

BILL ANALYSIS

C.S.H.B. 3711
By: Krusee
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many of the civil statutes regarding railroads are outdated or are preempted by federal law. There is no longer a need to have separate law on corporations that concerns only railroad corporations. The federal Surface Transportation Board has exclusive jurisdiction over the business operations of railroads. 49 USC §10501. The Federal Railroad Administration has jurisdiction over railroad safety, and FRA's rules preempt state regulation of the same subject matter. 49 USC §20106. Generally, Texas' modern statutes on railroads are in the Transportation Code, for example, chapter 91 (state railroads), chapter 201 (rail relocation and improvement), chapter 227 (Trans-Texas Corridor), chapter 317 (street crossings), and chapter 471 (railroad and roadway crossings).

CSHB 3711 would attempt to repeal laws concerning railroads that are outdated or preempted by federal law.

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

SECTION 1. The section would amend the definition of "railroad" to include:

(1) railroad corporations created under the Texas Civil Statutes, (2) railroads that are foreign (other than Texas) corporations, and (3) other legal entities created under other Texas laws.

SECTION 2. The section would amend Article 6336 concerning a railroad's condemnation powers. The amendment: (1) makes it easier to understand without making substantive changes; and (2) strikes the authority of the Railroad Commission [TxDOT] to regulate a railroad's decisions to abandon a rail line. (State regulatory authority has been preempted by federal law giving exclusive authority on rail abandonment to the federal Surface Transportation Board.)

SECTION 3. The section would amend Article 6351 concerning eminent domain. The amendments: (1) make the article easier to understand without making substantive changes; and (2) strikes the portion of the article that infers that TxDOT, rather than Surface Transportation Board, regulates the changing or abandonment of a rail line.

SECTION 4. The section amends Article 6445 concerning the power and authority of TxDOT to regulate railroads. The amendment adds that TxDOT has certain authority "to the extent not preempted by federal law." (Under federal law the Surface Transportation Board has exclusive jurisdiction over the rates and services provided by railroads.)

SECTION 5. Section 5(1) would repeal all of Title 112, Civil Statutes, Chapter 1, on railroad corporations. A business that wishes to create a corporation in Texas and operate a railroad would have to use the Texas Business Corporations Act. Section 5(2) would repeal all of Title 112, Civil Statutes, Chapter 2, concerning the business operations of a railroad. Half of these provisions are preempted by federal law. Section 5(3) would repeal all of Title 112, Civil Statutes, Chapter 3, on corporate governance of a railroad corporation. Sections 5(4) and 5(5) would repeal all of Title 112, Civil Statutes, Chapters 4 and 5, on investor rights in a railroad corporation. Section 5(6)(A) and (B) would repeal most, but not all, of Title 112, Civil Statutes, Chapter 6, on a railroad's right of way interests. The only articles that would remain law are

Articles 6324, 6326 and 6327 on railroad crossings, 6336, and 6337, 6338, 6339 on condemnation. Section 5(7) would repeal most, but not all, of Title 112, Civil Statutes, Chapter 7, on corporate governance and a few (federally preempted) matters. The only articles that would remain law are Articles 6341 (railroad general powers) and 6351 (eminent domain). Section 5(8) would repeal most, but not all, of Title 112, Civil Statutes, Chapter 8, on the restrictions and duties of a railroad. Most of the repealed articles concern a railroad's operations over which state oversight is preempted by federal law. The only articles that would remain law are Articles 6366, 6367, 6400 (cattle guards on tracks), 6402 (killing stock), 6419a (state IDs), 6419b (duty to stop and render aid), and 6419c (hazardous materials reporting). Section 5(9) would repeal most, but not all, of Title 112, Civil Statutes, Chapter 9, on collections of debts and rights of employees. Most of the repealed articles are preempted by federal railroad law. The only article that would remain law is Article 6420 on railroad property subject to execution. Section 5(10) would not repeal articles in Title 112, Civil Statutes, Chapter 11, on the general authority and proceedings of the Texas Railroad Commission. Articles 6444 through 6447j are not repealed. Section 5(10) would repeal many articles in Title 112, Civil Statutes, Chapter 11, on TxDOT setting the rates of railroads. These matters are preempted. The only articles remaining law would be Articles 6448a and 6448b (on railroad safety), 6492a (transportation of hazardous materials), 6519a (hearings), and 6519c (fee revenue goes to GR). Section 5(11) would repeal all of Title 112, Civil Statutes, Chapter 12, on corporate governance. Section 5(12) would repeal all of Title 112, Civil Statutes, Chapter 14, concerning union depot corporations (corporations formed to construct a railway station that serves two or more railroads). Most of the articles are preempted. Section 5(13) would repeal most of Title 112, Civil Statutes, Chapter 15. Repealed Articles 6555 - 6559 concern the grade crossings within a city ("viaducts"), and the agreements between a city and railroad. Repealed Articles 6559a - 6559f concern clearances between railroad tracks and nearby structures. Repealed Articles 6559g-1 and 6559g-2 concern merging railroad corporations, and are preempted. Repealed Articles 6559h-1 through 6559h-9 concern matters that have been preempted. The remaining repealed articles concern preempted matters, and one article (6559h-10) concerning dead animals along the track. The articles not proposed for repeal are 6559h-11, 6559i-1, and 6559i-2.

SECTION 6. This section would save the repealed articles concerning rail corporations for those rail corporations created under the laws before September 1, 2007.

SECTION 7. Effective date: September 1, 2007.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

In SECTION 5, Subsection (6) (A) the substitute removes to articles that were repealed in the filed version (6318 and 6320). These articles concern a railroad's right to enter land for surveying purposes (6318) and requires a railroad to repair a streambank or waterway that the railroad damages (6320). In Subsection (10) (A) the substitute removes articles that were repealed in the filed version (6464, 6465, 6467, 6468, 6476, 6477). These articles concern the inspection of railroad records, and the enforcement of Civil Statutes, Article XII regarding railroads. The substitute also removes Article 6475 from repealer list as filed. This article relates to liability of railroad in the injury of a third person for actions taken in violation of the law. The substitute also removes from repealer list Articles 6559a, 6559b, 6559c, 6559d, 6559e, 6559f. These concern the clearance between a railroad track and adjoining structures. The substitute adds to the repealer list Article 6559h-11, which concerns failure to stop at a crossing.