

1-1 By: Hamric (Senate Sponsor - Lindsay) H.B. No. 2958  
1-2 (In the Senate - Received from the House April 21, 2005;  
1-3 April 22, 2005, read first time and referred to Committee on  
1-4 Transportation and Homeland Security; May 20, 2005, reported  
1-5 adversely, with favorable Committee Substitute by the following  
1-6 vote: Yeas 8, Nays 0; May 20, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2958 By: Lindsay

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the creation of freight rail districts; granting  
1-11 authority to issue bonds or other similar obligations to create  
1-12 public debt; granting the power of eminent domain.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Title 5, Transportation Code, is amended by  
1-15 adding Subtitle I to read as follows:

1-16 SUBTITLE I. SPECIAL DISTRICTS

1-17 CHAPTER 171. FREIGHT RAIL DISTRICTS

1-18 SUBCHAPTER A. GENERAL PROVISIONS

1-19 Sec. 171.001. DEFINITIONS. In this chapter:

1-20 (1) "Board" means the district's board of directors.

1-21 (2) "Bonds" has the meaning assigned by Chapter 623,  
1-22 Acts of the 67th Legislature, Regular Session, 1981 (Article 6550c,  
1-23 Vernon's Texas Civil Statutes).

1-24 (3) "District" means a freight rail district created  
1-25 under this chapter.

1-26 (4) "Rail facilities" has the meaning assigned by  
1-27 Chapter 623, Acts of the 67th Legislature, Regular Session, 1981  
1-28 (Article 6550c, Vernon's Texas Civil Statutes), except that the  
1-29 term includes property and interests necessary or convenient for  
1-30 the provision of a nonrural rail transportation system.

1-31 (5) "Revenues" has the meaning assigned by Chapter  
1-32 623, Acts of the 67th Legislature, Regular Session, 1981 (Article  
1-33 6550c, Vernon's Texas Civil Statutes).

1-34 Sec. 171.002. APPLICABILITY OF RURAL RAIL TRANSPORTATION  
1-35 DISTRICTS LAW. (a) Except as provided by this chapter, Sections  
1-36 2-9, Chapter 623, Acts of the 67th Legislature, Regular Session,  
1-37 1981 (Article 6550c, Vernon's Texas Civil Statutes), apply to a  
1-38 district as if the district were created under that chapter.

1-39 (b) For purposes of applying Chapter 623, Acts of the 67th  
1-40 Legislature, Regular Session, 1981 (Article 6550c, Vernon's Texas  
1-41 Civil Statutes), to a district created under this chapter, a  
1-42 reference to "rail facilities" in Chapter 623 means "rail  
1-43 facilities" as defined by Section 171.001.

1-44 (c) For purposes of applying Chapter 623, Acts of the 67th  
1-45 Legislature, Regular Session, 1981 (Article 6550c, Vernon's Texas  
1-46 Civil Statutes), to a district created under this chapter, a  
1-47 reference in Chapter 623 to "eligible county" means a county that  
1-48 created the district.

1-49 [Sections 171.003-171.050 reserved for expansion]

1-50 SUBCHAPTER B. CREATION

1-51 Sec. 171.051. APPLICABILITY TO CERTAIN COUNTIES. A  
1-52 district may be created only in a county with a population of 3.3  
1-53 million or more and counties adjacent to such a county.

1-54 Sec. 171.052. CREATION BY COUNTIES AND MUNICIPALITIES. (a)  
1-55 The governing body of one or more counties and the most populous  
1-56 municipality in the most populous county may by concurrent order or  
1-57 ordinance create a district. At the time of creation, a district  
1-58 must include:

1-59 (1) a county with a population of 3.3 million or more;  
1-60 and

1-61 (2) that municipality.

1-62 (b) The order or ordinance creating the district:

1-63 (1) must specify:

2-1 (A) the number of district directors and who  
2-2 appoints the directors; and

2-3 (B) the method of selecting the board's presiding  
2-4 officer; and

2-5 (2) may specify terms and conditions that are not  
2-6 expressly inconsistent with this chapter.

2-7 (c) If the most populous county in the district contains a  
2-8 countywide navigation district and the presiding officer of the  
2-9 navigation district is jointly appointed by that county and the  
2-10 most populous municipality in that county, the order or ordinance  
2-11 creating the district must specify that:

2-12 (1) the presiding officer of the navigation district  
2-13 is a director of the freight rail district; and

2-14 (2) at least one director must be jointly appointed by  
2-15 the mayors of the municipalities in the district, except for the  
2-16 mayor of the most populous municipality in the most populous  
2-17 county.

2-18 (d) The common law doctrine of incompatibility does not  
2-19 apply to a director serving under Subsection (c)(1) with regard to  
2-20 the director's service for the freight rail district or for the  
2-21 navigation district.

2-22 Sec. 171.053. INTERMUNICIPAL COMMUTER RAIL DISTRICT  
2-23 POWERS. The governing bodies of the county or counties and of the  
2-24 most populous municipality in the most populous county may provide  
2-25 that the district may exercise the powers of an intermunicipal  
2-26 commuter rail district created under Article 6550c-1, Revised  
2-27 Statutes, by specifying in the concurrent order or ordinance  
2-28 creating the district that those powers may be exercised by the  
2-29 district.

2-30 Sec. 171.054. DISTRICT TERRITORY. The district consists  
2-31 of the territory of each county that created the district and the  
2-32 territory of the most populous municipality in the most populous  
2-33 county if that municipality's territory is located in more than one  
2-34 county.

2-35 [Sections 171.055-171.100 reserved for expansion]

2-36 SUBCHAPTER C. BOARD OF DIRECTORS

2-37 Sec. 171.101. COMPOSITION OF BOARD; PRESIDING OFFICER. The  
2-38 board consists of directors, including a presiding officer, as  
2-39 provided in the order or ordinance creating the district under  
2-40 Section 171.052(b).

2-41 Sec. 171.102. EX OFFICIO NONVOTING DIRECTOR; TEXAS  
2-42 TRANSPORTATION COMMISSION. The Texas Transportation Commission  
2-43 may appoint to the board a representative to serve as a nonvoting ex  
2-44 officio director.

2-45 Sec. 171.103. CONFLICT OF INTEREST. Chapter 171, Local  
2-46 Government Code, governs conflicts of interest for directors.

2-47 [Sections 171.104-171.150 reserved for expansion]

2-48 SUBCHAPTER D. POWERS AND DUTIES

2-49 Sec. 171.151. REGIONAL MOBILITY AUTHORITY POWERS. A  
2-50 district may exercise the transportation project powers of a  
2-51 regional mobility authority under Chapter 370 for a transportation  
2-52 project that is a freight rail facility.

2-53 Sec. 171.152. GENERAL CONTRACT POWERS. A district may  
2-54 contract with any person, including:

2-55 (1) a county or municipality, including a county or  
2-56 municipality that created the district;

2-57 (2) this state or any political subdivision of this  
2-58 state;

2-59 (3) the United States; or

2-60 (4) a railroad.

2-61 Sec. 171.153. EXERCISE OF POWERS IN OTHER COUNTIES. The  
2-62 commissioners court of a county that is not in the district may  
2-63 authorize the district to exercise its powers in that county if that  
2-64 county is adjacent to a county that is in the district.

2-65 Sec. 171.154. INTERMUNICIPAL COMMUTER RAIL POWERS. (a)  
2-66 The district may exercise the powers of an intermunicipal commuter  
2-67 rail district created under Article 6550c-1, Revised Statutes, only  
2-68 if the concurrent order or ordinance creating the district  
2-69 specifies that the district may exercise those powers. The order or

ordinance may not grant the district the power to impose a tax.

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

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

[Sections 171.156-171.200 reserved for expansion]

SUBCHAPTER E. RELATIONSHIP BETWEEN DISTRICT AND AFFECTED RAILROADS

Sec. 171.201. AGREEMENT WITH RAILROAD. (a) 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, the district and railroad must enter into a written agreement regarding the scope, operational impact, financing, and other elements of the project. The district may not undertake the project unless the district and the railroad agree on these terms.

(b) The agreement may 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. A district project may be conducted only in a manner that preserves the existing rail industry regulatory structure and railroad ownership rights.

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

Sec. 171.204. SERVICE TO CUSTOMERS. The district may not undertake 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. 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. The power of eminent domain may not be exercised under this chapter to condemn a right-of-way owned by a railroad.

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

[Sections 171.208-171.250 reserved for expansion]

SUBCHAPTER F. FINANCIAL PROVISIONS

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

Sec. 171.252. PURCHASE CONTRACTS. Subchapter O, 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. For the purposes of applying that subchapter to the district under this section, "commission" means the board.

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

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

(b) 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. The district may not spend money, including money from state or federal grants, to purchase a rail facility operated by a

4-1 port terminal railroad.

4-2 [Sections 171.256-171.300 reserved for expansion]

4-3 SUBCHAPTER G. WITHDRAWAL; DISSOLUTION

4-4 Sec. 171.301. WITHDRAWAL. (a) A county or municipality  
4-5 that created the district may petition the board for approval to  
4-6 withdraw from the district. The board may approve the petition only  
4-7 if:

4-8 (1) the district has no outstanding bonds; or

4-9 (2) the district has debt other than bonds and the  
4-10 board finds that the withdrawal of the county or municipality will  
4-11 not materially affect the ability of the district to repay the debt.

4-12 (b) If the board approves the petition, the county or  
4-13 municipality that withdrew from the district is not entitled to  
4-14 appoint directors to the board. The remaining counties or  
4-15 municipality by concurrent order or ordinance shall allocate among  
4-16 themselves the authority of the withdrawing county or municipality  
4-17 to appoint directors to the board.

4-18 Sec. 171.302. DISSOLUTION. In addition to the dissolution  
4-19 procedures provided by Chapter 623, Acts of the 67th Legislature,  
4-20 Regular Session, 1981 (Article 6550c, Vernon's Texas Civil  
4-21 Statutes), the board may dissolve a district if:

4-22 (1) all district liabilities have been paid or  
4-23 adequate provision has been made for the payment of all  
4-24 liabilities;

4-25 (2) the district is not a party to any lawsuits or  
4-26 adequate provision has been made for the satisfaction of any  
4-27 judgment or order that may be entered against the district in a  
4-28 lawsuit to which the district is a party; and

4-29 (3) the district has commitments from other  
4-30 governmental entities to assume jurisdiction of all district rail  
4-31 facilities.

4-32 SECTION 2. This Act takes effect immediately if it receives  
4-33 a vote of two-thirds of all the members elected to each house, as  
4-34 provided by Section 39, Article III, Texas Constitution. If this  
4-35 Act does not receive the vote necessary for immediate effect, this  
4-36 Act takes effect September 1, 2005.

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