

BILL ANALYSIS

C.S.H.B. 2958
By: Hamric
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Certain areas of the state have a system of freight rail lines that were originally constructed in rural, sparsely populated areas that have become part of urban or metropolitan areas. The number of rail lines in those areas and the growth of vehicular traffic and the associated at-grade crossings reduce mobility, unnecessarily increase automobile idling time, increase automobile emissions, increase the risk of automobile and train accidents, unnecessarily disrupt residential neighborhoods with freight rail traffic and reduce the speed at which freight rail cargo reaches its destinations. The ports and rail shippers utilizing rail services in this state, which are essential to the commerce and economic development of the entire state, have vital interests in improving the coordination of freight rail traffic. A system of better coordinated, improved freight rail lines will reduce pollution, improve safety, increase regional mobility, decrease transit times for freight rail cargoes, benefit the environment and generally enhance the economic development and the quality of life in affected areas.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

The legislation authorizes the creation of freight rail districts in certain circumstances. Subchapter A applies to districts the statutory provisions relating to rural rail transportation districts, as contained in Article 6550c, Vernon's Texas Civil Statutes.

Subchapter B of the bill provides for the creation of districts. They may be created only in a county with the population of 3.3 million or more and in counties adjacent to such a county. Currently, Harris County is the only county with a population of more than 3.3 million. The counties adjacent to Harris County are the following: Galveston, Brazoria, Fort Bend, Waller, Montgomery, Liberty and Chambers Counties. A district must include both the county with a population of 3.3 million or more and the most populous city in that county, which currently means the City of Houston. The order or ordinance must specify the presiding officer of the navigation district is a director of the freight rail district. The common law of incompatibility does not apply here.

The governing bodies of the county or counties of the most populous municipalities may provide the district may exercise the powers of an intermunicipal commuter rail district by specifying in the concurrent order or ordinance creating the district.

The district consists of the territory of each county that created the district and the territory of the most populous municipality.

Subchapter C of the bill states the district is created by the adoption of concurrent orders and a concurrent ordinance. Such orders and ordinance also provide for the board of directors of the district and the presiding officer, except that a jointly appointed presiding officer of a countywide navigation district in the most populous county (*e.g.*, the Port of Houston Authority) is one director appointed by the most populous county, and there is a non-voting ex-officio member appointed by the Texas Transportation Commission. The Local Governments Code governs conflicts of interest.

Subchapter D provides the district with broad contracting powers. The district may exercise the transportation project powers of a regional mobility authority under Chapter 370, Transportation Code. With the consent of a commissioners court, the district may exercise its powers in a county outside the boundaries of a district.

The district may exercise the powers of an intermunicipal commuter rail district only if authorized by concurrent order or ordinance.

Subchapter E provides for the relationship between a district and affected railroads, except with respect to grade separation projects. Basically, before a district may undertake any freight or commuter rail project that materially affects that tracks, facilities or properties of a railroad, the district must enter into a written agreement with that railroad. A railroad is not required to contract with a district. The projects undertaken by a district must preserve the existing rail industry regulatory structure and railroad ownership rights, must not materially alter the existing competitive relationships between and among railroads and must not negatively impact a railroad's present or future ability to provide consistent service to its customers. On the other hand, nothing in those agreements may prohibit a district from authorizing multiple freight railroads to operate on rail facilities constructed by the district. The district may not use eminent domain over right-of-way owned by a railroad.

Subchapter F contains financial provisions that authorize the pledge of revenues from any source to secure any bonds of the district. The purchasing power of the district is consistent with that of a navigation district. Ad valorem taxes are prohibited, and there may be no involuntary fees or taxes imposed upon railroads. The latter provision does not, however, prohibit voluntary financial contributions by railroads or district charges for use of its rail facilities. Additionally, no funds may be expended by a district to purchase rail facilities operated by the Port Terminal Rail Association.

Subchapter G contains withdrawal and dissolution provisions, and Subchapter H gives to a district the powers of intermunicipal rail districts, as set out in Article 6550c-1, Vernon's Texas Civil Statutes, if exercised in the concurrent orders and ordinance. The board may approve the petition to withdraw only if the district has no outstanding bonds or the district has debt other than bonds and the board finds the withdrawal of the county or municipality will not materially affect the ability of the district to repay the debt. The board may dissolve the district if all liabilities have been paid or the district is not a party to any lawsuits.

This Act takes effect immediately with a two thirds vote, otherwise upon September 1, 2005.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The committee substitute changes the original HB 2858 as filed in the following ways:

The committee substituted deletes the finding language and replaces it with statutory language, it moves the language referring to the common law doctrine of incompatibility to a different section of the bill, and adds language making the Texas Transportation Commission appointee a non-voting ex officio member.

The general power language is replaced with language giving the freight rail district the same powers as a district created under Chapter 623, Acts of the 67th Legislature, and it narrows the additional powers of a district to those equivalent to a regional mobility authority.

The new language replaces with whom a district may contract, permits the exercise of power in other counties which replaces the language referring to contracting for goods and services.

The following are technical changes in the committee substitute:

The substitute moves the language under Sec. 171.155 to Sec. 171.154, adds Sections which are reserved for expansion, substitutes new language or moves language from another subchapter for Subchapter E, Subchapter F, Subchapter G and Subchapter H as is more detailed in the above analysis.