

1-1 By: Shapleigh S.B. No. 1025  
1-2 (In the Senate - Filed February 28, 2007; March 14, 2007,  
1-3 read first time and referred to Committee on Transportation and  
1-4 Homeland Security; March 27, 2007, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 8,  
1-6 Nays 0; March 27, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1025 By: Shapleigh

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the powers and duties of the Texas Department of  
1-11 Transportation related to rail facilities.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (a), Section 91.004, Transportation  
1-14 Code, is amended to read as follows:

1-15 (a) The department may:

1-16 (1) plan and make policies for the location,  
1-17 construction, maintenance, and operation of ~~[a]~~ rail facilities  
1-18 ~~[facility]~~ or systems ~~[system]~~ in this state;

1-19 (2) acquire, finance, construct, reconstruct,  
1-20 relocate, maintain, and subject to Section 91.005, operate publicly  
1-21 or privately owned ~~[a]~~ passenger or freight rail facilities  
1-22 ~~[facility]~~, individually or as one or more systems;

1-23 (3) for the purpose of acquiring or financing a rail  
1-24 facility or system, accept a grant or loan from a:

1-25 (A) department or agency of the United States;

1-26 (B) department, agency, or political subdivision  
1-27 of this state; or

1-28 (C) public or private person;

1-29 (4) contract with a public or private person to  
1-30 finance, construct, maintain, or operate a rail facility under this  
1-31 chapter; or

1-32 (5) perform any act necessary to the full exercise of  
1-33 the department's powers under this chapter.

1-34 SECTION 2. Section 91.005, Transportation Code, is amended  
1-35 to read as follows:

1-36 Sec. 91.005. RELIANCE ON PRIVATE ENTITIES. The department  
1-37 shall contract with a private entity to operate a railroad under  
1-38 this chapter ~~[using facilities owned by the department]~~ and may not  
1-39 use department employees to operate a railroad. The department may  
1-40 maintain a railroad facility directly or through a private entity.  
1-41 The department may not own rolling stock.

1-42 SECTION 3. Subchapter B, Chapter 91, Transportation Code,  
1-43 is amended by adding Section 91.038 to read as follows:

1-44 Sec. 91.038. PRIVATELY OWNED RAIL FACILITIES. (a) The  
1-45 department may relocate, construct, reconstruct, maintain, or  
1-46 operate a privately owned rail facility only if the commission  
1-47 first determines that the acquisition or other action will be in the  
1-48 best interests of this state in improving the mobility of the  
1-49 residents of this state and will:

1-50 (1) relieve congestion on public highways;

1-51 (2) enhance public safety;

1-52 (3) improve air quality; or

1-53 (4) expand economic opportunity.

1-54 (b) An agreement entered into by the department with a  
1-55 private owner for the transfer of a rail facility must contain  
1-56 provisions necessary to ensure compliance with each requirement of  
1-57 Subsection (a).

1-58 SECTION 4. Section 91.071, Transportation Code, is amended  
1-59 to read as follows:

1-60 Sec. 91.071. FUNDING. (a) Except as provided in  
1-61 Subsection (b), the department may use any available funds to  
1-62 implement this chapter, including:

1-63 (1) funds from the state infrastructure bank; or

(2) surplus revenue of a toll project, as defined in Section 201.001.

(b) The department may not spend money from the general revenue fund to implement this chapter except:

- (1) pursuant to a line-item appropriation;
- (2) money awarded from the Texas Enterprise Fund under Section 481.078, Government Code; or
- (3) money appropriated to the Texas rail relocation and improvement fund.

SECTION 5. Subsections (a) and (c), Section 91.072, Transportation Code, are amended to read as follows:

(a) The commission and the department have the same powers and duties relating to the financing of a rail facility or a system established under Section 91.031 as the commission and the department have under Subchapter C ~~[E]~~, Chapter 228 ~~[361]~~, relating to the financing of a toll ~~[turnpike]~~ project, including the ability to deposit the proceeds of bonds or other obligations and to pledge, encumber, and expend such proceeds and revenues as provided in Chapter 228 ~~[361]~~.

(c) For purposes of this section, a reference in Subchapter C ~~[E]~~, Chapter 228 ~~[361]~~ to:

(1) a toll ~~[turnpike]~~ project means a rail facility or system; and

(2) revenue includes a fee, rent, or other usage charge established under this chapter or other money received under Sections 91.073 and 91.074.

SECTION 6. Subsection (a), Section 91.091, Transportation Code, is amended to read as follows:

(a) Subject to Section 91.096, the ~~[The]~~ commission may authorize the department to acquire ~~[in the name of the state]~~ a right-of-way, a property right, or other interest in real property determined to be necessary or convenient for the department's acquisition, construction, maintenance, or operation of rail facilities. An interest in property acquired for a rail facility owned or to be owned by the department shall be acquired in the name of the state.

SECTION 7. Section 91.095, Transportation Code, is amended to read as follows:

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

SECTION 8. Subchapter E, Chapter 91, Transportation Code, is amended by adding Section 91.096 to read as follows:

Sec. 91.096. ACQUISITION OF PROPERTY FOR PRIVATELY OWNED RAIL FACILITIES. The department may only acquire an interest in real property for a privately owned rail facility if the commission makes the determination required by Section 91.038.

SECTION 9. Subsection (d), Section 201.973, Transportation Code, is amended to read as follows:

(d) Obligations may be issued for one or more of the following purposes:

(1) to pay all or part of the costs of relocating, constructing, reconstructing, acquiring, improving, rehabilitating, or expanding rail facilities owned or to be owned by the department, including any necessary design, in the manner and locations determined by the commission that according to conclusive findings of the commission have an expected useful life, without material repair, of not less than 10 years;

(2) to provide participation by the state in the financing or payment of all or part of the costs of relocating, constructing, reconstructing, acquiring, improving, rehabilitating, or expanding publicly or privately owned rail facilities, including any necessary design, if the commission determines that the project will be in the best interests of the state in its major goal of improving the mobility of the residents of the state and will:

(A) relieve congestion on public highways;

(B) enhance public safety;  
 (C) improve air quality; or  
 (D) expand economic opportunity;  
 (3) to provide loans under Section 201.9731;  
 (4) to create debt service reserve accounts;  
 (5) ~~[(4)]~~ to pay interest on obligations for a period  
 of not longer than two years;  
 (6) ~~[(5)]~~ to refund or cancel outstanding  
 obligations; and  
 (7) ~~[(6)]~~ to pay the commission's costs of issuance.

SECTION 10. Subchapter O, Chapter 201, Transportation Code, is amended by adding Section 201.9731 to read as follows:

Sec. 201.9731. LOAN PROGRAM. (a) In addition to any other purpose authorized by this chapter, money in the fund may be used to provide loans to eligible applicants for the purposes described by Section 201.973(d) if the applicant's project meets the requirements of that section.

(b) The department shall administer the loan program and has all powers necessary and convenient to implement this section and may:

(1) establish standards and schedules for railroad infrastructure improvement projects;

(2) establish the specifications and provisions of a loan that is made to an eligible applicant;

(3) establish in any loan agreement the level and period of rail service to be provided by the railroad;

(4) negotiate and establish in any loan agreement the financial participation required of an eligible applicant; and

(5) provide technical assistance to an eligible applicant.

(c) The department shall allocate loans made under this section on bases that protect the public interest. A loan may cover all of a project's cost. Costs eligible for a loan do not include overhead costs or other indirect costs.

(d) The department shall adopt rules to implement the loan program.

SECTION 11. Subdivision (6), Section 228.001, Transportation Code, is amended to read as follows:

(6) "Transportation project" means:

(A) a tolled or nontolled state highway improvement project;

(B) a toll project eligible for department cost participation under Section 222.103;

(C) the acquisition, construction, reconstruction, relocation, maintenance, or operation of a rail facility or system under Chapter 91;

(D) the acquisition, construction, maintenance, or operation of a state-owned ferry under Subchapter A, Chapter 342;

(E) a public transportation project under Chapter 455 or 456;

(F) the establishment, construction, or repair of an aviation facility under Chapter 21; and

(G) a passenger rail project of another governmental entity.

SECTION 12. Section 455.005, Transportation Code, is amended to read as follows:

Sec. 455.005. RAIL FIXED GUIDEWAY ~~[MASS TRANSPORTATION]~~ SYSTEM SAFETY OVERSIGHT. (a) The department shall:

(1) oversee safety and security practices of rail fixed guideway ~~[mass transportation]~~ systems in compliance with 49 U.S.C. Section 5330; and

(2) establish a ~~[safety]~~ program standard to be used to provide rail transit agency safety and security oversight ~~[for each entity operating a rail fixed guideway mass transportation system within the state that provides:~~

~~[(A) safety requirements that:~~

~~[(i) at a minimum comply with the American Public Transit Association's guidelines published in the "Manual~~

~~for the Development of Rail Transit System Safety Program Plans",~~  
~~and~~

~~[(ii) include standards for the personal~~  
~~security of passengers and employees of rail fixed guideway~~  
~~systems;~~

~~[(B) lines of authority;~~

~~[(C) levels of responsibility and~~  
~~accountability; and~~

~~[(D) methods of documentation for the system;~~

~~[(3) at least every three years conduct an on-site~~  
~~safety review of each entity's system safety program plan and~~  
~~prepare and issue a report containing findings and recommendations~~  
~~resulting from that review that, at a minimum, include an analysis~~  
~~of the efficacy of the system safety program plan and a~~  
~~determination of whether it should be updated;~~

~~[(4) review and approve the annual internal safety~~  
~~audit conducted by an entity that operates a system;~~

~~[(5) establish procedures for the investigation of~~  
~~accidents and unacceptable hazardous conditions;~~

~~[(6) investigate accidents and unacceptable hazardous~~  
~~conditions at entities operating systems unless the National~~  
~~Transportation Safety Board has investigated or will investigate an~~  
~~accident;~~

~~[(7) require, review, and approve any plan of an~~  
~~entity operating a system to minimize, control, correct, or~~  
~~eliminate any investigated accident or hazard; and~~

~~[(8) submit reports or other information required by~~  
~~the United States Department of Transportation].~~

(b) The department may use a contractor to act on its behalf  
in carrying out the duties of the department under this section.

(c) The data collected under this section and the report of  
any investigation conducted by the department or a contractor  
acting on behalf of the department under this section:

(1) are ~~[is]~~ confidential and not subject to  
disclosure, inspection, or copying under Chapter 552, Government  
Code; and ~~[but]~~

(2) may not be admitted in evidence or used for any  
purpose in any action or proceeding arising out of any matter  
referred to in an investigation except in an action or a proceeding  
instituted by the state.

(d) Each rail transit agency ~~[entity operating a system]~~  
shall:

(1) develop and implement a system safety program plan  
and a security plan that comply ~~[complies]~~ with the department's  
~~[safety]~~ program plan standards and federal requirements;

(2) conduct an annual review of its system ~~[internal]~~  
safety program plan and security plan ~~[audit]~~ and submit the audit  
report to the department;

(3) report accidents, hazards, and hazard resolution  
activities ~~[unacceptable hazardous conditions]~~ to the department  
in accordance with the department's requirements ~~[writing or by~~  
~~electronic means acceptable to the department]; and~~

(4) ~~[minimize, control, correct, or eliminate any~~  
~~investigated unacceptable hazardous condition as required by the~~  
~~department; and~~

~~[(5)]~~ provide all necessary assistance to allow the  
department to conduct appropriate on-site investigations of  
accidents and hazards ~~[unacceptable hazardous conditions]~~.

(e) A ~~[Any part of a]~~ system security ~~[safety program]~~ plan  
~~[that concerns security for the system]~~:

(1) is confidential and not subject to disclosure,  
inspection, or copying under Chapter 552, Government Code; and

(2) may not be admitted in evidence or used for any  
purpose in any action or proceeding arising out of any matter  
referred to in an investigation except in an action or a proceeding  
instituted by the state.

(f) The commission shall adopt rules to implement this  
section.

(g) Notwithstanding any other provision of law to the

contrary, the commission, the department, or an officer, employee, or agent of the commission or department is not liable for any act or omission in the implementation of this section.

(h) In this section:

(1) "Hazard" means any real or potential condition, as defined in a rail transit agency's hazard management plan, that can cause:

(A) injury, illness, or death;

(B) damage to or loss of a system, equipment, or property; or

(C) damage to the environment.

(2) "Rail fixed guideway system" means any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway that is subject to 49 U.S.C. Section 5330.

(3) "Rail transit agency" means an entity that operates a rail fixed guideway system

~~[(1) "Accident" means:~~

~~[(A) any event involving the revenue service operation of a rail fixed guideway system as a result of which an individual:~~

~~[(i) dies, or~~

~~[(ii) suffers bodily injury and immediately receives medical treatment away from the scene of the event, or~~

~~[(B) a collision, derailment, or fire that causes property damage in excess of \$100,000.~~

~~[(2) "Commission" means the Texas Transportation Commission.~~

~~[(3) "Department" means the Texas Department of Transportation.~~

~~[(4) "Hazardous condition" means a condition that may endanger human life or property, including an unacceptable hazardous condition.~~

~~[(5) "Investigation" means a process to determine the probable cause of an accident or an unacceptable hazardous condition. The term includes a review and approval of the transit agency's determination of the probable cause of an accident or unacceptable hazardous condition.~~

~~[(6) "Rail fixed guideway mass transportation system" or "system" means any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway used for mass transportation that is included in the United States government's computation of fixed guideway route miles or receives funding for urbanized areas under 49 U.S.C. Section 5336 and is not regulated by the United States government.~~

~~[(7) "Safety" means freedom from danger.~~

~~[(8) "Security" means freedom from intentional danger.~~

~~[(9) "Unacceptable hazardous condition" means a hazardous condition determined to be unacceptable using the American Public Transit Association's guidelines' hazard resolution matrix].~~

SECTION 13. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

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