

By: Shapleigh

S.B. No. 612

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the powers and duties of the Texas Department of  
3 Transportation related to rail facilities.

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

5 SECTION 1. Section 91.004(a), Transportation Code, is  
6 amended to read as follows:

7 (a) The department may:

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

11 (2) acquire, finance, construct, reconstruct,  
12 relocate, maintain, and subject to Section 91.005, operate publicly  
13 or privately owned [~~a~~] passenger or freight rail facilities  
14 [~~facility~~], individually or as one or more systems;

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

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

18 (B) department, agency, or political subdivision  
19 of this state; or

20 (C) public or private person;

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

24 (5) perform any act necessary to the full exercise of

1 the department's powers under this chapter.

2 SECTION 2. Section 91.005, Transportation Code, is amended  
3 to read as follows:

4 Sec. 91.005. RELIANCE ON PRIVATE ENTITIES. The department  
5 shall contract with a private entity to operate a railroad under  
6 this chapter [~~using facilities owned by the department~~] and may not  
7 use department employees to operate a railroad. The department may  
8 maintain a railroad facility directly or through a private entity.  
9 The department may not own rolling stock.

10 SECTION 3. Subchapter B, Chapter 91, Transportation Code,  
11 is amended by adding Section 91.038 to read as follows:

12 Sec. 91.038. PRIVATELY OWNED RAIL FACILITIES. (a) The  
13 department may relocate, construct, reconstruct, maintain, or  
14 operate a privately owned rail facility only if the commission  
15 first determines that the acquisition or other action will be in the  
16 best interests of this state in improving the mobility of the  
17 residents of this state and will:

18 (1) relieve congestion on public highways;

19 (2) enhance public safety;

20 (3) improve air quality; or

21 (4) expand economic opportunity.

22 (b) An agreement entered into by the department with a  
23 private owner for the transfer of a rail facility must contain  
24 provisions necessary to ensure compliance with each requirement of  
25 Subsection (a).

26 SECTION 4. Section 91.071, Transportation Code, is amended  
27 to read as follows:

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

- 4                 (1) funds from the state infrastructure bank; or  
5                 (2) surplus revenue of a toll project, as defined by  
6 Section 201.001.

7           (b) The [~~Except for money received from the Texas economic~~  
8 ~~development bank fund under Section 489.102, Government Code,~~  
9 ~~the~~] department may not spend money from the general revenue fund  
10 to implement this chapter except:

- 11                 (1) money appropriated pursuant to a line-item  
12 appropriation;  
13                 (2) money received from the Texas economic development  
14 bank under Section 489.102, Government Code;  
15                 (3) money awarded from the Texas Enterprise Fund under  
16 Section 481.078, Government Code; or  
17                 (4) money appropriated to the Texas rail relocation  
18 and improvement fund.

19           SECTION 5. Sections 91.072(a) and (c), Transportation Code,  
20 are amended to read as follows:

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

1 in Chapter 228 [~~361~~].

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

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

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

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

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

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

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

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

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

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

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

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

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

24            (A) relieve congestion on public highways;

25            (B) enhance public safety;

26            (C) improve air quality; or

27            (D) expand economic opportunity;

- 1           (3) to provide loans under Section 201.9731;
- 2           (4) to create debt service reserve accounts;
- 3           (5) [~~4~~] to pay interest on obligations for a period
- 4 of not longer than two years;
- 5           (6) [~~5~~] to refund or cancel outstanding
- 6 obligations; and
- 7           (7) [~~6~~] to pay the commission's costs of issuance.

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

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

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

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

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

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

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

26                   (5) provide technical assistance to an eligible  
27 applicant.

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

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

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

9            (6) "Transportation project" means:

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

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

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

17            (D) the acquisition, construction, maintenance,  
18 or operation of a state-owned ferry under Subchapter A, Chapter  
19 342;

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

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

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

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

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

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

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

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

11                                 [~~(i) at a minimum comply with the American~~  
12 ~~Public Transit Association's guidelines published in the "Manual~~  
13 ~~for the Development of Rail Transit System Safety Program Plans"~~,  
14 ~~and~~

15                                 [~~(ii) include standards for the personal~~  
16 ~~security of passengers and employees of rail fixed guideway~~  
17 ~~systems,~~

18                                 [~~(B) lines of authority,~~

19                                 [~~(C) levels of responsibility and~~  
20 ~~accountability,~~ and

21                                 [~~(D) methods of documentation for the system,~~

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27           (g) Notwithstanding any other provision of law to the

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

4 (h) In this section:

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

8 (A) injury, illness, or death;

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

11 (C) damage to the environment.

12 (2) "Rail fixed guideway system" means any light,  
13 heavy, or rapid rail system, monorail, inclined plane, funicular,  
14 trolley, or automated guideway that is subject to 49 U.S.C. Section  
15 5330.

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

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

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

22 [~~(i) dies, or~~

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

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

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

1 ~~Commission.~~

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

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

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

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

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

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

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

26           SECTION 13. This Act takes effect immediately if it  
27 receives a vote of two-thirds of all the members elected to each

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1 house, as provided by Section 39, Article III, Texas Constitution.  
2 If this Act does not receive the vote necessary for immediate  
3 effect, this Act takes effect September 1, 2009.