

SUBJECT: Spending nondedicated highway funds on rail projects

COMMITTEE: Transportation — favorable, without amendment

VOTE: 7 ayes — Krusee, Phillips, Hamric, Edwards, Harper-Brown, Laney, Mercer
0 nays
2 absent — Garza, Hill

WITNESSES: For — None
Against — None
On — Ric Williamson, Texas Transportation Commission

BACKGROUND: Texas Constitution, Art. 8, sec. 7-a dedicates three-fourths of the net revenue from motor-vehicle fuel and lubricant sales taxes and registration fees to expenditures for right-of-way acquisition, construction, maintenance, and policing of public roadways and for administering laws that govern road traffic and safety, subject to legislative appropriation. The State Highway Fund, also called Fund 6, is administered by the Texas Department of Transportation (TxDOT), which is governed by the Texas Transportation Commission (TTC). The Constitution does not authorize rail expenditures from dedicated revenue in Fund 6. As of the end of fiscal 2002, Fund 6 contained approximately \$5.2 billion in dedicated revenue and \$747 million in nondedicated revenue, according to the comptroller's 2002 Annual Cash Report.

Art. 6550c-2, V.T.C.S. allows the TTC to authorize TxDOT to acquire rail facilities that the TTC deems feasible and viable for continued rail service. Expenditures are made from the Fund 6 Abandoned Rail Account, which includes federal funds eligible for rail spending, state appropriations, and proceeds from the sale of state-owned rail facilities.

DIGEST: HB 3085 would add Transportation Code, ch. 91 governing rail facilities. It would authorize the TTC and TxDOT to set policies and formulate plans to

locate, build, maintain, and operate (by contract) a rail facility or system. TxDOT could acquire, finance, build, maintain, and operate (by contract) passenger or freight rail facilities, individually or as part of one or more systems. TxDOT could contract with public or private entities, including political subdivisions and rail operator lessees, to finance, build, maintain, or operate rail facilities or perform any other acts necessary to exercising its powers. TxDOT employees could not be used to operate railroads.

TxDOT could acquire rolling stock through conditional sales contracts, leases, equipment trust certificates, or any other type of contract or trust agreement.

Contracts for rail construction, maintenance, or operation would have to be awarded on a lowest-bid basis unless TxDOT entered into exclusive development agreements (EDAs) with private entities. EDAs would require a competitive procurement process, including requests for proposals. TxDOT would have broad negotiating discretion for EDAs regarding professional and consulting services and construction, maintenance, and operations. TxDOT could authorize investment of public and private funds, including debt and equity participation, to finance rail functions. TxDOT could not incur or guarantee financial obligations on behalf of private entities that build, maintain, or operate rail facilities. Private entities entering into EDAs would have to provide performance and payment bonds or alternative forms of security. Before finalization of contracts, all private entity proposals, supplemental materials, and information generated by TxDOT during consideration of EDAs would be confidential and not subject to public disclosure laws.

TxDOT could contract for the use of all or part of a rail facility or system and could lease or sell all or parts of facilities or systems, including track right-of-way, for any purpose, including storage or transfer facilities, warehouses, garages, parking facilities, telecommunications lines or facilities, restaurants, or gas stations. TxDOT could enter into joint agreements to share use of rail facilities with rail operators, public and private utilities, communications systems, common carriers, or transportation systems. Utility right-of-way rights would be the same for rail facilities as for highways. TxDOT could require utilities to relocate their lines or equipment at the utilities' expense to

allow expansion or relocation of rail facilities, unless the utility had an easement or leasehold interest beforehand.

TxDOT would have to set goals for awarding contracts to small and disadvantaged businesses and give them full access to its contracting process.

TxDOT could spend money on specified rail projects from:

- Fund 6 revenue not dedicated by the Constitution;
- proceeds from bonds secured by the Texas Mobility Fund (TMF) or from other sources to be used for rail projects;
- fees and rent for the use of rail facilities and systems;
- grants or loans from federal or state agencies, state political subdivisions, or public or private persons, including the State Infrastructure Bank;
- cash or in-kind donations; or
- revenue bonds issued by the TTC.

Revenue bonds would have to be repaid solely from railroad facility and system operations. Such bonds would not constitute a debt of the state nor incur a pledge of the state's full faith and credit. Obligations incurred would have to be payable from revenue derived from rail operations or ownership. All fee and rent revenue collected from rail facility use would have to be deposited into Fund 6 and used for rail purposes. Rail system revenue would have to be accounted for separately and could not be commingled with revenue from rail facilities not part of a system, except for surplus revenue.

TxDOT could acquire property by any method, including purchase and condemnation, under any terms deemed to be in the state's best interest. Necessary property would include that needed for rail facility or future expansion right-of-way, environmental mitigation, scenic or safety buffer zones, and revenue production. TxDOT could enter property to conduct surveys or tests related to property acquisition without trespassing or constituting an entry under a pending condemnation proceeding. Local governments, political subdivisions, or public agencies could convey necessary property without advertisement. TxDOT could dispose of real property acquired for rail purposes if deemed no longer needed.

TxDOT would have to coordinate with local authorities when notified of intent to abandon or discontinue rail service to determine what actions should be taken to provide for continued rail service, including TxDOT acquisition.

TxDOT would have to conduct or approve all requisite environmental evaluations or studies. It could acquire or develop property or contract with a governmental or private entity to mitigate adverse environmental effects arising from rail facilities, regardless of whether the need for mitigation had been established.

The TTC could make all rules necessary for implementation.

The bill would repeal Art. 6550c-2, V.T.C.S, governing TxDOT's rail facilities preservation program.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 3085 would give TxDOT much-needed tools in its efforts to integrate the state highway system into a comprehensive, innovative approach to Texas' transportation needs. The bill would lay the foundation for high-speed rail and for parts of Gov. Perry's Trans-Texas Corridor Plan, which envisions rail, utility, and other lines along new highways connecting major urban centers and the Texas-Mexico border. Without this authority, TxDOT would have to keep building highways the way it has done since World War I.

HB 3085 would authorize TxDOT to spend money from any of several funding sources, other than dedicated Fund 6 revenue, for acquisition, financing, construction, operation, and maintenance of rail facilities. A closely related measure, HJR 1 by Puente, would propose amending the Constitution to allow expenditures on railway planning and right-of-way acquisition from dedicated revenue in Fund 6. However, HB 3085 would take effect even if HJR 1 is not approved by voters, and vice versa.

Abandonment of rail line segments over the years has contributed to an increase in freight truck traffic on state highways and local roads and bridges. Small towns in rural areas as well as large metropolitan communities,

especially those with ports, are being affected adversely. Rail companies may lack economic incentives to relocate city lines over which hazardous materials are borne, for example, or to retain lines over which commodities are hauled to processors and markets. Those routes obviously are important to local and area residents and businesses and, in a larger sense, to the state as a whole.

When Toyota decided to build a plant in San Antonio, local officials had to spend large sums to create a rail district to serve the site. The state should have been able to play a larger role in helping pay for that project because of its positive economic impact statewide, but TxDOT has limited authority to spend nondedicated Fund 6 money on rail, even for planning along rights-of-way. Nevertheless, state law requires TxDOT to incorporate rail into its statewide plans and to acquire and preserve existing rail lines deemed viable for continued service. Currently, however, TxDOT may spend only what is appropriated to the Abandoned Rail Account within Fund 6.

The state is not interested in entering the railroad business. TxDOT would not operate any rail lines independently but would contract for their operation. Unlike private enterprise, the state does not need to make a profit on rail for it to be a viable public good, especially given the other benefits and potential lost opportunity costs involved. TxDOT only needs to spend less than it would on comparable highway maintenance to break even on rail projects.

Granting additional statutory authority to enhance the state's rail capability would decrease traffic congestion (especially from commercial trucks), improve mobility by providing commuting and traveling alternatives, and reduce the amount of air pollution caused by vehicles.

**OPPONENTS
SAY:**

Fund 6 is stretched too thin already. TxDOT can afford only about one-third of the projects it has identified as necessary. Highway expansion and road maintenance are lagging, and traffic congestion and unsafe conditions are worsening. Now is the wrong time to siphon resources away from underfunded state highways and other crucial projects.

State government lacks the expertise to invest in railroads. If the private sector has no interest, that should indicate a lack of viability.

OTHER
OPPONENTS
SAY:

Rather than institutionalize a major policy shift in an agency with little or no experience in railroads, the bill should create incentives for rail companies to retain, upgrade, or expand service to rural areas or urban centers that the state would like to promote or enhance economically.

Authorizing different types of expenditures from different revenue sources in a constitutional amendment and its related legislation would be confusing and restrictive. If TxDOT truly is to innovate, it should have the flexibility to spend dedicated Fund 6 money on all aspects of rail transportation. The spending and project authorizations in the joint resolution and the bill should be the same.

The bill would fail to address the root cause of Texas' transportation crisis: inadequate resources. The Legislature should increase motor-fuel taxes or restructure Fund 6's revenue stream, or both.

NOTES:

According to the bill's fiscal note, TxDOT anticipates that, because of the planning and study required, it would not be able to use the powers and authority granted by the bill within the next five years.

The companion bill, SB 1712 by Wentworth, was considered in a public hearing by the Senate Infrastructure Development and Security Committee on April 23 and left pending.

HJR 1 by Puente, which would allow TxDOT to spend dedicated Fund 6 revenue on rail and utility planning and right-of-way acquisition, is on today's Constitutional Amendments Calendar.