

By: Puente

H.B. No. 3085

A BILL TO BE ENTITLED

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AN ACT

relating to the acquisition, financing, construction, operation,  
and maintenance of rail facilities by the Texas Department of  
Transportation; granting the authority to issue bonds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that:

(1) the transportation of materials, products, and  
people is essential to the continued economic vitality of this  
state;

(2) the state contains many industries that are  
heavily dependent on rail transportation for the movement of  
materials and products;

(3) the rail transportation system in some areas of  
this state is adversely affected by abandonment and discontinuance  
proceedings that cause the cessation of rail service to those  
areas;

(4) materials and products that cannot be transported  
by rail are typically transported by truck over state highways and  
local roads and bridges, thereby contributing to increased  
congestion and roadway maintenance costs, decreased safety for the  
traveling public, and a decrease in the expected life of those  
roadways;

(5) the provision of passenger rail facilities and  
systems will contribute to reducing the number of persons traveling

1 over state highways and local roads and bridges, thereby resulting  
2 in decreased congestion and improved safety and air quality; and

3 (6) it is in the interest of all citizens of this state  
4 that rail facilities and systems be part of a comprehensive state  
5 transportation system to provide for the most efficient and  
6 economical movement of essential materials and products to local,  
7 national, and export markets and to provide for improved mobility  
8 on, and the increased reliability of, the state's transportation  
9 system.

10 SECTION 2. Title 5, Transportation Code, is amended by  
11 adding Subtitle A to read as follows:

12 SUBTITLE A. TEXAS DEPARTMENT OF TRANSPORTATION

13 CHAPTER 91. RAIL FACILITIES

14 SUBCHAPTER A. GENERAL PROVISIONS

15 Sec. 91.001. DEFINITIONS. In this chapter:

16 (1) "Commission" means the Texas Transportation  
17 Commission.

18 (2) "Construction" includes design, planning, and  
19 preliminary studies.

20 (3) "Department" means the Texas Department of  
21 Transportation.

22 (4) "Maintenance facility" includes:

23 (A) a workshop;

24 (B) a service, storage, security, or personnel  
25 facility; and

26 (C) equipment for a facility described by  
27 Paragraph (B).

1           (5) "Operation" includes policing.

2           (6) "Rail facility" means real or personal property,  
3 or any interest in that property, that is determined to be necessary  
4 or convenient for the provision of a freight or passenger rail  
5 facility or system, including commuter rail, intercity rail, and  
6 high-speed rail. The term includes all property or interests  
7 necessary or convenient for the acquiring, providing, using, or  
8 equipping of a rail facility or system, including rights-of-way,  
9 rolling stock, trackwork, train controls, stations, and  
10 maintenance facilities.

11           (7) "Revenue" includes a charge, toll, rent, payment,  
12 user fee, franchise fee, license fee, fare, tariff, and other  
13 consideration:

14                   (A) received in return for the use of:  
15                           (i) a rail facility; or  
16                           (ii) a service offered in connection with  
17 the operation of a rail facility; or

18                   (B) resulting from a sale or conveyance of a rail  
19 facility.

20           (8) "Right-of-way" means a strip of land of a length  
21 and width determined by the commission to be required, necessary,  
22 or convenient for the provision of a rail facility or system and the  
23 space over, under, or on the land where trackwork is to be located.

24           (9) "Station" means a passenger or freight service  
25 building, terminal, station, ticketing facility, waiting area,  
26 platform, concession, elevator, escalator, facility for  
27 handicapped access, access road, parking facility for passengers,

1 baggage handling facility, or local maintenance facility, together  
2 with any interest in real property necessary or convenient for  
3 those items.

4 (10) "Surplus revenue" means:

5 (A) revenue that exceeds the department's debt  
6 service requirements, coverage requirements of any bond indenture,  
7 costs of operation and maintenance, and cost of expansion or  
8 improvement of a rail facility or system; and

9 (B) reserves and reserve funds maintained by the  
10 department.

11 (11) "Trackwork" means track, track beds, track bed  
12 preparation, ties, rail fasteners, slabs, rails, emergency  
13 crossovers, setout tracks, storage tracks, drains, fences,  
14 ballast, switches, bridges, and structures.

15 (12) "Train controls" includes:

16 (A) signals, lights, and other signaling;

17 (B) interlocking equipment;

18 (C) speed monitoring equipment;

19 (D) braking systems;

20 (E) central traffic control facilities; and

21 (F) communication systems.

22 Sec. 91.002. PUBLIC PURPOSE. The following functions are  
23 public and governmental functions, exercised for a public purpose,  
24 and matters of public necessity:

25 (1) the acquisition, financing, construction,  
26 operation, and maintenance of a rail facility under this chapter;

27 (2) the sale, lease, or license of a rail facility to a

1 rail operator and other public or private persons under this  
2 chapter; and

3 (3) the exercise of any other power granted under this  
4 chapter to the commission and the department.

5 Sec. 91.003. CHAPTER LIBERALLY CONSTRUED. This chapter  
6 shall be liberally construed to effect its purposes.

7 Sec. 91.004. RULES. The commission may adopt rules and the  
8 department may adopt procedures and prescribe forms necessary to  
9 implement this chapter.

10 Sec. 91.005. GENERAL POWERS. The department may:

11 (1) plan and make policies for the location,  
12 construction, maintenance, and operation of a rail facility or  
13 system in this state;

14 (2) acquire, finance, construct, maintain, and  
15 operate a passenger or freight rail facility, individually or as  
16 one or more systems;

17 (3) for the purpose of acquiring or financing a rail  
18 facility or system, accept a grant or loan from a:

19 (A) department or agency of the United States;

20 (B) department, agency, or political subdivision  
21 of this state; or

22 (C) public or private person;

23 (4) contract with a public or private person to  
24 finance, construct, maintain, or operate a rail facility under this  
25 chapter; or

26 (5) perform any act necessary to the full exercise of  
27 the department's powers under this chapter.

1       Sec. 91.006. RELIANCE ON PRIVATE ENTITIES. The department  
2 shall contract with a private entity to operate a railroad using  
3 facilities owned by the department and may not use department  
4 employees to operate a railroad. The department may maintain a  
5 railroad facility directly or through a private entity.

6       Sec. 91.007. COOPERATION OF STATE AGENCIES AND POLITICAL  
7 SUBDIVISIONS. Within available resources, an agency or political  
8 subdivision of this state shall cooperate with and assist the  
9 department in exercising its powers and duties under this chapter.

10       Sec. 91.008. NOTIFICATION OF INTENT TO ABANDON OR  
11 DISCONTINUE SERVICE. On receipt of notice of intent to abandon or  
12 discontinue rail service served under 49 C.F.R. Section 1152.20, as  
13 amended, the department shall coordinate with the governing body of  
14 a municipality, county, or rural rail transportation district in  
15 which all or a segment of the line is located to determine whether:

16               (1) the department should acquire the rail facility to  
17 which the notice relates; or

18               (2) any other actions should be taken to provide for  
19 continued rail transportation service.

20               [Sections 91.009-91.030 reserved for expansion]

21       SUBCHAPTER B. ACQUISITION AND DEVELOPMENT OF RAIL FACILITIES

22       Sec. 91.031. ESTABLISHMENT OF RAIL SYSTEMS. (a) If the  
23 commission determines that the provision of rail transportation  
24 services would be most efficiently and economically met by jointly  
25 operating two or more rail facilities as one operational and  
26 financial enterprise, it may create a system composed of those  
27 facilities.

1       (b) The commission may create more than one system and may  
2 combine two or more systems into one system.

3       (c) The department may finance, acquire, construct, and  
4 operate additional rail facilities as additions to and expansions  
5 of the system if the commission determines that the facility would  
6 most efficiently and economically be acquired and constructed if it  
7 were a part of the system and that the addition will benefit the  
8 system.

9       (d) The revenue of a system shall be accounted for  
10 separately and may not be commingled with the revenue of a rail  
11 facility that is not part of the system.

12       Sec. 91.032. ACQUISITION OF RAIL FACILITIES. (a) The  
13 commission may authorize the department to acquire an existing rail  
14 facility at a location and on a route the commission determines to  
15 be feasible and viable for rail transportation service.

16       (b) The department may enter into an agreement with the  
17 owner of an operating railroad for the acquisition or use of a rail  
18 facility on terms the department considers to be in the best  
19 interest of the state.

20       (c) The department may acquire rolling stock or other  
21 personal property under:

22           (1) conditional sales contracts;

23           (2) leases;

24           (3) equipment trust certificates; or

25           (4) any other form of contract or trust agreement.

26       Sec. 91.033. ENVIRONMENTAL REVIEW. (a) The department  
27 shall conduct or approve all environmental evaluations or studies

1 required for the construction, maintenance, or operation of a rail  
2 facility.

3 (b) The commission may adopt rules to allocate  
4 responsibility for conducting an environmental evaluation or study  
5 or preparing environmental documentation among entities involved  
6 in the construction, maintenance, or operation of a rail facility  
7 under this chapter.

8 Sec. 91.034. ENVIRONMENTAL MITIGATION. (a) The department  
9 may acquire, maintain, hold, restore, enhance, develop, or  
10 redevelop property for the purpose of mitigating a past, present,  
11 or future adverse environmental effect arising from the  
12 construction, maintenance, or operation of a rail facility without  
13 regard to whether the need for mitigation has already been  
14 established for a particular project.

15 (b) The department may contract with a governmental or  
16 private entity to maintain, control, hold, restore, enhance,  
17 develop, or redevelop property for the mitigation of a past,  
18 present, or future adverse environmental effect arising from the  
19 construction, maintenance, or operation of a rail facility without  
20 regard to whether the need for mitigation has already been  
21 established for a particular project.

22 (c) If authorized by the applicable regulatory authority,  
23 the department may pay an amount of money to an appropriate  
24 governmental or private entity instead of acquiring or managing  
25 property for the mitigation of a past, present, or future adverse  
26 environmental effect arising from construction, maintenance, or  
27 operation of a rail facility without regard to whether the need for



1 mitigation has already been established for a particular project.

2 Sec. 91.035. USE OF FACILITIES BELONGING TO PUBLIC OR  
3 PRIVATE ENTITY. The department, for the purpose of acquiring,  
4 constructing, maintaining, and operating freight or passenger rail  
5 facilities and systems in this state, may:

6 (1) use a street, alley, road, highway, or other  
7 public way of a municipality, county, or other political  
8 subdivision with the consent of that political subdivision; and

9 (2) at the expense of the department, relocate, raise,  
10 reroute, or change the grade of the construction of a street, alley,  
11 highway, road, railroad, electric line and facility, telegraph and  
12 telephone property and facility, pipeline and facility, conduit and  
13 facility, and other properties, whether publicly or privately  
14 owned, as necessary or useful in the construction, maintenance, and  
15 operation of a rail facility or system.

16 Sec. 91.036. EXPENDITURE OF FUNDS. The department may  
17 receive, accept, and expend funds from this state, a federal  
18 agency, or other public or private source for:

19 (1) rail planning;

20 (2) studies to determine the viability of a rail  
21 facility for rail transportation service;

22 (3) studies to determine the necessity for the  
23 department's acquisition or construction of a rail facility; and

24 (4) the acquisition, construction, maintenance, or  
25 operation of a rail facility under this chapter, including the  
26 assessment and remediation of environmental contamination existing  
27 in or on a rail facility.

1           [Sections 91.037–91.050 reserved for expansion]

2                           SUBCHAPTER C. CONTRACTS

3           Sec. 91.051. AWARDING OF CONTRACTS. Unless otherwise  
4 provided by this subchapter, a contract made by the department for  
5 the construction, maintenance, or operation of a rail facility must  
6 be let by a competitive bidding procedure in which the contract is  
7 awarded to the lowest responsible bidder that complies with the  
8 department's criteria.

9           Sec. 91.052. AGREEMENTS TO CONSTRUCT, MAINTAIN, AND OPERATE  
10 RAIL FACILITIES. The department may enter into an agreement with a  
11 public entity, including a political subdivision of this state, to  
12 permit the entity, independently or jointly with the department, to  
13 acquire, construct, maintain, or operate a rail facility or system.

14           Sec. 91.053. EXCLUSIVE DEVELOPMENT AGREEMENTS. (a) The  
15 department may enter into an exclusive development agreement with a  
16 private entity to construct, maintain, or operate a rail facility  
17 or system. An exclusive development agreement may provide for:

18                   (1) the lease of rights-of-way, the granting of  
19 easements, or the issuance of franchises, concessions, licences, or  
20 permits that are necessary to enable a private entity to construct,  
21 maintain, or operate a rail facility or system; or

22                   (2) the design, construction, maintenance, and  
23 operation of a rail facility in any combination.

24           (b) The department, when contracting with a private entity  
25 under this section, shall use a competitive procurement process  
26 that provides the best value for the department, including  
27 contracting through the issuance of requests for proposals. The

1 department shall publish in the request for bids, proposals, or  
2 qualifications the criteria that will be used to evaluate the  
3 bidders and the relative weight given to the criteria. The  
4 department may accept unsolicited proposals for proposed projects  
5 provided that the department issues a request for competing  
6 proposals for those proposed projects accepted for further  
7 evaluation. The department may require that a solicited or  
8 unsolicited proposal be accompanied by a nonrefundable fee  
9 sufficient to cover the department's cost to review the proposal.

10 (c) The department has broad discretion to negotiate  
11 provisions in an exclusive development agreement with a private  
12 entity. The provisions may relate to:

13 (1) professional and consulting services to be  
14 rendered in connection with a rail facility or system; and

15 (2) the construction, maintenance, and operation of a  
16 rail facility or system, including provisions for combining those  
17 services.

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

21 (e) The department shall prescribe the form of an exclusive  
22 development agreement and may include any matter the department  
23 considers advantageous to the state.

24 (f) Section 91.051 does not apply to an agreement entered  
25 into under this section.

26 Sec. 91.054. PAYMENT FOR WORK PRODUCT. (a) The department  
27 may pay an unsuccessful private entity that submits a response to a

1 request for proposals a stipulated amount of the final contract  
2 price for costs incurred in preparing that proposal. The  
3 stipulated amount must be stated in the request for proposals and  
4 may not exceed the value of any work product contained in the  
5 proposal that can, as determined by the department, be used by the  
6 department in the performance of its functions.

7 (b) After payment of the stipulated amount, the department  
8 may make use of any work product contained in the proposal,  
9 including the work product contained in the project design.

10 Sec. 91.055. LIABILITY FOR PRIVATE OBLIGATIONS. The  
11 department may not incur a financial obligation on behalf of, or  
12 otherwise guarantee the obligations of, a private entity that  
13 constructs, maintains, or operates a rail facility or system.

14 Sec. 91.056. INFORMATION RELATED TO PROPOSALS. Until a  
15 final contract is executed with respect to a proposed project, the  
16 following information is confidential, is not subject to  
17 disclosure, inspection, or copying under Chapter 552, Government  
18 Code, and is not subject to disclosure, discovery, subpoena, or  
19 other means of legal compulsion for its release:

20 (1) all or any part of a proposal submitted by a  
21 private entity for a project under an exclusive development  
22 agreement;

23 (2) any supplemental information or materials  
24 submitted by a private entity in connection with a proposal for a  
25 project under an exclusive development agreement; and

26 (3) any information created or collected by the  
27 department or its agents during consideration of a proposal for a

1 project under an exclusive development agreement.

2 Sec. 91.057. PERFORMANCE AND PAYMENT SECURITY. (a)

3 Notwithstanding the requirements of Subchapter B, Chapter 2253,  
4 Government Code, the department shall require a private entity  
5 entering into an exclusive development agreement under Section  
6 91.053 to provide performance and payment bonds or alternative  
7 forms of security in an amount sufficient to:

8 (1) adequately protect the department and ensure the  
9 proper performance of the agreement; and

10 (2) protect payment bond beneficiaries who have a  
11 direct contractual relationship with the private entity or a  
12 subcontractor of the private entity to supply labor or material.

13 (b) The performance and payment bonds or alternative forms  
14 of security shall be in an amount equal to the cost of constructing  
15 the project unless the department determines that it is  
16 impracticable for the private entity to provide security in that  
17 amount, in which case the department shall set the amount of the  
18 bonds or the alternative forms of security. The amount of the  
19 payment security may not be less than the amount of the performance  
20 security.

21 (c) A payment and performance bond or alternative form of  
22 security is not required for the portion of an agreement that  
23 includes only design or planning services, the performance of  
24 preliminary studies, or the acquisition of real property.

25 (d) In addition to performance and payment bonds, the  
26 department may require the following alternative forms of security:

27 (1) a cashier's check drawn on a financial entity

1 specified by the department;

2 (2) United States bonds or notes;

3 (3) an irrevocable bank letter of credit; or

4 (4) any other form of security determined suitable by  
5 the department.

6 (e) The commission by rule shall prescribe requirements for  
7 alternative forms of security provided under this section.

8 Sec. 91.058. SMALL AND DISADVANTAGED BUSINESSES. (a) The  
9 department shall:

10 (1) set goals for the award of contracts to small and  
11 disadvantaged businesses and attempt to meet the goals;

12 (2) attempt to identify small and disadvantaged  
13 businesses that provide or have the potential to provide supplies,  
14 materials, equipment, or services to the department; and

15 (3) give small and disadvantaged businesses full  
16 access to the department's contract bidding process and other  
17 contracting processes, inform the businesses about those  
18 processes, offer the businesses assistance concerning those  
19 processes, and identify barriers to the businesses' participation  
20 in those processes.

21 (b) This section does not exempt the department from  
22 competitive bidding requirements imposed by other law.

23 [Sections 91.059–91.070 reserved for expansion]

24 SUBCHAPTER D. FINANCING OF RAIL FACILITIES

25 Sec. 91.071. PERMISSIBLE SOURCES OF FUNDING. The  
26 department may use any legally permissible source of funding in  
27 acquiring, constructing, maintaining, and operating a rail

1 facility or system, including:

2 (1) appropriations from the state highway fund that  
3 are not dedicated under Section 7-a, Article VIII, Texas  
4 Constitution;

5 (2) proceeds from bonds secured by the Texas Mobility  
6 Fund;

7 (3) donations, whether in kind or in cash; and

8 (4) loans from the state infrastructure bank.

9 Sec. 91.072. REVENUE BONDS. (a) The commission may  
10 authorize the issuance of bonds to:

11 (1) pay all or part of the cost of acquiring,  
12 constructing, maintaining, or operating a rail facility or system;  
13 or

14 (2) refund any bonds previously issued for the  
15 facility or system.

16 (b) Chapters 1201, 1202, 1204, 1207, and 1371, Government  
17 Code, apply to bonds issued by the commission. To the extent there  
18 is a conflict between those laws and this chapter, the provisions of  
19 this chapter prevail.

20 Sec. 91.073. PAYMENT OF BONDS. The principal of, interest  
21 on, and any redemption premium on bonds issued by the commission  
22 under this chapter are payable solely from:

23 (1) the revenue of the rail facility or system for  
24 which the bonds are issued, including revenue pledged to pay the  
25 bonds;

26 (2) money received under Section 91.075;

27 (3) money derived from any other source available to

1 the department under this chapter, other than money derived from a  
2 rail facility that is not part of the same system, except that  
3 surplus revenue derived from one rail facility or system may be used  
4 for another; and

5 (4) amounts received under a credit agreement relating  
6 to the rail facility or system for which the bonds are issued.

7 Sec. 91.074. STATE CREDIT NOT PLEDGED. (a) Bonds issued  
8 under this chapter do not constitute a debt of the state or a pledge  
9 of the faith and credit of the state. Each bond must contain on its  
10 face a statement to the effect that the state is not obligated to  
11 pay the bond or the interest on the bond from a source other than the  
12 amount pledged to pay the bond and the interest on the bond, and  
13 neither the faith and credit nor taxing power of the state is  
14 pledged to the payment of the principal of or interest on the bond.

15 (b) The commission and the department may not incur  
16 financial obligations under this chapter that cannot be paid from  
17 revenue derived from owning or operating the department's rail  
18 facilities and systems and from other revenue provided by law.

19 Sec. 91.075. GRANTS AND LOANS. The department may apply  
20 for, accept, and expend money from grants, loans, or reimbursements  
21 for any purpose of this chapter, including paying for the cost of  
22 the acquisition, construction, maintenance, and operation of a rail  
23 facility or system.

24 Sec. 91.076. REVENUE. (a) The department may require a  
25 person, including any public or private entity, to pay a fee as a  
26 condition of using any part of a rail facility or system.

27 (b) The department shall establish and maintain rents or



1 other compensation for the use of rail facilities or systems in an  
2 amount that is, together with other revenue of the department  
3 received under this chapter, sufficient to enable the department to  
4 comply with the requirements of Section 91.073.

5 (c) The department may contract with a person for the use of  
6 all or part of a rail facility or system or may lease or sell all or  
7 part of a rail facility or system, including all or any part of the  
8 right-of-way adjoining trackwork, for any purpose, including  
9 placing on the adjoining right-of-way a storage or transfer  
10 facility, warehouse, garage, parking facility, telecommunication  
11 line or facility, restaurant, or gas station.

12 (d) All revenue received by the department under this  
13 chapter:

14 (1) shall be deposited to the credit of the state  
15 highway fund and may be used for any purpose authorized by this  
16 chapter; and

17 (2) is exempt from the application of Section 403.095,  
18 Government Code.

19 [Sections 91.077-91.090 reserved for expansion]

20 SUBCHAPTER E. ACQUISITION AND DISPOSAL OF PROPERTY

21 Sec. 91.091. ACQUISITION OF REAL PROPERTY. (a) The  
22 commission may authorize the department to acquire in the name of  
23 the state a right-of-way, a property right, or other interest in  
24 real property determined to be necessary or convenient for the  
25 department's acquisition, construction, maintenance, or operation  
26 of rail facilities.

27 (b) The commission may authorize the department to acquire

1 property by any method, including purchase and condemnation.  
2 Property may be purchased under any terms determined by the  
3 department to be in the best interest of the state.

4 (c) Property may be purchased along alternative potential  
5 routes for a rail facility even if only one of those potential  
6 routes will ultimately be chosen as the final route.

7 Sec. 91.092. PROPERTY NECESSARY OR CONVENIENT FOR RAIL  
8 FACILITIES. Property necessary or convenient for the department's  
9 acquisition, construction, maintenance, or operation of rail  
10 facilities includes an interest in real property or a property  
11 right the commission determines is necessary or convenient to  
12 provide:

13 (1) right-of-way for a location for:

14 (A) a rail facility; or

15 (B) the future expansion of a rail facility;

16 (2) land for mitigation of adverse environmental  
17 effects;

18 (3) buffer zones for scenic or safety purposes; and

19 (4) revenue for use in acquiring, constructing,  
20 maintaining, or operating a rail facility or system, including  
21 revenue received under a contract described by Section 91.076(c).

22 Sec. 91.093. RIGHT OF ENTRY. (a) To acquire property  
23 necessary or convenient for a rail facility, the department may  
24 enter any premises or real property, including a body of water, to  
25 make a survey, geotechnical evaluation, sounding, or examination.

26 (b) An entry under Subsection (a) is not:

27 (1) a trespass; or

1           (2) an entry under a pending condemnation procedure.

2           (c) The department shall make reimbursements for actual  
3 damages that result from an entry under Subsection (a).

4           Sec. 91.094. CONVEYANCE OF PROPERTY BELONGING TO POLITICAL  
5 SUBDIVISION OR PUBLIC AGENCY. The governing body of a  
6 municipality, county, political subdivision, or public agency may,  
7 without advertisement, convey the title to or a right in property  
8 determined to be necessary or convenient by the department under  
9 this subchapter.

10           Sec. 91.095. DISPOSAL OF PROPERTY. The department may  
11 sell, convey, or otherwise dispose of any rights or other interests  
12 in real property acquired under this subchapter that the commission  
13 determines are no longer needed for department purposes.

14           [Sections 91.096–91.100 reserved for expansion]

15           SUBCHAPTER F. OPERATION AND USE OF RAIL FACILITIES

16           Sec. 91.101. CONTRACTS FOR RAIL TRANSPORTATION  
17 SERVICES. The department may contract with a county or other  
18 political subdivision of the state for the department to provide  
19 rail transportation services on terms agreed to by the parties.

20           Sec. 91.102. CONTRACTS WITH RAIL OPERATORS. (a) The  
21 department may lease all or part of a rail facility or system to a  
22 rail operator. The department may contract with a rail operator for  
23 the use or operation of all or part of a rail facility or system.

24           (b) The department shall encourage to the maximum extent  
25 practical the participation of private enterprise in the operation  
26 of rail facilities and systems.

27           (c) A lease agreement shall provide for the department's

1 monitoring of a rail operator's service and performance.

2 (d) The department may enter into an agreement with a rail  
3 operator to sell all or any part of state-owned rail facilities on  
4 terms the department considers to be in the best interest of the  
5 state.

6 Sec. 91.103. JOINT USE OF RAIL FACILITIES. The department  
7 may:

8 (1) enter into an agreement with a rail operator,  
9 public utility, private utility, communication system, common  
10 carrier, or transportation system for the common use of its  
11 facilities, installations, or properties; and

12 (2) establish through routes, joint fares, and,  
13 subject to approval of a tariff-regulating body having  
14 jurisdiction, divisions of tariffs.

15 Sec. 91.104. ROUTINGS. The department may determine  
16 routings for rail facilities acquired, constructed, or operated by  
17 the department under this chapter.

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

26 (b) On receipt of notice under Subsection (a), the  
27 department may designate the location in the right-of-way where the

1 utility may place its facilities, lines, or equipment.

2 (c) The department may require a utility to relocate the  
3 utility's facilities, lines, or equipment, at the utility's  
4 expense, to allow for the expansion or relocation of rail  
5 facilities owned by the state. The department shall pay for the  
6 cost of the relocation if the utility acquired an easement or a  
7 leasehold interest in the real property occupied by the facility to  
8 be relocated before the department acquired the right-of-way under  
9 this chapter.

10 (d) A utility may use and operate a facility required to be  
11 relocated under this section at the new location for the same period  
12 and on the same terms as the utility had the right to do at the  
13 previous location of the facility.

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

17 SECTION 4. This Act takes effect immediately if it receives  
18 a vote of two-thirds of all the members elected to each house, as  
19 provided by Section 39, Article III, Texas Constitution. If this  
20 Act does not receive the vote necessary for immediate effect, this  
21 Act takes effect September 1, 2003.