

By: Hamric

H.B. No. 2958

A BILL TO BE ENTITLED

AN ACT

relating to the creation of freight rail districts; authorizing a tax; granting authority to issue bonds or other similar obligations to create public debt; granting the power of eminent domain.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 5, Transportation Code, is amended by adding Subtitle I to read as follows:

SUBTITLE I. SPECIAL DISTRICTS

CHAPTER 171. FREIGHT RAIL DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 171.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "Bonds" has the meaning assigned by Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (Article 6550c, Vernon's Texas Civil Statutes).

(3) "District" means a freight rail district created under this chapter.

(4) "Rail facilities" has the meaning assigned by Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (Article 6550c, Vernon's Texas Civil Statutes), except that the term includes property and interests necessary or convenient for the provision of a nonrural rail transportation system.

(5) "Revenues" has the meaning assigned by Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (Article

1 6550c, Vernon's Texas Civil Statutes).

2 Sec. 171.002. APPLICABILITY OF RURAL RAIL TRANSPORTATION
3 DISTRICTS LAW. (a) Except as provided by this chapter, Sections
4 2-9, Chapter 623, Acts of the 67th Legislature, Regular Session,
5 1981 (Article 6550c, Vernon's Texas Civil Statutes), apply to a
6 district as if the district were created under that chapter.

7 (b) For purposes of applying Chapter 623, Acts of the 67th
8 Legislature, Regular Session, 1981 (Article 6550c, Vernon's Texas
9 Civil Statutes), to a district created under this chapter, a
10 reference to "rail facilities" in Chapter 623 means "rail
11 facilities" as defined by Section 171.001.

12 (c) For purposes of applying Chapter 623, Acts of the 67th
13 Legislature, Regular Session, 1981 (Article 6550c, Vernon's Texas
14 Civil Statutes), to a district created under this chapter, a
15 reference in Chapter 623 to "eligible county" means a county that
16 created the district.

17 [Sections 171.003-171.050 reserved for expansion]

18 SUBCHAPTER B. CREATION

19 Sec. 171.051. APPLICABILITY TO CERTAIN COUNTIES. A
20 district may be created only in a county with a population of 3.3
21 million or more and counties adjacent to such a county.

22 Sec. 171.052. CREATION BY COUNTIES AND MUNICIPALITIES. (a)
23 The governing body of one or more counties and the most populous
24 municipality in the most populous county may by concurrent order or
25 ordinance create a district. At the time of creation, a district
26 must include:

27 (1) a county with a population of 3.3 million or more;

1 and

2 (2) that municipality.

3 (b) The order or ordinance creating the district must
4 specify:

5 (1) the number of district directors and who appoints
6 the directors; and

7 (2) the method of selecting the board's presiding
8 officer.

9 (c) If the most populous county in the district contains a
10 countywide navigation district and the presiding officer of the
11 navigation district is jointly appointed by that county and the
12 most populous municipality in that county, the order or ordinance
13 creating the district must specify that the presiding officer of
14 the navigation district is a director of the freight rail district.
15 The common law doctrine of incompatibility does not apply to a
16 director serving under this subsection with regard to the
17 director's service for the freight district or for the navigation
18 district.

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

27 Sec. 171.054. DISTRICT TERRITORY. The district consists

1 of the territory of each county that created the district and the
2 territory of the most populous municipality in the most populous
3 county if that municipality's territory is located in more than one
4 county.

5 [Sections 171.055-171.100 reserved for expansion]

6 SUBCHAPTER C. BOARD OF DIRECTORS

7 Sec. 171.101. COMPOSITION OF BOARD; PRESIDING OFFICER. The
8 board consists of directors, including a presiding officer, as
9 provided in the order or ordinance creating the district under
10 Section 171.052(b).

11 Sec. 171.102. EX OFFICIO NONVOTING DIRECTOR; TEXAS
12 TRANSPORTATION COMMISSION. The Texas Transportation Commission
13 may appoint to the board a representative to serve as a nonvoting ex
14 officio director.

15 Sec. 171.103. CONFLICT OF INTEREST. Chapter 171, Local
16 Government Code, governs conflicts of interest for directors.

17 [Sections 171.104-171.150 reserved for expansion]

18 SUBCHAPTER D. POWERS AND DUTIES

19 Sec. 171.151. REGIONAL MOBILITY AUTHORITY POWERS. A
20 district may exercise the transportation project powers of a
21 regional mobility authority under Chapter 370.

22 Sec. 171.152. GENERAL CONTRACT POWERS. A district may
23 contract with any person, including:

24 (1) a county or municipality, including a county or
25 municipality that created the district;

26 (2) this state or any political subdivision of this
27 state;

1 (3) the United States; or

2 (4) a railroad.

3 Sec. 171.153. EXERCISE OF POWERS IN OTHER COUNTIES. The
4 commissioners court of a county that is not in the district may
5 authorize the district to exercise its powers in that county.

6 Sec. 171.154. INTERMUNICIPAL COMMUTER RAIL POWERS; TAXES.

7 (a) The district may exercise the powers of an intermunicipal
8 commuter rail district created under Article 6550c-1, Revised
9 Statutes, only if the concurrent order or ordinance creating the
10 district specifies that the district may exercise those powers.

11 (b) If the district is granted the powers of an
12 intermunicipal commuter rail district, the district may impose a
13 sales and use tax in the manner provided by Article 6550c-1, Revised
14 Statutes.

15 (c) In the event of a conflict between this chapter and a
16 power granted by Article 6550c-1, Revised Statutes, this chapter
17 controls. In the event of a conflict between Article 6550c-1 and
18 Chapter 623, Acts of the 67th Legislature, Regular Session, 1981
19 (Article 6550c, Vernon's Texas Civil Statutes), Article 6550c
20 controls over Article 6550c-1.

21 [Sections 171.155-171.200 reserved for expansion]

22 SUBCHAPTER E. RELATIONSHIP BETWEEN DISTRICT AND AFFECTED RAILROADS

23 Sec. 171.201. AGREEMENT WITH RAILROAD. (a) Before a
24 district may undertake a freight or commuter rail project that
25 materially affects the tracks, facilities, or other property of a
26 railroad that owns track in the district, the district and railroad
27 must enter into a written agreement regarding the scope,

1 operational impact, financing, and other elements of the project.
2 The district may not undertake the project unless the district and
3 the railroad agree on these terms.

4 (b) The agreement may include provisions for the railroad's
5 financial participation in the project according to the benefits
6 the railroad derives from the project.

7 Sec. 171.202. PRESERVATION OF REGULATORY STRUCTURE AND
8 OWNERSHIP RIGHTS. A district project may be conducted only in a
9 manner that preserves the existing rail industry regulatory
10 structure and railroad ownership rights.

11 Sec. 171.203. COMPETITIVE RELATIONSHIPS. The district may
12 not undertake a project that changes the existing competitive
13 relationships between and among railroads.

14 Sec. 171.204. SERVICE TO CUSTOMERS. The district may not
15 undertake a project that negatively affects a railroad's present or
16 future ability to provide consistent service to its customers.

17 Sec. 171.205. USE OF DISTRICT RAIL FACILITIES. This
18 chapter does not prohibit the district from authorizing multiple
19 freight railroads to operate on district rail facilities.

20 Sec. 171.206. LIMITATION ON EMINENT DOMAIN. The district
21 may not exercise the power of eminent domain to condemn a
22 right-of-way owned by a railroad.

23 Sec. 171.207. EXCEPTION; GRADE SEPARATION PROJECTS. This
24 subchapter does not apply to a rail-roadway or rail-rail grade
25 separation project.

26 [Sections 171.208-171.250 reserved for expansion]

1 SUBCHAPTER F. FINANCIAL PROVISIONS

2 Sec. 171.251. PLEDGE OF REVENUES. A district may secure and
3 pledge revenues derived from any source to secure the payment of
4 district bonds.

5 Sec. 171.252. PURCHASE CONTRACTS. Subchapter O, Chapter
6 60, Water Code, as added by Chapter 307, Acts of the 78th
7 Legislature, Regular Session, 2003, applies to the district as if
8 the district were a navigation district under that subchapter. For
9 the purposes of applying that subchapter to the district under this
10 section, "commission" means the board.

11 Sec. 171.253. AD VALOREM TAX PROHIBITED. A district may not
12 impose an ad valorem tax.

13 Sec. 171.254. FEES AND TAXES CHARGED TO RAILROADS. (a) A
14 district may not impose a tax, fee, or other charge on a railroad
15 unless the railroad agrees to that tax, fee, or other charge.

16 (b) This section does not prohibit a railroad from
17 voluntarily contributing to the cost of rail facilities or prohibit
18 the district from charging for the use of a rail facility by a
19 railroad or other person.

20 Sec. 171.255. PORT TERMINAL RAILROAD ASSOCIATION RAIL
21 FACILITIES. The district may not spend money, including money from
22 state or federal grants, to purchase a rail facility operated by a
23 port terminal railroad.

24 [Sections 171.256-171.300 reserved for expansion]

25 SUBCHAPTER G. WITHDRAWAL; DISSOLUTION

26 Sec. 171.301. WITHDRAWAL. (a) A county or municipality
27 that created the district may petition the board for approval to

1 withdraw from the district. The board may approve the petition only
2 if:

3 (1) the district has no outstanding bonds; or

4 (2) the district has debt other than bonds and the
5 board finds that the withdrawal of the county or municipality will
6 not materially affect the ability of the district to repay the debt.

7 (b) If the board approves the petition, the county or
8 municipality that withdrew from the district is not entitled to
9 appoint directors to the board. The remaining counties or
10 municipality by concurrent order or ordinance shall allocate among
11 themselves the authority of the withdrawing county or municipality
12 to appoint directors to the board.

13 Sec. 171.302. DISSOLUTION. In addition to the dissolution
14 procedures provided by Chapter 623, Acts of the 67th Legislature,
15 Regular Session, 1981 (Article 6550c, Vernon's Texas Civil
16 Statutes), the board may dissolve a district if:

17 (1) all district liabilities have been paid or
18 adequate provision has been made for the payment of all
19 liabilities;

20 (2) the district is not a party to any lawsuits or
21 adequate provision has been made for the satisfaction of any
22 judgment or order that may be entered against the district in a
23 lawsuit to which the district is a party; and

24 (3) the district has commitments from other
25 governmental entities to assume jurisdiction of all district rail
26 facilities.

27 SECTION 2. This Act takes effect immediately if it receives

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1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2005.