

## **BILL ANALYSIS**

C.S.S.B. 1659  
By: Nichols  
Culture, Recreation, & Tourism  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas State Railroad (railroad) is a steam powered tourist excursion train operated by the Texas Parks and Wildlife Department (TPWD). The railroad dates back to the late 1800s when the Texas prison system opened the East Texas Penitentiary in Rusk, Texas.

The railroad was turned over to TPWD in 1972, and inmates from the Texas Department of Corrections set to work clearing brush, replacing cross ties, and repairing bridges. Park employees traveled over much of the United States to obtain vintage rail cars and steam locomotives for use in the park and Victorian-style depots were constructed at both ends of the line to provide passenger comfort and interpretive exhibits. After years of hard work, the Texas State Railroad Park opened in 1976 to provide children of all ages with the thrill and romance of steam powered railroading. TPWD can no longer afford to keep the train running and TPWD is proposing to make the train a static display.

C.S.S.B. 1659 creates the Texas State Railroad Authority (authority) and directs TPWD to transfer the train and its assets to the authority. The authority will be a quasi-governmental entity reflecting a partnership between the communities of Rusk and Palestine. The authority will be able to partner with a private operator to run and manage the train. The authority will have the ability to lease all or part of the railroad and its facilities to a private operator for future operations. C.S.S.B. 1659 creates a local public-private partnership which will ensure that the railroad continues to be a focal point for tourism and economic development in East Texas.

### **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. Amends Title 4, Special District Local Laws Code, by adding Subtitle D, as follows:

#### SUBTITLE D. PARKS AND RECREATION

#### CHAPTER 4501. TEXAS STATE RAILROAD AUTHORITY

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4501.001. DEFINITIONS. Defines "authority," "board," and "director."

Sec. 4501.002. CREATION AND NATURE OF AUTHORITY. Provides that the Texas State Railroad Authority (authority) is a special district created under Section 59, Article XVI, Texas Constitution, for the development of parks and recreational facilities.

Sec. 4501.003. PURPOSES OF AUTHORITY. Provides that the authority is created to achieve certain functions, including but not limited to operation of the railroad, facilities associated with the railroad, and specified benefits offered by the railroad. Provides that the creation of this authority is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, tourism, recreation, the arts, entertainment, economic development, and public welfare in Anderson and Cherokee counties.

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Sec. 4501.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) Provides that the authority is created to serve a public use and benefit.

(b) Provides that all residents of this state will benefit from the works and projects provided by the authority.

(c) Sets forth that the creation of the authority is in the public interest and is essential to meet certain specified goals.

(d) Sets forth certain actions the authority will undertake.

(e) Prohibits the authority from acting as the agent or instrumentality of any private interest, even though the authority will incidentally benefit many private interests in addition to the paramount public interest.

Sec. 4501.005. GENERAL WATER DISTRICT LAW NOT APPLICABLE. Provides that Chapter 49 (Provisions Applicable to All Districts), Water Code, does not apply to the authority.

[Reserves Sections 4501.006–4501.050 for expansion.]

#### SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 4501.051. GOVERNING BODY; TERMS. Provides that the authority is governed by a board of seven voting directors appointed under Section 4501.053. Provides that three directors are to be appointed by the City of Palestine, three directors are to be appointed by the City of Rusk, and one director is to be appointed by the other directors. Provides for the composition and terms of the board.

Sec. 4501.052. ELIGIBILITY. Provides that a person must be at least 21 years of age to be qualified to serve as a director. Prohibits a voting director from serving more than three consecutive terms. Provides that at least two of the three directors appointed by the City of Palestine must reside in Anderson County and that two of the three directors appointed by the City of Rusk must reside in Cherokee County.

Sec. 4501.053. APPOINTMENT OF DIRECTORS. Requires the city council of the City of Palestine to appoint as a voting director one person proposed by the mayor of Palestine, by majority vote, not later than August 31 of each year. Requires the city council of the City of Rusk to appoint as a voting director one person proposed by the mayor of Rusk, by majority vote, not later than August 31 of each year. Requires the directors appointed by Subsection (a) to appoint a seventh director, by majority vote, not later than September 30 of every third year.

Sec. 4501.054. NONVOTING DIRECTORS. Sets forth certain persons who are to serve as nonvoting directors. Provides that a nonvoting director is not counted in determining the board quorum.

Sec. 4501.055. VACANCIES. Provides that a board vacancy is filled in the same manner as the original appointment.

Sec. 4501.056. VOTING AUTHORITY OF PRESIDENT. Provides that the board president is a voting member but is only authorized to vote to break a tie. Entitles all other voting directors to one vote on any issue before the board.

Sec. 4501.057. OFFICERS. Requires the board to elect from among the voting directors officers for the authority, including a president, a vice president, a secretary, and a treasurer, each year. Prohibits the president and vice president from being directors appointed by the same city.

[Reserves Sections 4501.058-4501.100 for expansion.]

## SUBCHAPTER C. POWERS AND DUTIES

Sec. 4501.101. GENERAL POWERS. Provides that the authority has the powers necessary to accomplish any authority purpose, including the purposes specified in Section 4501.003.

Sec. 4501.102. CONTRACT TO MANAGE OR OPERATE AUTHORITY PROPERTY. Authorizes the authority to contract with any person to manage or operate all or part of authority property.

Sec. 4501.103. COMPETITIVE BIDDING. (a) Provides that except as provided by Subsection (b), the competitive bidding requirements for a municipality under Chapter 252 (Purchasing and Contracting Authority of Municipalities), Local Government Code, applies to the authority.

(b) Provides that a contract with a private person under Section 4501.102 or 4501.104(2) is exempt from the competitive bidding requirements of Chapter 252 (Purchasing and Contracting Authority of Municipalities), Local Government Code, or any other statute if the contract is entered into before the effective date of the Act creating this chapter, is conditioned on the passage of the Act creating this chapter; and is assigned by a party to the contract after the effective date of the Act creating this chapter.

Sec. 4501.104. GENERAL PROPERTY POWERS. Authorizes the authority to acquire, own, lease, operate, construct, maintain, repair, improve, or extend improvements, equipment, or any other property necessary to accomplish an authority purpose or to lease or otherwise convey authority property to private parties for an authority purpose.

Sec. 4501.105. CONDITIONAL TRANSFER OF PROPERTY TO PRIVATE OPERATOR. Requires that a conveyance of authority property, including a lease, to a private operator be conditioned on an obligation that the property must be used to support the operations of the Railroad. The conveyance must provide that ownership of the authority property automatically reverts back to the Parks and Wildlife Department if the authority or private operator does not use the property to support operations of the Texas State Railroad, does not use the property in a manner that primarily promotes a state public interest or converts the Texas State Railroad to a static display.

Sec. 4501.106. SURPLUS PROPERTY. Authorizes the authority, with the consent of the Parks and Wildlife Department, to dispose of surplus property, including by exchanging the surplus property with another person for other property, to improve the quality and usefulness of property used by the authority.

Sec. 4501.107. DISPOSITION OF PUBLIC PARKS AND RECREATIONAL LANDS; EXEMPTION FROM APPLICABILITY OF OTHER LAW. Provides that Chapter 253, Local Government Code, and Chapter 26 (Protection of Public Parks and Recreational Lands), Parks and Wildlife Code, does not apply to the use, transfer, or other disposition of property by certain methods.

Sec. 4501.108. NONPROFIT CORPORATION. Authorizes the board to authorize the creation of a nonprofit corporation to assist the authority in implementing a project or providing a service authorized by this chapter by resolution. Authorizes the nonprofit corporation to implement any project and provide any service authorized by this chapter. Requires the board to appoint the board of directors of the nonprofit corporation.

Sec. 4501.109. AUTHORITY TO SUE AND BE SUED; IMMUNITY. Authorizes the authority to sue and be sued in this state. Provides that this section does not waive any governmental immunity that would otherwise apply to the authority.

[Reserves Sections 4501.110-4501.150 for expansion.]

## SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 4501.151. AD VALOREM TAXES PROHIBITED. Prohibits the authority from imposing an ad valorem tax.

Sec. 4501.152. GRANTS; DONATIONS. Authorizes the authority to accept grants and donations, including property, for any authority purpose.

Sec. 4501.153. GRANTS FROM OTHER TAXING AUTHORITY; CONTRACT. Authorizes a taxing authority in Anderson [County] or Cherokee County to grant certain tax revenues to the authority. Provides that the grant must serve a public purpose of the taxing authority making the grant.

[Reserves Sections 4501.154-4501.200 for expansion.]

## SUBCHAPTER E. DISSOLUTION

Sec. 4501.201. DISSOLUTION OF AUTHORITY; OUTSTANDING DEBT. Authorizes the board to dissolve the authority regardless of whether the authority has debt. Requires the authority to remain in existence solely for the purpose of discharging its debts if the authority has debt when it is dissolved. Provides that the dissolution is effective when all debts have been discharged.

SECTION 2. Repealer: Section 22.182 (Texas State Railroad), Parks and Wildlife Code.

SECTION 3. (a) Requires the city council of the City of Palestine and the city council of the City of Rusk to appoint three voting directors from three persons proposed by the mayor of Palestine or Rusk, as applicable, to serve as directors under Subchapter B, Chapter 4501, Special District Local Laws Code, as added by this Act, not later than September 1, 2007.

(b) Requires the directors appointed under this section to represent each city to draw lots to determine which director from each city serves a term expiring on certain dates.

(c) Requires the directors appointed under Subsection (a) of this section to meet in open session and appoint a seventh director not later than September 30, 2007. Requires the seventh director to serve a term expiring October 1, 2010.

SECTION 4. (a) Provides that not earlier than September 1, 2007, and on execution of the requirements of Section 5 of this Act, certain properties, obligations and liabilities, and files and records, are transferred to the authority.

(b) Authorizes the Texas Parks and Wildlife Department (TPWD) to agree with the authority to transfer any property of TPWD to the authority to implement the transfer required by this Act before September 1, 2007.

(c) Requires TPWD to continue to perform functions and activities under Section 22.182 (Texas State Railroad), Parks and Wildlife Code, in the period beginning on the effective date of this Act and ending on execution of the requirements of Section 5 of this Act, as if that section had not been repealed by this Act, and continues the former law in effect for that purpose.

SECTION 5. (a) Requires TPWD to transfer to the authority the property described by Subsection (d) of this section, for the consideration described by Subsection (b) of this section, not later than October 1, 2007.

(b) Provides that consideration for the transfer authorized by Subsection (a) of this section is an agreement between the parties that requires the authority to use the property in a manner that primarily promotes a state public purpose. Provides that if the authority does not use the property transferred under this Act in a manner that primarily promotes a state public interest, ownership of the property automatically reverts to TPWD.

(c) Requires TPWD to transfer the property by an appropriate instrument of transfer. Provides that the instrument of transfer must include certain provisions.

(d) Provides that the property to which Subsection (a) of this section refers is all real and personal property associated with the railroad owned by the State of Texas, including right-of-way and trackage of the railroad, all trains and other property used to operate the Texas State Railroad, and all equipment or other property of TPWD used for the administration of or related to the railroad..

SECTION 6. Sets forth certain legislative findings including notice, recommendations filed by the Texas Commission on Environmental Quality, general law relating to consent by political subdivisions, and whether the requirements of the constitution and laws of the state and certain rules and procedures of the legislature have been fulfilled and accomplished.

SECTION 7. Effective date: upon passage or September 1, 2007.

#### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

LIBERAL CONSTRUCTION OF CHAPTER was deleted from the substitute.

COMPETITIVE BIDDING. Language was added that exempts competitive bidding requirements if the contract is entered into before the effective date of the Act creating this chapter, is conditioned on the passage of the Act creating this chapter; and is assigned by a party to the contract after the effective date of the Act creating this chapter.

CONDITIONAL TRANSFER OF PROPERTY TO PRIVATE OPERATOR. Language was added specifying what the private owner can do with the property. It specifically added that the conveyance must provide that ownership of the authority property automatically reverts back to the Parks and Wildlife Department if the authority or private operator does not use the property to support operations of the Texas State Railroad, does not use the property in a manner that supports the operations of the Texas State Railroad or in a manner that primarily promotes a state public interest, or converts the Texas State Railroad to a static display.

DISPOSITION OF PUBLIC PARKS AND RECREATIONAL LANDS; EXEMPTION FROM APPLICABILITY OF OTHER LAW. Adds a reference to Chapter 253, Local Government Code.

Small, nonsubstantive cleanup modification were made to put the section numbers in order.