

BILL ANALYSIS

Senate Research Center

C.S.H.B. 2958
By: Hamric (Lindsay)
Transportation & Homeland Security
5/20/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, in Harris County and surrounding counties, there is a need for an entity that can effect the consolidation and improvement of freight rail lines in the region. C.S.H.B. 2958 creates a new chapter in the Transportation Code, which authorizes the creation of a freight rail district containing Harris County and counties surrounding Harris.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

SUBTITLE I. SPECIAL DISTRICTS

CHAPTER 171. FREIGHT RAIL DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 171.001. DEFINITIONS. Defines "board," "bonds," "district," "rail facilities," and "revenues."

Sec. 171.002. APPLICABILITY OF RURAL RAIL TRANSPORTATION DISTRICTS LAW. (a) Provides that Sections 2-9, Chapter 623 (Rural Rail Transportation Districts), Acts of the 67th Legislature, Regular Session, 1981 (Article 6550c, V.T.C.S.), except as provided by this chapter, apply to a district as if the district were created under that chapter.

(b) Provides that for purposes of applying Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (Article 6550c, V.T.C.S.), to a district created under this chapter, a reference to "rail facilities" in Chapter 623 means "rail facilities" as defined by Section 171.001.

(c) Provides that for purposes of applying Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (Article 6550, V.T.C.S.), to a district created under this chapter, a reference in Chapter 623 to "eligible county" means a county that created the district.

[Reserves Sections 171.003-171.050 for expansion.]

SUBCHAPTER B. CREATION

Sec. 171.051. APPLICABILITY TO CERTAIN COUNTIES. Authorizes a freight rail district (district) to be created only in a county with a population of 3.3 million or more and counties adjacent to such a county.

Sec. 171.052. CREATION BY COUNTIES AND MUNICIPALITIES. (a) Authorizes the governing body of one or more counties and the most populous municipality in the

most populous county to by concurrent order or ordinance create a district. Requires a district, at the time of creation, to include a certain county or that municipality.

(b) Provides that the order or ordinance creating the district shall specify certain requirements and may specify certain authorizations.

(c) Requires the order or ordinance creating the district to specify that the presiding officer of the navigation district is a director of the freight rail district, if the most populous county in the district contains a countywide navigation district and the presiding officer of the navigation district is jointly appointed by that county and the most populous municipality in that county, and at least one director must be jointly appointed by certain entities.

(d) Provides that the common law doctrine of incompatibility does not apply to a director serving under this subsection (c)(1) with regard to the director's service for the freight district or for the navigation district.

Sec. 171.053. INTERMUNICIPAL COMMUTER RAIL DISTRICT POWERS. Authorizes the governing bodies of the county or counties and of the most populous municipality in the most populous county to provide that the district may exercise the powers of an intermunicipal commuter rail district created under Article 6550c-1, Revised Statutes, by specifying in the concurrent order or ordinance creating the district that those powers may be exercised by the district.

Sec. 171.054. DISTRICT TERRITORY. Provides that the district consists of territory of each county that created the district and the territory of the most populous municipality in the most populous county if that municipality's territory is located in more than one county.

[Reserves Sections 171.055-171.100 for expansion.]

SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 171.101. COMPOSITION OF BOARD; PRESIDING OFFICER. Provides that the district's board consists of directors, including a presiding officer, as provided in the order or ordinance creating the district under Section 171.052(b).

Sec. 171.102. EX OFFICIO NONVOTING DIRECTOR; TEXAS TRANSPORTATION COMMISSION. Authorizes the Texas Transportation Commission to appoint to the board a representative to serve as a nonvoting ex officio director.

Sec. 171.103. CONFLICT OF INTEREST. Provides that Chapter 171 (Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments), Local Government Code, governs conflicts of interest for directors.

[Reserves Sections 171.104-171.150 for expansion.]

SUBCHAPTER D. POWERS AND DUTIES

Sec. 171.151. REGIONAL MOBILITY AUTHORITY POWERS. Authorizes a district to exercise the transportation project powers of a regional mobility authority under Chapter 370 (Regional Mobility Authorities) for a transportation project that is a freight rail facility.

Sec. 171.152. GENERAL CONTRACT POWERS. Authorizes a district to contract with certain entities.

Sec. 171.153. EXERCISE OF POWERS IN OTHER COUNTIES. Authorizes the commissioners court of a county that is not in the district to authorize the district to exercise its powers in that county if that county is adjacent to a county that is in the district.

Sec. 171.154. INTERMUNICIPAL COMMUTER RAIL POWERS. (a) Authorizes the district to exercise the powers of an intermunicipal commuter rail district created under Article 6550c-1, Revised Statutes, only if the concurrent order or ordinance creating the district specifies that the district may exercise those powers.

(b) Provides that in the event of a conflict between this chapter and a power granted by Article 6550c-1, Revised Statutes, this chapter controls. Provides that in the event of a conflict between Article 6550c-1 and Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (Article 6550c, V.T.C.S), Article 6550c controls over Article 6550c-1.

Sec. 171.155. COUNTY EXERCISE OF DISTRICT'S POWER OF EMINENT DOMAIN. Authorizes the district's right to exercise the power of eminent domain to be exercised only by each commissioners court of the county in which the property to be condemned is located. Authorizes the commissioners, on request by the board, to exercise that power on behalf of the district.

[Reserves Sections 171.156-171.200 for expansion.]

SUBCHAPTER E. RELATIONSHIP BETWEEN DISTRICT AND AFFECTED RAILROADS

Sec. 171.201. AGREEMENT WITH RAILROAD. (a) Requires the district and railroad, before a district may undertake a freight or commuter rail project that materially affects the tracks, facilities, or other property of a railroad that owns track in the district, to enter into a written agreement regarding the scope, operational impact, financing, and other elements of the project. Prohibits the district from undertaking the project unless the district and the railroad agree on these terms.

(b) Authorizes the agreement to include provisions for the railroad's financial participation in the project according to the benefits the railroad derives from the project.

Sec. 171.202. PRESERVATION OF REGULATORY STRUCTURE AND OWNERSHIP RIGHTS. Authorizes a district project to be conducted only in a manner that preserves the existing rail industry regulatory structure and railroad ownership rights.

Sec. 171.203. COMPETITIVE RELATIONSHIPS. Prohibits the district from undertaking a project that changes the existing competitive relationships between and among railroads.

Sec. 171.204. SERVICE TO CUSTOMERS. Prohibits the district from undertaking a project that negatively affects a railroad's present or future ability to provide consistent service to its customers.

Sec. 171.205. USE OF DISTRICT RAIL FACILITIES. Provides that this chapter does not prohibit the district from authorizing multiple freight railroads to operate on district rail facilities.

Sec. 171.206. LIMITATION ON EMINENT DOMAIN. Prohibits the power of eminent domain from being exercised under this chapter to condemn a right-of-way owned by a railroad.

Sec. 171.207. EXCEPTION; GRADE SEPARATION PROJECTS. Provides that this subchapter does not apply to a rail-roadway or rail-rail grade separation project.

[Reserves Sections 171.208-171.250 for expansion.]

SUBCHAPTER F. FINANCIAL PROVISIONS

Sec. 171.251. PLEDGE OF REVENUES. Authorizes a district to secure and pledge revenues derived from any source to secure the payment of district bonds.

Sec. 171.252. PURCHASE CONTRACTS. Provides that Subchapter O (Financial Disclosure by Members of Governing Body), Chapter 60, Water Code, as added by Chapter 307, Acts of the 78th Legislature, Regular Session, 2003, applies to the district as if the district were a navigation district under that subchapter. Provides that for the purposes of applying that subchapter to the district under this section, "commission" means the district's board of directors.

Sec. 171.253. AD VALOREM AND SALES AND TAXES PROHIBITED. Prohibits a district from imposing an ad valorem tax or a sales and use tax.

Sec. 171.254. FEES CHARGED TO RAILROADS. (a) Prohibits a district from imposing a fee or other charge on a railroad unless the railroad agrees to that fee or other charge.

(b) Provides that this section does not prohibit a railroad from voluntarily contributing to the cost of rail facilities or prohibit the district from charging for the use of a rail facility by a railroad or other person.

Sec. 171.255. PORT TERMINAL RAILROAD ASSOCIATION RAIL FACILITIES. Prohibits the district from spending money, including money from state or federal grants, to purchase a rail facility operated by a port terminal railroad.

[Reserves Sections 171.256-171.300 for expansion.]

SUBCHAPTER G. WITHDRAWAL; DISSOLUTION

Sec. 171.301. WITHDRAWAL. (a) Authorizes a county or municipality that created the district to petition the board for approval to withdraw from the district. Authorizes the board to approve the petition only if certain conditions apply.

(b) Provides that if the board approves the petition, the county or municipality that withdrew from the district is not entitled to appoint directors to the board. Requires the remaining counties or municipality by concurrent order or ordinance to allocate among themselves the authority of the withdrawing county or municipality to appoint directors to the board.

Sec. 171.302. DISSOLUTION. Authorizes the board, in addition to the dissolution procedures provided by Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (Article 6550c, V.T.C.S.), to dissolve a district if certain procedures are followed.

SECTION 2. Effective date: upon passage or September 1, 2005.