

SUBJECT: Authorizing rail preservation by the Texas Department of Transportation

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Alexander, Hawley, Hill, Noriega, Pickett, Swinford
1 nay — Y. Davis
1 present, not voting — Edwards
1 absent — Hamric

SENATE VOTE: On final passage, March 19 — voice vote

WITNESSES: (*On House companion bill, HB 682:*)
For — Cletis Millsap, TEX-2 and Hopkins County Commissioners Court;
Gary Joiner, Texas Farm Bureau; Charles A. Finnell; *Registered but did not testify:* Larry Zacharias, City of Richardson; James Allison, County Judges and Commissioners Association of Texas; Bill Barton, Texas Railroad Association

Against — None

BACKGROUND: Current law does not authorize a formal mechanism for the state to preserve abandoned railroads and rail rights-of-way. The Texas Railroad Commission is the primary state agency overseeing railroad regulation and safety.

DIGEST: CSSB 406 would authorize the Texas Department of Transportation (TxDOT) to preserve, acquire, lease, and/or sell rail facilities, including rail lines. It would not authorize TxDOT to regulate, operate, or maintain rail facilities.

On receipt of a notice of intent to abandon or discontinue rail service, TxDOT would have to determine, along with the governing bodies of cities, counties, or rural transportation districts in which all or part of the line was located, what should be done to continue service, including whether TxDOT should buy the rail facilities.

The Texas Transportation Commission (TTC) could authorize TxDOT to acquire feasible, viable rail lines from railroad owners; to contract with rural transportation districts to sell, lease, or contract for the use or operation of all or part of a state-owned rail facility; or to contract with a railroad company to sell all or part of a state-owned rail facility. The TTC could authorize TxDOT to buy right-of-way or other real property deemed necessary for acquisition of rail facilities, or to sell the same if no longer was needed.

Public agencies, cities, counties and other political subdivisions could convey property to TxDOT without advertisement. Existing agreements for right-of-way access by utilities, pipelines, communications companies, or public or governmental entities would remain intact. TxDOT would have to pay a utility to relocate its facilities, lines, or equipment for expansion or relocation of state-owned rail facilities if the utility acquired an easement or leasehold interest before TxDOT acquired the right-of-way.

The bill would create the abandoned rail account as a dedicated account in the State Highway Fund. Money in the account could be appropriated only to TxDOT to preserve rail facilities. Deposits into the account could include state appropriations, eligible federal funds, sale proceeds, rail-use payments, contributions, and interest or other earned income. The account would be exempt from laws relating to abolition of funds or accounts in the treasury or relating to abolition of fund dedications or rededications. Any future appropriations made from state funds to the account could not be used for purposes other than those defined in the bill.

This bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

CSSB 406 would enable the state to preserve abandoned rail lines or discontinued rail services that represent important transportation and economic assets. Hundreds of miles of marginally profitable rail lines are at risk in Texas. Once lost, these assets are virtually impossible to recover because of the prohibitive cost. Texas needs to preserve these short lines, which have been squeezed out of business by rail deregulation, to help solve the state's transportation crisis and to maintain the economic viability of small and rural communities. Also, many industries in the state depend heavily on rail transportation to move raw materials and products.

Many of the rail lines targeted by this bill serve rural areas. Maintaining viable rail connections between farms, ranches, and markets could help reduce truck traffic. One rail car can haul at least three semitractor-trailer loads, and one semitractor-trailer inflicts the same damages to roadways as do 9,600 automobiles. With increased commercial traffic generated by the North American Free Trade Agreement, rehabilitating rail lines would help preserve highways. Texas must look to other modes of transportation to supplement its public roadways.

TxDOT is the logical agency to which to delegate rail preservation authority. The law already requires TxDOT to incorporate rail into its statewide transportation planning process. TxDOT already acts as the holding company for the South Orient line from Presidio to Coleman Junction. The problems of that rail line are not indicative of opportunities in other parts of the state.

Some rail lines are being sought to provide commuter service between major metropolitan areas and their “exurbs,” and some would be viable if the operators did not have large capital outlays. Feasibility studies would help insulate TxDOT from financial loss, even though the lines typically are sold for cents on the dollar. Any line that ultimately failed still could be sold for scrap at a breakeven price. In any case, the state would not lose money.

CSSB 406 would not affect the Texas Railroad Commission’s rail safety programs or regulatory authority.

OPPONENTS
SAY:

As a highway-building agency, TxDOT does not belong in the railroad business. It now has enough money to meet only 36 percent of the state’s transportation needs. Abandoned railroads would not do much, if anything, to solve Texas’ transportation problems. TxDOT needs to focus on relieving traffic congestion, not on saving foundering railroads.

Few if any abandoned or discontinued railways in Texas are viable. They are not being used because they cannot turn a profit or no longer are needed. A state agency with stretched resources and no railroad expertise should not be expected to revitalize the dying short-line industry.

Texas already has failed at this experiment. In 1991, the Legislature established the South Orient Rural Rail Transportation District and

appropriated \$3 million through TxDOT to purchase right-of-way. TxDOT leased the line to the South Orient Railroad Co. Traffic never developed, and the company lost \$9 million in eight years.

The company asked for permission to discontinue service in 1998, and the federal government ordered South Orient to sell. In February 2001, TxDOT paid \$6 million to buy the railroad, planning to lease it to Texas Pacifico Transportation, which paid the \$3.5 million balance in March. South Orient has not been profitable since its inception. If TxDOT had the authority to buy the line already, CSSB 406 is unnecessary.

Large railroads are serving Texas' major markets. TxDOT should not be engaging in railroad speculation when it constantly requests more money and manpower for its core functions.

CSSB 406 could siphon federal funds from the Texas Railroad Commission and indirectly undermine or cloud the commission's regulatory authority. It also would raise liability questions as to which agency would be responsible if a cause of action arose.

NOTES:

The committee substitute is the same as the companion bill, HB 682 by Hawley, which was considered by the House Transportation Committee in a public hearing on February 20 and left pending. The Senate-passed version of SB 406 would require TxDOT to solicit proposals to lease all or part of any state-owned rail facilities and to enter into a lease agreement with the offeror whose proposal provided the best value to the state. The substitute removed a provision in the Senate bill authorizing TxDOT to receive, accept, and spend funds for rail planning.

Article 11 of the House-passed version of SB 1 by Ellis, the general appropriations bill for fiscal 2002-03, contains a rider that would authorize transfer of up to \$10 million from TxDOT's appropriation for highway construction to the abandoned rail account, contingent on enactment of HB 682 or similar legislation and subject to approval by the governor and the Legislative Budget Board.