

BILL ANALYSIS

Senate Research Center
81R3065 JTS-F

S.B. 612
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Transportation & Homeland Security
4/3/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Chapter 91 (Rail Facilities), Transportation Code, authorizes the Texas Department of Transportation (TxDOT) to acquire, finance, construct, maintain, and operate a railroad facility. Subchapter O (Rail Relocation and Improvement), Chapter 201 (General Provisions and Administration), Transportation Code, authorizes the Texas Transportation Commission (TTC), through TxDOT, to manage, invest, use, and administer the Rail Relocation and Improvement Fund. Chapter 228 (State Highway Toll Projects), Transportation Code, concerns toll projects, including a toll project that is a rail facility, individually or as one or more systems.

Rail relocation and improvement will require TxDOT to work with private entities, and to meet significant funding requirements. TxDOT will in many instances work with private entities that own rail facilities to be relocated. TxDOT's authority, for example, to acquire property to be owned by a private entity, is not explicit, and should be made clear. The law does not authorize funding a rail facility using funds from a toll project or the Texas Enterprise Fund. Concerning the Rail Relocation and Improvement Fund, TTC is not allowed to use the fund for financing a rail facility or issuing loans for a facility.

As proposed, S.B. 612 authorizes TxDOT to plan and make policies for the location, construction, maintenance, and operation of rail facilities or systems, and to acquire, finance, construct, reconstruct, relocate, maintain, and operate publicly or privately owned passenger or freight rail facilities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Transportation in SECTION 10 (Section 201.9731, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 91.004(a), Transportation Code, as follows:

(a) Authorizes the Texas Department of Transportation (TxDOT) to plan and make policies for the location, construction, maintenance, and operation of rail facilities or systems in this state, rather than a rail facility or system in this state; acquire, finance, construct, reconstruct, relocate, maintain, and subject to Section 91.005, operate publicly or privately owned passenger or freight rail facilities, individually or as one or more systems. Makes a conforming change.

SECTION 2. Amends Section 91.005, Transportation Code, as follows:

Sec. 91.005. RELIANCE ON PRIVATE ENTITIES. Requires TxDOT to contract with a private entity to operate a railroad under this chapter, rather than to operate a railroad using facilities owned by TxDOT, and prohibits TxDOT from using TxDOT employees to operate a railroad.

SECTION 3. Amends Subchapter B, Chapter 91, Transportation Code, by adding Section 91.038, as follows:

Sec. 91.038. PRIVATELY OWNED RAIL FACILITIES. (a) Authorizes TxDOT to relocate, construct, reconstruct, maintain, or operate a privately owned rail facility only if

the Texas Transportation Commission (TTC) first determines that the acquisition or other action will be in the best interests of this state in improving the mobility of the residents of this state and will relieve congestion on public highways, enhance public safety, improve air quality, or expand economic opportunity.

(b) Requires that an agreement entered into by TxDOT with a private owner for the transfer of a rail facility contain provisions necessary to ensure compliance with each requirement of Subsection (a).

SECTION 4. Amends Section 91.071, Transportation Code, as follows:

Sec. 91.071. FUNDING. Authorizes TxDOT, except as provided in Subsection (b), to use any available funds to implement this chapter, including surplus revenue of a toll project, as defined by Section 201.001 (Definitions). Makes nonsubstantive changes.

(b) Prohibits TxDOT from spending money from the general revenue fund to implement this chapter except money appropriated pursuant to a line-item appropriation; money received from the Texas economic development bank under Section 489.102 (Powers and Duties of Bank), Government Code; money awarded from the Texas Enterprise Fund under Section 481.078 (Texas Enterprise Fund), Government Code; or money appropriated to the Texas rail relocation and improvement fund. Deletes existing text prohibiting TxDOT, except for money received from the Texas economic development bank fund under Section 489.102, Government Code, from spending money from the general revenue fund to implement this chapter except pursuant to a line-item appropriation.

SECTION 5. Amends Sections 91.072(a) and (c), Transportation Code, as follows:

(a) Provides that TTC and TxDOT have the same powers and duties relating to the financing of a rail facility or a system established under Section 91.031 (Establishment of Rail Systems) as TTC and TxDOT have under Subchapter C (Toll Revenue Bonds), rather than E (Limitation on Toll Facility Determination; Conversion of Nontolled State Highway), Chapter 228 (State Highway Toll Projects), rather than 361 (State Highway Turnpike Projects), relating to the financing of a toll, rather than 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. Makes a conforming change.

(c) Makes conforming changes.

SECTION 6. Amends Section 91.091(a), Transportation Code, to authorize TTC, subject to Section 91.096, to authorize TxDOT to acquire, rather than authorizing TTC to authorize TxDOT 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 TxDOT's acquisition, construction, maintenance, or operation of rail facilities. Requires that an interest in property acquired for a rail facility owned or to be owned by TxDOT be acquired in the name of the state.

SECTION 7. Amends Section 91.095, Transportation Code, as follows:

Sec. 91.095. DISPOSAL OF PROPERTY. Authorizes TxDOT to 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 TTC determines are no longer needed for TxDOT purposes.

SECTION 8. Amends Subchapter E, Chapter 91, Transportation Code, by adding Section 91.096, as follows:

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

SECTION 9. Amends Section 201.973(d), Transportation Code, to authorize that obligations be issued for one or more of the following reasons including, 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 TTC determines that the project will expand economic opportunity be in the best interests of the state in its major goal of improving the mobility of the residents of the state and will provide loans under Section 201.9731. Makes nonsubstantive changes.

SECTION 10. Amends Subchapter O, Chapter 201, Transportation Code, by adding Section 201.9731, as follows:

Sec. 201.9731. LOAN PROGRAM. (a) Authorizes money in the fund, in addition to any other purpose authorized by this chapter, to 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) Requires TxDOT to administer the loan program and provides that TxDOT has all powers necessary and convenient to implement this section and authorizes TxDOT to establish standards and schedules for railroad infrastructure improvement projects; establish the specifications and provisions of a loan this is made to an eligible applicant; establish in any loan agreement the level and period of rail service to be provided by the railroad; negotiate and establish in any loan agreement the financial participation required of an eligible applicant; and provide technical assistance to an eligible applicant.

(c) Requires TxDOT to allocate loans made under this section on bases that protect the public interest. Authorizes a loan to cover all of a project's cost. Provides that costs eligible for a loan do not include overhead costs or other indirect costs.

(d) Requires TxDOT to adopt rules to implement the loan program.

SECTION 11. Amends Section 228.001(6), Transportation Code, to redefine "transportation project."

SECTION 12. Amends Section 455.005, Transportation Code, as follows:

Sec. 455.005. New heading: RAIL FIXED GUIDEWAY SYSTEM SAFETY OVERSIGHT. (a) Requires TxDOT to oversee safety and security practices of rail fixed guideway systems in compliance with 49 U.S.C. Section 5330, and establish a program standard to be used to provide rail transit agency safety and security oversight. Deletes existing text, requiring TxDOT to oversee safety and security practices of rail fixed guideway mass transportation systems (system) in compliance with 49 U.S.C. Section 5330; establish a safety program for each entity operating a system that provides certain safety requirements and methods of documentation for the system; 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; review and approve the annual internal safety audit conducted by an entity that operates a system; establish procedures for the investigation of accidents and unacceptable hazardous conditions; investigate accidents and unacceptable hazardous conditions at entities operating systems unless the National Transportation Safety Board has investigated or will investigate an accident; require, review, and approve any plan of an entity operating a system to minimize, control, correct, or eliminate any investigated accident or hazard; and submit reports or other information required by the United States Department of Transportation.

(b) Makes no changes to this subsection.

(c) Provides that the data collected under this section and the report of any investigation conducted by TxDOT or a contractor acting on behalf of TxDOT under this section are confidential and not subject to, rather than is confidential and subject to, disclosure, inspection, or copying under Chapter 552 (Public Information), Government Code, and 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) Requires each rail transit agency to develop and implement a system safety program plan and a security plan that comply with TxDOT's program plan standards and federal requirements; conduct an annual review of its system safety program plan and security plan and submit the audit report to TxDOT; report accidents, hazards, and hazard resolution activities to TxDOT in accordance with TxDOT's requirements; and provide all necessary assistance to allow TxDOT to conduct appropriate on-site investigations of accidents and hazards. Deletes existing text requiring each entity operating a system to develop a system safety program plan that complies with TxDOT's safety program plan standards; conduct an internal safety audit and submit the audit report to TxDOT; report accidents and unacceptable hazardous conditions to TxDOT in writing or by electronic means acceptable to TxDOT; minimize, control, correct, or eliminate any investigated unacceptable hazardous conditions as required by TxDOT; and provide all necessary assistance to allow TxDOT to conduct appropriate on-site investigations of accidents and unacceptable hazardous conditions.

(e) Provides that a system security plan, rather than any part of a system safety program plan that concerns security for the system, is confidential and not subject to disclosure, inspection, or copying under Chapter 552, Government Code; and is prohibited from being 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) Makes no changes to this subsection.

(g) Makes no changes to this subsection.

(h) Defines "hazard," "rail fixed guideway system," and "rail transit agency." Deletes existing text that defines "accident," "commission," "department," "hazardous condition," "investigation," "rail fixed guideway mass transportation system," "system," "safety," "security," and "unacceptable hazardous condition."

SECTION 13. Effective date: upon passage or September 1, 2009.