

By: Merritt

H.B. No. 3650

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 granting the power of eminent domain.

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

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

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

11 Sec. 1. DEFINITIONS. In this article:

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

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

16 (3) "Border region" means the Texas-Louisiana border
17 region or the Texas-Mexico border region, as defined by Section
18 2056.002, Government Code.

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

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

23 (6) "High-speed rail" means the rail technology that
24 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. GOVERNING BODY. (a) The governing body of an
11 authority is a board of directors consisting of representatives of
12 each county in the border region for which the authority is created.
13 The board is composed of 11 members appointed by the governor.

14 (b) The members of the board shall elect one member as
15 presiding officer. The presiding officer may select another member
16 to preside in the absence of the presiding officer.

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

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

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

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

1 Sec. 3. POWERS AND DUTIES OF AUTHORITY. (a) An authority is
2 a public body and a political subdivision of the state exercising
3 public and essential governmental functions and has all the powers
4 necessary or convenient to carry out the purposes of this article.
5 An authority, in the exercise of powers under this article, is
6 performing only governmental functions and is a governmental unit
7 within the meaning of Chapter 101, Civil Practice and Remedies
8 Code.

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

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

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

24 (e) An authority may acquire, construct, develop, own,
25 operate, maintain, and improve intermodal and high-speed rail
26 facilities to connect political subdivisions in the applicable
27 border region. For this purpose and with the consent of a

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

23 (f) An authority has the right of eminent domain to acquire
24 real property in fee simple or an interest in real property less
25 than fee simple in, on, under, or above land, including an easement,
26 right-of-way, or right of use of airspace or subsurface space. The
27 power of eminent domain under this section does not apply to land

1 under the jurisdiction of the department or a rail line owned by a
2 common carrier or municipality. An authority shall, to the extent
3 possible, use existing rail or intermodal transportation corridors
4 for the alignment of its system. A proceeding for the exercise of
5 the power of eminent domain is begun by the adoption by the board of
6 a resolution declaring the public necessity for the acquisition by
7 an authority of the property or interest described in the
8 resolution and that the acquisition is necessary and proper for the
9 construction, extension, improvement, or development of high-speed
10 rail facilities and is in the public interest. The resolution of an
11 authority is conclusive evidence of the public necessity of the
12 proposed acquisition and that the real or personal property or
13 interest in property is necessary for public use.

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

17 (1) an intangible legal right to receive a percentage
18 of identified fees related to the applicable segment of the system;
19 or

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

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

27 (i) An authority may adopt rules to govern the operation of

1 the authority, its employees, the system, service provided by the
2 authority, and any other necessary matter concerning its purposes,
3 including rules relating to health, safety, alcohol or beverage
4 service, food service, and telephone and utility services, to
5 protect the health, safety, and general welfare of residents of the
6 border region and people who use the authority's services.

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

9 (k) An authority shall establish and maintain rates or other
10 compensation for the use of the facilities of the system acquired,
11 constructed, operated, regulated, or maintained by the authority
12 that is reasonable and nondiscriminatory and, together with grants
13 received by the authority, is sufficient to produce revenues
14 adequate:

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

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

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

22 (l) An authority may make contracts, leases, and agreements
23 with, and accept grants and loans from, the United States, this
24 state, agencies and political subdivisions of this state or another
25 state of the United States, the United Mexican States, or a state of
26 the United Mexican States, and other persons and entities and may
27 perform any act necessary for the full exercise of the powers vested

1 in it. The commission may enter into an interlocal agreement with an
2 authority under which the authority may exercise a power or duty of
3 the commission for the development and efficient operation of an
4 intermodal corridor in the border region. An authority may acquire
5 rolling stock or other property under conditional sales contracts,
6 leases, equipment trust certificates, or any other form of contract
7 or trust agreement. A revenue bond indenture may limit the exercise
8 of the powers granted by this section, and a limit applies as long
9 as the revenue bonds issued under the indenture are outstanding and
10 unpaid.

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

14 (n) An authority may lease all or part of the high-speed
15 rail facilities to, or contract for the use or operation of all or
16 part of the high-speed rail facilities by, an operator. An
17 authority shall encourage to the maximum extent practicable the
18 participation of private enterprise in the operation of high-speed
19 rail facilities. The term of an operating contract under this
20 subsection may not exceed 20 years.

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

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

27 (q) Before beginning the operation of high-speed rail

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

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

16 (s) The board shall by resolution name one or more banks for
17 the deposit of authority funds. Authority funds are public funds
18 and may be invested in securities permitted by Chapter 2256,
19 Government Code. To the extent funds of an authority are not insured
20 by the Federal Deposit Insurance Corporation or its successor, they
21 shall be collateralized in the manner provided for county funds.

22 (t) To provide tax benefits to another party that are
23 available with respect to property under the laws of a foreign
24 country or to encourage private investment with a transportation
25 authority in the United States, and notwithstanding any other
26 provision of this chapter, an authority may enter into and execute,
27 as it considers appropriate, contracts, agreements, notes,

1 security agreements, conveyances, bills of sale, deeds, leases as
2 lessee or lessor, and currency hedges, swap transactions, or
3 agreements relating to foreign and domestic currency. The
4 agreements or instruments may have the terms, maturities, duration,
5 provisions as to governing law, indemnities, and other provisions
6 that are approved by the board. In connection with any transaction
7 authorized by this subsection, the authority shall deposit in
8 trust, escrow, or similar arrangement cash or lawful investments or
9 securities, or shall enter into one or more payment agreements,
10 financial guarantees, or insurance contracts with counterparties
11 having either a corporate credit or debt rating in any form, a
12 claims-paying ability, or a rating for financial strength of "AA"
13 or better by Moody's Investors Service, Inc., or by Standard &
14 Poor's Corporation or "A-" or better by BEST's rating system that,
15 by their terms, including interest to be earned on any cash or
16 securities, are sufficient in amount to pay when due all amounts
17 required to be paid by the authority as rent over the full term of
18 the transaction plus any optional purchase price due under the
19 transaction. A certification in advance by an independent financial
20 expert, banker, or certified public accountant, who is not an
21 employee of the authority, certifying compliance with this
22 requirement constitutes conclusive evidence of compliance.
23 Property sold, acquired, or otherwise transferred under this
24 subsection is considered for all purposes to be property owned and
25 held by the authority and used for public purposes.

26 Sec. 4. BONDS AND NOTES. (a) An authority may issue revenue
27 bonds and notes in amounts the board considers necessary or

1 appropriate for the acquisition, purchase, construction,
2 reconstruction, repair, equipping, improvement, or extension of
3 the authority's high-speed rail facilities. A bond or note is fully
4 negotiable and may be made redeemable before maturity, at the
5 option of the authority and at the price and under the terms the
6 board determines in the resolution authorizing the bond or note and
7 may be sold at public or private sale, as the board determines.

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

17 (c) To secure the payment of the bond or note, an authority
18 may encumber and pledge all or any part of the revenues of its
19 high-speed rail facilities, may mortgage and encumber all or part
20 of the property of the high-speed rail facilities and any thing
21 pertaining to them that is acquired or to be acquired, and may
22 prescribe the terms and provisions of the bond or note in any manner
23 not inconsistent with this article. If not prohibited by the
24 resolution or indenture relating to outstanding bonds or notes, an
25 authority may encumber separately any item of real or personal
26 property.

27 (d) A bond or note is a legal and authorized investment for

1 banks, trust companies, savings and loan associations, and
2 insurance companies. The bond or note is eligible to secure the
3 deposit of public funds of this state or a municipality, county,
4 school district, or other political corporation or subdivision of
5 this state. The bond or note is lawful and sufficient security for
6 the deposits to the extent of the principal amount or market value
7 of the bond or note, whichever is less.

8 Sec. 5. COMPETITIVE BIDS. A contract in the amount of more
9 than \$15,000 for the construction of improvements or the purchase
10 of material, machinery, equipment, supplies, or any other property
11 other than real property may be let only on competitive bids after
12 notice published, at least 15 days before the date set for receiving
13 bids, in a newspaper of general circulation in each county in the
14 applicable border region. The board may adopt rules governing the
15 taking of bids and the awarding of contracts. This section does not
16 apply to:

- 17 (1) personal or professional services;
18 (2) the acquisition of an existing rail transportation
19 system; or
20 (3) a contract with a common carrier to construct
21 lines or to operate high-speed rail service on lines owned in whole
22 or in part by the carrier.

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

27 Sec. 7. SALES AND USE TAX. (a) A sales and use tax is imposed

1 on items sold on authority property. The sales and use tax shall be
2 imposed at the rate of the highest combination of local sales and
3 use taxes imposed at the time of the authority's creation in any
4 local governmental jurisdiction in the applicable border region.
5 The comptroller shall remit to the authority the local sales and use
6 tax collected on the authority's property. All other local sales
7 and use taxes that would otherwise be imposed on authority property
8 are abolished by the imposition of this tax.

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

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

18 (1) an adequate map showing the property boundaries of
19 the authority; and

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

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

26 (e) At the same time an authority notifies the comptroller
27 under Subsection (c) of this section, the authority shall notify

1 each affected local governmental unit of the authority's creation
2 and provide each with an adequate map showing the property
3 boundaries of the authority.

4 (f) Not later than the 30th day after the date an authority
5 adds territory to the authority, the authority shall notify the
6 comptroller and each affected local governmental unit of the
7 addition. The authority must include with each notification an
8 adequate map showing the new boundaries of the authority and the
9 date the additional territory was added. Not later than the 30th day
10 after the date the comptroller receives the notice under this
11 subsection, the comptroller shall inform the authority of whether
12 the comptroller is prepared to administer the tax in the additional
13 territory.

14 (g) A tax imposed under this section or the abolition of a
15 tax under Subsection (a) of this section takes effect on the first
16 day of the first complete calendar quarter that occurs after the
17 expiration of the first complete calendar quarter that occurs after
18 the date the comptroller receives a notice of the action as required
19 by this section.

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