus any optional purchase
10 price due under the transaction. A counterparty to a payment
11 agreement, financial guarantee, or insurance contract under this
12 subsection must have either a corporate credit or debt rating in any
13 form, a claims-paying ability, or a rating for financial strength
14 of "AA" or better by Moody's Investors Service, Inc., or by Standard
15 & Poor's Corporation or "A-" or better by BEST's rating system.

16 (d) A certification in advance by an independent financial
17 expert, banker, or certified public accountant, who is not an
18 employee of the authority, certifying compliance with this
19 requirement constitutes conclusive evidence of compliance.
20 Property sold, acquired, or otherwise transferred under this
21 section is considered for all purposes to be property owned and held
22 by the authority and used for public purposes.

23 [Sections 175.207-175.300 reserved for expansion]

24 SUBCHAPTER F. BONDS

25 Sec. 175.301. REVENUE BONDS. An authority may issue
26 revenue bonds and notes in amounts the board considers necessary or
27 appropriate for the acquisition, purchase, construction,

1 reconstruction, repair, equipping, improvement, or extension of
2 the authority's higher-speed rail facilities.

3 Sec. 175.302. SECURITY FOR PAYMENT OF BONDS. (a) To secure
4 the payment of a bond or note, an authority may:

5 (1) encumber and pledge all or any part of the revenues
6 of its higher-speed rail facilities;

7 (2) mortgage and encumber all or part of the property
8 of the higher-speed rail facilities and any thing pertaining to
9 them that is acquired or to be acquired; and

10 (3) prescribe the terms and provisions of the bond or
11 note in any manner not inconsistent with this chapter.

12 (b) Unless prohibited by the resolution or indenture
13 relating to outstanding bonds or notes, an authority may encumber
14 separately any item of property.

15 Sec. 175.303. BONDS AND NOTES AS AUTHORIZED INVESTMENTS AND
16 SECURITY FOR DEPOSITS OF PUBLIC FUNDS. (a) Bonds and notes are
17 legal and authorized investments for:

18 (1) a bank;

19 (2) a trust company;

20 (3) a savings and loan association; and

21 (4) an insurance company.

22 (b) The bonds and notes are:

23 (1) eligible to secure the deposit of public funds of
24 this state or a municipality, county, school district, or other
25 political corporation or subdivision of this state; and

26 (2) lawful and sufficient security for the deposits to
27 the extent of the principal amount or market value of the bonds and

1 notes, whichever is less.

2 Sec. 175.304. AWARDING CONSTRUCTION OR PURCHASE CONTRACTS.

3 (a) A contract in the amount of more than \$15,000 for the
4 construction of improvements or the purchase of material,
5 machinery, equipment, supplies, or any other property other than
6 real property may be let only through competitive bidding after
7 notice is published, at least 15 days before the date set for
8 receiving bids, in a newspaper of general circulation in each
9 county in the applicable border region.

10 (b) The board may adopt rules governing the taking of bids
11 and the awarding of contracts.

12 (c) This section does not apply to:

13 (1) personal or professional services;

14 (2) the acquisition of an existing rail transportation
15 system; or

16 (3) a contract with a common carrier to construct
17 lines or to operate higher-speed rail service on lines wholly or
18 partly owned by the carrier.

19 [Sections 175.305-175.350 reserved for expansion]

20 SUBCHAPTER G. TAXES

21 Sec. 175.351. TAX EXEMPTION. Authority property, material
22 purchases, revenues, and income and the interest on a bond or note
23 issued by an authority are exempt from all taxes imposed by this
24 state or a political subdivision of this state.

25 Sec. 175.352. SALES AND USE TAX IMPOSED. A sales and use
26 tax is imposed on items sold on authority property.

27 Sec. 175.353. TAX RATE. The sales and use tax imposed under

1 Section 175.352 shall be imposed at the rate of the highest
2 combination of local sales and use taxes imposed at the time of the
3 authority's creation in any local governmental jurisdiction in the
4 applicable border region.

5 Sec. 175.354. ABOLITION OF OTHER TAXES. All other local
6 sales and use taxes that would otherwise be imposed on authority
7 property are abolished by the imposition of the tax under Section
8 175.352.

9 Sec. 175.355. DUTY OF COMPTROLLER. The comptroller shall:

10 (1) administer, collect, and enforce the tax imposed
11 under Section 175.352; and

12 (2) remit to the authority the local sales and use tax
13 collected on the authority's property.

14 Sec. 175.356. APPLICABILITY OF TAX CODE. Chapter 321, Tax
15 Code, governs the computation, administration, governance, and use
16 of the tax except as inconsistent with this chapter.

17 Sec. 175.357. NOTICE TO COMPTROLLER. (a) An authority shall
18 notify the comptroller in writing by registered or certified mail
19 of the authority's creation and of its intent to impose the sales
20 and use tax under Section 175.352.

21 (b) The authority shall provide to the comptroller all
22 information required to implement the tax, including:

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

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

27 (c) Not later than the 30th day after the date the

1 comptroller receives the notice, map, and other information, the
2 comptroller shall inform the authority of whether the comptroller
3 is prepared to administer the tax.

4 Sec. 175.358. NOTICE TO LOCAL GOVERNMENTS. At the same time
5 an authority notifies the comptroller under Section 175.357, the
6 authority shall:

7 (1) notify each affected local governmental unit of
8 the authority's creation; and

9 (2) provide each with an adequate map showing the
10 property boundaries of the authority.

11 Sec. 175.359. ACQUISITION OF ADDITIONAL TERRITORY SUBJECT
12 TO TAX. (a) 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.

16 (b) The authority must include with each notification:

17 (1) an adequate map showing the new boundaries of the
18 authority; and

19 (2) the date the additional territory was added.

20 (c) Not later than the 30th day after the date the
21 comptroller receives the notice under this section, the comptroller
22 shall inform the authority of whether the comptroller is prepared
23 to administer the tax imposed under Section 175.352 in the
24 additional territory.

25 Sec. 175.360. EFFECTIVE DATE OF TAX. A tax imposed under
26 Section 175.352 or the abolition of a tax under Section 175.354
27 takes effect on the first day of the first complete calendar quarter

1 that occurs after the expiration of the first complete calendar
2 quarter that occurs after the date the comptroller receives a
3 notice of the action as required by this subchapter.

4 SECTION 2. This Act takes effect September 1, 2009.