

CHAPTER 332

§.B. No. 968

AN ACT

relating to the creation, re-creation, administration, powers and duties including the power to issue bonds and the power of eminent domain, validation, and dissolution of rural rail transportation districts.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (Article 6550c, Vernon's Texas Civil Statutes), is amended by amending Sections 1 through 6 and adding Section 6A to read as follows:

Sec. 1. FINDINGS. The legislature finds that:

(1) the state contains many rural areas that are heavily dependent on agriculture for economic survival;

(2) transportation of agricultural and industrial products is essential to the continued economic vitality of rural areas;

(3) the rail transportation systems in some rural areas are threatened by railroad bankruptcies and abandonment proceedings that would cause the cessation of rail services to the areas; [and]

(4) it is in the interest of all citizens of the state that existing rail systems be maintained for the most efficient and economical movement of essential agricultural products from the areas of production to the local, national, and export markets;

(5) *rural rail transportation districts are appropriate political subdivisions to provide for the continued operation of railroads, which are declared by Article X, Section 2, of the Texas Constitution to be public highways;*

(6) *the creation, re-creation, financing, maintenance, and operation of rural rail transportation districts and facilities acquired by the districts under this Act will help develop, maintain, and diversify the economy of the state, eliminate unemployment or underemployment, foster the growth of enterprises based on agriculture, and serve to develop and expand transportation and commerce within the state under the authority granted by Article III, Section 52-a, of the Texas Constitution; and*

(7) *financing by rural rail transportation districts for the purposes provided by this Act is a lawful and valid public purpose.*

Sec. 2. DEFINITIONS. In this Act:

(1) "Board" means the board of directors of a rural rail transportation district [system].

(2) "Bonds" means bonds; notes, including bond anticipation notes, revenue anticipation notes, and grant anticipation notes; warrants; certificates of obligation; interest-bearing contracts; interest-bearing leases of property; equipment trust certificates; commercial paper; and any obligation issued to refund any type of bond.

(3) "Concurrent orders" means the orders adopted by eligible counties that contain identical provisions regarding the creation or re-creation of a district.

(4) "District" means a rural rail transportation district created under this Act.

(5) "Earthworks and structures" includes the clearing and grubbing of right-of-way; demolition of structures; relocation of utilities, pipelines, and any other obstacles in right-of-way; stripping and stockpiling; removal of subsoils for embankment or spoil; borrow pits; dressing and seeding of slopes; construction of culverts; road crossings; bridges; restoration of roadway; drainage within a right-of-way or along road networks; and restoration of a hydrologic system.

(6) "Eligible counties" means two or more counties that meet the requirements of Sections 3(a) and (b) of this Act.

(7) "Operating contract" means a professional services contract executed by a district and another person under which the person agrees to provide:

(A) all or part of the rolling stock required for operation as a common carrier over all or a part of the rail facilities of the district; and

(B) all or part of the personnel required for the operation of the rolling stock owned or leased by the district or for the operation of the rail facilities of the district.

(8) "Maintenance and operating expenses" means all expenses of operating and maintaining a district and its rail facilities, including all compensation, labor, materials, repairs, and extensions necessary, required, or convenient in the discretion of the board to render efficient service or to maintain and operate the district, and taxes or other amounts paid, payable, or to be paid to the United States pursuant to Section 148(f) of the Internal Revenue Code of 1986 (26 U.S.C. Section 148), or any similar law.

(9) "Maintenance facility" includes a workshop, a service, storage, security, or personnel facility, temporary or transient lodging for district employees, and equipment for any type of facility.

(10) "Person" has the meaning assigned by Section 311.005, Government Code.

(11) "Rail facilities" means any real, personal, or mixed property, or any interest in that property that is determined by the board to be necessary or convenient for the provision of a rural rail transportation system and all property or interests necessary or convenient for the acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, using, or equipping of the system, including rights-of-way, earthworks and structures, trackwork, train controls, stations, rolling stock, and maintenance facilities.

(12) "Revenues" means all income, receipts, and collections received by, to be received by, or pledged to the district from or by any source, except a restricted gift or a grant in aid of construction.

(13) "Right-of-way" means a right of passage over property; a strip of land in length and width determined required, necessary, or convenient by the board over, on, or under which trackwork is or is to be constructed or acquired; or a right of precedential passing.

(14) "Rolling stock" means locomotives, engines, rail cars, repair construction cars, or other cars designed to operate on trackwork.

(15) "Station" means a passenger or freight service building, terminal, or station, ticketing facility, waiting area, platform, concession, elevator, escalator, facility for handicapped access, access road, parking facility for passengers, baggage handling facility, local maintenance facility, and offices for district purposes, together with any interest in real property necessary or convenient for any of the listed items.

(16) "Trackwork" means track, track beds, track bed preparation, ties, rail fasteners, slabs, rails, emergency crossovers, setout tracks, storage track, and switches.

(17) "Train controls" includes signalling, interlocking equipment, speed monitoring equipment, emergency braking systems, central traffic control facilities, and communication systems.

~~[(3) "System" means all real and personal property held or used for rail transportation purposes, including land, easements, rights-of-way, other interests in land, franchises, stations, platforms, terminals, garages, shops, control houses, other buildings and structures, rolling stock, tracks, signals, other equipment, supplies, and other facilities necessary or convenient for the use of or access to rail transportation.]~~

Sec. 3. CREATION, RE-CREATION, OR DISSOLUTION OF DISTRICT. (a) The commissioners courts of two or more eligible counties that, taken together, constitute a contiguous geographic area may by order create or re-create a rural rail transportation district consisting of the territory of the counties whose commissioners courts adopt the order.

~~(b) [After approval by the board of directors of a district, the commissioners court of an eligible county by order may include the territory of that county in the district.]~~

~~[(e)] A county eligible to create or re-create [form or join] a district is one in which is located a rail line that is in the process of being or has been abandoned through a bankruptcy court or Interstate Commerce Commission proceeding, or any line carrying 3 million gross tons per mile per year or less.~~

(c) The commissioners courts of two or more eligible counties that create a district or provide for the re-creation of a district by the addition of one or more counties shall by concurrent order at the time of creation or re-creation:

- (1) declare the boundaries of the district as the boundaries of the counties included;
- (2) designate the name of the district; and
- (3) designate the number of board members, which may not be less than four, and the manner of their appointment by a commissioners court.

(d) The commissioners courts of all counties included within a district by order may provide for the dissolution of the district if:

- (1) the commissioners courts determine that the dissolution will not impair an obligation of any contract of the district; and
- (2) the dissolution order will become effective only on the creation or re-creation of another district in which each county included within the dissolving district is included.

(e) A district created or re-created under this section automatically assumes any obligation of a contract executed by the district or a predecessor district and in force on the date of the creation or re-creation unless the contract expressly expires on the date of dissolution or re-creation of the district that executed the contract.

Sec. 4. BOARD OF DIRECTORS; EMPLOYEES. (a) ~~[Each commissioners court that participates in the creation of or joins a district shall appoint one person to be a member of the board of directors of the district. Provided however, that if the district shall be composed~~

of three counties or less, then each commissioners court shall appoint two directors to the board of directors. The board of directors is responsible for the management, operation, and control of the district.

(b) To be eligible for appointment to the board, a person must be a resident of the county governed by the commissioners court that appoints the person [district]. A board member serves for a term of two years ending on the second anniversary of the latest date a concurrent order was adopted creating or re-creating the district. A vacancy on the board shall be filled for the remainder of the term by the commissioners court that appointed the member who vacated the position. A board member may be removed from office for neglect of duty or malfeasance in office by the commissioners court that appointed the member, after at least 10 days' written notice to the member and a hearing before the commissioners court. At a hearing on the question of removal of a board member, the board member is entitled to be heard in person or through counsel.

(c) Members of the board shall select a *president, vice-president, treasurer, and secretary*. The secretary is not required to be a board member [their presiding officers]. The board shall hold at least one regular meeting each month for the purpose of transacting business of the district. The *president* [presiding officer] may call special meetings of the board. A majority of the members is a quorum.

(d) The board shall adopt rules for its proceedings and may employ and compensate persons to carry out the powers and duties of the district. *The right to control and regulate the affairs of the district is vested exclusively in the board except as specifically otherwise provided by this Act.*

(e) A board member or employee of a district may not be pecuniarily interested, directly or indirectly, in any contract or agreement to which the district is a party.

(f) *Notice of a meeting of the board shall be posted at the administrative office of the district and at the courthouse in the county in which that office is located. In all other respects Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), applies to meetings of the board.*

Sec. 5. POWERS AND DUTIES OF DISTRICT. (a) A rural rail transportation district is a public body and a political subdivision of the state exercising public and essential governmental functions and having all the powers necessary or convenient to carry out the purposes of this Act, including the powers granted in this section. A district, in the exercise of powers under this Act, is performing only governmental functions and is a "governmental unit" within the meaning of Chapter 101, Civil Practice and Remedies Code. A district is a "local government" under Chapter 1084, Acts of the 70th Legislature, Regular Session, 1987 (Article 715c, Vernon's Texas Civil Statutes); an "issuer" under Chapter 503, Acts of the 54th Legislature, 1955 (Article 717k, Vernon's Texas Civil Statutes), Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes), the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), Chapter 53, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 717k-8, Vernon's Texas Civil Statutes), and Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes); and a "public agency" under Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), and Chapter 400, Acts of the 66th Legislature, 1979 (Article 717m-1, Vernon's Texas Civil Statutes). The acquisition, improvement, or repair of rail facilities by a district is an "eligible project" under Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

(b) A district has perpetual succession.

(c) A district may sue and be sued in all courts of competent jurisdiction, may institute and prosecute suits without giving security for costs, and may appeal from a judgment without giving supersedeas or cost bond. *An action at law or in equity against the district shall be brought in the county in which the principal office of the district is located, except that in eminent domain proceedings suit shall be brought in the county in which the land is located.*

(d) A district may acquire by grant, purchase, gift, devise, lease, or otherwise and may hold, use, sell, lease, or dispose of real and personal property, licenses, patents, rights, and

interests necessary, convenient, or useful for the full exercise of any of its powers under this Act.

(e) A district may *plan, acquire, construct, complete, develop, own, operate, and maintain rail facilities inside or outside the district, and for those purposes subject to a grant previously secured or with the consent of any municipality, county, or other political subdivision may use streets, alleys, roads, highways, and other public ways of any municipality, county, or other political subdivision and may relocate, raise, reroute, change the grade of, or alter, at the expense of the district, the construction of any street, alley, highway, road, railroad, electric lines and facilities, telegraph and telephone properties and facilities, pipelines and facilities, conduits and facilities, and other properties, whether publicly or privately owned, as necessary or useful in the construction, reconstruction, repair, maintenance, and operation of rail facilities. A district may acquire by purchase, whenever it considers the purchase expedient, any land, property rights, right-of-way, franchises, easements, and other interests in land as it considers necessary for the acquisition, construction, or operation of any rail facility on such terms and at such price as agreed to between the district and the owner and may take title in the name of the district. The governing body of every municipality, county, other political subdivision, or public agency is authorized without any form of advertisement to make conveyance of title or rights and easements to any property needed by the district to effect its purposes in connection with the acquisition, construction, or operation of rail facilities [a system within its boundaries, both inside and outside the limits of incorporated cities, towns, and villages, and has the right to use the streets, alleys, roads, highways, and other public ways and to relocate, raise, lower, reroute, regulate, change the grade of, and alter the construction of any street, alley, highway, or road; any railroad track, bridge, or other facility or property; any gas transmission or distribution pipes, pipelines, mains, or other facility or property; any water, sanitary sewer, or storm sewer pipes, pipelines, or other facility or property; any electric lines, telegraph or telephone facility or property; any cable television lines, cables, conduits, or other facility or property; and pipelines and facilities, conduits and facilities, or other property whether publicly or privately owned, in the construction, reconstruction, repair, maintenance, or operation of the system. A district shall pay the cost of any change made under this subsection and is liable for any damage to property occurring because of the change].*

(f) A district has the right of eminent domain to acquire lands in fee simple and any interest less than fee simple in, on, under, or above lands, including, without limitation, easements, rights-of-way, rights of use of airspace or subsurface space. The right may not be exercised in a manner that would unduly interfere with interstate commerce [~~or unduly impair the neighborhood character of property surrounding or adjacent to the property sought to be condemned~~]. Eminent domain proceedings brought by a district are governed by Title 52, Revised [Civil] Statutes [~~of Texas, 1925~~], except as it is inconsistent with this Act. Proceedings for the exercise of the power of eminent domain are commenced by the adoption by the board of a resolution declaring the public necessity for the acquisition by the district of the property or interest described in the resolution, and that the acquisition is necessary and proper for the construction, extension, improvement, or development of *rail facilities [the system]* and is in the public interest. The resolution of the district is conclusive evidence of the public necessity of the proposed acquisition and that the real or personal property or interest in property is necessary for public use.

(g) A district may enter into agreements with any other public utility, private utility, communication system, common carrier, or transportation system for the joint use of its facilities, installations, or properties within or *outside* the district and establish through routes, joint fares, and, subject to approval of any tariff-regulating body having jurisdiction, divisions of tariffs.

(h) *A district may adopt rules to govern the operation of the district, its employees, the rail facilities, service provided by the district, and any other necessary matter concerning its purposes, including rules regarding health, safety, alcohol or beverage service, food service, and telephone and utility services, to protect the health, safety, and general welfare of the state.*

(i) *A district may enter into joint ownership agreements with any person.*

(j) A district shall establish and maintain rents or other compensation for the use of the facilities of the system acquired, constructed, operated, regulated, or maintained by the district that are reasonable and nondiscriminatory and, together with grants received by the district, are sufficient to produce revenues adequate:

(1) to pay all expenses necessary to the operation and maintenance of the properties and facilities of the district;

(2) to pay the interest on and principal of all bonds issued by the district under this Act payable in whole or in part from the revenues, as they become due and payable; and

(3) to fulfill the terms of any agreements made with the holders of bonds or with any person in their behalf.

(k) [(i)] A district may make contracts, leases, and agreements with, and accept grants and loans from the United States of America, its departments and agencies, the state, its agencies, and political subdivisions, and public or private corporations and persons, and may generally perform all acts necessary for the full exercise of the powers vested in it. A district may acquire rolling stock or other property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement. Any revenue bond indenture may provide limitations on the exercise of the powers granted by this section, and the limitations apply so long as any of the revenue bonds issued pursuant to the indenture are outstanding and unpaid.

(l) [(j)] A district may sell, lease, convey, or otherwise dispose of any of its rights, interests, or properties not needed for or, in the case of leases, not inconsistent with the efficient operation and maintenance of the system. It may, *on adoption of an order by the board*, sell, lease, or otherwise dispose of, at any time, any surplus materials or personal or real property not needed for its requirements or for the purpose of carrying out its power under this Act.

(m) [(k)] A district by resolution may adopt rules and regulations governing the use, operation, and maintenance of the system and shall determine all routings and change them whenever the board considers it advisable.

(n) [(l)] A district may lease the rail facilities [system] or any part to, or contract for the use or operation of the rail facilities [system] or any part by, any operator. A district shall encourage to the maximum extent practicable the participation of private enterprise in the operation of rail facilities [the system]. *The term of an operating contract under this subsection may not exceed 20 years.*

(o) [(m)] A district may contract with any county or other political subdivision of the state for the district to provide rail transportation services to any area outside the boundaries of the district on such terms and conditions as may be agreed to by the parties.

(p) *Before beginning the operation of rail facilities the board of a district shall adopt an annual operating budget specifying the anticipated revenues and expenses of the district for the remainder of the fiscal year, and the district shall adopt an operating budget for each succeeding fiscal year. The fiscal year of the district ends September 30 unless changed by the board not more than once in any three-year period. The board shall hold a public hearing before adopting each budget except the initial budget. Notice of each hearing must be published at least seven days before the date of the hearing in a newspaper of general circulation in the district. A budget may be amended at any time if notice of the proposed amendment is given in the notice of meeting. An expenditure that is not budgeted may not be made.*

(q) *The board of a district shall by resolution name one or more banks for the deposit of district funds. District funds are public funds and may be invested in securities permitted by the Public Funds Investment Act of 1987 (Article 812a-2, Vernon's Texas Civil Statutes). To the extent funds of the district are not insured by the Federal Deposit Insurance Corporation or its successor, they shall be collateralized in the manner provided for county funds.*

Sec. 6. BONDS AND NOTES. (a) A district may issue revenue bonds and notes from time to time and in such amounts as its board considers necessary or appropriate for the acquisition, purchase, construction, reconstruction, repair, equipping, improvement, or extension of its rail facilities [system]. All bonds and notes are fully negotiable and may be made redeemable before maturity, at the option of the issuing district, at such price or prices and

under such terms and conditions as may be fixed by the issuing district in the resolution authorizing the bonds or notes, and may be sold at public or private sale, as determined by the board.

(b) Before delivery, all bonds and notes authorized to be issued, except notes issued to an agency of the federal or state government, and the records relating to their issuance shall be submitted to the attorney general for examination. If the attorney general finds that they have been issued in accordance with the constitution and this Act, and that they will be binding obligations of the district issuing them, the attorney general shall approve them, and they shall be registered by the state comptroller of public accounts. After approval, registration, and sale and delivery of the bonds to the purchaser, they are incontestable.

(c) In order to secure the payment of the bonds or notes, the district may encumber and pledge all or any part of the revenues of its *rail facilities* [system], may mortgage and encumber all or any part of the properties of the *rail facilities* [system], and everything pertaining to them acquired or to be acquired, and may prescribe the terms and provisions of the bonds and notes in any manner not inconsistent with this Act. If not prohibited by the resolution or indenture relating to outstanding bonds or notes, any district may encumber separately any item or items of real estate or personalty.

(d) All bonds and notes are legal and authorized investments for banks, trust companies, savings and loan associations, and insurance companies. The bonds and notes are eligible to secure the deposit of public funds of the state, cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the state. The bonds and notes are lawful and sufficient security for the deposits to the extent of the bonds' principal amount or market value, whichever is less [~~when accompanied by all unmatured coupons appurtenant to them~~].

(e) Bonds payable solely from revenues may be issued by resolution of the board.

*Sec. 6A. ALTERNATIVE FINANCING. (a) A district may use the procedures provided by Chapter 271, Local Government Code, to finance rail facilities of the district, except to the extent of conflict with this Act and except that the district may not levy or collect ad valorem taxes.*

*(b) A district may issue nonnegotiable purchase money notes, payable in installments and secured by the property being acquired or constructed, to acquire or construct rail facilities. A district may also secure the obligation of the notes by a pledge or undertaking to issue bonds or bond anticipation notes. A district may covenant with the purchaser of bond anticipation notes that the proceeds of one or more particular series of bonds will be used for the ultimate payment of the purchase money notes or bond anticipation notes.*

SECTION 2. All orders by the commissioners courts of eligible counties, as defined by Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (Article 6550c, Vernon's Texas Civil Statutes), as amended by this Act, that were adopted before the effective date of this Act and have not been repealed, that purported to create a rural rail transportation district under that Act, that named the counties to be included in the district, and that are not the subject of litigation as to their validity on the effective date of this Act are validated, ratified, and confirmed as if they were adopted in compliance with all applicable law.

SECTION 3. The board of each rural rail transportation district that was created or re-created before the effective date of this Act or is validated by this Act shall, not later than the 90th day after the effective date of this Act, file with the Railroad Commission of Texas a certified copy of the orders creating or re-creating the district.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 3, 1993: Yeas 31, Nays 0; the Senate concurred in House amendment on May 18, 1993, by a viva-voce vote; passed the House, with amendment, on May 13, 1993, by a non-record vote.

Approved May 29, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.