

SUBJECT: Transfer of the Texas State Railroad to the Texas State Railroad Authority

COMMITTEE: Culture, Recreation, and Tourism — committee substitute recommended

VOTE: 5 ayes — Hilderbran, Kuempel, Dukes, Howard, Phillips

0 nays

2 absent — Homer, O'Day

WITNESSES: For — Henry A. Esslinger; Bob Goldsberry, Texas State Railroad Operating Agency; Allen C. Harper, American Heritage Railways; Steven Harper; Brian Malone, Palestine Economic Development Corp.; Steve Presley, Texas State Railroad Operating Agency; Carolyn Salter, city of Palestine; Paul Schranck, American Heritage Railways; (*Registered, but did not testify*: Dan Davis, Palestine Convention & Visitors Bureau; Ruth Davis; Joseph McMahan, Texas Restaurant Association; Bob Turner, Texas Alliance of Rail Districts and National Rail Consultants)

Against — Michael Banks; Max Bennett; Mary C. Decker; Evelyn L. Merz, Houston Group of Sierra Club; (*Registered, but did not testify*: Linda Evans, Texans for State Parks; Ken Kramer, Lone Star Chapter of the Sierra Club; Beth McDonald, Texans for State Parks)

On — (*Registered, but did not testify*: Ann Bright, Texas Parks and Wildlife; John E. Cobb)

BACKGROUND: Parks and Wildlife Code, sec. 22.182 allows the Texas Parks and Wildlife Department (TPWD) to operate and collect all revenues from the Texas State Railroad, its right-of-way, and its tracks as part of the state parks system. The Texas State Railroad originally was run by the state as a common carrier between Rusk and Palestine and later was leased to private railroads. In 1972, it was transferred to TPWD and is operated for tourists.

Local Government Code, ch. 252 requires a county making an expenditure exceeding \$25,000 or entering into an insurance contract to comply with competitive bidding procedures to use reverse auction procedures or

comply with a method described by Local Government Code, ch. 271, subch. H.

Local Government Code, ch. 271, subch. H requires a government entity to use one of the following procurement procedures when planning a construction project:

- competitive bidding;
- competitive sealed proposals for construction services;
- a design-build contract;
- a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager; or
- a job order contract for the minor repair, rehabilitation, or alteration of a facility.

Parks and Wildlife Code, ch. 26 does not allow a government entity to approve a project that requires the taking of public land that has been designated as a parkland unless there is no feasible alternative and the project takes steps to minimize its impacts. Notice must be given at least 30 days before a public hearing about the taking, and notice must be published in a newspaper of general circulation. A petition for judicial review can be requested 30 days after the approval is announced. Government entities that have control of the public land are exempt from this chapter if the land was originally intended for another public use and is temporarily or was never designated as parkland.

DIGEST:

CSHB 3113 would repeal Parks and Wildlife Code, sec. 22.182 and establish the Texas State Railroad Authority to:

- purchase, own, hold, lease, and acquire facilities or other property to operate and maintain the Texas State Railroad;
- continue and improve the operation of the Texas State Railroad;
- operate concessions, museums, campgrounds, and other facilities associated with the Texas State Railroad; and
- enhance, augment, and improve the historical, educational, and cultural benefits offered by the Texas State Railroad.

The bill would establish the Texas State Railroad Authority with seven board members serving staggered three-year terms. All eligible board members would have to be at least 21 years old and could not serve for more than three consecutive terms. Three of the members would be

appointed no later than September 1, 2007, by the city of Palestine and three by the city of Rusk, with one-third of these city-appointed positions expiring September 1 of each year. Two of the three members appointed by the city of Palestine would have to reside in Anderson County, while two of the three appointed by the city of Rusk would have to reside in Cherokee County. The board of directors could appoint one additional board member, whose term would expire October 1 every third year. Vacancies would be filled in the same manner as original appointments. In addition, the board would include one mayor or city council member from both Palestine and Rusk to serve as non-voting members of the board. This bill would establish the election of board officers and require that the president and vice-president not be appointed by the same city.

CSHB 3113 would allow the Texas State Railroad Authority to contract with a private person or non-profit corporation for operation and management services or to acquire, own, lease, construct, maintain, repair, and improve property without complying with the competitive bidding requirements under Local Government Code, ch. 252. The Texas State Railroad Authority could appoint the board of any non-profit corporation formed to provide services to the Texas State Railroad.

The bill would allow the Texas State Railroad Authority to convey property to a private operator for purposes of the railroad. The authority could dispose of surplus property with the permission of TPWD and would not be subject to Parks and Wildlife Code, ch. 26. CSHB 3113 would allow the Texas State Railroad Authority to sue or be sued, and would not grant it governmental immunity.

The bill would not allow the Texas State Railroad Authority to impose ad valorem taxes, but it could accept grants and donations. A taxing authority in Anderson or Cherokee counties could grant the Texas State Railroad Authority sales tax revenue received from a sale made on Texas State Railroad Authority property or local hotel occupancy tax revenue received from a hotel within one mile of where the Texas State Railroad Authority loads or unloads passengers.

CSHB 3113 would allow the Texas State Railroad Authority to dissolve regardless of whether it owed a debt, but it would remain in existence until the debts were discharged.

The bill would require the cities of Rusk and Palestine to appoint one voting member to the board each year, no later than August 31. In addition, the cities of Rusk and Palestine would have to appoint initial board members by September 1, 2007, and draw lots to determine which director from each city would serve a term expiring:

- September 1, 2008;
- September 1, 2009; and
- September 1, 2010.

The bill would require the board to appoint its seventh member no later than September 30, 2007, and that member would serve a term expiring October 1, 2010.

CSHB 3113 would transfer the following property and all associated obligations and liabilities, property, files, and other records from TPWD to the Texas State Railroad Authority by October 1, 2007:

- the right-of-way and tracks of the Texas State Railroad by a 99-year lease;
- all trains and property used to operate the Texas State Railroad; and
- all equipment or property of TPWD used for the administration of the Texas State Railroad.

The bill would require the Texas State Railroad Authority to continue to operate the railroad in a manner that promotes a state public purpose, or the railroad automatically would revert back to TPWD.

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, 2007.

**SUPPORTERS
SAY:**

CSHB 3113 would enhance the operation of the Texas State Railroad while reducing costs to the state. Currently, the Texas State Railroad operates on \$2.2 million each year, which results in a net loss to the state of \$1.2 million annually. TPWD estimates that it would take roughly \$6 million annually to update the railroad's operational capacity and, to that end, TPWD requested a biennial appropriation of \$11.8 million for fiscal 2008-09 in order to address deferred maintenance costs. Because the appropriation has not been granted at this time, TPWD will be forced to make the railroad a static display within the next two years. A static

display would be disastrous to the Texas State Railroad, resulting in a precipitous drop in visitors each year.

In response to this pending crisis, community leaders in Cherokee and Anderson counties have devised a plan to work with a private contractor in order to restore the Texas State Railroad to full operational capacity and improve ridership and profitability. CSHB 3113 would allow the state to stop providing annual appropriations to operate the Texas State Railroad and instead make a one-time investment of \$12 million to pay for deferred maintenance. The Texas State Railroad Authority then would be granted the equipment and rolling stock and be empowered to contract with a private entity to manage and operate the railroad. While the state would continue to own the tracks and right-of way, it no longer would represent a cost to general revenue.

The bill would grant the management of the railroad to an organization that is better equipped to operate it. When it became apparent that the Texas State Railroad might have to cease operations, a Request for Qualifications (RFQ) created and generated the interest of four private operators. The RFQ included the development of a matrix to score each applicant on issues, such as its commitment and capacity to preserve, protect, and promote the railroad. In the end, American Heritage Railways was selected because of its track record in running similar tourist rail attractions, including the Durango-Silverton Narrow Gauge Railway in Colorado and the Great Smoky Mountains Railway in North Carolina. These railroads currently operate in areas where a population of roughly 3.5 million people are within a three-hour drive of the railway and achieve an annual ridership of roughly 200,000 people.

By contrast, the Texas State Railroad operates in an area with roughly 12 million people within a three-hour drive and achieves an annual ridership of only 50,000. There are several reasons for this ridership disparity, but chief among them is a lack of a promotional budget available to TPWD. American Heritage Railways can attract riders through regional promotional efforts and marketing to families by hosting special events such as Thomas the Tank Engine, The Little Engine that Could, The Great Pumpkin Patch Express with Charlie Brown and Snoopy, Polar Express, and Wine Tasting rides.

In addition, the operator has promised to keep all existing employees who want to stay and provide additional seasonal employment as ridership

increases. While they would not provide the same salaries and benefits of state positions, American Heritage Railways would provide wages and benefits that are competitive with jobs available in the region, and TPWD would make other positions in the agency available to those who are qualified and interested in transferring. Further, because the private contractor works with several other rail projects across the country, it can benefit from economies of scale to reduce overall costs for rail maintenance and equipment rehabilitation in comparison to TPWD.

The bill would provide additional economic development to the region and the state. Tourist traffic generated by the Texas State Railroad is critical to the livelihood of rural counties like Cherokee and Anderson. A 2006 Crompton/Boswell Study found that the Texas State Railroad's 54,674 visitors generated \$5.9 million in direct expenditures in the two counties, resulting in \$5.4 million in income to local residents and 157 jobs. At the state level, these tourists generated \$700,000 in direct sales tax revenues.

Private operation of the Texas State Railroad is projected to triple ridership and double employment, which could increase the state's direct sale tax revenues to \$1.1 million by fiscal 2010. If the state invested \$12 million to support the transfer of the railroad and continued to receive \$700,000 in sales tax revenues each year, it would earn a 5.8 percent rate of return. Additional benefits include the development of small businesses to serve increased tourist traffic and an increased capacity to handle motion picture filming on-site. While TPWD has helped facilitate film crews in the past, in 2006 it did not have sufficient staffing and was forced to turn away four filming opportunities, which could have brought the state additional revenues. CSHB 3113 would facilitate a plan to increase the value of a state asset, rather than turn it into a static display and force the state to liquidate its assets at fire sale prices.

**OPPONENTS
SAY:**

This bill would cede a state asset to a private contractor with very little oversight. Currently, the Texas State Railroad is a \$130 million asset owned by the people of Texas. Rather than receive any payment or rental for these facilities, this bill not only would hand over all equipment, property, and a 99-year lease of the right-of-way free of charge, but it also would require the state to pay an additional \$12 million to the Texas State Railroad Authority. TPWD made a request for roughly \$12 million this session to keep this valuable state asset operational, but no funding has been appropriated. This bill would ask the state to make the same \$12 million appropriation, but then would give away this tangible asset. While

this bill may reduce future appropriations for operating the Texas State Railroad, there is no guarantee that ridership would increase or that the Texas State Railroad Authority would be able to manage the attraction better than TPWD.

In addition, this bill provides no explicit protections for existing state employees working for the Texas State Railroad. Current employees likely would see a reduction in salaries and benefits or could be fired during the transition. While TPWD would make positions available to its current employees, this would not be a practical option for many people, who likely would have to relocate their families to other parts of the state to accept these positions. Further, many would be at risk of losing critical health benefits and pensions guaranteed by years of state service.

This bill may inadvertently make the Texas State Railroad inaccessible to much of the public. In keeping with TPWD's mission to make Texas cultural resources available to present and future generations, the Texas State Railroad currently charges \$11 to \$24 for adult riders and allows all children under the age of 12 to ride for free. In contrast, the Durango-Silverton Narrow Gauge Railway charges \$45 to \$145 for adult riders and \$22 to \$35 for children ages five to 11, and the Great Smoky Mountains Railway charges \$32 to \$55 for adult riders and \$20 to \$30 for children. In short, a private contractor would put the cost of experiencing the Texas State Railroad out of reach of many families, particularly those who currently live in the small rural towns of Anderson and Cherokee counties. While American Heritage Railways may be able to secure lower costs for equipment, it would achieve most of its cost savings by reducing salaries, benefits, and raising admission prices. The state has a vested interest in protecting and making its cultural resources accessible and should not give them away to private interests seeking a profit.

**OTHER
OPPONENTS
SAY:**

This bill should guarantee that existing Texas State Railroad employees be transferred to the private contractor at their current wage and benefits. Further, it should assure that no transferred employee would be dismissed without cause before the first anniversary of the transfer.

NOTES:

The companion bill, SB 1659 by Nichols, passed the Senate on April 26 and was reported favorably as substituted by the House Committee on Culture, Recreation, and Tourism on May 2.

According to the Legislative Budget Board, the bill would result in a savings to the state of \$1.2 million for the State Parks Account and \$1.1 million in general revenue-related funds due to a 42.9 decrease in FTEs and operational costs for the Texas State Railroad.