

SUBJECT: Authorizing use of rail relocation and improvement fund for rail projects

COMMITTEE: Transportation — favorable, without amendment

VOTE: 7 ayes — Krusee, Phillips, Deshotel, Harless, Hill, Macias, Murphy
1 nay — Haggerty
1 absent — Harper-Brown

WITNESSES: For — Victor Boyer, San Antonio Mobility Coalition, Inc.; Dennis Kearns, BNSF Railway; Pete Sepulveda, Jr., Cameron County, City of Harlingen, City of Brownsville; (*Registered, but did not testify:* William H. Bingham and Sid Covington, Austin-San Antonio Intermunicipal Commuter Rail District; Randy Cain, City of Round Rock; Aaron Day, City of Fort Worth; Scott Forbes, Texas Ports Association and Port of Houston Authority; Darrin Hall, City of Houston - Office of the Mayor; Sandra Hentges, Austin Chamber of Commerce; Jerry L. Hodge, City of Grapevine; John Hrcir, City of Austin; James McCarley, Dallas Regional Mobility Coalition; Ross Milloy, Austin-San Antonio Corridor Council; Lawrence Olsen, Texas Good Roads Association; Leilah Powell and Angelo Zottarelli, Bexar County Commissioners Court; Susie Shields, Greater San Antonio Chamber of Commerce; Andrew Smith, City of San Antonio; Vic Suhm, Tarrant Regional Transportation Coalition North Texas Commission; Bruce Todd, Austin-San Antonio Corridor Council Executive Committee; Jerry Valdez, Greater Houston Partnership; Joe Valenzuela, City of San Marcos; Joe Bill Watkins, Kansas City Southern Railroad Atty. Warren Erdman; Christopher Aadnesen)

Against — None

On — Amadeo Saenz, Texas Department of Transportation

BACKGROUND: On November 8, 2005, Texas voters approved, by a margin of 54 percent to 46 percent, an amendment to the Constitution — Proposition 1/HJR 54 by McClendon — authorizing the creation of the Texas Rail Relocation and Improvement Fund within the state treasury. The amendment allowed the Texas Transportation Commission (TTC) to administer a revolving fund to finance or partially fund relocation and improvement of privately

and publicly owned passenger and freight rail facilities. TTC can issue bonds pledged against the fund to be repaid from the fund balance. The 79th Legislature approved the enabling legislation (HB 1546 by McClendon), creating the statutory framework for the establishment of the fund.

Transportation Code, ch. 91 authorizes to the Texas Department of Transportation (TxDOT) to build, finance, acquire, maintain, and operate railroads, rail facilities, and land needed for those purposes. Sec. 91.071(b) prevents the agency from using general revenue to implement the chapter unless the spending is approved by a line-item appropriation.

DIGEST: HB 3747 would amend Transportation Code, sec. 91.071(b) to allow TxDOT to spend general revenue appropriated to the Texas Rail Relocation and Improvement Fund to implement Transportation Code, ch. 91.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS SAY: Texas voters and the Legislature have endorsed the concept of the Texas Rail Relocation and Improvement Fund, and HB 3747 simply would create a mechanism for TxDOT to implement the will of the people. The state has identified \$17.4 billion in needed rail projects across Texas. If the Legislature adopts a budget that includes funding for the program, HB 3747 would allow the agency to begin identifying the state's top rail relocation priorities and begin work on the initial project.

The Texas Rail Relocation and Improvement Fund was created to enhance public safety, alleviate traffic congestion, improve air quality, and boost economic opportunity. The project is designed to relocate dangerous freight rail lines from densely populated areas. It would enable shipment of more goods by train and reduce the number of trucks traveling on highways, which would decrease congestion and potentially dangerous truck traffic. Right-of-way obtained by relocating railroads out of urban areas could be used for the placement of commuter rail lines or new highways, both of which would decrease traffic congestion.

The goals of the program are dependent on a mechanism allowing TxDOT to spend money on these projects, and this bill would create that by

allowing the agency to tap the Texas Rail Relocation and Improvement Fund created within the state treasury. The Constitution bans the agency from using money from State Highway Fund (Fund 6) on rail, so this would be the best and most appropriate way to pursue these projects.

Although the Legislature has not created a consistent, guaranteed source of revenue that would allow the agency to issue bonds that would fund several projects, the House has included a one-time appropriation of \$150 million in Art. 11 of HB 1 by Chisum, the proposed general appropriations act for fiscal 2008-09. If money were appropriated, TxDOT then would develop rules for eligibility and determine its priorities and whether it should use the money for an independent project or partner with a private or public entity on a more expensive project. It would not make sense for the agency to spend the time and resources to develop expenditure procedures before it had received money to spend.

**OPPONENTS
SAY:**

Affording TxDOT a funding mechanism for a program without definition would be a questionable endeavor. At a time when the Legislature has expressed concerns about TxDOT's decisions and funding priorities, especially those involving participation in partnerships with private enterprise, it would be unwise to allow TxDOT to create its own rules for spending money and deeming eligibility of projects. The state should not spend public dollars on projects that benefit private companies, and this bill would provide no safeguard against that possibility.