

By: Harper-Brown

H.B. No. 2580

A BILL TO BE ENTITLED

AN ACT

relating to the authority of municipalities to create freight rail districts that have the powers of rural rail transportation districts; granting the power of eminent domain.

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

SECTION 1. The heading to Chapter 171, Transportation Code, is amended to read as follows:

CHAPTER 171. FREIGHT RAIL DISTRICTS CREATED BY CERTAIN COUNTIES

SECTION 2. Subtitle I, Title 5, Transportation Code, is amended by adding Chapter 171A to read as follows:

CHAPTER 171A. FREIGHT RAIL DISTRICTS CREATED BY MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 171A.001. DEFINITIONS. In this chapter:

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

(2) "Bonds" has the meaning assigned by Section 172.001.

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

(4) "Rail facilities" has the meaning assigned by Section 172.001, except that the term:

(A) includes property and interests necessary or convenient for the provision of a nonrural rail transportation system; and

(B) does not include facilities for passenger

1 rail service.

2 (5) "Revenue" has the meaning assigned by Section
3 172.001.

4 Sec. 171A.002. APPLICABILITY OF RURAL RAIL TRANSPORTATION
5 DISTRICTS LAW. (a) Except as provided by this chapter, the
6 provisions of Chapter 172 other than Sections 172.003 and 172.157
7 apply to a district as if the district were created under that
8 chapter.

9 (b) For purposes of applying Chapter 172 to a district
10 created under this chapter, a reference to "rail facilities" in
11 Chapter 172 means "rail facilities" as defined by Section 171A.001.

12 (c) For purposes of applying Chapter 172 to a district
13 created under this chapter:

14 (1) a reference in Chapter 172 to an eligible county
15 means the municipality that created the district; and

16 (2) a reference in Chapter 172 to the commissioners
17 court of an eligible county means the governing body of the
18 municipality that created the district.

19 [Sections 171A.003-171A.050 reserved for expansion]

20 SUBCHAPTER B. CREATION

21 Sec. 171A.051. CREATION BY MUNICIPALITY. (a) The
22 governing body of a municipality may by ordinance create a
23 district.

24 (b) The ordinance creating the district:

25 (1) must specify:

26 (A) the number of district directors and who
27 appoints the directors; and

1 (B) the method of selecting the board's presiding
2 officer; and

3 (2) may specify terms that are not expressly
4 inconsistent with this chapter.

5 Sec. 171A.052. DISTRICT TERRITORY. The boundaries of a
6 district must be coextensive with the boundaries of the
7 municipality that created the district.

8 [Sections 171A.053-171A.100 reserved for expansion]

9 SUBCHAPTER C. BOARD OF DIRECTORS

10 Sec. 171A.101. COMPOSITION OF BOARD; PRESIDING OFFICER.
11 The board consists of directors, including a presiding officer, as
12 provided in the ordinance creating the district under Section
13 171A.051(b).

14 Sec. 171A.102. EX OFFICIO NONVOTING DIRECTOR; TEXAS
15 TRANSPORTATION COMMISSION. The Texas Transportation Commission
16 may appoint to the board a representative to serve as an ex officio
17 nonvoting director.

18 Sec. 171A.103. CONFLICT OF INTEREST. Chapter 171, Local
19 Government Code, governs conflicts of interest for directors.

20 [Sections 171A.104-171A.150 reserved for expansion]

21 SUBCHAPTER D. POWERS AND DUTIES

22 Sec. 171A.151. REGIONAL MOBILITY AUTHORITY POWERS. A
23 district may exercise the transportation project powers of a
24 regional mobility authority under Chapter 370 for a transportation
25 project that is a freight rail facility.

26 Sec. 171A.152. GENERAL CONTRACT POWERS. A district may
27 contract with any person, including:

- 1 (1) a county or municipality;
- 2 (2) this state or any political subdivision of this
- 3 state;
- 4 (3) the United States; or
- 5 (4) a railroad.

6 Sec. 171A.153. EXERCISE OF POWERS IN COUNTIES. The
7 commissioners court of a county that contains or is adjacent to a
8 district may authorize the district to exercise its powers in that
9 county.

10 Sec. 171A.154. EMINENT DOMAIN. (a) A district may exercise
11 the power of eminent domain to acquire:

- 12 (1) land in fee simple; or
- 13 (2) any interest less than fee simple in, on, under, or
- 14 above land, including an easement, right-of-way, or right of use of
- 15 airspace or subsurface space.

16 (b) A district may not exercise the power of eminent domain:

- 17 (1) in a manner that would unduly interfere with
- 18 interstate commerce; or
- 19 (2) to condemn a right-of-way owned by a railroad.

20 (c) An eminent domain proceeding brought by a district is
21 governed by Section 172.159(b) and Chapter 21, Property Code,
22 except to the extent inconsistent with this chapter.

23 (d) An eminent domain proceeding is begun by the board's
24 adoption of a resolution declaring that the district's acquisition
25 of the property or interest described in the resolution:

- 26 (1) is a public necessity; and
- 27 (2) is necessary and proper for the construction,

1 extension, improvement, or development of rail facilities and is in
2 the public interest.

3 (e) The resolution is conclusive evidence of the public
4 necessity of the proposed acquisition and that the real property or
5 interest in property is necessary for public use.

6 [Sections 171A.155-171A.200 reserved for expansion]

7 SUBCHAPTER E. RELATIONSHIP BETWEEN DISTRICT AND AFFECTED RAILROADS

8 Sec. 171A.201. AGREEMENT WITH RAILROAD. (a) Before a
9 district may undertake a freight rail project that materially
10 affects the tracks, facilities, or other property of a railroad
11 that owns track in the district, the district and railroad must
12 enter into a written agreement regarding the scope, operational
13 impact, financing, and other elements of the project. The district
14 may not undertake the project unless the district and the railroad
15 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. 171A.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. 171A.203. COMPETITIVE RELATIONSHIPS. A district may
24 not undertake a project that changes the existing competitive
25 relationships between and among railroads.

26 Sec. 171A.204. SERVICE TO CUSTOMERS. A 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. 171A.205. USE OF DISTRICT RAIL FACILITIES. This
3 chapter does not prohibit a district from authorizing multiple
4 freight railroads to operate on district rail facilities.

5 Sec. 171A.206. EXCEPTION; GRADE SEPARATION PROJECTS. This
6 subchapter does not apply to a rail-roadway or rail-rail grade
7 separation project.

8 [Sections 171A.207-171A.250 reserved for expansion]

9 SUBCHAPTER F. FINANCIAL PROVISIONS

10 Sec. 171A.251. PLEDGE OF REVENUE. A district may secure and
11 pledge revenue derived from any source to secure the payment of
12 district bonds.

13 Sec. 171A.252. PURCHASE CONTRACTS. Subchapter O, Chapter
14 60, Water Code, applies to a district as if the district were a
15 navigation district under that subchapter. For the purposes of
16 applying that subchapter to the district under this section,
17 "commission" means the board.

18 Sec. 171A.253. AD VALOREM AND SALES AND USE TAXES
19 PROHIBITED. A district may not impose an ad valorem tax or a sales
20 and use tax.

21 Sec. 171A.254. FEES CHARGED TO RAILROADS. (a) A district
22 may not impose a fee or other charge on a railroad unless the
23 railroad agrees to the fee or other charge.

24 (b) This section does not prohibit a railroad from
25 voluntarily contributing to the cost of rail facilities or prohibit
26 the district from charging for the use of a rail facility by a
27 railroad or other person.

1 Sec. 171A.255. PORT TERMINAL RAILROAD ASSOCIATION RAIL
2 FACILITIES. A district may not spend money, including money from
3 state or federal grants, to purchase a rail facility operated by a
4 port terminal railroad.

5 [Sections 171A.256-171A.300 reserved for expansion]

6 SUBCHAPTER G. DISSOLUTION

7 Sec. 171A.301. DISSOLUTION. In addition to the dissolution
8 procedures provided by Chapter 172, the board may dissolve a
9 district if:

10 (1) all district liabilities have been paid or
11 adequate provision has been made for the payment of all
12 liabilities;

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

17 (3) the district has commitments from other
18 governmental entities to assume jurisdiction of all district rail
19 facilities.

20 SECTION 3. (a) Section 171A.154, Transportation Code, as
21 added by Section 2 of this Act, takes effect only if this Act
22 receives a two-thirds vote of all the members elected to each house.

23 (b) If this Act does not receive a two-thirds vote of all the
24 members elected to each house, Subchapter D, Chapter 171A,
25 Transportation Code, as added by Section 2 of this Act, is amended
26 by adding Section 171A.154 to read as follows:

27 Sec. 171A.154. NO EMINENT DOMAIN POWER. The district may

1 not exercise the power of eminent domain.

2 (c) This section is not intended to be an expression of a
3 legislative interpretation of the requirements of Section 17(c),
4 Article I, Texas Constitution.

5 SECTION 4. Except as provided by Section 3 of this Act, this
6 Act takes effect September 1, 2013.