

1 AN ACT

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

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

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

8 SUBTITLE I. SPECIAL DISTRICTS

9 CHAPTER 171. FREIGHT RAIL DISTRICTS

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 171.001. DEFINITIONS. In this chapter:

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

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

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

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

23 (5) "Revenues" has the meaning assigned by Chapter
24 623, 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:

4 (1) must specify:

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

7 (B) the method of selecting the board's presiding
8 officer; and

9 (2) may specify terms and conditions that are not
10 expressly inconsistent with this chapter.

11 (c) If the most populous county in the district contains a
12 countywide navigation district and the presiding officer of the
13 navigation district is jointly appointed by that county and the
14 most populous municipality in that county, the order or ordinance
15 creating the district must specify that:

16 (1) the presiding officer of the navigation district
17 is a director of the freight rail district; and

18 (2) at least one director must be jointly appointed by
19 the mayors of the municipalities in the district, except for the
20 mayor of the most populous municipality in the most populous
21 county.

22 (d) The common law doctrine of incompatibility does not
23 apply to a director serving under Subsection (c)(1) with regard to
24 the director's service for the freight rail district or for the
25 navigation district.

26 Sec. 171.053. INTERMUNICIPAL COMMUTER RAIL DISTRICT
27 POWERS. The governing bodies of the county or counties and of the

1 most populous municipality in the most populous county may provide
2 that the district may exercise the powers of an intermunicipal
3 commuter rail district created under Article 6550c-1, Revised
4 Statutes, by specifying in the concurrent order or ordinance
5 creating the district that those powers may be exercised by the
6 district.

7 Sec. 171.054. DISTRICT TERRITORY. The district consists
8 of the territory of each county that created the district and the
9 territory of the most populous municipality in the most populous
10 county if that municipality's territory is located in more than one
11 county.

12 [Sections 171.055-171.100 reserved for expansion]

13 SUBCHAPTER C. BOARD OF DIRECTORS

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

18 Sec. 171.102. EX OFFICIO NONVOTING DIRECTOR; TEXAS
19 TRANSPORTATION COMMISSION. The Texas Transportation Commission
20 may appoint to the board a representative to serve as a nonvoting ex
21 officio director.

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

24 [Sections 171.104-171.150 reserved for expansion]

25 SUBCHAPTER D. POWERS AND DUTIES

26 Sec. 171.151. REGIONAL MOBILITY AUTHORITY POWERS. A
27 district may exercise the transportation project powers of a

1 regional mobility authority under Chapter 370 for a transportation
2 project that is a freight rail facility.

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

5 (1) a county or municipality, including a county or
6 municipality that created the district;

7 (2) this state or any political subdivision of this
8 state;

9 (3) the United States; or

10 (4) a railroad.

11 Sec. 171.153. EXERCISE OF POWERS IN OTHER COUNTIES. The
12 commissioners court of a county that is not in the district may
13 authorize the district to exercise its powers in that county if that
14 county is adjacent to a county that is in the district.

15 Sec. 171.154. INTERMUNICIPAL COMMUTER RAIL POWERS. (a)
16 The district may exercise the powers of an intermunicipal commuter
17 rail district created under Article 6550c-1, Revised Statutes, only
18 if the concurrent order or ordinance creating the district
19 specifies that the district may exercise those powers. The order or
20 ordinance may not grant the district the power to impose a tax.

21 (b) In the event of a conflict between this chapter and a
22 power granted by Article 6550c-1, Revised Statutes, this chapter
23 controls. In the event of a conflict between Article 6550c-1 and
24 Chapter 623, Acts of the 67th Legislature, Regular Session, 1981
25 (Article 6550c, Vernon's Texas Civil Statutes), Article 6550c
26 controls over Article 6550c-1.

27 Sec. 171.155. MUNICIPAL LIMIT ON DISTRICT'S POWER OF

1 EMINENT DOMAIN. If the property to be condemned is located in the
2 corporate limits of one or more municipalities, the district may
3 exercise the power of eminent domain to condemn the property only if
4 each municipality in which the property is located consents to the
5 exercise of that power.

6 [Sections 171.156-171.200 reserved for expansion]

7 SUBCHAPTER E. RELATIONSHIP BETWEEN DISTRICT AND AFFECTED RAILROADS

8 Sec. 171.201. AGREEMENT WITH RAILROAD. (a) Before a
9 district may undertake a freight or commuter rail project that
10 materially affects the tracks, facilities, or other property of a
11 railroad that owns track in the district, the district and railroad
12 must enter into a written agreement regarding the scope,
13 operational impact, financing, and other elements of the project.
14 The district may not undertake the project unless the district and
15 the railroad agree on these terms.

16 (b) The agreement may include provisions for the railroad's
17 financial participation in the project according to the benefits
18 the railroad derives from the project.

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

23 Sec. 171.203. COMPETITIVE RELATIONSHIPS. The district may
24 not undertake a project that changes the existing competitive
25 relationships between and among railroads.

26 Sec. 171.204. SERVICE TO CUSTOMERS. The district may not
27 undertake a project that negatively affects a railroad's present or

1 future ability to provide consistent service to its customers.

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

5 Sec. 171.206. LIMITATION ON EMINENT DOMAIN. The power of
6 eminent domain may not be exercised under this chapter to condemn a
7 right-of-way owned by a railroad.

8 Sec. 171.207. EXCEPTION; GRADE SEPARATION PROJECTS. This
9 subchapter does not apply to a rail-roadway or rail-rail grade
10 separation project.

11 [Sections 171.208-171.250 reserved for expansion]

12 SUBCHAPTER F. FINANCIAL PROVISIONS

13 Sec. 171.251. PLEDGE OF REVENUES. A district may secure and
14 pledge revenues derived from any source to secure the payment of
15 district bonds.

16 Sec. 171.252. PURCHASE CONTRACTS. Subchapter O, Chapter
17 60, Water Code, as added by Chapter 307, Acts of the 78th
18 Legislature, Regular Session, 2003, applies to the district as if
19 the district were a navigation district under that subchapter. For
20 the purposes of applying that subchapter to the district under this
21 section, "commission" means the board.

22 Sec. 171.253. AD VALOREM AND SALES AND USE TAXES
23 PROHIBITED. A district may not impose an ad valorem tax or a sales
24 and use tax.

25 Sec. 171.254. FEES CHARGED TO RAILROADS. (a) A district
26 may not impose a fee or other charge on a railroad unless the
27 railroad agrees to the fee or other charge.

1 (b) This section does not prohibit a railroad from
2 voluntarily contributing to the cost of rail facilities or prohibit
3 the district from charging for the use of a rail facility by a
4 railroad or other person.

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

9 [Sections 171.256-171.300 reserved for expansion]

10 SUBCHAPTER G. WITHDRAWAL; DISSOLUTION

11 Sec. 171.301. WITHDRAWAL. (a) A county or municipality
12 that created the district may petition the board for approval to
13 withdraw from the district. The board may approve the petition only
14 if:

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

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

19 (b) If the board approves the petition, the county or
20 municipality that withdrew from the district is not entitled to
21 appoint directors to the board. The remaining counties or
22 municipality by concurrent order or ordinance shall allocate among
23 themselves the authority of the withdrawing county or municipality
24 to appoint directors to the board.

25 Sec. 171.302. DISSOLUTION. In addition to the dissolution
26 procedures provided by Chapter 623, Acts of the 67th Legislature,
27 Regular Session, 1981 (Article 6550c, Vernon's Texas Civil

1 Statutes), the board may dissolve a district if:

2 (1) all district liabilities have been paid or
3 adequate provision has been made for the payment of all
4 liabilities;

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

9 (3) the district has commitments from other
10 governmental entities to assume jurisdiction of all district rail
11 facilities.

12 SECTION 2. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I certify that H.B. No. 2958 was passed by the House on April 20, 2005, by the following vote: Yeas 145, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2958 on May 26, 2005, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2958 was passed by the Senate, with amendments, on May 24, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor