

## **BILL ANALYSIS**

H.B. 3085  
By: Puente  
Transportation  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Abandonment of rail line segments over time has likely contributed to an increase in truck traffic moving over state highways and local roads and bridges. The economies of small towns and rural areas are severely affected by the loss of rail transportation service.

Rail is an important component of the state transportation system. Certain industries, such as agriculture, have historically depended on rail to move their materials and products. The Texas ports also rely on rail service. In addition, expanding the provision of passenger rail facilities will likely contribute to reducing the number of persons traveling over state highways and local roads and bridges.

The Texas Department of Transportation is statutorily required to incorporate rail into its statewide planning. H.B. 3085 clarifies and expands the powers of the Texas Department of Transportation to acquire, finance, construct, operate, and maintain rail facilities and systems.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 2 (Section 91.004, 91.033, and 91.057, Transportation Code) of this bill.

### **ANALYSIS**

SECTION 1. Presents legislative findings.

SECTION 2. Amends Title 5, Transportation Code by adding Subtitle A, Chapter 91 as follows:

SUBTITLE A. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 91. RAIL FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 91.001. DEFINITION. Defines "commission," "construction," "department," "maintenance facility," "revenue," "right of way," "station," "surplus revenue," "trackwork," and "train controls."

Sec. 91.002. PUBLIC PURPOSE. Provides that the specified functions granted to the Texas Transportation Commission (commission) and the department under this chapter are public and governmental functions, exercised for public purpose, and matters public necessity.

Sec. 91.003. CHAPTER LIBERALLY CONSTRUED. Provides that this chapter shall be liberally construed to effect its purposes.

Sec. 91.004. RULES. Authorizes the commission to promulgate rules and the department to implement procedures and prescribe forms necessary to implement this chapter.

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Sec. 91.004. RULES. Authorizes the commission to promulgate rules and the department to implement procedures and prescribe forms necessary to implement this chapter.

Sec. 91.005. GENERAL POWERS. Authorizes the department to plan and make policies for rail facilities and systems in this state, to acquire, finance, construct, maintain, and operate passenger and freight rail facilities and systems, to accept grants or loans for the purpose of acquiring or financing rail facilities and systems, to contract with public or private persons to finance, construct, maintain, or operate rail facilities, and to perform any other act necessary to the full exercise of the department's powers under this chapter.

Sec. 91.006. RELIANCE ON PRIVATE ENTITIES. Provides that the department shall contract with a private entity to operate a railroad, may not use department employees to operate a railroad, and may maintain a railroad directly or through private entities.

Sec. 91.007. COOPERATION OF STATE AGENCIES AND POLITICAL SUBDIVISIONS. Provides that a state agency or political subdivision is required to cooperate with and assist the department in exercising its powers and duties under this chapter.

Sec. 91.008. NOTIFICATION OF INTENT TO ABANDON OR DISCONTINUE SERVICE. Requires the department, on receipt of the notice of intent to abandon or discontinue rail service described by 49 C.F.R. Section 1152.20, as amended, to coordinate with the governing body of any municipality, county, or rural rail transportation district in which all or a segment of the line is located as to whether the department should acquire the rail facilities to which the notice relates, or any other actions should be taken to provide for continued rail transportation service.

#### SUBCHAPTER B. ACQUISITION AND DEVELOPMENT OF RAIL FACILITIES

Sec. 91.021. ESTABLISHMENT OF RAIL SYSTEMS. (a) Authorizes the commission to create rail systems for the purpose of jointly operating two or more rail facilities as one operational and financial enterprise. Authorizes the department to finance, acquire, construct, and operate additional rail facilities as additions to the expansion of a system.

(b) Provides that the revenue of a system shall be accounted for separately and may not be commingled with the revenue of a rail facility that is not part of the system.

Sec. 91.022. ACQUISITION OF RAIL FACILITIES. (a) Authorizes the commission to authorize the department to acquire existing rail facilities at locations and on routes the commission determines to be feasible and viable for rail transportation service.

(b) Authorizes the department to enter into an agreement with an owner of an operating railroad for the acquisition or use of rail facilities on terms and conditions the department finds to be in the best interests of the state.

(c) Authorizes the department to acquire rolling stock or other personal property.

Sec. 91.023. ENVIRONMENTAL REVIEW. (a) Requires the department to conduct or approve all environmental studies or evaluations required for the construction, maintenance, or operation of a rail facility.

(b) Authorizes the commission to adopt rules allocating responsibilities for conducting environmental evaluations or studies or preparing environmental documentation among entities involved in the construction, maintenance, or operation of a rail facility.

Sec. 91.024. ENVIRONMENTAL MITIGATION. (a) Provides that the department may acquire, maintain, hold, restore, enhance, develop, or redevelop property for the purpose of mitigating adverse environmental effects arising from the construction, maintenance, or operation of a rail facility, whether or not the need for mitigation has already been established.

Sec. 91.005. GENERAL POWERS. Authorizes the department to plan and make policies for rail facilities and systems in this state, to acquire, finance, construct, maintain, and operate passenger and freight rail facilities and systems, to accept grants or loans for the purpose of acquiring or financing rail facilities and systems, to contract with public or private persons to finance, construct, maintain, or operate rail facilities, and to perform any other act necessary to the full exercise of the department's powers under this chapter.

Sec. 91.006. RELIANCE ON PRIVATE ENTITIES. Provides that the department shall contract with a private entity to operate a railroad, may not use department employees to operate a railroad, and may maintain a railroad directly or through private entities.

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(b) Authorizes the department to contract with a governmental or private entity to maintain, control, hold, restore, enhance, develop, or redevelop property for the purpose of mitigating adverse environmental effects.

(c) Authorizes the department to pay a sum of money to a governmental or private entity instead of acquiring or managing property for the purpose of mitigating adverse environmental effects.

Sec. 91.025. USE OF FACILITIES BELONGING TO PUBLIC OR PRIVATE ENTITY. Authorizes the department, with the consent of the applicable political subdivision, to use streets, alleys, roads, highways, and other public ways of the political subdivision for the purpose of acquiring, constructing, maintaining, and operating rail facilities and systems. Authorizes the department, at its expense, to relocate, raise, reroute, or change the grade of the construction of a street, road, highway, and railroad, electric, telephone, or pipeline facility, and other properties necessary in the construction, maintenance, and operation of rail facilities or systems.

Sec. 91.026. EXPENDITURE OF FUNDS. Authorizes the department to receive, accept, and expend funds received from the state, any federal agency, or other public or private sources for certain stated purposes, including the acquisition, construction, maintenance, or operation of rail facilities under this chapter.

#### SUBCHAPTER C. CONTRACTS

Sec. 91.041. AWARDING OF CONTRACTS. Provides that, unless otherwise provided by this subchapter, a contract for the construction, maintenance, or operation of a rail facility must be let by a competitive bidding procedure in which the contract is awarded to lowest responsible bidder.

Sec. 91.042. AGREEMENTS TO CONSTRUCT, MAINTAIN, AND OPERATE RAIL FACILITIES. Authorizes the department to enter into an agreement with a public entity to permit the entity, independently or jointly with the department, to acquire, construct, maintain, or operate rail facility or system.

Sec. 91.043. EXCLUSIVE DEVELOPMENT AGREEMENTS. (a) Authorizes the department to enter into exclusive development agreement with a private entity to construct, maintain, or operate, in any combination, a rail facility or system. Provides that an exclusive development agreement may provide for the issuance of franchises, concessions, licenses or permits to the private entity.

(b) Requires the department, when contracting with a private entity under this section, to use a competitive procurement process that provides the best value for the department, including through the issuance of requests for proposals. Requires a request for bids, proposals, or qualifications to include the criteria used to evaluate offerors and the relative weight given to each criterion. Authorizes the department to accept unsolicited proposals for projects under specified conditions. Authorizes the department to require a nonreimbursable proposal review fee.

(c) Provides the department with broad discretion to negotiate provisions in an exclusive development agreement, including provisions for combining professional services and construction services.

(d) Provides that the department may authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.

(e) Requires the department to prescribe the form of an exclusive development agreement, and authorizes the inclusion of any matter advantageous to the state.

(f) Provides that an exclusive development agreement is not subject to the requirements of Section 91.041.

SEC. 91.044. PAYMENT FOR WORK PRODUCT. Authorizes the department to pay an unsuccessful private entity that submits a proposal a stipulated amount of the final contract price for any costs incurred

(b) Authorizes the department to contract with a governmental or private entity to maintain, control, hold, restore, enhance, develop, or redevelop property for the purpose of mitigating adverse environmental effects.

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in preparing the proposal, provided the amount paid does not exceed the value of work product contained in the proposal that can be used by the department.

Sec. 91.045. **LIABILITY FOR PRIVATE OBLIGATIONS.** Provides that the department may not incur a financial obligation on behalf of the private entity that constructs, maintains, or operates a rail facility or system.

Sec. 91.046. **INFORMATION RELATED TO PROPOSALS.** Provides that proposals for projects developed under an exclusive development agreement and related information are confidential.

Sec. 91.047. **PERFORMANCE AND PAYMENT SECURITY.** Requires a private entity entering into an exclusive development agreement to provide performance and payment bonds or alternative forms of security authorized under this section, and prescribes the amount of security. Requires the commission to prescribe by rule requirements for alternate forms of security.

Sec. 91.048. **SMALL AND DISADVANTAGED BUSINESSES.** (a) Requires the department to set goals for the award of contracts to small and disadvantaged businesses, to identify small and disadvantaged businesses that can provide supplies, materials, equipment, and services to the department, and to give small and disadvantaged businesses full access to the department's contract bidding process.

(b) Provides that this section does not exempt the department from competitive bidding requirements imposed by other law.

#### **SUBCHAPTER D. FINANCING OF RAIL FACILITIES**

Sec. 91.061. **PERMISSIBLE SOURCES OF FUNDING.** Authorizes the department to use any legally permissible source of funding in acquiring, constructing, maintaining, and operating a rail facility or system, including appropriations from the state highway fund, bond proceeds, loans, and donations.

Sec. 91.062. **REVENUE BONDS.** (a) Authorizing the commission to issue revenue bonds to pay all or part of the cost of acquiring, constructing, maintaining, or operating a rail facility or system, or to refund previously issued bonds.

(b) Provides the Chapter 1201, 1202, 1204, 1207, and 1371, Government Code apply to bonds issued by the commission, and that the provisions of this chapter prevail to the extent of any conflict between those laws and this chapter.

Sec. 91.064. **STATE CREDIT NOT PLEDGED.** (a) Provides that bonds issued under this chapter do not constitute a debt of the state or a pledge of the faith and credit of the state.

(b) Provides that the commission and the department may not incur financial obligations under this chapter that cannot be paid from revenue derived from the department's rail facilities and systems and from other revenue provided by law.

Sec. 91.065. **GRANTS AND LOANS.** Authorizes the department to apply for, accept, and expend money from grants, loans, or reimbursements for any purpose of this chapter.

Sec. 91.066. **REVENUE.** (a) Authorizes the department to require any person, including any public or private entity, to pay a fee as a condition of using any part of a rail facility or system.

(b) Requires the department to establish and maintain rents or other compensation for the use of rail facilities or systems that is, together with other revenue received under this chapter, sufficient to satisfy payment obligations for bonds issued under this chapter.

(c) Provides that the department may contract with a person for the use of all or part of a rail facility or

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Sec. 91.061. **PERMISSIBLE SOURCES OF FUNDING.** Authorizes the department to use any legally permissible source of funding in acquiring, constructing, maintaining, and operating a rail facility or system, including appropriations from the state highway fund, bond proceeds, loans, and donations.

Sec. 91.062. **REVENUE BONDS.** (a) Authorizing the commission to issue revenue bonds to pay all or part of the cost of acquiring, constructing, maintaining, or operating a rail facility or system, or to refund previously issued bonds.

(b) Provides the Chapter 1201, 1202, 1204, 1207, and 1371, Government Code apply to bonds issued by the commission, and that the provisions of this chapter prevail to the extent of any conflict between those laws and this chapter.

Sec. 91.064. **STATE CREDIT NOT PLEDGED.** (a) Provides that bonds issued under this chapter do not constitute a debt of the state or a pledge of the faith and credit of the state.

(b) Provides that the commission and the department may not incur financial obligations under this chapter that cannot be paid from revenue derived from the department's rail facilities and systems and from other revenue provided by law.

Sec. 91.065. **GRANTS AND LOANS.** Authorizes the department to apply for, accept, and expend money from grants, loans, or reimbursements for any purpose of this chapter.

Sec. 91.066. **REVENUE.** (a) Authorizes the department to require any person, including any public or private entity, to pay a fee as a condition of using any part of a rail facility or system.

(b) Requires the department to establish and maintain rents or other compensation for the use of rail facilities or systems that is, together with other revenue received under this chapter, sufficient to satisfy payment obligations for bonds issued under this chapter.

(c) Provides that the department may contract with a person for the use of all or part of a rail facility or

system or lease or sell all or part of a rail facility or system, including for the purpose of placing on the adjoining right of way certain appurtenant facilities.

(d) Requires all revenue received by the department under this chapter to be deposited to the credit of the state highway fund, and to be used for any purpose authorized by this chapter. Provides that the deposited revenue is exempt from the application of Section 403.095, Government Code.

#### SUBCHAPTER E. ACQUISITION AND DISPOSAL OF PROPERTY

Sec. 91.081. ACQUISITION OF REAL PROPERTY. (a) Authorizes the commission to authorize the department to acquire any right of way, other interest in real property, or property right determined to be necessary or convenient for the department's acquisition, construction, maintenance, or operation of rail facilities.

(b) Provides that the commission may authorize the department to acquire property by any method, including purchase and condemnation.

(c) Provides the property may be purchased along alternative potential routes for a rail facility even if only one of these routes will ultimately be chosen as the final route.

Sec. 91.082. PROPERTY NECESSARY OR CONVENIENT FOR RAIL FACILITIES. Defines property that is necessary or convenient for the department's acquisition, construction, maintenance, or operation of rail facilities, including right of way for rail facility or future location of rail facility, land for environmental mitigation and buffer zones, and property that is used to provide revenue for use acquiring, constructing, maintaining, or operating, a rail facility or system.

Sec. 91.083. RIGHT OF ENTRY. (a) Authorizes the department to enter any real property, water, or premises to make a survey, geotechnical evaluation, sounding, or examination needed in order to acquire property for a rail facility.

(b) Provides that an entry is not a trespass or an entry under a pending condemnation procedure.

(c) Requires the department to reimburse any actual damages that result from an activity described in Subsection (a).

Sec. 91.084. CONVEYANCE OF PROPERTY BELONGING TO POLITICAL SUBDIVISION OR PUBLIC AGENCY. Authorizes the governing body of a political subdivision or public agency to, without advertisement, convey property to the department that is determined to be necessary or convenient for a rail facility.

Sec. 91.085 DISPOSAL OF PROPERTY. Authorizes the department to dispose of any rights or interests in real property acquired under this subchapter that the commission determines are no longer needed for department purposes.

#### SUBCHAPTER F. OPERATION AND USE OF RAIL FACILITIES.

Sec. 91.101 CONTRACTS FOR RAIL TRANSPORTATION SERVICES. Authorizes the department to contract with a political subdivision of this state to provide rail transportation services in the political subdivision.

Sec. 91.102 CONTRACTS WITH RAIL OPERATORS. (a) provides that the department may lease rail

system or lease or sell all or part of a rail facility or system, including for the purpose of placing on the adjoining right of way certain appurtenant facilities.

(d) Requires all revenue received by the department under this chapter to be deposited to the credit of the state highway fund, and to be used for any purpose authorized by this chapter. Provides that the deposited revenue is exempt from the application of Section 403.095, Government Code.

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Sec. 91.102 CONTRACTS WITH RAIL OPERATORS. (a) provides that the department may lease rail

system or lease or sell all or part of a rail facility or system, including for the purpose of placing on the adjoining right of way certain appurtenant facilities.

(d) Requires all revenue received by the department under this chapter to be deposited to the credit of the state highway fund, and to be used for any purpose authorized by this chapter. Provides that the deposited revenue is exempt from the application of Section 403.095, Government Code.

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Sec. 91.102 CONTRACTS WITH RAIL OPERATORS. (a) provides that the department may lease rail

facilities or systems or any part to, or contract for the use of rail facilities or systems or any part by, any rail operator.

(b) Requires the department to encourage to the maximum extent practical the participation of private enterprise in the operation of rail facilities and systems.

(c) Requires a lease agreement to provide for the department's monitoring of a rail operator's service and performance.

(d) Authorizes the department to enter into agreements with any rail operator to sell all or part of any state-owned rail facility.

Sec. 91.103. JOINT USE OF RAIL FACILITIES. Authorizes the department to enter into agreements with a rail operator, public or private utility, communication system, common carrier, or transportation system for the common use of its facilities or properties, and to establish through routes, joint fares, and divisions of tariffs.

Sec. 91.104. ROUTINGS. Provides that the department may determine routings for rail facilities acquired, constructed, or operated by the department under this chapter.

Sec. 91.105. PLACEMENT OF UTILITY FACILITIES, LINES, AND EQUIPMENT. (a) Provides that a utility has the same right to place its facilities, lines, or equipment in, over, or across right of way that is part of a state-owned rail facility as the utility has with respect to the right of way of a state highway under Chapter 181, Utilities Code. Requires a utility to notify the department of the utility's intention to exercise that authority over right of way that is part of state-owned rail facilities.

(b) Authorizes the department, on receipt of notice under Subsection (a) of this section, to designate the location in the right of way where the utility may place its facilities, lines, or equipment.

(c) Authorizes the department to require a utility to relocate the utility's facilities, lines, or equipment, at the utility's expense, to allow for the expansion or relocation of state owned rail facilities. Requires the department to pay for the cost of the relocation under certain conditions.

(d) Authorizes a utility to use and operate a facility required to be relocated under this section at the new location for the same period and on the same terms as the utility has the right to do at the previous location of the facility.

SECTION 3. Repeals Section 2, Chapter 1244, Acts of the 77th Legislature, Regular Session, 2001 (Article 6550c-2, Vernon's Texas Civil Statutes).

#### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003.



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