

BILL ANALYSIS

Senate Research Center
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H.B. 3650
By: Merritt et al. (Carona)
Transportation & Homeland Security
5/21/2009
Committee Report (Amended)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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.

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

Rulemaking authority is expressly granted to board of directors of a border region higher-speed rail authority in SECTION 1 (Sections 175.105 and 175.304, Transportation Code) of this bill.

Rulemaking authority is expressly granted to a border region higher-speed rail authority in SECTION 1 (Sections 175.161 and 175.168, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle I, Title 5, Transportation Code, by adding Chapter 175, as follows:

CHAPTER 175. BORDER REGION HIGHER-SPEED RAIL AUTHORITIES

SUBCHAPTER A. GENERAL PROVISION

Sec. 175.001. DEFINITIONS. Defines "authority," "authority property," "board," "border region," "commission," "department," "director," "higher-speed rail," "higher-speed rail facility," and "system."

[Reserves Sections 175.002-175.050 for expansion.]

SUBCHAPTER B. CREATION

Sec. 175.051. CREATION OF AUTHORITIES. Authorizes the Texas Transportation Commission (TTC) by order to authorize the creation of a border region higher-speed rail authority (authority) in each border region for the purposes of financing, acquiring property for, constructing, maintaining, operating, and improving a higher-speed rail system in each border region.

[Reserves Sections 175.052-175.100 for expansion.]

SUBCHAPTER C. GOVERNANCE

Sec. 175.101. COMPOSITION OF BOARDS. (a) Provides that the governing body of an authority in the Texas-Louisiana border region is a board of seven directors consisting of the county judges of the five most populous counties in the region; and two directors selected by the county judges to represent the remaining counties in the region.

(b) Provides that the governing body of an authority in the Texas-Mexico border region is a board of 11 directors consisting of the county judges of the seven most populous counties in the region; and four directors selected by the county judges to represent the remaining counties in the region.

Sec. 175.102. PRESIDING OFFICER. (a) Requires the directors to elect one director as presiding officer.

(b) Authorizes the presiding officer to select another director to preside in the absence of the presiding officer.

Sec. 175.103. MEETINGS. Requires the presiding officer to call at least one meeting of the authority's board of directors (board) each year and authorizes the presiding officer to call other meetings as the presiding officer determines are appropriate.

Sec. 175.104. COMPENSATION; REIMBURSEMENT. Provides that a director is not entitled to compensation for serving as a director but is entitled to reimbursement for reasonable expenses incurred while serving as a director.

Sec. 175.105. RULES FOR PROCEEDINGS. Requires the board to adopt rules for its proceedings and appoint an executive committee.

Sec. 175.106. EMPLOYEES. Authorizes the board to employ and compensate persons to carry out the powers and duties of the authority.

Sec. 175.107. CONFLICTS OF INTEREST. Provides that Chapter 171 (Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments), Local Government Code, applies to a director.

[Reserves Sections 175.108-175.150 for expansion.]

SUBCHAPTER D. POWERS AND DUTIES OF AUTHORITY

Sec. 175.151. NATURE OF AUTHORITY. (a) Provides that an authority is a public body and a political subdivision of the state exercising public and essential governmental functions.

(b) Provides that an authority, in the exercise of powers under this chapter, is performing only governmental functions and is a governmental unit within the meaning of Chapter 101 (Tort Claims), Civil Practice and Remedies Code.

Sec. 175.152. GENERAL POWERS OF AUTHORITY. Provides that an authority has all the powers necessary or convenient to carry out the purposes of this chapter, including authority to plan and develop a high-speed rail facility under the authority in this chapter; solicit federal funding to be allocated to the authority for the purposes of this chapter; coordinate with federal planners and representatives from adjacent states for the interconnectivity of high-speed rail systems in this state with systems developed in federally designated high-speed rail corridors in other states; represent and negotiate on behalf of the authority for the interconnectivity of high-speed rail with existing and planned transportation systems, including airports, seaports, transit systems, commuter rail systems, and highways; and coordinate with federal transportation planners and officials at the United States Department of Defense or its successor agency regarding issues related to the provision of connectivity to military installations in this state.

Sec. 175.153. SUNSET REVIEW. Provides that an authority is subject every 12th year to review under Chapter 325 (Sunset Law), Government Code.

Sec. 175.154. SUITS. (a) Authorizes an authority to sue and be sued, institute and prosecute suits without giving security for costs, and appeal from a judgment without giving a supersedeas or cost bond.

(b) Requires that an action at law or in equity against an authority be brought in the county in which a principal office of the authority is located, except that in an eminent domain proceeding involving an interest in land, suit is required to be brought in the county in which the land is located.

Sec. 175.155. POWERS RELATED TO DISTRICT PROPERTY. Authorizes an authority to acquire by grant, purchase, gift, devise, lease, or otherwise and hold, use, sell, lease, or dispose of real and personal property, licenses, patents, rights, and interests necessary, convenient, or useful for the full exercise of its powers.

Sec. 175.156. GENERAL AUTHORITY OVER HIGHER-SPEED RAIL FACILITIES. 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.

Sec. 175.157. USE AND ALTERATION OF PROPERTY OF ANOTHER POLITICAL SUBDIVISION. (a) Authorizes an authority, for a purpose described by Section 175.156, as necessary or useful in the construction, reconstruction, repair, maintenance, operation, and improvement of the system, and with the consent of a municipality, county, or other political subdivision, to use streets, alleys, roads, highways, and other public ways of the municipality, county, or other political subdivision; and relocate, raise, reroute, change the grade of, or alter, at the authority's expense, the construction of any publicly owned or privately owned street, alley, highway, road, railroad, electric line or facility, telegraph or telephone property and facility, pipeline or facility, conduit or facility, and other property.

(b) Prohibits an authority from using or altering a road or highway that is part of the state highway system without the permission of the TTC; or a railroad without permission of the railroad.

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

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

Sec. 175.159. EMINENT DOMAIN. (a) Authorizes an authority to exercise the power of eminent domain to acquire real property in fee simple; or an interest in real property less than fee simple in, on, under, or above land, including an easement, right-of-way, or right of use of airspace or subsurface space.

(b) Provides that the power of eminent domain under this section does not apply to land under the jurisdiction of the Texas Department of Transportation (TxDOT), or a rail line owned by a common carrier or municipality.

(c) Requires an authority, to the extent possible, to use existing rail or intermodal transportation corridors for the alignment of its system.

(d) Provides that an eminent domain proceeding is begun by the board's adoption of a resolution declaring that the authority's acquisition of the property or interest described in the resolution is a public necessity, and is necessary and proper for the construction, extension, improvement, or development of higher-speed rail facilities and is in the public interest.

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

(f) Authorizes an authority, with the consent of the property owner, instead of paying for real property with a single fixed payment, to pay the owner in the form of an intangible legal right to receive a percentage of identified fees related to the applicable segment of the system; or an exclusive or nonexclusive right to use or operate a part of the system.

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

Sec. 175.161. RULES. Authorizes an authority, to protect the health, safety, and general welfare of residents of the border region and people who use the authority's services, 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, including rules relating to health, safety, food service, and telephone and utility services. Requires that the acquisition, taxation, sale, and service of alcoholic beverages in or on any of the authority's system, high-speed rail facilities, rolling stock, and intermodal facilities comply in all respects with the provisions of the Texas Alcoholic Beverage Code, the rules of the Texas Alcoholic Beverage Commission, and Chapter 183 (Mixed Beverage Tax), Tax Code.

Sec. 175.162. JOINT OWNERSHIP AGREEMENTS. Authorizes an authority to enter into a joint ownership agreement with any person.

Sec. 175.163. COMPENSATION FOR USE OF SYSTEM FACILITIES. (a) 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.

(b) Requires that the rates or other compensation, together with grants received by the authority, be sufficient to produce revenues adequate to pay all expenses necessary for the operation and maintenance of the properties and facilities of the authority; pay the interest on and principal of bonds issued by the authority and payable in whole or in part from the revenues, as they become due and payable; and comply with the terms of an agreement made with the holders of bonds or with any person in their behalf.

Sec. 175.164. AGREEMENTS GENERALLY. Authorizes an authority to make contracts, leases, and agreements with, and accept grants and loans from, the United States, this state, agencies and political subdivisions of this state or another state of the United States, the United Mexican States, or a state of the United Mexican States, and other persons and entities and to perform any act necessary for the full exercise of the powers vested in it.

Sec. 175.165. INTERLOCAL AGREEMENTS WITH COMMISSION. Authorizes TTC to enter into an interlocal agreement with an authority under which the authority is authorized to exercise a power or duty of TTC for the development and efficient operation of an intermodal corridor in the applicable border region.

Sec. 175.166. ACQUISITION OF ROLLING STOCK AND OTHER PROPERTY. Authorizes an authority to acquire rolling stock or other property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement.

Sec. 175.167. LIMIT ON POWER. Authorizes a revenue bond indenture to limit the exercise of the powers granted by this subchapter, and provides that a limit applies as long as the revenue bonds issued under the indenture are outstanding and unpaid.

Sec. 175.168. RULES GOVERNING SYSTEM AND ROUTINGS. Authorizes an authority by resolution to adopt rules governing the use, operation, and maintenance of the system and to determine all routings and change them as the board considers advisable.

Sec. 175.169. OPERATION OR USE CONTRACTS. (a) Authorizes an authority to lease all or part of the higher-speed rail facilities to an operator; or contract for the use or operation of all or part of the higher-speed rail facilities by an operator.

(b) Requires an authority, to the maximum extent practicable, to encourage the participation of private enterprise in the operation of higher-speed rail facilities.

(c) Prohibits the term of an operating contract under this section from exceeding 20 years.

Sec. 175.170. RAIL TRANSPORTATION SERVICES AGREEMENTS WITH OTHER POLITICAL SUBDIVISIONS. (a) Authorizes an authority, except as provided in Subsection (b), 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 to which the parties agree.

(b) Prohibits an authority from undertaking any project or providing any services, or contracting to undertake any project or providing any services, in an area that includes a county with a population of 3.3 million or more and any county adjacent to that county if the area is served by a district created under Chapter 171 (Freight Rail Districts), unless the district and the authority enter into a written agreement specifying the terms and conditions under which the project or services will be undertaken or provided.

[Reserves Sections 175.171-175.200 for expansion.]

SUBCHAPTER E. FINANCIAL PROVISIONS

Sec. 175.201. PURCHASE OF ADDITIONAL INSURED PROVISIONS. Authorizes an authority to purchase an additional insured provision to any liability insurance contract.

Sec. 175.202. FISCAL YEAR. Provides that unless the board changes the fiscal year, the fiscal year of an authority ends September 30.

Sec. 175.203. ANNUAL BUDGET. (a) Requires the board, before beginning the operation of higher-speed rail facilities, to adopt an annual operating budget specifying the authority's anticipated revenues and expenses for the remainder of the fiscal year. Requires the board to adopt an operating budget for each succeeding fiscal year.

(b) Requires the board to hold a public hearing before adopting a budget other than the initial budget. Requires that notice of each hearing be published at least seven days before the date of the hearing in a newspaper of general circulation in each county in the applicable border region.

(c) Authorizes a budget to be amended at any time if notice of the proposed amendment is given in the notice of the meeting.

(d) Provides that an expenditure that is not budgeted may not be made.

Sec. 175.204. RETIREMENT BENEFITS. Provides that an authority is eligible to participate in the Texas County and District Retirement System.

Sec. 175.205. DEPOSITORY. (a) Requires the board by resolution to name one or more banks for the deposit of authority funds.

(b) Provides that authority funds are public funds and are authorized to be invested in securities permitted by Chapter 2256 (Public Funds Investment), Government Code.

(c) Provides that to the extent funds of an authority are not insured by the Federal Deposit Insurance Corporation or its successor, they are required to be collateralized in the manner provided for county funds.

Sec. 175.206. AGREEMENTS RELATED TO FOREIGN AND DOMESTIC CURRENCY. (a) Authorizes an authority, to provide tax benefits to another party 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, and notwithstanding any other provision of this chapter, to enter into and execute, as it considers appropriate, contracts, agreements, notes, security agreements, conveyances, bills of sale, deeds, leases as lessee or lessor, and currency hedges, swap transactions, or agreements relating to foreign and domestic currency.

(b) 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.

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

(d) Provides 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. Provides that property sold, acquired, or otherwise transferred under this section is considered for all purposes to be property owned and held by the authority and used for public purposes.

[Reserves Sections 175.207-175.300 for expansion.]

SUBCHAPTER F. BONDS

Sec. 175.301. REVENUE BONDS. 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.

Sec. 175.302. SECURITY FOR PAYMENT OF BONDS. (a) Authorizes the authority, to secure the payment of a bond or note, to encumber and pledge all or any part of the revenues of its higher-speed rail facilities; mortgage and encumber all or part of the property of the higher-speed rail facilities and any thing pertaining to them that is acquired or to be acquired; and prescribe the terms and provisions of the bond or note in any manner not inconsistent with this chapter.

(b) Authorizes an authority, unless prohibited by the resolution or indenture relating to outstanding bonds or notes, to encumber separately any item of property.

Sec. 175.303. BONDS AND NOTES AS AUTHORIZED INVESTMENTS AND SECURITY FOR DEPOSITS OF PUBLIC FUNDS. (a) Provides that bonds and notes are legal and authorized investments for a bank, a trust company, a savings and loan association, and an insurance company.

(b) Provides that the bonds and notes are eligible to secure the deposit of public funds of this state or a municipality, county, school district, or other political corporation or subdivision of this state; and lawful and sufficient security for the deposits to the extent of the principal amount or market value of the bonds and notes, whichever is less.

Sec. 175.304. AWARDED CONSTRUCTION OR PURCHASE CONTRACTS. (a) Authorizes a contract in the amount of more than \$15,000 for the construction of improvements or the purchase of material, machinery, equipment, supplies, or any other property other than real property to be let only through competitive bidding after notice is published, at least 15 days before the date set for receiving bids, in a newspaper of general circulation in each county in the applicable border region.

(b) Authorizes the board to adopt rules governing the taking of bids and the awarding of contracts.

(c) Provides that this section does not apply to personal or professional services, the acquisition of an existing rail transportation system, or a contract with a common carrier to construct lines or to operate higher-speed rail service on lines wholly or partly owned by the carrier.

[Reserves Sections 175.305-175.350 for expansion.]

SUBCHAPTER G. TAXES

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

Sec. 175.352. SALES AND USE TAX IMPOSED. Provides that a sales and use tax is imposed on items sold on authority property.

Sec. 175.353. TAX RATE. Requires that the sales and use tax imposed under Section 175.352 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.

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

Sec. 175.355. DUTY OF COMPTROLLER. Requires the comptroller of public accounts (comptroller) to administer, collect, and enforce the tax imposed under Section 175.352; and remit to the authority the local sales and use tax collected on the authority's property.

Sec. 175.356. APPLICABILITY OF TAX CODE. Provides that Chapter 321 (Municipal Sales and Use Tax Act), Tax Code, governs the computation, administration, governance, and use of the tax except as inconsistent with this chapter.

Sec. 175.357. NOTICE TO COMPTROLLER. (a) 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 the sales and use tax under Section 175.352.

(b) Requires that the authority provide to the comptroller all information required to implement the tax, including an adequate map showing the property boundaries

of the authority and a certified copy of the resolution of the authority board adopting the tax.

(c) Requires the comptroller, not later than the 30th day after the date the comptroller receives the notice, map, and other information, to inform the authority of whether the comptroller is prepared to administer the tax.

Sec. 175.358. NOTICE TO LOCAL GOVERNMENTS. Requires the authority, at the same time an authority notifies the comptroller under Section 175.357, 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.

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

(b) 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.

(c) Requires the comptroller, not later than the 30th day after the date the comptroller receives the notice under this section, to inform the authority of whether the comptroller is prepared to administer the tax imposed under Section 175.352 in the additional territory.

Sec. 175.360. EFFECTIVE DATE OF TAX. Provides that a tax imposed under Section 175.352 or the abolition of a tax under Section 175.354 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 as required by this subchapter.

SECTION 2. Effective date: September 1, 2009.

SUMMARY OF COMMITTEE CHANGES

(1) Amends SECTION 1 if the bill, at the end of added Subchapter A, Chapter 175, Transportation Code (page 2, between lines 13 and 14), by adding:

Sec. 175.002. ACTIVITIES OF HIGH-SPEED RAIL LOCAL GOVERNMENT CORPORATION UNAFFECTED. Prohibits an authority created and operating under this chapter from interfering or competing with, obstructing, delaying, or compromising the activities, goals, and objectives of a local government corporation created to facilitate, analyze, develop, maintain, and implement high-speed passenger rail generally along the federally designated routes.

(2) Amends SECTION 1 of the bill by striking added Section 175.152, Transportation Code (page 4, lines 9-27), and substituting:

Sec. 175.152. GENERAL POWERS OF AUTHORITY. Provides that an authority has all the powers necessary or convenient to carry out the purposes of this chapter.