

1-1 By: Shapleigh S.B. No. 612  
1-2 (In the Senate - Filed February 2, 2009; February 23, 2009,  
1-3 read first time and referred to Committee on Transportation and  
1-4 Homeland Security; April 8, 2009, reported favorably by the  
1-5 following vote: Yeas 9, Nays 0; April 8, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the powers and duties of the Texas Department of  
1-9 Transportation related to rail facilities.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subsection (a), Section 91.004, Transportation  
1-12 Code, is amended to read as follows:

1-13 (a) The department may:

1-14 (1) plan and make policies for the location,  
1-15 construction, maintenance, and operation of [~~a~~] rail facilities  
1-16 [~~facility~~] or systems [~~system~~] in this state;

1-17 (2) acquire, finance, construct, reconstruct,  
1-18 relocate, maintain, and subject to Section 91.005, operate publicly  
1-19 or privately owned [~~a~~] passenger or freight rail facilities  
1-20 [~~facility~~], individually or as one or more systems;

1-21 (3) for the purpose of acquiring or financing a rail  
1-22 facility or system, accept a grant or loan from a:

1-23 (A) department or agency of the United States;

1-24 (B) department, agency, or political subdivision  
1-25 of this state; or

1-26 (C) public or private person;

1-27 (4) contract with a public or private person to  
1-28 finance, construct, maintain, or operate a rail facility under this  
1-29 chapter; or

1-30 (5) perform any act necessary to the full exercise of  
1-31 the department's powers under this chapter.

1-32 SECTION 2. Section 91.005, Transportation Code, is amended  
1-33 to read as follows:

1-34 Sec. 91.005. RELIANCE ON PRIVATE ENTITIES. The department  
1-35 shall contract with a private entity to operate a railroad under  
1-36 this chapter [~~using facilities owned by the department~~] and may not  
1-37 use department employees to operate a railroad. The department may  
1-38 maintain a railroad facility directly or through a private entity.  
1-39 The department may not own rolling stock.

1-40 SECTION 3. Subchapter B, Chapter 91, Transportation Code,  
1-41 is amended by adding Section 91.038 to read as follows:

1-42 Sec. 91.038. PRIVATELY OWNED RAIL FACILITIES. (a) The  
1-43 department may relocate, construct, reconstruct, maintain, or  
1-44 operate a privately owned rail facility only if the commission  
1-45 first determines that the acquisition or other action will be in the  
1-46 best interests of this state in improving the mobility of the  
1-47 residents of this state and will:

1-48 (1) relieve congestion on public highways;

1-49 (2) enhance public safety;

1-50 (3) improve air quality; or

1-51 (4) expand economic opportunity.

1-52 (b) An agreement entered into by the department with a  
1-53 private owner for the transfer of a rail facility must contain  
1-54 provisions necessary to ensure compliance with each requirement of  
1-55 Subsection (a).

1-56 SECTION 4. Section 91.071, Transportation Code, is amended  
1-57 to read as follows:

1-58 Sec. 91.071. FUNDING. (a) Except as provided in  
1-59 Subsection (b), the department may use any available funds to  
1-60 implement this chapter, including:

1-61 (1) funds from the state infrastructure bank; or

1-62 (2) surplus revenue of a toll project, as defined by  
1-63 Section 201.001.

1-64 (b) The [~~Except for money received from the Texas economic~~

2-1 ~~development bank fund under Section 489.102, Government Code, the]~~  
2-2 department may not spend money from the general revenue fund to  
2-3 implement this chapter except:

2-4 (1) money appropriated pursuant to a line-item  
2-5 appropriation;

2-6 (2) money received from the Texas Economic Development  
2-7 Bank under Section 489.102, Government Code;

2-8 (3) money awarded from the Texas Enterprise Fund under  
2-9 Section 481.078, Government Code; or

2-10 (4) money appropriated to the Texas rail relocation  
2-11 and improvement fund.

2-12 SECTION 5. Subsections (a) and (c), Section 91.072,  
2-13 Transportation Code, are amended to read as follows:

2-14 (a) The commission and the department have the same powers  
2-15 and duties relating to the financing of a rail facility or a system  
2-16 established under Section 91.031 as the commission and the  
2-17 department have under Subchapter C [~~E~~], Chapter 228 [~~361~~], relating  
2-18 to the financing of a toll [~~turnpike~~] project, including the  
2-19 ability to deposit the proceeds of bonds or other obligations and to  
2-20 pledge, encumber, and expend such proceeds and revenues as provided  
2-21 in Chapter 228 [~~361~~].

2-22 (c) For purposes of this section, a reference in Subchapter  
2-23 C [~~E~~], Chapter 228 [~~361~~] to:

2-24 (1) a toll [~~turnpike~~] project means a rail facility or  
2-25 system; and

2-26 (2) revenue includes a fee, rent, or other usage  
2-27 charge established under this chapter or other money received under  
2-28 Sections 91.073 and 91.074.

2-29 SECTION 6. Subsection (a), Section 91.091, Transportation  
2-30 Code, is amended to read as follows:

2-31 (a) Subject to Section 91.096, the [~~The~~] commission may  
2-32 authorize the department to acquire [~~in the name of the state~~] a  
2-33 right-of-way, a property right, or other interest in real property  
2-34 determined to be necessary or convenient for the department's  
2-35 acquisition, construction, maintenance, or operation of rail  
2-36 facilities. An interest in property acquired for a rail facility  
2-37 owned or to be owned by the department shall be acquired in the name  
2-38 of the state.

2-39 SECTION 7. Section 91.095, Transportation Code, is amended  
2-40 to read as follows:

2-41 Sec. 91.095. DISPOSAL OF PROPERTY. The department may  
2-42 sell, convey, or otherwise dispose of any rights or other interests  
2-43 in real property acquired in the name of the state under this  
2-44 subchapter that the commission determines are no longer needed for  
2-45 department purposes.

2-46 SECTION 8. Subchapter E, Chapter 91, Transportation Code,  
2-47 is amended by adding Section 91.096 to read as follows:

2-48 Sec. 91.096. ACQUISITION OF PROPERTY FOR PRIVATELY OWNED  
2-49 RAIL FACILITIES. The department may acquire an interest in real  
2-50 property for a privately owned rail facility only if the commission  
2-51 makes the determination required by Section 91.038.

2-52 SECTION 9. Subsection (d), Section 201.973, Transportation  
2-53 Code, is amended to read as follows:

2-54 (d) Obligations may be issued for one or more of the  
2-55 following purposes:

2-56 (1) to pay all or part of the costs of relocating,  
2-57 constructing, reconstructing, acquiring, improving,  
2-58 rehabilitating, or expanding rail facilities owned or to be owned  
2-59 by the department, including any necessary design, in the manner  
2-60 and locations determined by the commission that according to  
2-61 conclusive findings of the commission have an expected useful life,  
2-62 without material repair, of not less than 10 years;

2-63 (2) to provide participation by the state in the  
2-64 financing or payment of all or part of the costs of relocating,  
2-65 constructing, reconstructing, acquiring, improving,  
2-66 rehabilitating, or expanding publicly or privately owned rail  
2-67 facilities, including any necessary design, if the commission  
2-68 determines that the project will be in the best interests of the  
2-69 state in its major goal of improving the mobility of the residents

3-1 of the state and will:  
 3-2 (A) relieve congestion on public highways;  
 3-3 (B) enhance public safety;  
 3-4 (C) improve air quality; or  
 3-5 (D) expand economic opportunity;  
 3-6 (3) to provide loans under Section 201.9731;  
 3-7 (4) to create debt service reserve accounts;  
 3-8 (5) ~~[(4)]~~ to pay interest on obligations for a period  
 3-9 of not longer than two years;  
 3-10 (6) ~~[(5)]~~ to refund or cancel outstanding  
 3-11 obligations; and  
 3-12 (7) ~~[(6)]~~ to pay the commission's costs of issuance.

3-13 SECTION 10. Subchapter O, Chapter 201, Transportation Code,  
 3-14 is amended by adding Section 201.9731 to read as follows:

3-15 Sec. 201.9731. LOAN PROGRAM. (a) In addition to any other  
 3-16 purpose authorized by this chapter, money in the fund may be used to  
 3-17 provide loans to eligible applicants for the purposes described by  
 3-18 Section 201.973(d) if the applicant's project meets the  
 3-19 requirements of that section.

3-20 (b) The department shall administer the loan program and has  
 3-21 all powers necessary and convenient to implement this section and  
 3-22 may:

3-23 (1) establish standards and schedules for railroad  
 3-24 infrastructure improvement projects;

3-25 (2) establish the specifications and provisions of a  
 3-26 loan that is made to an eligible applicant;

3-27 (3) establish in any loan agreement the level and  
 3-28 period of rail service to be provided by the railroad;

3-29 (4) negotiate and establish in any loan agreement the  
 3-30 financial participation required of an eligible applicant; and

3-31 (5) provide technical assistance to an eligible  
 3-32 applicant.

3-33 (c) The department shall allocate loans made under this  
 3-34 section on bases that protect the public interest. A loan may cover  
 3-35 all of a project's cost. Costs eligible for a loan do not include  
 3-36 overhead costs or other indirect costs.

3-37 (d) The department shall adopt rules to implement the loan  
 3-38 program.

3-39 SECTION 11. Subdivision (6), Section 228.001,  
 3-40 Transportation Code, is amended to read as follows:

3-41 (6) "Transportation project" means:

3-42 (A) a tolled or nontolled state highway  
 3-43 improvement project;

3-44 (B) a toll project eligible for department cost  
 3-45 participation under Section 222.103;

3-46 (C) the acquisition, construction,  
 3-47 reconstruction, relocation, maintenance, or operation of a rail  
 3-48 facility or system under Chapter 91;

3-49 (D) the acquisition, construction, maintenance,  
 3-50 or operation of a state-owned ferry under Subchapter A, Chapter  
 3-51 342;

3-52 (E) a public transportation project under  
 3-53 Chapter 455 or 456;

3-54 (F) the establishment, construction, or repair  
 3-55 of an aviation facility under Chapter 21; and

3-56 (G) a passenger rail project of another  
 3-57 governmental entity.

3-58 SECTION 12. Section 455.005, Transportation Code, is  
 3-59 amended to read as follows:

3-60 Sec. 455.005. RAIL FIXED GUIDEWAY [~~MASS TRANSPORTATION~~]  
 3-61 SYSTEM SAFETY OVERSIGHT. (a) The department shall:

3-62 (1) oversee safety and security practices of rail  
 3-63 fixed guideway [~~mass transportation~~] systems in compliance with 49  
 3-64 U.S.C. Section 5330; and

3-65 (2) establish a [~~safety~~] program standard to be used  
 3-66 to provide rail transit agency safety and security oversight [~~for~~  
 3-67 each entity operating a rail fixed guideway mass transportation  
 3-68 system within the state that provides:

3-69 [~~(A) safety requirements that:~~

4-1 ~~[(i) at a minimum comply with the American~~  
 4-2 ~~Public Transit Association's guidelines published in the "Manual~~  
 4-3 ~~for the Development of Rail Transit System Safety Program Plans";~~  
 4-4 ~~and~~

4-5 ~~[(ii) include standards for the personal~~  
 4-6 ~~security of passengers and employees of rail fixed guideway~~  
 4-7 ~~systems;~~

4-8 ~~[(B) lines of authority;~~

4-9 ~~[(C) levels of responsibility and~~  
 4-10 ~~accountability; and~~

4-11 ~~[(D) methods of documentation for the system;~~

4-12 ~~[(3) at least every three years conduct an on-site~~  
 4-13 ~~safety review of each entity's system safety program plan and~~  
 4-14 ~~prepare and issue a report containing findings and recommendations~~  
 4-15 ~~resulting from that review that, at a minimum, include an analysis~~  
 4-16 ~~of the efficacy of the system safety program plan and a~~  
 4-17 ~~determination of whether it should be updated;~~

4-18 ~~[(4) review and approve the annual internal safety~~  
 4-19 ~~audit conducted by an entity that operates a system;~~

4-20 ~~[(5) establish procedures for the investigation of~~  
 4-21 ~~accidents and unacceptable hazardous conditions;~~

4-22 ~~[(6) investigate accidents and unacceptable hazardous~~  
 4-23 ~~conditions at entities operating systems unless the National~~  
 4-24 ~~Transportation Safety Board has investigated or will investigate an~~  
 4-25 ~~accident;~~

4-26 ~~[(7) require, review, and approve any plan of an~~  
 4-27 ~~entity operating a system to minimize, control, correct, or~~  
 4-28 ~~eliminate any investigated accident or hazard; and~~

4-29 ~~[(8) submit reports or other information required by~~  
 4-30 ~~the United States Department of Transportation].~~

4-31 (b) The department may use a contractor to act on its behalf  
 4-32 in carrying out the duties of the department under this section.

4-33 (c) The data collected under this section and the report of  
 4-34 any investigation conducted by the department or a contractor  
 4-35 acting on behalf of the department under this section:

4-36 (1) are ~~is~~ confidential and not subject to  
 4-37 disclosure, inspection, or copying under Chapter 552, Government  
 4-38 Code; and ~~but~~

4-39 (2) may not be admitted in evidence or used for any  
 4-40 purpose in any action or proceeding arising out of any matter  
 4-41 referred to in an investigation except in an action or a proceeding  
 4-42 instituted by the state.

4-43 (d) Each rail transit agency ~~[entity operating a system]~~  
 4-44 shall:

4-45 (1) develop and implement a system safety program plan  
 4-46 and a security plan that comply ~~complies~~ with the department's  
 4-47 ~~[safety]~~ program plan standards and federal requirements;

4-48 (2) conduct an annual review of its system ~~[internal]~~  
 4-49 safety program plan and security plan ~~[audit]~~ and submit the audit  
 4-50 report to the department;

4-51 (3) report accidents, hazards, and hazard resolution  
 4-52 activities ~~[unacceptable hazardous conditions]~~ to the department  
 4-53 in accordance with the department's requirements ~~[writing or by~~  
 4-54 ~~electronic means acceptable to the department]; and~~

4-55 (4) ~~[minimize, control, correct, or eliminate any~~  
 4-56 ~~investigated unacceptable hazardous condition as required by the~~  
 4-57 ~~department; and~~

4-58 ~~[(5)]~~ provide all necessary assistance to allow the  
 4-59 department to conduct appropriate on-site investigations of  
 4-60 accidents and hazards ~~[unacceptable hazardous conditions]~~.

4-61 (e) A [Any part of a] system security ~~[safety program]~~ plan  
 4-62 ~~[that concerns security for the system]~~:

4-63 (1) is confidential and not subject to disclosure,  
 4-64 inspection, or copying under Chapter 552, Government Code; and

4-65 (2) may not be admitted in evidence or used for any  
 4-66 purpose in any action or proceeding arising out of any matter  
 4-67 referred to in an investigation except in an action or a proceeding  
 4-68 instituted by the state.

4-69 (f) The commission shall adopt rules to implement this

5-1 section.

5-2 (g) Notwithstanding any other provision of law to the  
5-3 contrary, the commission, the department, or an officer, employee,  
5-4 or agent of the commission or department is not liable for any act  
5-5 or omission in the implementation of this section.

5-6 (h) In this section:

5-7 (1) "Hazard" means any real or potential condition, as  
5-8 defined in a rail transit agency's hazard management plan, that can  
5-9 cause:

(A) injury, illness, or death;

(B) damage to or loss of a system, equipment, or  
5-12 property; or

(C) damage to the environment.

5-14 (2) "Rail fixed guideway system" means any light,  
5-15 heavy, or rapid rail system, monorail, inclined plane, funicular,  
5-16 trolley, or automated guideway that is subject to 49 U.S.C. Section  
5-17 5330.

5-18 (3) "Rail transit agency" means an entity that  
5-19 operates a rail fixed guideway system ["Accident" means:

5-20 [~~(A) any event involving the revenue service~~  
5-21 ~~operation of a rail fixed guideway system as a result of which an~~  
5-22 ~~individual:~~

[~~(i) dies, or~~

5-24 [~~(ii) suffers bodily injury and immediately~~  
5-25 ~~receives medical treatment away from the scene of the event, or~~

5-26 [~~(B) a collision, derailment, or fire that causes~~  
5-27 ~~property damage in excess of \$100,000.~~

5-28 [~~(2) "Commission" means the Texas Transportation~~  
5-29 ~~Commission.~~

5-30 [~~(3) "Department" means the Texas Department of~~  
5-31 ~~Transportation.~~

5-32 [~~(4) "Hazardous condition" means a condition that may~~  
5-33 ~~endanger human life or property, including an unacceptable~~  
5-34 ~~hazardous condition.~~

5-35 [~~(5) "Investigation" means a process to determine the~~  
5-36 ~~probable cause of an accident or an unacceptable hazardous~~  
5-37 ~~condition. The term includes a review and approval of the transit~~  
5-38 ~~agency's determination of the probable cause of an accident or~~  
5-39 ~~unacceptable hazardous condition.~~

5-40 [~~(6) "Rail fixed guideway mass transportation system"~~  
5-41 ~~or "system" means any light, heavy, or rapid rail system, monorail,~~  
5-42 ~~inclined plane, funicular, trolley, or automated guideway used for~~  
5-43 ~~mass transportation that is included in the United States~~  
5-44 ~~government's computation of fixed guideway route miles or receives~~  
5-45 ~~funding for urbanized areas under 49 U.S.C. Section 5336 and is not~~  
5-46 ~~regulated by the United States government.~~

5-47 [~~(7) "Safety" means freedom from danger.~~

5-48 [~~(8) "Security" means freedom from intentional~~  
5-49 ~~danger.~~

5-50 [~~(9) "Unacceptable hazardous condition" means a~~  
5-51 ~~hazardous condition determined to be unacceptable using the~~  
5-52 ~~American Public Transit Association's guidelines' hazard~~  
5-53 ~~resolution matrix].~~

5-54 SECTION 13. This Act takes effect immediately if it  
5-55 receives a vote of two-thirds of all the members elected to each  
5-56 house, as provided by Section 39, Article III, Texas Constitution.  
5-57 If this Act does not receive the vote necessary for immediate  
5-58 effect, this Act takes effect September 1, 2009.

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