

TRANSPORTATION CODE

TITLE 5. RAILROADS

SUBTITLE B. STATE RAIL FACILITIES

CHAPTER 91. RAIL FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 91.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Transportation Commission.

(2) "Construction" includes design, planning, and preliminary studies.

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

(4) "Maintenance facility" includes:

(A) a workshop;

(B) a service, storage, security, or personnel facility; and

(C) equipment for a facility described by Paragraph (A) or (B).

(5) "Operation" includes policing.

(6) "Rail facility" means real or personal property, or any interest in that property, that is determined to be necessary or convenient for the provision of a freight or passenger rail facility or system, including commuter rail, intercity rail, high-speed rail, and tri-track. The term includes all property or interests necessary or convenient for the acquiring, providing, using, or equipping of a rail facility or system, including rights-of-way, trackwork, train controls, stations, and maintenance facilities.

(7) "Revenue" includes a charge, toll, rent, payment, user fee, franchise fee, license fee, fare, tariff, and other consideration:

(A) received in return for the use of:

(i) a rail facility; or

(ii) a service offered in connection with the operation of a rail facility; or

(B) resulting from a sale or conveyance of a rail facility.

(8) "Right-of-way" means a strip of land of a length and width determined by the commission to be required, necessary, or convenient for the provision of a rail facility or system and the space over, under, or on the land where trackwork is to be located.

(9) "Station" means a passenger or freight service building, terminal, station, ticketing facility, waiting area, platform, concession, elevator, escalator, facility for handicapped access, access road, parking facility for passengers, baggage handling facility, or local maintenance facility, together with any interest in real property necessary or convenient for those items.

(10) "Surplus revenue" means:

(A) revenue that exceeds the department's debt service requirements, coverage requirements of any bond indenture, costs of operation and maintenance, and cost of expansion or improvement of a rail facility or system; and

(B) reserves and reserve funds maintained by the department under this chapter.

(11) "Trackwork" means track, track beds, track bed preparation, ties, rail fasteners, slabs, rails, emergency crossovers, setout tracks, storage tracks, drains, fences, ballast, switches, bridges, and structures.

(12) "Train controls" includes:

(A) signals, lights, and other signaling;

(B) interlocking equipment;

(C) speed monitoring equipment;

(D) braking systems;

(E) central traffic control facilities; and

(F) communication systems.

(13) "Tri-track" means a triangular monorail beam guideway:

(A) constructed at a grade above surface modes of transportation;

(B) for use by dual-mode vehicles capable of using the guideway or a highway; and

(C) with entrances accessible from and exits accessible to highways.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 1.01, eff. June 14, 2005.

Sec. 91.002. PUBLIC PURPOSE. The following functions are public and governmental functions, exercised for a public purpose, and matters of public necessity:

(1) the acquisition, financing, construction, operation, and maintenance of a rail facility under this chapter;

(2) the sale, lease, or license of a rail facility to a rail operator and other public or private persons under this chapter; and

(3) the exercise of any other power granted under this chapter to the commission and the department.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.003. RULES. The commission may adopt rules and the department may adopt procedures and prescribe forms necessary to implement this chapter.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.004. GENERAL POWERS. (a) The department may:

(1) plan and make policies for the location, construction, maintenance, and operation of a rail facility or system in this state;

(2) acquire, finance, construct, maintain, and subject to Section 91.005, operate a passenger or freight rail facility, individually or as one or more systems;

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

(A) department or agency of the United States;

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

(C) public or private person;

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

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

(b) Except as provided by Subsection (c), money appropriated or allocated by the United States for the construction and maintenance in this state of rail facilities owned by any public or private entity shall be administered by the commission and may be spent only under the supervision of the department.

(c) Subsection (b) does not apply to money appropriated or allocated:

(1) to a transit authority described by Chapter 451, a transportation authority described by Chapter 452 or 460, or a transit department described by Chapter 453; or

(2) for use by:

(A) a port authority or navigation district created or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution; or

(B) a district created under:

(i) Chapter 171;

(ii) Chapter 172 of this code or Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (former Article 6550c, Vernon's Texas Civil Statutes);

(iii) Chapter 173 of this code or former Article 6550c-1, Revised Statutes; or

(iv) Chapter 174 of this code or former Article 6550c-3, Revised Statutes.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 1.02, eff. June 14, 2005.

Acts 2009, 81st Leg., R.S., Ch. 16 (H.B. 2434), Sec. 1, eff.

May 12, 2009.

Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 4.02, eff. April 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 24.001, eff. September 1, 2011.

Sec. 91.005. RELIANCE ON PRIVATE ENTITIES. The department shall contract with a private entity to operate a railroad using facilities owned by the department and may not use department employees to operate a railroad. The department may maintain a railroad facility directly or through a private entity. The department may not own rolling stock.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.006. COOPERATION OF STATE AGENCIES AND POLITICAL SUBDIVISIONS. Within available resources, an agency or political subdivision of this state shall cooperate with and assist the department in exercising its powers and duties under this chapter.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.007. NOTIFICATION OF INTENT TO ABANDON OR DISCONTINUE SERVICE. On receipt of notice of intent to abandon or discontinue rail service served under 49 C.F.R. Section 1152.20, as amended, the department shall coordinate with the governing body of a municipality, county, or rural rail transportation district in which all or a segment of the line is located to determine whether:

(1) the department should acquire the rail facility to which the notice relates; or

(2) any other actions should be taken to provide for continued rail transportation service.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

SUBCHAPTER B. ACQUISITION AND DEVELOPMENT OF RAIL FACILITIES

Sec. 91.031. ESTABLISHMENT OF RAIL SYSTEMS. (a) If the commission determines that the provision of rail transportation services would be most efficiently and economically met by jointly operating two or more rail facilities as one operational and financial enterprise, it may create a system composed of those facilities.

(b) The commission may create more than one system and may combine two or more systems into one system.

(c) The department may finance, acquire, construct, and operate additional rail facilities as additions to and expansions of the system if the commission determines that the facility would most efficiently and economically be acquired and constructed if it were a part of the system and that the addition will benefit the system.

(d) The revenue of a system shall be accounted for separately and may not be commingled with the revenue of a rail facility that is not part of the system.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.032. ACQUISITION OF RAIL FACILITIES. (a) The commission may authorize the department to acquire an existing rail facility at a location and on a route the commission determines to be feasible and viable for rail transportation service.

(b) The department may enter into an agreement with the owner of an operating railroad for the acquisition or use of a rail facility on terms the department considers to be in the best interest of the state.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.033. ENVIRONMENTAL REVIEW. (a) The department shall conduct or approve all environmental evaluations or studies required for the construction, maintenance, or operation of a rail facility.

(b) The commission may 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.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.034. ENVIRONMENTAL MITIGATION. (a) The department may acquire, maintain, hold, restore, enhance, develop, or redevelop property for the purpose of mitigating 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) The department may contract with a governmental or private entity to maintain, control, hold, restore, enhance, develop, or redevelop property for the mitigation of 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) If authorized by the applicable regulatory authority, the department may pay an amount of money to an appropriate governmental or private entity instead of acquiring or managing property for the mitigation of a past, present, or future adverse environmental effect arising from construction, maintenance, or operation of a rail facility without regard to whether the need for mitigation has already been established for a particular project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.035. USE OF FACILITIES BELONGING TO PUBLIC OR PRIVATE ENTITY. (a) The department, for the purpose of acquiring, constructing, maintaining, and operating freight or passenger rail facilities and systems in this state, may:

(1) use a street, alley, road, highway, or other public way of a municipality, county, or other political subdivision with the consent of that political subdivision; and

(2) at the expense of the department, relocate, raise, reroute, or change the grade of the construction of a street, alley, highway, road, railroad, electric line and facility, telegraph and telephone property and facility, pipeline and facility, conduit and facility, and other properties, whether publicly or privately owned, as necessary or useful in the construction, maintenance, and operation of a rail facility or system.

(b) The department shall provide reasonable notice to the owner of the applicable facility of the need for the alteration under Subsection (a)(2) and allow that owner the opportunity to complete the alteration.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.036. EXPENDITURE OF FUNDS. Subject to Section 91.071(b), the department may receive, accept, and expend funds from this state, a federal agency, or other public or private source for:

- (1) rail planning;
- (2) studies to determine the viability of a rail facility for rail transportation service;
- (3) studies to determine the necessity for the department's acquisition or construction of a rail facility; and
- (4) the acquisition, construction, maintenance, or operation of a rail facility under this chapter, including the assessment and remediation of environmental contamination existing in or on a rail facility.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.0361. CERTAIN FREIGHT RAILROAD PROJECTS. (a) If sufficient funds from bonds sold to construct the Central Texas turnpike project or from the Texas mobility fund are available, the department may, and is strongly encouraged to, use the funds for engineering, design, grading, and construction necessary to create a grade-separated freight rail line capable of being safely traveled by trains operating at not less than 80 miles per hour in

or adjacent to the State Highway 130 corridor.

(b) The department may, and is strongly encouraged to, enter into negotiations with any Class I railroad concerning building and operating a freight railroad in or adjacent to the State Highway 130 corridor. The department may explore with any Class I railroad the possibility of operating the freight railroad line in or adjacent to the State Highway 130 corridor as a revenue-producing partnership that could benefit this state and the current holders of bonds used in the financing of State Highway 130.

(c) This section may not be construed to allow any delay in the current published schedule for the construction and completion of State Highway 130.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.037. CONTRACTS WITH GOVERNMENTAL ENTITIES. This chapter does not apply to real or personal property, facilities, funding, projects, operations, construction, or a project plan of a transportation authority created under Chapter 451, 452, or 460 unless the commission or its designee has signed a written agreement with the transportation authority specifying the terms and conditions under which the transportation authority may participate.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

SUBCHAPTER C. CONTRACTS

Sec. 91.051. AWARDING OF CONTRACTS. Except for a contract entered into under Section 91.052, 91.054, or 91.102, a contract made by the department for the construction, maintenance, or operation of a rail facility must be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with the department's criteria.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 1.03, eff. June 14, 2005.

Sec. 91.052. AGREEMENTS TO CONSTRUCT, MAINTAIN, AND OPERATE RAIL FACILITIES. The department may enter into an agreement with a public entity, including a political subdivision of this state, to permit the entity, independently or jointly with the department, to acquire, construct, maintain, or operate a rail facility or system. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.053. SMALL AND DISADVANTAGED BUSINESSES. (a) The department shall:

(1) set goals for the award of contracts to small and disadvantaged businesses and attempt to meet the goals;

(2) attempt to identify small and disadvantaged businesses that provide or have the potential to provide supplies, materials, equipment, or services to the department; and

(3) give small and disadvantaged businesses full access to the department's contract bidding process and other contracting processes, inform the businesses about those processes, offer the businesses assistance concerning those processes, and identify barriers to the businesses' participation in those processes.

(b) This section does not exempt the department from competitive bidding requirements imposed by other law.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.054. COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) To the extent and in the manner that the department may enter into a comprehensive development agreement under Chapter 223, the department may enter into a comprehensive development agreement under this chapter that provides for the financing, design, acquisition, construction, maintenance, or operation of a rail facility or system. All provisions of Chapter 223 relating to comprehensive development agreements apply to comprehensive

development agreements for facilities under this chapter, including provisions relating to the confidentiality of information. Claims arising under a comprehensive development agreement are subject to Section [201.112](#).

(b) The department may combine in a comprehensive development agreement under this chapter a rail facility or system and a toll project as defined by Section [201.001](#).

(c) The department may not enter into a comprehensive development agreement with a private entity under this chapter that provides for the lease or use of rights-of-way or related property by the private entity to construct, operate, or maintain a facility that is unrelated to the operation of the rail facility or system. Added by Acts 2005, 79th Leg., Ch. 281 (H.B. [2702](#)), Sec. 1.04, eff. June 14, 2005.

SUBCHAPTER D. FINANCING OF RAIL FACILITIES

Sec. 91.071. FUNDING. (a) Except as provided in Subsection (b), the department may use any available funds to implement this chapter, including funds from the state infrastructure bank.

(b) Except for money received from the Texas economic development bank fund under Section [489.102](#), Government Code, and except as provided by Section [91.106\(j\)](#), the department may not spend money from the general revenue fund to implement this chapter except pursuant to a line-item appropriation.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 5.01(a), eff. Jan. 11, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. [2702](#)), Sec. 1.05, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1410 (H.B. [2660](#)), Sec. 3, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 766 (H.B. [1750](#)), Sec. 1, eff. June 17, 2011.

Sec. 91.072. FINANCING OF RAIL FACILITIES AND SYSTEMS. (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 E, Chapter 361, relating to the financing of a 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 361.

(b) The powers held by the commission and the department include the power to:

(1) authorize the issuance of bonds to pay all or part of the cost of acquiring, constructing, maintaining, or operating a rail facility or system;

(2) maintain separate accounts for bond proceeds and the revenues of a rail facility or system, and pledge those revenues and proceeds to the payment of bonds or other obligations issued or entered into with respect to the facility or system;

(3) impose fees, rents, and other charges for the use of a rail facility or system; and

(4) obtain from another source the fees and other revenue necessary to pay all or part of the principal and interest on bonds issued under this chapter.

(c) For purposes of this section, a reference in Subchapter E, Chapter 361 to:

(1) a 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.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.073. GRANTS AND LOANS. The department may 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.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.074. REVENUE. (a) The department may 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. The department may not require a person to pay a fee in connection with the placement, maintenance, or other use of a public utility facility.

(b) The department shall 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 91.072.

(c) The department may contract with a person for the use of all or part of a rail facility or system or may 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. Any portion of a rail facility or system that is used or leased by a private person under this subsection for a commercial purpose is not exempt from ad valorem taxation and is subject to local zoning regulations and building standards.

(d) The department shall not unreasonably discriminate in deciding who may use any part of a rail facility or system.

(e) All revenue received by the department under this chapter:

(1) shall be deposited to the credit of the state highway fund and may be used for any purpose authorized by this chapter; and

(2) is exempt from the application of Section 403.095, Government Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 1.06, eff. June 14, 2005.

Sec. 91.075. PASS-THROUGH FARES. (a) In this section, "pass-through fare" means:

(1) a per passenger fee or a per passenger mile fee that is determined by the number of passengers using a passenger rail facility; or

(2) a fee that is determined based on the number of carloads or commodity tonnages shipped using a freight rail facility.

(b) The department may enter into an agreement with a public or private entity that provides for the payment of pass-through fares to the public or private entity as reimbursement for the acquisition, design, development, financing, construction, relocation, maintenance, or operation of a passenger rail facility or a freight rail facility by the entity.

(c) The department may use any available funds for the purpose of making a pass-through fare payment under this section, including funds from the state infrastructure bank.

(d) The commission may adopt rules necessary to implement this section. Rules adopted under this subsection may include criteria for:

(1) determining the amount of pass-through fares to be paid under this section; and

(2) allocating the risk that ridership on a passenger rail facility or carloads or commodity tonnages shipped on a freight rail facility will be higher or lower than the parties to an agreement under this section anticipated in entering into the agreement.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 1.07, eff. June 14, 2005.

SUBCHAPTER E. ACQUISITION AND DISPOSAL OF PROPERTY

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

(b) The commission may authorize the department to acquire property by any method, including purchase and condemnation. Property may be purchased under any terms determined by the department to be in the best interest of the state.

(c) Property may 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.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.092. PROPERTY NECESSARY OR CONVENIENT FOR RAIL FACILITIES. Property necessary or convenient for the department's acquisition, construction, maintenance, or operation of rail facilities includes an interest in real property or a property right the commission determines is necessary or convenient to provide:

- (1) right-of-way for a location for:
 - (A) a rail facility; or
 - (B) the future expansion of a rail facility;
- (2) land for mitigation of adverse environmental effects;
- (3) buffer zones for scenic or safety purposes; and
- (4) revenue for use in acquiring, constructing, maintaining, or operating a rail facility or system, including revenue received under a contract described by Section [91.074\(c\)](#).

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

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

(b) An entry under Subsection (a) or (d) is not:

(1) a trespass; or

(2) an entry under a pending condemnation procedure.

(c) The department shall make reimbursements for actual damages that result from an entry under Subsection (a) or (d).

(d) To ensure the safety and convenience of the public, the department shall, when entering any real property, water, or premises on which is located a public utility facility:

(1) comply with applicable industry standard safety codes and practices; and

(2) notwithstanding Subsection (a), give the owner or operator of the public utility facility not less than 10 days' notice before entering the real property, water, or premises.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

SUBCHAPTER F. OPERATION AND USE OF RAIL FACILITIES

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

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

(b) The department shall encourage to the maximum extent practical the participation of private enterprise in the operation of rail facilities and systems.

(c) A lease agreement shall provide for the department's monitoring of a rail operator's service and performance.

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.103. JOINT USE OF RAIL FACILITIES. The department may:

(1) 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

(2) establish through routes, joint fares, and, subject to approval of a tariff-regulating body having jurisdiction, divisions of tariffs.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.104. ROUTINGS. The department may determine routings for rail facilities acquired, constructed, or operated by the department under this chapter.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.105. PLACEMENT OF UTILITY FACILITIES, LINES, AND EQUIPMENT. (a) 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, Utilities Code. A utility shall notify the department of the utility's intention to exercise authority over right-of-way that is part of state-owned rail facilities.

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

(c) The department may 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. A relocation under this subsection must be accomplished pursuant to Subsections (e)-(j). The department shall pay for the cost of the relocation. If a utility facility is replaced, the cost of replacement is limited to an amount equal to the cost of replacing the facility with a comparable facility, less the net salvage value of the replaced facility.

(d) A utility may 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.

(e) If the department determines that a public utility facility must be relocated, the utility and the department shall negotiate in good faith to establish reasonable terms and conditions concerning the responsibilities of the parties with regard to sharing of information about the project and the planning and implementation of any necessary relocation of a public utility facility.

(f) The department shall use its best efforts to provide an affected utility with plans and drawings of the project that are sufficient to enable the utility to develop plans for, and determine the cost of, the necessary relocation of the public utility facility. If the department and the affected utility enter into an agreement after negotiations under Subsection (e), the

terms and conditions of the agreement govern the relocation of public utility facilities covered by the agreement.

(g) If the department and an affected utility do not enter into an agreement under Subsection (e), the department shall provide to the affected utility:

(1) written notice of the department's determination that the public utility facility must be removed;

(2) a final plan for relocation of the public utility facility; and

(3) reasonable terms and conditions for an agreement with the utility for the relocation of the public utility facility.

(h) Not later than the 90th day after the date a utility receives the notice from the department, including the plan and agreement terms and conditions under Subsection (g), the utility shall enter into an agreement with the department that provides for the relocation.

(i) If the utility fails to enter into an agreement within the 90-day period under Subsection (h), the department may relocate the public utility facility at the sole cost and expense of the utility less any reimbursement of costs that would have been payable to the utility under applicable law. A relocation by the department under this subsection shall be conducted in full compliance with applicable law, using standard equipment and construction practices compatible with the utility's existing facilities, and in a manner that minimizes disruption of utility service.

(j) The 90-day period under Subsection (h) may be extended:

(1) by mutual agreement between the department and the utility; or

(2) for any period during which the utility is negotiating in good faith with the department to relocate its facility.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 4.01, eff. June 21, 2003.

Sec. 91.106. OPERATIONS DURING CERTAIN EMERGENCIES.

(a) In this section, "director" means the executive director of

the department.

(b) The director may issue an order authorizing the department to lease rolling stock and to contract with a qualified person or rail operator to operate rolling stock if:

(1) the director determines that a natural or man-made condition exists that threatens a department rail facility or the provision of safe and efficient rail services using a department rail facility; and

(2) the condition threatens health, life, or property in the affected area.

(c) An order issued under Subsection (b) takes effect according to the order's terms, but the order may not take effect until reasonable notice is given:

(1) in a newspaper of general circulation in the affected area;

(2) through television or radio serving the affected area; or

(3) by circulating notices or posting signs at conspicuous places in the affected area.

(d) An order issued under Subsection (b) must expire not later than the 30th day after the date the order is issued.

(e) The director may amend, modify, or rescind an order issued under Subsection (b) while the order is effective.

(f) The director may issue one or more successive orders as necessary to protect health, life, or property in the affected area. Each successive order must expire not later than the 30th day after the date the successive order is issued.

(g) The department may not use department employees to operate rolling stock.

(h) The department may enter into a contract authorized by an order issued under Subsection (b) for a period not to exceed 90 days without using competitive bidding procedures otherwise required by law if the department attempts to negotiate with at least three qualified persons during the contracting process.

(i) Immediately after the department enters into a contract under this section, the department shall send a copy of the contract to the Legislative Budget Board. On request of the Legislative

Budget Board, the department may send the copy in an electronic format.

(j) The department may use any available funds to implement this section, including:

(1) the undedicated portion of the state highway fund;
and

(2) any money appropriated to the department from the general revenue fund, regardless of whether there is a line-item appropriation for such a purpose.

(k) The department shall attempt to recover any state funds used by the department to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 766 (H.B. [1750](#)), Sec. 2, eff. June 17, 2011.