

# AGENDA ITEM

26A

## FORT BEND COUNTY FY 2010 COMMISSIONERS COURT AGENDA REQUEST FORM

Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

Date Submitted: 11/12/2009

Submitted By:

Court Agenda Date: 11/17/2009

Department: County Judge

Phone Number: 281-341-8608

### SUMMARY OF ITEM:

Take all appropriate action on the First Amended and Restated Concurrent Order of the Gulf Coast Freight Rail District.

RENEWAL AGREEMENT/APPOINTMENT

YES ☐ NO ☐

REVIEWED BY COUNTY ATTORNEY'S OFFICE:

YES ☐ NO ☐

List Supporting Documents Attached:

### FINANCIAL SUMMARY:

BUDGETED ITEM: YES ☐ NO ☐

FUNDNG SOURCE: Accounting Unit:  
Activity (If Applicable):

Account Number:

DESCRIPTION OF LAWSON ACCOUNT: \_\_\_\_\_

### Instructions to submit Agenda Request Form:

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

### DISTRIBUTION:

Original Form Submitted with back up to County Judge's Office ☐ (✓ when completed)

If by E-Mail to [ospindon@co.fort-bend.tx.us](mailto:ospindon@co.fort-bend.tx.us)

If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

<input type="checkbox"/> Auditor (281-341-3774)	<input type="checkbox"/> Comm. Pct. 1 (281-342-0587)
<input type="checkbox"/> Budget Officer (281-344-3954)	<input type="checkbox"/> Comm. Pct. 2 (281-403-8009)
<input type="checkbox"/> Facilities/Planning (281-633-7022)	<input type="checkbox"/> Comm. Pct. 3 (281-242-9060)
<input type="checkbox"/> Purchasing Agent (281-341-8642)	<input type="checkbox"/> Comm. Pct. 4 (281-980-9077)
<input type="checkbox"/> Information Technology (281-341-4526)	<input type="checkbox"/> County Clerk (281-341-8697)
<input type="checkbox"/> Other:	<input type="checkbox"/> County Atty (281-341-4557)

### RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify):

11-19-09 copy received

City of Houston, Texas Ordinance No. 2009-1077

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A REVISED FIRST AMENDED AND RESTATED FREIGHT RAIL DISTRICT ORDINANCE TO EXTEND THE DATE OF EXECUTION BY THE PARTIES; ADOPTING THE REVISED FIRST AMENDED AND RESTATED ORDINANCE IN LIEU OF ORDINANCE NO. 2009-777; MAKING VARIOUS FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City approved Ordinance No. 2006-1154 on November 15, 2006, authorizing the creation of a Joint Freight Rail District with Ft. Bend and Harris Counties ("Original Ordinance"); and

**WHEREAS**, the Original Ordinance required all parties to adopt it within 30 days of the City's passage; and

**WHEREAS**, the Harris County Commissioners Court approved the Original Ordinance on December 19, 2006, with one revision: the Court deleted the 30-day requirement because it would otherwise miss the deadline; and

**WHEREAS**, the City approved Ordinance No. 2007-53 on January 10, 2007, which ratified Harris County's change and readopted the Original Ordinance; and

**WHEREAS**, the City approved Ordinance No. 2009-777 on August 26, 2009, which amended and restated the Original Ordinance by adding Waller and Galveston Counties to the District and expanding the District's powers ("Amended Ordinance"); and

**WHEREAS**, the Amended Ordinance required the City, Harris County, and Ft. Bend County to adopt it by October 1, 2009; and

**WHEREAS**, the Harris County Commissioners Court approved the Amended Ordinance on October 27, 2009, with one revision: the Court replaced the October 1, 2009 deadline with a December 31, 2009 deadline; and

**WHEREAS**, it is now necessary for the City to ratify Harris County's change and re-adopt the Amended Ordinance;

**NOW, THEREFORE:**

\* \* \* \*

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

Section 1. The City Council adopts the recitals above as its findings.

Section 2. City Council adopts and authorizes the revised ordinance as described in the caption in substantially the form shown in the document that is attached hereto and incorporated herein by this reference in lieu of Ordinance No. 2009-777, which is superseded by this ordinance. The Mayor is hereby authorized to execute such document and all related documents. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 3. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 4. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 5. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 4<sup>th</sup> day of November, 2009.

APPROVED this 4<sup>th</sup> day of November, 2009.

Bill White  
Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is \_\_\_\_\_.

\_\_\_\_\_  
City Secretary

(Prepared by Legal Dept. MR C ST)

(MPB/dg 10/29/09)

Assistant City Attorney

(Requested by Mayor's Office)

(L.D. File No. 039-0500255-002)

G:\CONTRACT\DLGMB\Ord\Freight Rail District.doc

CAPTION PUBLISHED IN DAILY COURT

REVIEW

DATE: NOV 10 2009

AYE	NO	
✓		MAYOR WHITE
••••	••••	COUNCIL MEMBERS
✓		LAWRENCE
	<del>ABSENT</del>	JOHNSON
	<del>ABSENT</del>	CLUTTERBUCK
✓		ADAMS
✓		SULLIVAN
✓		KHAN
	<del>ABSENT</del>	HOLM
✓		GONZALEZ
✓		RODRIGUEZ
✓		BROWN
✓		LOVELL
✓		NORIEGA
✓		GREEN
✓		JONES
CAPTION	ADOPTED	

OCT 27 2009

APPROVE \_\_\_\_\_

Recorded Vol \_\_\_\_\_ Page \_\_\_\_\_

*Harris County:*

**FIRST AMENDED AND RESTATED CONCURRENT ORDER  
CREATING A FREIGHT RAIL DISTRICT PURSUANT TO CHAPTER  
171, TEXAS TRANSPORTATION CODE; AND MAKING OTHER  
PROVISIONS AND FINDINGS RELATED TO THE SUBJECT.**

*City of Houston:*

**CITY OF HOUSTON ORDINANCE NO. 09-**

**277**

**FIRST AMENDED AND RESTATED CONCURRENT  
ORDINANCE CREATING A FREIGHT RAIL DISTRICT PURSUANT TO  
CHAPTER 171, TEXAS TRANSPORTATION CODE; MAKING OTHER  
PROVISIONS AND FINDINGS RELATED TO THE SUBJECT; AND  
DECLARING AN EMERGENCY.**

*Fort Bend County:*

**FIRST AMENDED AND RESTATED CONCURRENT ORDER  
CREATING A FREIGHT RAIL DISTRICT PURSUANT TO CHAPTER  
171, TEXAS TRANSPORTATION CODE; AND MAKING OTHER  
PROVISIONS AND FINDINGS RELATED TO THE SUBJECT.**

\* \* \*

*Waller County:*

**FIRST AMENDED AND RESTATED CONCURRENT ORDER  
CREATING A FREIGHT RAIL DISTRICT PURSUANT TO CHAPTER  
171, TEXAS TRANSPORTATION CODE; AND MAKING OTHER  
PROVISIONS AND FINDINGS RELATED TO THE SUBJECT.**

\* \* \*

*Galveston County:*

**FIRST AMENDED AND RESTATED CONCURRENT ORDER  
CREATING A FREIGHT RAIL DISTRICT PURSUANT TO CHAPTER  
171, TEXAS TRANSPORTATION CODE; AND MAKING OTHER  
PROVISIONS AND FINDINGS RELATED TO THE SUBJECT.**

WHEREAS, the Seventy-Ninth Legislature of the State of Texas, by H.B. 2958, 1st R.S.

(to be codified as Chapter 171 of Subtitle I, Title 5, Texas Transportation Code) (the "Enabling

Act”), authorized a county with a population of 3.3 million or more, counties adjacent to such a county and the most populous municipality in the most populous county to adopt a concurrent order or ordinance to create a freight rail district; and

WHEREAS, Harris County, Texas has a population of more than 3.3 million, the City of Houston, Texas is the most populous municipality in Harris County and the following counties are adjacent to Harris County: Montgomery County; Liberty County; Chambers County; Galveston County; Brazoria County; Fort Bend County; and Waller County (collectively, such counties, the “Adjacent Counties”); and

WHEREAS, the Enabling Act requires that at the time of its creation a freight rail district must include a county with a population of 3.3 million or more and the most populous municipality in such county;

WHEREAS, pursuant to the Enabling Act, Harris County, the City of Houston and Fort Bend County previously created the Gulf Coast Freight Rail District, by approval of a Concurrent Order or Ordinance, respectively, on December 19, 2006, January 10, 2007 and January 23, 2007 (the “Original Concurrent Order or Ordinance”);

WHEREAS, Harris County, the City of Houston and Fort Bend County now desire to amend and restate the Original Concurrent Order or Ordinance to make certain modifications thereto and to add Waller and Galveston Counties to the District; NOW, THEREFORE,

***Harris County:***

BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY,  
TEXAS:

***City of Houston:***

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

***Fort Bend County:***

BE IT ORDERED BY THE COMMISSIONERS COURT OF FORT BEND COUNTY,  
TEXAS:

\* \* \*

***Waller County:***

BE IT ORDERED BY THE COMMISSIONERS COURT OF WALLER COUNTY,  
TEXAS:

\* \* \*

***Galveston County:***

BE IT ORDERED BY THE COMMISSIONERS COURT OF GALVESTON COUNTY,  
TEXAS:

Section 1. By adoption of this First Amended and Restated Concurrent Order or Ordinance, the Commissioners Court of Harris County, the City Council of the City of Houston and the Commissioners Court of Fort Bend County (collectively the "Parties") hereby modify the Original Concurrent Order or Ordinance previously approved by such entities to create the District as a freight rail district under and pursuant to Chapter 171, Texas Transportation Code.

Section 2. The name of the District (formerly the Gulf Coast Freight Rail District) shall be the GULF COAST RAIL DISTRICT, which shall be referred to herein as the "District."

Section 3. The territory of the District consists of the combined territories of Harris County, the City of Houston, Fort Bend County and all other Adjacent Counties that have adopted a concurrent order providing for the creation of the District and for the inclusion of such county in the District.

Section 4. A. The District shall be governed by a Board of Directors (the "Board"), consisting of thirteen (13) Directors, who shall be appointed or shall serve as follows:

<u>Directors</u>	<u>Manner of Appointment/Service</u>
Positions No. 1, 2 and 3 (Harris County)	Three (3) Directors appointed by the Commissioners Court of Harris County, which appointment shall be made effective by written notice to the Board.
Positions No. 4, 5 and 6 (City of Houston)	Three (3) Directors appointed by the Mayor of the City of Houston, which appointment shall be made effective by written notice to the Board.
Position No. 7	One (1) Director jointly appointed by the Commissioners Court of Harris County and by the Mayor of the City of Houston, which shall be made effective by written notice to the Board. Such Director shall serve as the Chairman of the Board.
Position No. 8 (Small Municipalities in Harris County)	One (1) Director jointly appointed by the mayors of all municipalities in Harris County (except for the Mayor of the City of Houston), which appointment shall be made in the manner set out in Section 4.B.1. hereof and which shall be made effective by written notice to the Board.
Position No. 9	The Chairman of the Port Commission of the Port of Houston Authority.
Position No. 10 (Fort Bend County)	One (1) Director appointed by the County Judge of Fort Bend County, which appointment shall be made effective by written notice to the Board.
Position No. 11 (Small Municipalities in Fort Bend County)	One (1) Director jointly appointed by the mayors of all municipalities in Fort Bend County, which appointment shall be made in the manner set out in Section 4.B.2. hereof and which shall be made effective by written notice to the Board.

Directors

Manner of Appointment/Service

Position No. 12  
(Waller County)

One (1) Director appointed by the County Judge of Waller County, which appointment shall be made effective by written notice to the Board.

Position No. 13  
(Galveston County)

One (1) Director appointed by the County Judge of Galveston County, which appointment shall be made effective by written notice to the Board.

\*\*\*

\*\*\*

Ex Officio Director

One (1) Director appointed by the Texas Transportation Commission, which appointment shall be made effective by written notice to the Board.

A quorum of the Board is a majority of the total number of Directors appointed or serving as provided in Section 4.A. hereof, excluding the Ex Officio Director.

B. 1. The Director appointed to serve in Position No. 8 shall be appointed by the mayors who are members of the Harris County Mayors' and Councils' Association.

2. The Director appointed to serve in Position No. 11 shall be appointed by the mayors of the municipalities in Fort Bend County.

C. Except as provided in this paragraph, all Directors (except for the Ex Officio Director) shall be entitled to vote on all matters coming before the Board; provided, however, that if at anytime there is an even number of Directors entitled to vote on a matter before the Board, including the Director who is the Chair, which number shall be determined at the time the matter is called for a Board vote, then the Chair of the Board shall not be entitled to vote on such matter. All successive Directors shall be appointed or shall serve in the same manner as the original appointees.

D. 1. A Director appointed to a Position shall serve at the pleasure of the official or governing body or entity that appointed such Director; provided, however, that a Director must be reappointed at least every two years.

2. The Chairman of the Port Commission of the Port of Houston Authority shall serve as the Navigation District Director for so long as such person serves as such Chairman.

3. The Ex Officio Director shall serve at the pleasure of the Texas Transportation Commission.

E. The Presiding Officer of the Board shall be its Chair, who shall be the Director appointed to and serving in Position No. 7. During the absence of the Chair, or in the event of a vacancy in such position, the Presiding Officer of the Board shall be the Director elected by the Board as Vice-Chair.

F. An official, governing body or entity that appoints one or more Directors or a majority of the mayors of the municipalities in Harris County (except for the Mayor of the City of Houston) or Fort Bend County may remove any Director whom he/she or it appointed at any time without cause by written notice to the Chair of the Board and all officials and governing bodies or entities entitled to appoint one or more Directors.

G. The Board shall adopt conflict of interest rules for its Board of Directors and staff, which shall be consistent with applicable state law.

Section 5. The District shall have all powers of a freight rail district under Chapter 171, Texas Transportation Code, including the powers of a rural rail transportation district under Article 6550c, Vernon's Texas Civil Statutes, and the powers of an intermunicipal commuter rail district created under Article 6550c-1, Vernon's Texas Civil Statutes, including the powers

related to a commuter rail facility and other types of passenger rail services, including intercity rail services, except as otherwise provided by Chapter 171, Texas Transportation Code.

Section 6.

A. The District may contract for its operations with an appropriate entity, including the Port of Houston Authority, on terms and conditions agreed on by the contracting parties.

B. Railroads, individually or through representatives, may attend all meetings of the Board and may have reasonable access to all information as provided by applicable law.

C. 1. No Board action or Board recommendation of action shall be effective with respect to the location of new rail lines or the modification of rail lines within Harris County unless such action or recommendation of action shall have been approved by at least three (3) of the Directors serving in Positions 1, 2, 3, 7 and 8.

2. No Board action or Board recommendation of action shall be effective with respect to the location of new rail lines or the modification of rail lines within the City of Houston unless such action or recommendation of action shall have been approved by at least three (3) of the Directors serving in Positions 4, 5, 6 and 7.

3. No Board action or Board recommendation of action shall be effective with respect to the location of new rail lines or the modification of rail lines within Fort Bend County unless such action or recommendation of action shall have been approved by both Directors serving in Positions No. 10 and 11.

4. No Board action or Board recommendation of action shall be effective with respect to the location of new rail lines or the modification of rail lines within Waller County unless such action or recommendation of action shall have been approved by the Director serving in Position No. 12.

5. No Board action or Board recommendation of action shall be effective with respect to the location of new rail lines or the modification of rail lines within Galveston County unless such action or recommendation of action shall have been approved by the Director serving in Position No. 13.

D. The Board shall not enter into any contract or agreement for the financing, construction or modification of freight or commuter rail lines within Fort Bend County unless such contract or agreement has been duly approved in principle by the Commissioners Court of Fort Bend County.

E. The Board may enter into agreements with the Texas Department of Transportation or any other agency or political subdivision of the State of Texas for the analysis and study of a regional rail plan and for the funding from such entities of such analysis and study.

F. The Board shall not enter into any contract, nor shall it award any contract, for the construction of freight or commuter rail improvements located entirely within one city or county when such city or county has legal authority and financial capacity to do so, unless such contract has been duly approved in principle by the governing body of such city or county.

G. The Board shall not have the power to levy a tax or mandatory assessment. The Board may study or analyze a source of funding as part of a state or local match of funds that (1) is reasonably related to freight or commuter rail and (2) is not currently used by local taxing jurisdictions as a principal source of funding for essential local services.

H. The Board may not impose a fee or other charge on a railroad unless the railroad agrees to the fee or other charge, provided that the foregoing does not prohibit a railroad from

voluntarily contributing to the cost of rail facilities or prohibit the District from charging for the use of a rail facility by a railroad or other person.

Section 7. One or more other Adjacent Counties may be included in the District by adoption of an amended and restated concurrent order or ordinance by Harris County, the City of Houston, Fort Bend County, all other Adjacent Counties already included in the District and the other Adjacent County or Counties proposed to be included. Such amended and restated concurrent order or ordinance may contain any terms and conditions permitted by the Enabling Act, including amendments to this First Amended and Restated Concurrent Order or Ordinance.

Section 8. Harris County, the City of Houston, Fort Bend County and all other Adjacent Counties included in the District may withdraw from the District in accordance with Section 171.301, Texas Transportation Code. The District may be dissolved in accordance with Section 171.302, Texas Transportation Code.

Section 9. The Commissioners Court of Harris County, the City Council of the City of Houston, the Commissioners Court of Fort Bend County, the Commissioners Court of Galveston County and the Commissioners Court of Waller County, as appropriate, officially find, determine, recite and declare that a sufficient written notice of the date, hour, place and subject of the meeting at which this First Amended and Restated Concurrent Order or Ordinance, as appropriate, was presented was posted at a place convenient to the public at the location and for the time required by law preceding such meeting, as required by the Open Meetings Act, Tex. Gov't Code Ann. ch. 551 (Vernon 1994); and that such meeting has been open to the public as required by law at all times during which this First Amended and Restated Concurrent Order or Ordinance, as appropriate, and the subject matter thereof has been discussed, considered and

formally acted upon. Such Commissioners Courts and City Council further ratifies, approves and confirms such written notice and the contents and postings thereof.

Section 10. If any provision, section, subsection, sentence, clause or phrase hereof, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions hereof or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the Commissioners Courts and the City Council in adopting this First Amended and Restated Concurrent Order or Ordinance, as appropriate, that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this First Amended and Restated Concurrent Order or Ordinance, as appropriate, are declared to be severable for that purpose.

Section 11. A. Upon final passage and adoption hereof by the Commissioners Court of Harris County, the County Clerk of Harris County is directed to give prompt written notice to the Board.

B. Upon final passage and adoption hereof by the City Council of the City of Houston, the City Secretary of the City of Houston is directed to give prompt written notice to the Board.

C. Upon final passage and adoption hereof by the Commissioners Court of Fort Bend County, the County Clerk of Fort Bend County is directed to give prompt written notice to the Board.

D. Upon final passage and adoption hereof by the Commissioners Court of Waller County, the County Clerk of Waller County is directed to give prompt written notice to the Board.

E. Upon final passage and adoption hereof by the Commissioners Court of Galveston County, the County Clerk of Galveston County is directed to give prompt written notice to the Board.

Section 12. As to the City of Houston, there exists a public emergency requiring that this First Amended and Restated Concurrent Ordinance be passed finally on the date of its introduction as required in writing by the Mayor; therefore, this First Amended and Restated Concurrent Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this First Amended and Restated Concurrent Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

Section 13. A. This First Amended and Restated Concurrent Order or Ordinance will be effective only if approved by Harris County, the City of Houston and Fort Bend County on or before October 1, 2009, and shall be effective as of the date of approval hereof by the last of such entities to approve this First Amended and Restated Concurrent Order or Ordinance. As of such effective date, the Original Concurrent Order or Ordinance will no longer be in force and effect.

B. This First Amended and Restated Concurrent Order or Ordinance will be effective with respect to Waller County and Galveston County upon the later to occur of (1) the last approval of this First Amended and Restated Concurrent Order or Ordinance by Harris County, the City of Houston or Fort Bend County, or (2) the approval hereof by the commissioners court of each such county not later than December 31, 2009. If the commissioners court of either such county does not approve this First Amended and Restated Concurrent Order or Ordinance by

December 31, 2009, the provisions hereof with respect to such non-approving county shall be of no force and effect.

\* \* \*

*[Remainder of This Page Intentionally Left Blank]*

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_ OCT 27 2009, 2009, by the Commissioners  
Court of Harris County, Texas.

HARRIS COUNTY, TEXAS

Ed Emmett  
County Judge ED EMMETT

ATTEST:

Beverly B. Kaufman  
County Clerk BEVERLY B. KAUFMAN  
(SEAL)

ATTEST: APPROVED this 26<sup>th</sup> day of August, 2009.

Bill Russell  
City Secretary

CITY OF HOUSTON, TEXAS

Bill White  
Mayor of the City of Houston

Approved as to Form:

WR  
Assistant City Attorney  
(Requested by Mayor's Office)  
L. D. File No. 0420900067001

\* \* \*

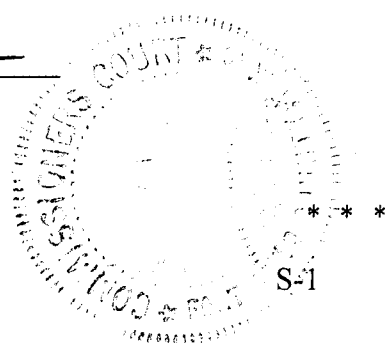
APPROVED this 17 day of November, 2009, by the Commissioners  
Court of Fort Bend County, Texas.

FORT BEND COUNTY, TEXAS

Robert Belcher  
County Judge

ATTEST:

Hudson  
County Clerk  
(SEAL)



APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the Commissioners  
Court of Waller County, Texas.

WALLER COUNTY, TEXAS

\_\_\_\_\_  
County Judge

ATTEST:

\_\_\_\_\_  
County Clerk

(SEAL)

\* \* \*

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the Commissioners  
Court of Galveston County, Texas.

GALVESTON COUNTY, TEXAS

\_\_\_\_\_  
County Judge

ATTEST:

\_\_\_\_\_  
County Clerk

(SEAL)