

BILL ANALYSIS

Senate Research Center
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S.B. 1712
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Infrastructure Development and Security
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DIGEST AND PURPOSE

Currently, the Texas Department of Transportation (TxDOT) is authorized to include rail in its statewide transportation planning and to acquire and preserve existing rail lines that have been determined to be viable for continued rail transportation service. As proposed, S.B. 1712 establishes the structure for TxDOT to acquire, finance, construct, operate, and maintain rail facilities and systems.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 2 (Sections 91.004, 91.033, and 91.057, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Sets forth findings of the legislature.

SECTION 2. Amends Title 5, Transportation Code, by adding Subtitle A, as follows:

SUBTITLE A. TEXAS DEPARTMENT OF TRANSPORTATION
CHAPTER 91. RAIL FACILITIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 91.001. DEFINITIONS. Defines “commission,” “construction,” “department,” “maintenance facility,” “operation,” “rail facility,” “revenue,” “right-of-way,” “station,” “surplus revenue,” “trackwork,” and “train controls.”

Sec. 91.002. PUBLIC PURPOSE. Sets forth the public and governmental functions exercised for a public purpose and matters of public necessity.

Sec. 91.003. CHAPTER LIBERALLY CONSTRUED. Requires that this chapter be liberally construed to effect its purpose.

Sec. 91.004. RULES. Authorizes the Texas Transportation Commission (TTC) to adopt rules and the Texas Department of Transportation (TxDOT) to adopt procedures and prescribe forms to implement this chapter.

Sec. 91.005. GENERAL POWERS. Sets forth TxDOT’s general powers.

Sec. 91.006. RELIANCE ON PRIVATE ENTITIES. Requires TxDOT to contract with a private entity to operate a railroad, using TxDOT-owned facilities, and prohibits the use of TxDOT employees to operate a railroad. Authorizes TxDOT to maintain a railroad facility directly or indirectly through a private entity.

Sec. 91.007. COOPERATION OF STATE AGENCIES AND POLITICAL SUBDIVISIONS. Requires a state agency, or political subdivision, to cooperate with and assist TxDOT, within available resources, in exercising its powers and duties under this chapter.

Sec. 91.008. NOTIFICATION OF INTENT TO ABANDON OR DISCONTINUE SERVICE. Requires TxDOT to coordinate with certain governing bodies to make certain determinations upon receipt of notice of intent to abandon or discontinue rail service.

[Reserves Sections 91.009-91.030 for expansion.]

SUBCHAPTER B. ACQUISITION AND DEVELOPMENT OF RAIL FACILITIES

Sec. 91.031. ESTABLISHMENT OF RAIL SYSTEMS. (a) Authorizes TTC to create a system that jointly operates two or more rail facilities as one operational and financial enterprise if TTC determines that this would be the most efficient and economical provision of rail transportation service.

(b) Authorizes TTC to create more than one system and to combine two or more systems into one.

(c) Authorizes TxDOT to finance, acquire, construct, and operate additional rail facilities as additions to and expansions of the system, if TTC determines that the facility would be most efficiently and economically acquired and constructed as part of the system and the addition would benefit the system.

(d) Requires the system's revenue to be accounted for separately and prohibits it from comingled with a non-system rail facility.

Sec. 91.032. ACQUISITION OF RAIL FACILITIES. (a) Authorizes TTC to authorize TxDOT to acquire an existing rail facility located and on a route determined by TTC to be feasible and viable for rail transportation service.

(b) Authorizes TxDOT to enter into an agreement with an owner of an operating railroad to acquire or use a rail facility on terms TxDOT considers to be in the best interest of the state.

(c) Authorizes TxDOT to acquire rolling stock or other personal property under certain circumstances.

Sec. 91.033. ENVIRONMENTAL REVIEW. (a) Requires TxDOT to conduct or approve all environmental evaluations or studies required for construction, maintenance, or operation of a rail facility.

(b) Authorizes TTC to adopt rules to allocate responsibility for conducting an environmental evaluation or study, or preparing environmental documentation, among entities involved in the construction, maintenance, or operation of a rail facility under this chapter.

Sec. 91.034. ENVIRONMENTAL MITIGATION. (a) Authorizes TxDOT to perform certain actions concerning property to mitigate a past, present, or future adverse environmental effect arising from the construction, maintenance, or operation of a rail facility, without regard to whether the need for mitigation has already been established for a particular project.

(b) Authorizes TxDOT to contract with a governmental or private entity to perform certain actions concerning property to mitigate a past, present, or future adverse environmental effect arising from the construction, maintenance, or operation of a rail facility, without regard to whether the need for mitigation has already been established for a particular project.

(c) Authorizes TxDOT, if authorized by the applicable regulatory authority, to pay an appropriate governmental or private entity, instead of acquiring or managing property to mitigate a past, present, or future adverse environmental effect arising

from the construction, maintenance, or operation of a rail facility, without regard to whether the need for mitigation has already been established for a particular project.

Sec. 91.035. USE OF FACILITIES BELONGING TO PUBLIC OR PRIVATE ENTITY. Authorizes TxDOT to engage in certain actions for the purpose of acquiring, constructing, maintaining, and operating freight or passenger rail facilities and systems in this state.

Sec. 91.036. EXPENDITURE OF FUNDS. Authorizes TxDOT to receive, accept, and expend funds from this state, a federal agency, or other public or private source for certain activities.

[Reserves Sections 91.037-91.050 for expansion.]

SUBCHAPTER C. CONTRACTS

Sec. 91.051. AWARDING OF CONTRACTS. Requires, unless otherwise provided by this subchapter, a contract made by TxDOT for the construction, maintenance, or operation of a rail facility to be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with TxDOT's criteria.

Sec. 91.052. AGREEMENTS TO CONSTRUCT, MAINTAIN, AND OPERATE RAIL FACILITIES. Authorizes TxDOT to enter into an agreement with a public entity, including a political subdivision of this state, to permit the entity, independently or jointly with TxDOT, to construct, maintain, or operate a rail facility or system.

Sec. 91.053. EXCLUSIVE DEVELOPMENT AGREEMENTS. (a) Authorizes TxDOT to enter into an exclusive development agreement with a private entity to construct, maintain, or operate a rail facility or system. Authorizes an exclusive development agreement to provide for certain circumstances.

(b) Requires TxDOT, when contracting with a private entity under this section, to use a competitive procurement process, including contracting through the issuance of requests for proposals, that provides the best value for TxDOT. Requires TxDOT to publish the criteria to be used, and their relative weight, in the request for bids, proposals, or qualifications. Authorizes TxDOT to accept unsolicited proposals for proposed projects, provided that TxDOT issues a request for competing proposals for those proposed projects accepted for further evaluation. Authorizes TxDOT to require a solicited or unsolicited proposal to be accompanied by a nonrefundable fee sufficient to cover TxDOT's cost to review the proposal.

(c) Provides that TxDOT has broad discretion to negotiate provisions in an exclusive development agreement with a private entity. Authorizes the provisions to relate to certain circumstances.

(d) Authorizes TxDOT to authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.

(e) Requires TxDOT to prescribe an exclusive agreement's form and authorizes TxDOT to include any matter TxDOT considers advantageous to the state.

(f) Exempts an agreement entered into under this section from Section 91.051.

Sec. 91.054. PAYMENT FOR WORK PRODUCT. (a) Authorizes TxDOT to pay an unsuccessful private entity that submits a response to a request for proposals (RFP), a stipulated amount of the final contract price for costs incurred in preparing the proposal.

Requires the stipulated amount to be stated in the RFP and prohibits it from exceeding the value of any work product contained in the proposal that can, as determined by TxDOT, be used by TxDOT in performing its functions.

(b) Authorizes TxDOT, after payment of the stipulated amount, to use any work product contained in the proposal, including the work product contained in the design.

Sec. 91.055. **LIABILITY FOR PRIVATE OBLIGATIONS.** Prohibits TxDOT from incurring a financial obligation on behalf of, or other wise guaranteeing the obligations of, a private entity that constructs, maintains, or operates a rail facility or system.

Sec. 91.056. **INFORMATION RELATED TO PROPOSALS.** Provides that, until a final contract is executed with respect to a proposed project, certain information is confidential; not subject to disclosure, inspection, or copying under Chapter 552 (Public Information), Government Code; and not subject to certain means of legal compulsion for release.

Sec. 91.057. **PERFORMANCE AND PAYMENT SECURITY.** (a) Requires TxDOT, notwithstanding Chapter 2253B (General Requirements; Liability), Government Code, to require a private entity entering into an exclusive agreement under 91.053 to provide performance and payment bonds or alternative forms of security in an amount sufficient for certain protections.

(b) Requires the performance and payment bonds or alternative forms of security to be in an amount equal to the cost of constructing the project unless the department determines that it is impracticable for the private entity to provide security in that amount, in which case TxDOT is required to set the amount of the bonds or the alternative forms of security. Prohibits the amount of the payment security from being less than the amount of the performance security.

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

(d) Authorizes TxDOT, in addition to performance and payment bonds, to require certain forms of alternative.

(e) Requires TTC, by rule, to prescribe requirements for alternative forms of security provided under this section.

Sec. 91.058. **SMALL AND DISADVANTAGED BUSINESSES.** (a) Requires TxDOT to perform certain functions in relation to small and disadvantaged businesses.

(b) Provides that this section does not exempt TxDOT from competitive bidding requirements imposed by other law.

[Reserves Sections 91.059-91.070 for expansion.]

SUBCHAPTER D. FINANCING OF RAIL FACILITIES

Sec. 91.071. **PERMISSIBLE SOURCES OF FUNDING.** Authorizes TxDOT to use any legally permissible source of funding in acquiring, constructing, maintaining, and operating a rail facility or system, including certain funding sources.

Sec. 91.072. **REVENUE BONDS.** (a) Authorizes TTC to authorize the issuance of bonds to pay all or part of the cost of acquiring, constructing, maintaining, or operating a rail facility or system, or refund any bonds previously issued for the facility or system.

(b) Provides that Chapters 1201(Public Security Procedures Act), 1202 (Examination and Registration of Public Utilities), 1204 (Interest Rate), 1207 (Refunding Bonds), and 1371 (Obligations for Certain Public Improvements), Government Code, apply to bonds issued by TTC, and to the extent that there is a conflict between those laws and this chapter, the provisions of this chapter prevail.

Sec. 91.073. PAYMENT OF BONDS. Provides that the principal of, interest on, and any redemption premium on bonds issued by TTC under this chapter are payable solely from certain funds.

Sec. 91.074. STATE CREDIT NOT PLEDGED. (a) Provides that bonds issued under this chapter do not constitute a debt of the state or a pledge of the faith and credit of the state. Requires each bond to contain, on its face, a statement to the effect that the state is not obligated to pay the bond or the interest on the bond from a source other than the amount pledged to pay the bond and the interest on the bond, and neither the faith and credit nor taxing power of the state is pledged to the payment of the principal of or interest on the bond.

(b) Prohibits TTC and TxDOT from incurring financial obligations under this chapter that cannot be paid from revenue derived from owning or operating TxDOT's rail facilities and systems and from other revenue provided by law.

Sec. 91.075. GRANTS AND LOANS. Authorizes TxDOT to apply for, accept, and expend money from grants, loans, or reimbursements for any purpose of this chapter, including paying for the cost of the acquisition, construction, maintenance, and operation of a rail facility or system.

Sec. 91.076. REVENUE. (a) Authorizes TxDOT to require a person, including any public or private entity, to pay a fee as a condition of using any part of a rail facility or system.

(b) Requires TxDOT to establish and maintain rents or other compensation for the use of rail facilities or systems in an amount that is, together with other revenue of the department received under this chapter, sufficient to enable the department to comply with the requirements of Section 91.073.

(c) Authorizes TxDOT to contract with a person for the use of all or part of a rail facility or system or to lease or sell all or part of a rail facility or system, including all or any part of the right-of-way adjoining trackwork, for any purpose, including placing on the adjoining right-of-way a storage or transfer facility, warehouse, garage, parking facility, telecommunication line or facility, restaurant, or gas station.

(d) Requires all revenue received by TxDOT under this chapter to be deposited to the credit of the state highway fund and authorizes its use for any purpose authorized by this chapter. Exempts all revenue received by TxDOT under this chapter from Section 403.095 (Use of Dedicated Revenue), Government Code.

[Reserves Sections 91.077-91.090 for expansion.]

SUBCHAPTER E. ACQUISITION AND DISPOSAL OF PROPERTY

Sec. 91.091. ACQUISITION OF REAL PROPERTY. (a) Authorizes 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.

(b) Authorizes TTC to authorize TxDOT to acquire property by any method,

including purchase and condemnation. Authorizes property to be purchased under any terms determined by TxDOT to be in the best interest of the state.

(c) Authorizes property to be purchased along alternative potential routes for a rail facility even if only one of those potential routes will ultimately be chosen as the final route.

Sec. 91.092. **PROPERTY NECESSARY OR CONVENIENT FOR RAIL FACILITIES.** Provides that property necessary or convenient for TxDOT's acquisition, construction, maintenance, or operation of rail facilities includes an interest in real property or a property right TTC determines is necessary or convenient to provide certain functions and revenue.

Sec. 91.093. **RIGHT OF ENTRY.** (a) Authorizes TxDOT to enter any premises or real property, including a body of water, to make a survey, geotechnical evaluation, sounding, or examination, to acquire property necessary or convenient for a rail facility.

(b) Provides that an entry under Subsection (a) is not a trespass or an entry under a pending condemnation procedure.

(c) Requires TxDOT to make reimbursements for actual damages that result from an entry under Subsection (a).

Sec. 91.094. **CONVEYANCE OF PROPERTY BELONGING TO POLITICAL SUBDIVISION OR PUBLIC AGENCY.** Authorizes the governing body of a municipality, county, political subdivision, or public agency, without advertisement, to convey the title to or a right in property determined to be necessary or convenient by TxDOT under this subchapter.

Sec. 91.095. **DISPOSAL OF PROPERTY.** Authorizes TxDOT to sell, convey, or otherwise dispose of any rights or other interests in real property acquired under this subchapter that TTC determines are no longer needed for TxDOT purposes.

[Reserves Sections 91.096-91.100 for expansion.]

SUBCHAPTER F. OPERATION AND USE OF RAIL FACILITIES

Sec. 91.101. **CONTRACTS FOR RAIL TRANSPORTATION SERVICES.** Authorizes TxDOT to contract with a county or other political subdivision of the state for TxDOT to provide rail transportation services on terms agreed to by the parties.

Sec. 91.102. **CONTRACTS WITH RAIL OPERATORS.** (a) Authorizes TxDOT to lease all or part of a rail facility or system to a rail operator. Authorizes TxDOT to contract with a rail operator for the use or operation of all or part of a rail facility or system.

(b) Requires TxDOT to encourage, to the maximum extent practical, the participation of private enterprise in the operation of rail facilities and systems.

(c) Requires lease agreement to provide for TxDOT's monitoring of a rail operator's service and performance.

(d) Authorizes TxDOT to enter into an agreement with a rail operator to sell all or any part of state-owned rail facilities on terms TxDOT considers to be in the state's best interest.

Sec. 91.103. **JOINT USE OF RAIL FACILITIES.** Authorizes TxDOT to enter into an agreement with a rail operator, public utility, private utility, communication system, common carrier, or transportation system for the common use of its facilities,

installations, or properties, and to establish through routes, joint fares, and, subject to approval of a tariff-regulating body having jurisdiction, divisions of tariffs.

Sec. 91.104. ROUTINGS. Authorizes TxDOT to determine routings for rail facilities acquired, constructed, or operated by TxDOT under this chapter.

Sec. 91.105. PLACEMENT OF UTILITY FACILITIES, LINES, AND EQUIPMENT.

(a) Provides that a utility has the same right to place its facilities, lines, or equipment in, over, or across right-of-way that is part of a state-owned rail facility as the utility has with respect to the right-of-way of a state highway under Chapter 181 (Miscellaneous Powers and Duties of Utilities), Utilities Code. Requires a utility to notify TxDOT of the its intention to exercise authority over right-of-way that is part of state-owned rail facilities.

(b) Authorizes TxDOT, on receipt of notice under Subsection (a), to designate the location in the right-of-way where the utility may place its facilities, lines, or equipment.

(c) Authorizes TxDOT to require a utility to relocate the utility's facilities, lines, or equipment, at the utility's expense, to allow for the expansion or relocation of rail facilities owned by the state. Requires TxDOT to pay for the cost of the relocation if the utility acquired an easement or a leasehold interest in the real property occupied by the facility to be relocated before TxDOT acquired the right-of-way under this chapter.

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

SECTION 3. Repealer: Article 6550c-2, V.T.C.S. (Preservation of Rail Facilities by Texas Department of Transportation).

SECTION 4. Effective date: upon passage or September 1, 2003.