

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

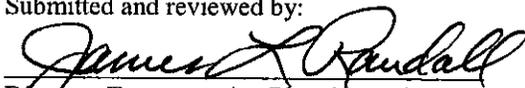
The Texas Transportation Commission (commission) finds it necessary to propose new §7.1, §7.10, §7.12, §7.13, §7.20, §7.21, and §7.22, and the repeal of §§15.140-15.155 all relating to rails and rail facilities, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed repeals and new sections, attached to this minute order as Exhibits A - G, are incorporated by reference as though set forth at length verbatim in this minute order.

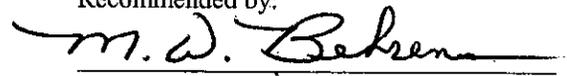
IT IS THEREFORE ORDERED by the commission that new §7.1, §7.10, §7.12, §7.13, §7.20, §7.21, and §7.22 and the repeal of §§15.140-15.155 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:


Director, Transportation Planning and
Programming Division

Recommended by:


Executive Director

110221 SEP 29 05

Minute
Number

Date
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes:
3 new Subchapter A, General Provisions, new §7.1, concerning
4 Definitions; Subchapter B, Contracts, new §7.10, Definitions,
5 new §7.12, Construction and Maintenance Contracts, and new §7.13
6 Leasing of Rail Facilities; new Subchapter C, Abandoned Rail,
7 new §7.20, Definitions, new §7.21, Abandonment of Rail Line by
8 Rural Rail Transportation District, and new §7.22, Acquisition
9 of Abandoned Rail Facilities.

10

11 EXPLANATION OF PROPOSED NEW SECTIONS

12 House Bill 3588, 78th Legislature, Regular Session, 2003, and
13 House Bill 2702, 79th Legislature, Regular Session, 2005,
14 broadened the department's responsibilities concerning rail
15 facilities. The enactment of these bills requires the adoption
16 of new rules concerning rail facilities. Due to the growing
17 department responsibilities in this area and the growing number
18 of administrative rules the department will be required to
19 promulgate, the department is creating a new Chapter in Title 43
20 of the Texas Administrative Code entitled Rail Facilities.

21

22 Existing rules concerning rail in Chapter 15, Transportation
23 Planning and Programming, are being simultaneously repealed.
24 This rulemaking moves those rules, without substantive change,
25 to the new Chapter 7, Rail Facilities.

1

2 New §7.1, Definitions, in new Subchapter A, General Provisions,
3 defines for purposes of the new Chapter 7, Texas Department of
4 Transportation and the Texas Transportation Commission.

5

6 New §7.10, in Subchapter B, Contracts, defines terms used in the
7 subchapter. These definitions are moved from §15.141 and
8 §15.151.

9

10 New §7.12, Construction and Maintenance Contracts, in Subchapter
11 B, Contracts, is moved from current §15.154.

12

13 New §7.13, Leasing of Rail Facilities, in Subchapter B,
14 Contracts, is moved from current §15.155.

15

16 New §7.20, Definitions, in new Subchapter C, Abandoned Rail,
17 defines terms used in the new subchapter. These definitions are
18 moved from §15.141 and §15.151.

19

20 New §7.21, Abandonment of Rail Line by Rural Rail Transportation
21 District, is moved from §15.140, §15.142, §15.143, §15.144, and
22 §15.145.

23

24 New §7.22, Acquisition of Abandoned Rail Facilities, is moved
25 from §15.152 and §15.153.

1

2 FISCAL NOTE

3 James Bass, Chief Financial Officer, has determined that for
4 each of the first five years the new sections as proposed are in
5 effect, there will be no fiscal implications for state or local
6 governments as a result of enforcing or administering the new
7 sections. There are no anticipated economic costs for persons
8 required to comply with the sections as proposed.

9

10 Jim Randall, P.E., Director, Transportation Planning and
11 Programming Division, has certified that there will be no
12 significant impact on local economies or overall employment as a
13 result of enforcing or administering the new sections.

14

15 PUBLIC BENEFIT

16 Mr. Randall has also determined that for each year of the first
17 five years the sections are in effect, the public benefit
18 anticipated as a result of enforcing or administering the new
19 sections will be the consolidation of department rules
20 concerning rail facilities under one chapter of Title 43 of the
21 Texas Administration Code. There will be no adverse economic
22 effect on small businesses.

23

24 SUBMITTAL OF COMMENTS

25 Written comments on the proposed new sections may be submitted

1 to Jim Randall, P.E., Director, Transportation Planning and
2 Programming Division, Texas Department of Transportation, 125
3 East 11th Street, Austin, Texas 78701-2483. The deadline for
4 receipt of comments is 5:00 p.m. on November 14, 2005.

5

6 STATUTORY AUTHORITY

7 The new sections are proposed under Transportation Code,
8 §201.101, which provides the Texas Transportation Commission
9 (commission) with the authority to establish rules for the
10 conduct of the work of the department, and more specifically,
11 Texas Civil Statutes, Article 6550c, §5(r), which requires the
12 commission to adopt rules governing the commission's approval of
13 the abandonment of a rural rail transportation district's rail
14 line with respect to which state funds have been loaned or
15 granted, and Transportation Code, §91.003, which authorizes the
16 commission to adopt rule necessary to implement Transportation
17 Code, Chapter 91, concerning Texas Department of Transportation
18 rail facilities.

19

20 CROSS REFERENCE TO STATUTE

21 Transportation Code, Chapter 91 and Texas Civil Statutes,
22 Article 6550c, §5(r).

1 SUBCHAPTER A. GENERAL PROVISIONS

2 §7.1. Definitions. The following words and terms, when used in
3 this chapter, shall have the following meanings, unless the
4 context clearly indicates otherwise.

5 (1) Commission -- The Texas Transportation Commission.

6 (2) Department -- The Texas Department of Transportation.

1 SUBCHAPTER B. CONTRACTS

2 §7.10. Definitions. The following words and terms, when used
3 in this subchapter, shall have the following meanings, unless
4 the context clearly indicates otherwise.

5 (1) Abandoned rail facilities--Rail facilities for which:

6 (A) a notice of intent to abandon or discontinue
7 service has been filed with the Surface Transportation Board
8 under 49 C.F.R. §1152.20;

9 (B) an application for abandonment or discontinuance of
10 service has been filed with the Surface Transportation Board
11 under 49 C.F.R. Part 1152; or

12 (C) abandonment or discontinuance of service has been
13 authorized by the Surface Transportation Board.

14 (2) Commission--The Texas Transportation Commission.

15 (3) Department--The Texas Department of Transportation.

16 (4) Director--The director of the department's
17 Transportation Planning and Programming Division.

18 (5) District--A rural rail transportation district
19 created under Texas Civil Statutes, Article 6550c.

20 (6) Executive Director--The executive director of the
21 department or the executive director's designee not below the
22 level of division director.

23 (7) Federal application--An application for abandonment

1 of a rail line filed with the Surface Transportation Board under
2 49 C.F.R. Part 1152, Subpart C.

3 (8) Notice--The notice of intent to file an abandonment
4 application described in 49 C.F.R. §1152.20.

5 (9) Public entity--A governmental entity, including a
6 political subdivision of this state, that is authorized by law
7 to operate rail facilities.

8 (10) Rail facility--Real or personal property, or any
9 interest in that property, that is determined to be necessary or
10 convenient for the provision of a freight or passenger rail
11 facility or system, including commuter rail, intercity rail, and
12 high-speed rail.

13 (11) Service performed on the rail line--The number of
14 trains operated on the line and their frequency, and the total
15 tonnage and carloads on the line.

16 (12) State funds--Funds provided by this state or an
17 agency of this state for the purpose of acquiring or operating a
18 rail line.

19

20 §7.12. Construction and Maintenance Contracts.

21 (a) Transportation Code, §91.051, provides that except for
22 a contract entered into under §91.052, §91.054 or §91.102, a
23 contract made by the department for the construction,

NOTE: New Sections

Exhibit C

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1 maintenance, or operation of a rail facility must be let by a
2 competitive bidding procedure in which the contract is awarded
3 to the lowest responsible bidder who complies with the
4 department's requirements.

5 (b) The department shall comply with the policies and
6 procedures prescribed in Chapter 9, Subchapter B of this title
7 (relating to Highway Improvement Contracts) in the qualification
8 of bidders, issuance of proposals and receipt of bids, and award
9 and execution of a contract for the construction or maintenance
10 of a rail facility.

11 (c) The name and address of the individual to whom bids
12 shall be submitted will be provided when a project is
13 advertised. That individual will be responsible for opening and
14 reading bids in accordance with the policies and procedures in
15 §9.15 of this title (relating to Acceptance, Rejection, and
16 Reading of Proposals).

17 (d) Bidder responsibility requirements shall be provided by
18 the department with the proposal form issued for a project.

19 (e) A construction or maintenance contract may provide for
20 partial payments and retainage in the amounts provided in the
21 contract.

22 (f) Architectural, engineering, or surveying services that
23 are needed for the construction or maintenance of a rail

1 facility shall be acquired in accordance with the requirements
2 of Government Code, Chapter 2254, and Chapter 9, Subchapter C of
3 this title (relating to Contracting for Architectural,
4 Engineering, and Surveying Services), except that the
5 administrative qualification requirements of §9.42 of this title
6 (relating to Administrative Qualification) shall not apply if
7 the department does not have a precertification category for the
8 work to be performed.

9

10 §7.13. Leasing of Rail Facilities.

11 (a) Transportation Code, §91.102, authorizes the department
12 to lease all or part of a rail facility or system to a rail
13 operator and to contract with a rail operator for the use or
14 operation of all or part of a rail facility or system.

15 Transportation Code, §91.052, authorizes the department to enter
16 into an agreement with a public entity, including a political
17 subdivision of this state, to permit the entity, independently
18 or jointly with the department, to acquire, construct, maintain,
19 or operate a rail facility or system.

20 (b) The department may lease a rail facility acquired or
21 constructed by the department to a public entity. The public
22 entity shall comply with all applicable laws when contracting
23 for the operation of the rail facility. The lease agreement

1 shall provide for the department's monitoring of the rail
2 operator's service and performance.

3 (c) The department will use a competitive process to obtain
4 private rail operators for rail facilities acquired or
5 constructed by the department. The department will publish a
6 notice in the Texas Register and in a newspaper of general
7 circulation in the area in which the rail facility is located,
8 requesting proposals to lease and operate a department rail
9 facility.

10 (d) In evaluating proposals submitted in response to a
11 request under subsection (c) of this section, the department
12 will consider the:

13 (1) qualifications and capability of the proposer to
14 operate the rail facility;

15 (2) proposer's experience in constructing and maintaining
16 rail facilities;

17 (3) financial capability of the proposer to operate and
18 maintain the rail facility;

19 (4) relative effectiveness of the proposer's management
20 team and staff;

21 (5) extent to which the proposal minimizes the
22 department's financial obligations in acquiring or maintaining
23 the rail facility;

1 (6) proposer's plan for maintaining and improving
2 equipment, trackwork, and right of way, including the planned
3 schedule for carrying out the maintenance and improvements and
4 planned funding sources; and

5 (7) proposer's planned operating rules and procedures for
6 servicing markets served by the rail facility, including plans
7 and proposed schedules for improving service and adding
8 additional markets.

9 (e) The department will rank all proposals submitted in
10 response to a request under subsection (c) of this section using
11 the criteria set out in the request for proposals. The criteria
12 will, at a minimum, include the factors listed in subsection (d)
13 of this section. The department will negotiate a lease
14 agreement with the highest ranked proposer.

15 (f) If an agreement satisfactory to the department cannot
16 be negotiated with the proposer, the department will formally
17 end negotiations with that proposer. The department may reject
18 all proposals or proceed to the next highest ranked proposal and
19 attempt to negotiate an agreement with that proposer.

20 (g) The executive director will submit to the commission a
21 summary of the final terms of a lease agreement successfully
22 negotiated with a public or private entity under this section.
23 The commission may authorize the executive director to execute

- 1 the agreement if it finds that the agreement is in the best
- 2 interest of the state and furthers state, regional, and local
- 3 transportation plans, programs, policies, and goals.

1 SUBCHAPTER C. ABANDONED RAIL.

2 §7.20. Definitions. The following words and terms, when used
3 in this subchapter, shall have the following meanings, unless
4 the context clearly indicates otherwise.

5 (1) Abandoned rail facilities--Rail facilities for which:

6 (A) a notice of intent to abandon or discontinue
7 service has been filed with the Surface Transportation Board
8 under 49 C.F.R. §1152.20;

9 (B) an application for abandonment or discontinuance of
10 service has been filed with the Surface Transportation Board
11 under 49 C.F.R. Part 1152; or

12 (C) abandonment or discontinuance of service has been
13 authorized by the Surface Transportation Board.

14 (2) Commission--The Texas Transportation Commission.

15 (3) Department--The Texas Department of Transportation.

16 (4) Director--The director of the department's
17 Transportation Planning and Programming Division.

18 (5) District--A rural rail transportation district
19 created under Texas Civil Statutes, Article 6550c.

20 (6) Federal application--An application for abandonment
21 of a rail line filed with the Surface Transportation Board under
22 49 C.F.R. Part 1152, Subpart C.

23 (7) Notice--The notice of intent to file an abandonment

1 application described in 49 C.F.R. §1152.20.

2 (8) Rail facility--Real or personal property, or any
3 interest in that property, that is determined to be necessary or
4 convenient for the provision of a freight or passenger rail
5 facility or system, including commuter rail, intercity rail, and
6 high-speed rail.

7 (9) Service performed on the rail line--The number of
8 trains operated on the line and their frequency, and the total
9 tonnage and carloads on the line.

10 (10) State funds--Funds provided by this state or an
11 agency of this state for the purpose of acquiring or operating a
12 rail line.

13
14 §7.21. Abandonment of Rail Line by Rural Rail Transportation
15 District.

16 (a) Purpose. Texas Civil Statutes, Article 6550c, §5(r)
17 provides that a rural rail transportation district created under
18 that article may not abandon a rail line of the district with
19 respect to which state funds have been loaned or granted unless
20 the abandonment is approved by the Texas Transportation
21 Commission as being consistent with the policies of that
22 article. This section prescribes the policies and procedures by
23 which a rural rail transportation district may apply for and

1 obtain approval to abandon a rail line of the district.

2 (b) Application.

3 (1) To request approval of the abandonment of a segment
4 of rail line with respect to which state funds have been loaned
5 or granted, a district shall submit an application to the
6 director.

7 (2) An application shall be submitted no later than 45
8 days after the filing of a notice under 49 C.F.R. §1152.20 and
9 shall include a copy of:

10 (A) documentation under which the district obtained
11 state funds for the rail line;

12 (B) the notice relating to the rail line;

13 (C) the federal application relating to the rail line;

14 and

15 (D) documentation evidencing compliance with the
16 requirements of 49 C.F.R. §1152.20.

17 (c) Public Hearing.

18 (1) If the department finds that the application meets
19 the requirements of subsection (b) of this section, it will
20 notify the district of its findings and will conduct one or more
21 public hearings to receive public comment on the proposed
22 abandonment.

23 (2) The department will hold at least one hearing within

1 at least one of the counties of the district.

2 (3) The department will file a notice of each hearing
3 with the Secretary of the State for publication in the Texas
4 Register.

5 (4) The district shall advertise each hearing in
6 accordance with an outreach plan developed in consultation with
7 the department.

8 (d) Approval: In approving a request to abandon a segment
9 of rail line, the commission will consider:

10 (1) service performed on the line in the two years
11 preceding the date of the notice;

12 (2) comments or other evidence of support of or
13 opposition to the proposed abandonment received from interested
14 parties;

15 (3) alternate sources of transportation services
16 available, including alternate sources of rail transportation
17 service;

18 (4) impact of the proposed abandonment on the operation
19 of the state transportation system;

20 (5) impact of the proposed abandonment on communities
21 served by the rail line; and

22 (6) viability of the rail line for continued rail
23 transportation service.

1 (e) Limitation. Abandonment of a rail line is subject to
2 Surface Transportation Board permission pursuant to federal law.

3

4 §7.22. Acquisition of Abandoned Rail Facilities.

5 (a) Purpose. Transportation Code, Chapter 91, authorizes
6 the department to acquire abandoned rail facilities. In
7 establishing criteria for the department's acquisition of
8 abandoned rail facilities, the commission is required to
9 consider the local and regional economic benefit realized from
10 the disbursement of funds in comparison to the amount of the
11 disbursement. This section prescribes policies and procedures
12 for the department's acquisition of abandoned rail facilities.

13 (b) Public involvement.

14 (1) On receipt of a notice of intent to abandon or
15 discontinue service, the department shall coordinate with the
16 governing body of any municipality, county, or district in which
17 all or a segment of the rail facility is located to determine
18 whether:

19 (A) the department should acquire the rail facility to
20 which the notice relates; or

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

23 (2) The department shall request that a municipality,

1 county, or district in which all or a segment of the rail
2 facility is located provide documentation concerning the local
3 and regional economic impact of an abandonment or discontinuance
4 of service.

5 (3) If the department determines that there is a need to
6 preserve the rail facility for continued rail service, or to
7 preserve the corridor for another public-use condition under 49
8 C.F.R. §1152.28, it will notify the municipalities, counties, or
9 districts in which all or a segment of the rail facility is
10 located, and will conduct one or more public hearings to receive
11 public comment on the proposed acquisition.

12 (4) In making a determination under subsection (c) of
13 this section, the department will consider:

14 (A) information contained in the notice of intent to
15 abandon or discontinue service and any application for
16 abandonment or discontinuance of service filed with the Surface
17 Transportation Board with respect to that rail facility under 49
18 C.F.R. Part 1152, including the extent of any service performed
19 on the rail line; and

20 (B) information provided by a municipality, county, or
21 district concerning the economic impact of an abandonment or
22 discontinuance of service.

23 (5) The department will hold at least one public hearing

1 within at least one of the counties in which the rail facility
2 is located and will file a notice of each hearing with the
3 Secretary of the State for publication in the Texas Register.

4 (c) Criteria. In approving the acquisition of an abandoned
5 rail facility, the commission will consider:

6 (1) service performed on the rail line in the two years
7 preceding the date of the notice of intent to abandon or
8 discontinue service;

9 (2) comments or other evidence in support of or
10 opposition to the proposed abandonment or discontinuance of
11 service received from interested parties;

12 (3) alternate sources of transportation services
13 available, including alternate sources of rail transportation
14 service;

15 (4) impact of the proposed abandonment or discontinuance
16 of service on the operation of the state transportation system;

17 (5) local and regional economic impact of the abandonment
18 or discontinuance of service;

19 (6) viability of the rail line for continued rail
20 transportation service; and

21 (7) the extent to which the monetary value of the
22 economic benefits attributable to the acquisition exceed the
23 amount of funds disbursed by the department to acquire the rail

1 facility.

NOTE: New Sections

Exhibit D

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1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes the
3 repeal of Chapter 15, Subchapter L, §§15.140-15.145 concerning
4 Abandonment of Rail Line by Rural Rail Transportation District
5 and Chapter 15, Subchapter M, §§15.150-15.155 concerning Rail
6 Facilities.

7

8 EXPLANATION OF PROPOSED REPEALS

9 House Bill 3588, 78th Legislature, Regular Session, 2003, and
10 House Bill 2702, 79th Legislature, Regular Session, 2005,
11 broadened the department's responsibilities concerning rail
12 facilities. The enactment of these bills requires the adoption
13 of new rules concerning rail facilities. Due to the growing
14 department responsibilities in this area and the growing number
15 of administrative rules the department will be required to
16 promulgate, the department is creating a new Chapter in Title 43
17 of the Texas Administrative Code entitled Rail Facilities.
18 Existing rules in Chapter 15, Transportation Planning and
19 Programming, concerning rail are being repealed and
20 simultaneously adopted in the new rail facilities chapter.

21

22 FISCAL NOTE

23 James Bass, Chief Financial Officer, has determined that for
24 each of the first five years the repeals as proposed are in
25 effect, there will be no fiscal implications for state or local

1 governments as a result of enforcing or administering the
2 repeals. There are no anticipated economic costs for persons
3 required to comply with the repeals.

4

5 James Randall, P.E., Director, Transportation Planning and
6 Programming Division, has certified that there will be no
7 significant impact on local economies or overall employment as a
8 result of enforcing or administering the repeals.

9

10 PUBLIC BENEFIT

11 Mr. Randall has also determined that for each year of the first
12 five years the repeals are in effect, the public benefit
13 anticipated as a result of enforcing or administering the
14 repeals will be the consolidation of rules concerning rail
15 facilities. There will be no adverse economic effect on small
16 businesses.

17

18 SUBMITTAL OF COMMENTS

19 Written comments on the proposed repeals may be submitted to
20 James Randall, P.E., Director, Transportation Planning and
21 Programming Division, Texas Department of Transportation, 125
22 East 11th Street, Austin, Texas 78701-2483. The deadline for
23 receipt of comments is 5:00 p.m. on November 14, 2005.

24

1 STATUTORY AUTHORITY:

2 The repeals are proposed under Transportation Code, §201.101,
3 which provides the Texas Transportation Commission with the
4 authority to establish rules for the conduct of the work of the
5 department.

6

7 CROSS REFERENCE TO STATUTE: Texas Civil Statutes, Article
8 6550c, §5(r).

1 49 C.F.R. Part 1152, Subpart C.

2 (6) Notice--The notice of intent to file an abandonment
3 application described in 49 C.F.R. §1152.20.

4 (7) State funds--Funds provided by this state or an
5 agency of this state for the purpose of acquiring or operating a
6 rail line.

7
8 §15.142. Application.

9 (a) To request approval of the abandonment of a segment of
10 rail line with respect to which state funds have been loaned or
11 granted, a district shall submit an application to the director.

12 (b) An application shall be submitted no later than 45 days
13 after the filing of a notice under 49 C.F.R. §1152.20 and shall
14 include a copy of:

15 (1) documentation under which the district obtained state
16 funds for the rail line;

17 (2) the notice relating to the rail line;

18 (3) the federal application relating to the rail line;

19 and

20 (4) documentation evidencing compliance with the
21 requirements of 49 C.F.R. §1152.20.

22

23 §15.143. Public Hearing.

NOTE: Repealed Sections

Exhibit F

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1 (a) If the department finds that the application meets the
2 requirements of §15.142 of this subchapter, it will notify the
3 district of its findings and will conduct one or more public
4 hearings to receive public comment on the proposed abandonment.

5 (b) The department will hold at least one hearing within at
6 least one of the counties of the district.

7 (c) The department will file a notice of each hearing with
8 the Secretary of the State for publication in the Texas
9 Register.

10 (d) The district shall advertise each hearing in accordance
11 with an outreach plan developed in consultation with the
12 department.

13
14 §15.144. Approval. In approving a request to abandon a segment
15 of rail line, the commission will consider:

16 (1) service performed on the line in the two years
17 preceding the date of the notice;

18 (2) comments or other evidence of support of or
19 opposition to the proposed abandonment received from interested
20 parties;

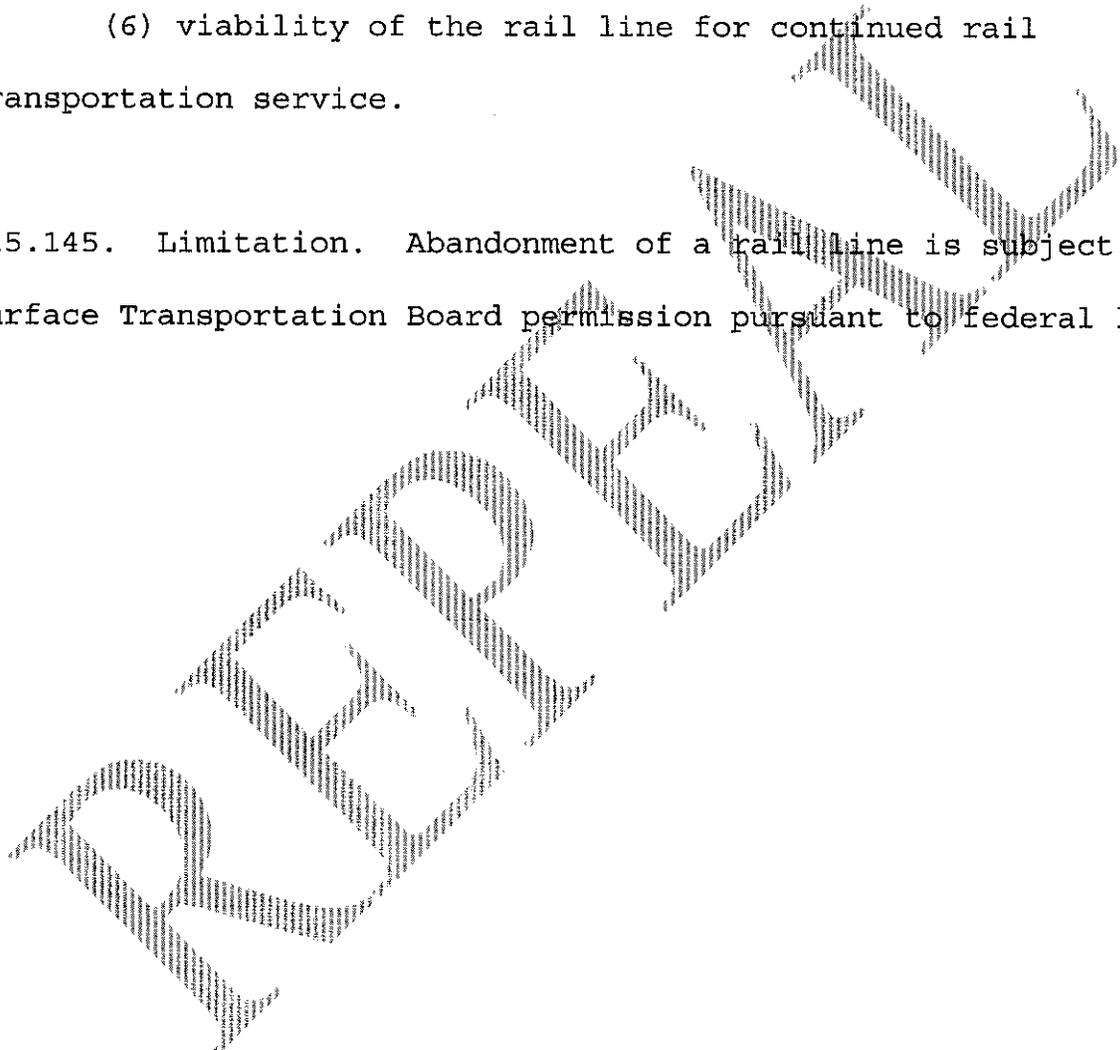
21 (3) alternate sources of transportation services
22 available, including alternate sources of rail transportation
23 service;

1 (4) impact of the proposed abandonment on the operation
2 of the state transportation system;

3 (5) impact of the proposed abandonment on communities
4 served by the rail line; and

5 (6) viability of the rail line for continued rail
6 transportation service.

7
8 §15.145. Limitation. Abandonment of a rail line is subject to
9 Surface Transportation Board permission pursuant to federal law.



1 SUBCHAPTER M. RAIL FACILITIES

2 §15.150. Purpose. Transportation Code, Chapter 91, authorizes
3 the Texas Department of Transportation to acquire, finance,
4 construct, maintain, and operate a passenger or freight rail
5 facility or system, including the acquisition of abandoned rail
6 facilities. In establishing criteria for the Texas Department
7 of Transportation's acquisition of abandoned rail facilities,
8 the Texas Transportation Commission is required to consider the
9 local and regional economic benefit realized from the
10 disbursement of funds in comparison to the amount of the
11 disbursement. This subchapter prescribes policies and
12 procedures for the Texas Department of Transportation's
13 acquisition of abandoned rail facilities, the awarding of
14 contracts for the construction or maintenance of rail
15 facilities, and the leasing of rail facilities acquired or
16 constructed by the Texas Department of Transportation to public
17 and private entities.

18
19 §15.151. Definitions. The following words and terms, when used
20 in this subchapter, shall have the following meanings, unless
21 the context clearly indicates otherwise.

22 (1) Abandoned rail facilities--Rail facilities for which:

23 (A) a notice of intent to abandon or discontinue

1 service has been filed with the Surface Transportation Board
2 under 49 C.F.R. §1152.20;

3 (B) an application for abandonment or discontinuance of
4 service has been filed with the Surface Transportation Board
5 under 49 C.F.R. Part 1152; or

6 (C) abandonment or discontinuance of service has been
7 authorized by the Surface Transportation Board.

8 (2) Commission--The Texas Transportation Commission.

9 (3) Department--The Texas Department of Transportation.

10 (4) District--A rural rail transportation district
11 created under Texas Civil Statutes, Article 6550c.

12 (5) Executive Director--The executive director of the
13 department or the executive director's designee not below the
14 level of division director.

15 (6) Public entity--A governmental entity, including a
16 political subdivision of this state, that is authorized by law
17 to operate rail facilities.

18 (7) Rail facility--Real or personal property, or any
19 interest in that property, that is determined to be necessary or
20 convenient for the provision of a freight or passenger rail
21 facility or system, including commuter rail, intercity rail, and
22 high-speed rail.

23 (8) Service performed on the rail line--the number of

1 trains operated on the line and their frequency, and the total
2 tonnage and carloads on the line.

3

4 §15.152. Public Involvement.

5 (a) On receipt of a notice of intent to abandon or
6 discontinue service, the department shall coordinate with the
7 governing body of any municipality, county, or district in which
8 all or a segment of the rail facility is located to determine
9 whether:

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

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

14 (b) The department shall request that a municipality,
15 county, or district in which all or a segment of the rail
16 facility is located provide documentation concerning the local
17 and regional economic impact of an abandonment or discontinuance
18 of service.

19 (c) If the department determines that there is a need to
20 preserve the rail facility for continued rail service, or to
21 preserve the corridor for another public-use condition under 49
22 C.F.R. §1152.28, it will notify the municipalities, counties, or
23 districts in which all or a segment of the rail facility is

1 located, and will conduct one or more public hearings to receive
2 public comment on the proposed acquisition.

3 (d) In making a determination under subsection (c) of this
4 section, the department will consider:

5 (1) information contained in the notice of intent to
6 abandon or discontinue service and any application for
7 abandonment or discontinuance of service filed with the Surface
8 Transportation Board with respect to that rail facility under 49
9 C.F.R. Part 1152, including the extent of any service performed
10 on the rail line; and

11 (2) information provided by a municipality, county, or
12 district concerning the economic impact of an abandonment or
13 discontinuance of service.

14 (e) The department will hold at least one public hearing
15 within at least one of the counties in which the rail facility
16 is located and will file a notice of each hearing with the
17 Secretary of the State for publication in the Texas Register.

18
19 §15.153. Criteria. In approving the acquisition of an
20 abandoned rail facility, the commission will consider:

21 (1) service performed on the rail line in the two years
22 preceding the date of the notice of intent to abandon or
23 discontinue service;

1 (2) comments or other evidence in support of or
2 opposition to the proposed abandonment or discontinuance of
3 service received from interested parties;

4 (3) alternate sources of transportation services
5 available, including alternate sources of rail transportation
6 service;

7 (4) impact of the proposed abandonment or discontinuance
8 of service on the operation of the state transportation system;

9 (5) local and regional economic impact of the abandonment
10 or discontinuance of service;

11 (6) viability of the rail line for continued rail
12 transportation service; and

13 (7) the extent to which the monetary value of the
14 economic benefits attributable to the acquisition exceed the
15 amount of funds disbursed by the department to acquire the rail
16 facility.

17
18 §15.154. Construction and Maintenance Contracts.

19 (a) Transportation Code, §91.051, provides that unless
20 otherwise provided by Subchapter C of that chapter, a contract
21 made by the department for the construction, maintenance, or
22 operation of a rail facility must be let by a competitive
23 bidding procedure in which the contract is awarded to the lowest

1 responsible bidder who complies with the department's
2 requirements.

3 (b) The department shall comply with the policies and
4 procedures prescribed in Chapter 9, Subchapter B of this title
5 (relating to Highway Improvement Contracts) in the qualification
6 of bidders, issuance of proposals and receipt of bids, and award
7 and execution of a contract for the construction or maintenance
8 of a rail facility.

9 (c) The name and address of the individual to whom bids
10 shall be submitted will be provided when a project is
11 advertised. That individual will be responsible for opening and
12 reading bids in accordance with the policies and procedures in
13 §9.15 of this title (relating to Acceptance, Rejection, and
14 Reading of Proposals).

15 (d) Bidder responsibility requirements shall be provided by
16 the department with the proposal form issued for a project.

17 (e) A construction or maintenance contract may provide for
18 partial payments and retainage in the amounts provided in the
19 contract.

20 (f) Architectural, engineering, or surveying services that
21 are needed for the construction or maintenance of a rail
22 facility shall be acquired in accordance with the requirements
23 of Government Code, Chapter 2254, and Chapter 9, Subchapter C of

1 this title (relating to Contracting for Architectural,
2 Engineering, and Surveying Services), except that the
3 administrative qualification requirements of §9.42 of this title
4 (relating to Administrative Qualification) shall not apply if
5 the department does not have a precertification category for the
6 work to be performed.

7
8 §15.155. Leasing of Rail Facilities.

9 (a) Transportation Code, §91.102, authorizes the department
10 to lease all or part of a rail facility or system to a rail
11 operator and to contract with a rail operator for the use or
12 operation of all or part of a rail facility or system.

13 Transportation Code, §91.052, authorizes the department to enter
14 into an agreement with a public entity, including a political
15 subdivision of this state, to permit the entity, independently
16 or jointly with the department, to acquire, construct, maintain,
17 or operate a rail facility or system.

18 (b) The department may lease a rail facility acquired or
19 constructed by the department to a public entity. The public
20 entity shall comply with all applicable laws when contracting
21 for the operation of the rail facility. The lease agreement
22 shall provide for the department's monitoring of the rail
23 operator's service and performance.

1 (c) The department will use a competitive process to obtain
2 private rail operators for rail facilities acquired or
3 constructed by the department. The department will publish a
4 notice in the Texas Register and in a newspaper of general
5 circulation in the area in which the rail facility is located,
6 requesting proposals to lease and operate a department rail
7 facility.

8 (d) In evaluating proposals submitted in response to a
9 request under subsection (c) of this section, the department
10 will consider the:

11 (1) qualifications and capability of the proposer to
12 operate the rail facility;

13 (2) proposer's experience in constructing and maintaining
14 rail facilities;

15 (3) financial capability of the proposer to operate and
16 maintain the rail facility;

17 (4) relative effectiveness of the proposer's management
18 team and staff;

19 (5) extent to which the proposal minimizes the
20 department's financial obligations in acquiring or maintaining
21 the rail facility;

22 (6) proposer's plan for maintaining and improving
23 equipment, trackwork, and right of way, including the planned

1 schedule for carrying out the maintenance and improvements and
2 planned funding sources; and

3 (7) proposer's planned operating rules and procedures for
4 servicing markets served by the rail facility, including plans
5 and proposed schedules for improving service and adding
6 additional markets.

7 (e) The department will rank all proposals submitted in
8 response to a request under subsection (c) of this section using
9 the criteria set out in the request for proposals. The criteria
10 will, at a minimum, include the factors listed in subsection (d)
11 of this section. The department will negotiate a lease
12 agreement with the highest ranked proposer.

13 (f) If an agreement satisfactory to the department cannot
14 be negotiated with the proposer, the department will formally
15 end negotiations with that proposer. The department may reject
16 all proposals or proceed to the next highest ranked proposal and
17 attempt to negotiate an agreement with that proposer.

18 (g) The executive director will submit to the commission a
19 summary of the final terms of a lease agreement successfully
20 negotiated with a public or private entity under this section.
21 The commission may authorize the executive director to execute
22 the agreement if it finds that the agreement is in the best
23 interest of the state and furthers state, regional, and local

- 1 transportation plans, programs, policies, and goals.