

(The House considered SB 1540 by Carona, the Senate companion bill, in lieu of HB 2987, the House version of the bill, which had been set on the daily calendar and was analyzed by the House Research Organization. The bill subsequently was enacted as SB 1540.)

HOUSE
RESEARCH

ORGANIZATION bill analysis

5/8/2009

HB 2987
Phillips

SUBJECT: Nonsubstantive revision of railroad statutes

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 13 ayes — Solomons, Menendez, Cook, Craddick, Farabee, Gallego, Harless, Jones, Lucio, Maldonado, Oliveira, Swinford, S. Turner

0 nays

2 absent — Geren, Hilderbran

WITNESSES: For — (*Registered, but did not testify*: Terry Briggs, Brotherhood of Locomotive Engineers and Trainmen; Dennis Kearns, BNSF Railway, Texas Railroad Association)

Against — None

On — Jeff Archer, Texas Legislative Council; (*Registered, but did not testify*: Deborah Fulton, Texas Legislative Council; Jennifer Stewart, Texas Legislative Council)

BACKGROUND: Under Government Code, sec. 323.007, the Texas Legislative Council (TLC) must revise Texas statutes periodically to make them more accessible, understandable, and usable without altering their sense, meaning, or effect. As part of this process, the TLC reclassifies and rearranges statutes in a more logical order; employs a numbering system and format that will accommodate future expansion of the law; eliminates repealed, invalid, or duplicative provisions; and improves the draftsmanship of the law. The Council periodically recommends shifting provisions of existing law into the statutory codes.

Art. 3, sec. 43 of the Texas Constitution provides for recodifying statutes that relate to different subjects without substantive change and for this purpose allows an exception to the requirement in Art. 3, sec. 35 that bills contain no more than one subject expressed in the title.

DIGEST: HB 2987 would make nonsubstantive additions and revisions to the Transportation Code, Natural Resources Code, and the Government Code involving railroads, along with conforming and citation revisions. The bill would state as legislative intent that it would be enacted under Art. 3, sec. 43 of the Texas Constitution and that no substantive change in the law was intended.

The bill would take effect April 1, 2011.

SUPPORTERS SAY: HB 3545 would enact the most recent installment of this recodification of the laws concerning railroads and the agencies that regulate them. This reorganization of existing law into statutory codes is an ongoing project of the TLC. This draft has been extensively reviewed and would make no substantive change in the law. It contains a statement of legislative intent to direct the judiciary to read the bill as nonsubstantive. HB 3545 would comply with the purpose of recodification, which is to make statutory laws more accessible, understandable, and usable without altering the sense, meaning, or effect of existing law. The bill would not take effect until April 1, 2011, in case current law under the existing statutes were amended by the 81st Legislature.

OPPONENTS SAY: The Legislature should abandon the practice of approving large recodification bills because it can no longer rely on statements of legislative intent that no substantive change in the law was intended. The Supreme Court has made clear in the *Entergy*, *Fleming Foods*, and other cases that it does not view statements of legislative intent as controlling on the issue of whether or not recodification bills truly are non-substantive changes to the law. The courts have made clear that they will look to the plain language of the law before looking at legislative intent and can interpret recodification bills as making substantive changes, regardless of any legislative declaration.

The Legislature instead should break these bills up into many smaller substantive bills, and pass them as it would any other bill. This would ensure an adequate vetting of the changes to better ensure the law truly says what the Legislature intends. The Legislature also could amend the Code Construction Act to give additional direction to the courts on recodification bills. Texas also could establish an official revisor of statutes. Many states have empowered a legislative agency that performs the same functions as Texas' recodification bills in rearranging and

streamlining the statutes. Most statutory revision consists of editorial “housekeeping” changes that could be accomplished by means other than legislation.

NOTES:

The companion bill, SB 1540 by Carona, passed the Senate by 30-0 on April 23 on the Local and Uncontested Calendar and was reported favorably, without amendment, by the House State Affairs Committee on May 6, making it eligible to be considered in lieu of HB 2987.

HB 4126 by Hartnett and SB 2038 by Duncan would alter the jurisdiction of the Texas Supreme Court and amend the Code Construction Act to direct the judiciary to find that a recodification bill does not affect the meaning or effect of a statute. HB 4126 is on today’s General State Calendar. SB 2038 passed the Senate by 30-0 on April 30 and has been referred to the House Judiciary and Civil Jurisprudence Committee.