

- SUBJECT:** Prohibiting the obstruction of emergency vehicles at railroad crossings
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 6 ayes — Krusee, Harper-Brown, Deshotel, Harless, Macias, Murphy
2 nays — Haggerty, Hill
1 present not voting — Phillips
- WITNESSES:** For — Martin A. Pessink, City of Pittsburg, Camp County; (Registered, *but did not testify*: Randy Cain, Texas Fire Chiefs Assoc.

Against — (*Registered, but did not testify*: Dennis Kearns, BNSF Railway)

On — Ron Olson, Union Pacific Railroad, Texas Railroad Association
- BACKGROUND:** Transportation Code, sec. 471.007 imposes a criminal penalty against a railway company if its train blocks a street, railroad crossing, or public highway for more than ten minutes. It requires a peace officer charging a railway company for an offense to prepare in duplicate a citation to appear in court and attach one copy of the citation to the train or deliver the copy to an employee or other agent of the railway company. An offense is a misdemeanor punishable by a fine of not less than \$100 or more than \$300. It is a defense to prosecution if the train obstructed the street or crossing due to an act of God or breakdown of the train.
- DIGEST:** CSHB 1757 would stipulate that a railway company would commit an offense if a train obstructed for more than ten minutes a street, railroad crossing, or public highway and as a result, an authorized emergency vehicle was prevented from taking the most direct route to an emergency. It would require an officer who was charging a railway company with an offense to deliver the citation to an employee or other agent of the railway company.

An offense committed before the effective date of the bill would be covered by the laws in effect at that time.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

Texas law prohibiting a train from blocking a street or highway for more than ten minutes -- also known as the Texas Anti-Blocking Statute -- was determined by the Fifth U.S. Circuit Court of Appeals in *Friberg v. Kansas City*, 267 F.3d 439, 444 (5th Cir. 2001) in 2001 to be preempted by the Interstate Commerce Commission Termination Act of 1995, which prohibits a state from imposing or enforcing any legislation involving railroads. In that case, business owners sued a railway company for blocking the road to their business and alleged negligence because of the economic impact on their business.

In some communities, trains commonly block railroad crossings, city streets, and state highways for long periods of time, creating severe safety hazards because emergency vehicles are being blocked, forcing them to make time consuming detours. Citations issued to railway companies in response to these occurrences have remained unenforceable because of the Fifth Circuit Court's decision.

In 2005, Atty. Gen. Greg Abbott issued GA-0331 in which he noted that the 2001 ruling by the Fifth Circuit Court acknowledged the possibility that the Texas Legislature might be able to craft a statute regulating blocking to the extent it interfered with state and local law enforcement or emergency response, which is not preempted. CSHB 1757 would narrow the anti-blocking statute to include only the blocking of emergency vehicles.

**OPPONENTS
SAY:**

CSHB 1757 would impose punitive measures against a railroad that would not address growing infrastructure needs in communities. Railroad tracks predate roads and streets by decades. Cities have land use and zoning powers to put streets where they do not interfere with busy railway traffic. They have the ability to build grade separations, including bridges over the railroad tracks or tunnels that go under them, which are much safer. With the population explosion Texas is experiencing, streets and railroad tracks both are crowded, but this bill unfairly would penalize railroad companies. Trains keep freight moving and off congested highways.

There has not been a single proven case in Texas where a train crew failed to break a train for an emergency vehicle. Train crews are responsible members of the community and usually have family members living in the communities they serve. No one would oppose the unblocking of a

crossing for emergencies. There are two ways to contact a railroad in an emergency. A first responder can call a 1-800 hotline number or can contact the railroad simply by calling 911 or the sheriff's department, which only takes minutes. Train crews can break a crossing block by backing up the entire length of the train or uncoupling train cars.

Current Texas law regarding this issue is preempted by federal law, which places the regulation of train operations, as well as the construction and operation of side tracks, under the exclusive jurisdiction of the federal Surface Transportation Board.