

By: Merritt

H.B. No. 3650

Substitute the following for H.B. No. 3650:

By: Moody

C.S.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.

12           Sec. 175.153. SUNSET REVIEW. An authority is subject every  
13 12th year to review under Chapter 325, Government Code (Texas  
14 Sunset Act).

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

16                   (1) sue and be sued;

17                   (2) institute and prosecute suits without giving  
18 security for costs; and

19                   (3) appeal from a judgment without giving a  
20 supersedeas or cost bond.

21           (b) An action at law or in equity against an authority must  
22 be brought in the county in which a principal office of the  
23 authority is located, except that in an eminent domain proceeding  
24 involving an interest in land, suit must be brought in the county in  
25 which the land is located.

26           Sec. 175.155. POWERS RELATED TO DISTRICT PROPERTY. An  
27 authority may acquire by grant, purchase, gift, devise, lease, or

1 otherwise and may hold, use, sell, lease, or dispose of real and  
2 personal property, licenses, patents, rights, and interests  
3 necessary, convenient, or useful for the full exercise of its  
4 powers.

5 Sec. 175.156. GENERAL AUTHORITY OVER HIGHER-SPEED RAIL  
6 FACILITIES. An authority may acquire, construct, develop, own,  
7 operate, maintain, and improve intermodal and higher-speed rail  
8 facilities to connect political subdivisions in the applicable  
9 border region.

10 Sec. 175.157. USE AND ALTERATION OF PROPERTY OF ANOTHER  
11 POLITICAL SUBDIVISION. (a) For a purpose described by Section  
12 175.156, as necessary or useful in the construction,  
13 reconstruction, repair, maintenance, operation, and improvement of  
14 the system, and with the consent of a municipality, county, or other  
15 political subdivision, an authority may:

16 (1) use streets, alleys, roads, highways, and other  
17 public ways of the municipality, county, or other political  
18 subdivision; and

19 (2) relocate, raise, reroute, change the grade of, or  
20 alter, at the authority's expense, the construction of any publicly  
21 owned or privately owned street, alley, highway, road, railroad,  
22 electric line or facility, telegraph or telephone property and  
23 facility, pipeline or facility, conduit or facility, and other  
24 property.

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

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

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

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

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

11           Sec. 175.159. EMINENT DOMAIN. (a) An authority may  
12 exercise the power of eminent domain to acquire:

13           (1) real property in fee simple; or

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

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

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

20           (2) a rail line owned by a common carrier or  
21 municipality.

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

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

1           (1) is a public necessity; and

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

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

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

11           (1) an intangible legal right to receive a percentage  
12 of identified fees related to the applicable segment of the system;  
13 or

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

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

17 An authority may:

18           (1) make agreements with a public utility, private  
19 utility, communication system, common carrier, state agency, or  
20 transportation system for the joint use of facilities,  
21 installations, or properties inside or outside the border region;  
22 and

23           (2) establish through routes and joint fares.

24           Sec. 175.161. RULES. To protect the health, safety, and  
25 general welfare of residents of the border region and people who use  
26 the authority's services, an authority may adopt rules to govern  
27 the operation of the authority, its employees, the system, service

1 provided by the authority, and any other necessary matter  
2 concerning its purposes, including rules relating to health,  
3 safety, alcohol or beverage service, food service, and telephone  
4 and utility services.

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

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

8 (a) An authority shall establish and maintain reasonable and  
9 nondiscriminatory rates or other compensation for the use of the  
10 facilities of the system acquired, constructed, operated,  
11 regulated, or maintained by the authority.

12 (b) Together with grants received by the authority, the  
13 rates or other compensation must be sufficient to produce revenues  
14 adequate to:

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

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

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

22 Sec. 175.164. AGREEMENTS GENERALLY. An authority may make  
23 contracts, leases, and agreements with, and accept grants and loans  
24 from, the United States, this state, agencies and political  
25 subdivisions of this state or another state of the United States,  
26 the United Mexican States, or a state of the United Mexican States,  
27 and other persons and entities and may perform any act necessary for



1 the full exercise of the powers vested in it.

2 Sec. 175.165. INTERLOCAL AGREEMENTS WITH COMMISSION. The  
3 commission may enter into an interlocal agreement with an authority  
4 under which the authority may exercise a power or duty of the  
5 commission for the development and efficient operation of an  
6 intermodal corridor in the applicable border region.

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

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

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

19 Sec. 175.169. OPERATION OR USE CONTRACTS. (a) An authority  
20 may:

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

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

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

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

3       Sec. 175.170. RAIL TRANSPORTATION SERVICES AGREEMENTS WITH  
4 OTHER POLITICAL SUBDIVISIONS. An authority may contract with a  
5 county or other political subdivision of this state for the  
6 authority to provide higher-speed rail transportation services to  
7 an area outside the border region on the terms and conditions to  
8 which the parties agree.

9       [Sections 175.171-175.200 reserved for expansion]

10               SUBCHAPTER E. FINANCIAL PROVISIONS

11       Sec. 175.201. PURCHASE OF ADDITIONAL INSURED PROVISIONS.  
12 An authority may purchase an additional insured provision to any  
13 liability insurance contract.

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

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

22       (b) The board shall hold a public hearing before adopting a  
23 budget other than the initial budget. Notice of each hearing must  
24 be published at least seven days before the date of the hearing in a  
25 newspaper of general circulation in each county in the applicable  
26 border region.

27       (c) A budget may be amended at any time if notice of the

1 proposed amendment is given in the notice of the meeting.

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

3 Sec. 175.204. RETIREMENT BENEFITS. An authority is  
4 eligible to participate in the Texas County and District Retirement  
5 System.

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

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

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

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

23 (b) The agreements or instruments may have the terms,  
24 maturities, duration, provisions as to governing law, indemnities,  
25 and other provisions that are approved by the board.

26 (c) In connection with any transaction authorized by this  
27 section, the authority shall deposit in trust, escrow, or similar

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

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

20 [Sections 175.207-175.300 reserved for expansion]

21 SUBCHAPTER F. BONDS

22 Sec. 175.301. REVENUE BONDS. An authority may issue  
23 revenue bonds and notes in amounts the board considers necessary or  
24 appropriate for the acquisition, purchase, construction,  
25 reconstruction, repair, equipping, improvement, or extension of  
26 the authority's higher-speed rail facilities.

27 Sec. 175.302. SECURITY FOR PAYMENT OF BONDS. (a) To secure

1 the payment of a bond or note, an authority may:

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

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

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

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

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

- 15 (1) a bank;  
16 (2) a trust company;  
17 (3) a savings and loan association; and  
18 (4) an insurance company.

19 (b) The bonds and notes are:

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

23 (2) lawful and sufficient security for the deposits to  
24 the extent of the principal amount or market value of the bonds and  
25 notes, whichever is less.

26 Sec. 175.304. AWARDING CONSTRUCTION OR PURCHASE CONTRACTS.

27 (a) A contract in the amount of more than \$15,000 for the

1 construction of improvements or the purchase of material,  
2 machinery, equipment, supplies, or any other property other than  
3 real property may be let only through competitive bidding after  
4 notice is published, at least 15 days before the date set for  
5 receiving bids, in a newspaper of general circulation in each  
6 county in the applicable border region.

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

9 (c) This section does not apply to:

10 (1) personal or professional services;

11 (2) the acquisition of an existing rail transportation  
12 system; or

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

16 [Sections 175.305-175.350 reserved for expansion]

17 SUBCHAPTER G. TAXES

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

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

24 Sec. 175.353. TAX RATE. The sales and use tax imposed under  
25 Section 175.352 shall be imposed at the rate of the highest  
26 combination of local sales and use taxes imposed at the time of the  
27 authority's creation in any local governmental jurisdiction in the

1 applicable border region.

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

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

7 (1) administer, collect, and enforce the tax imposed  
8 under Section 175.352; and

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

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

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

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

20 (1) an adequate map showing the property boundaries of  
21 the authority; and

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

24 (c) Not later than the 30th day after the date the  
25 comptroller receives the notice, map, and other information, the  
26 comptroller shall inform the authority of whether the comptroller  
27 is prepared to administer the tax.

1       Sec. 175.358. NOTICE TO LOCAL GOVERNMENTS. At the same time  
2 an authority notifies the comptroller under Section 175.357, the  
3 authority shall:

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

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

8       Sec. 175.359. ACQUISITION OF ADDITIONAL TERRITORY SUBJECT  
9 TO TAX. (a) Not later than the 30th day after the date an authority  
10 adds territory to the authority, the authority shall notify the  
11 comptroller and each affected local governmental unit of the  
12 addition.

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

14           (1) an adequate map showing the new boundaries of the  
15 authority; and

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

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

22       Sec. 175.360. EFFECTIVE DATE OF TAX. A tax imposed under  
23 Section 175.352 or the abolition of a tax under Section 175.354  
24 takes effect on the first day of the first complete calendar quarter  
25 that occurs after the expiration of the first complete calendar  
26 quarter that occurs after the date the comptroller receives a  
27 notice of the action as required by this subchapter.



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