

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 3344

By: Maddux

AS INTRODUCED

An Act relating to railroads; creating the Oklahoma Railroad Leasing Act; providing for applicability of act; defining terms; prohibiting certain provisions in certain leases; making certain leases unenforceable; providing for damages; providing for procedures for determination of certain controversies; providing for appeals; providing for certain priority of offers to tenants for sale or lease of railroad land; providing procedures; providing for payment of costs; requiring certain determinations; setting certain time periods; providing for withdrawals; providing for venue; providing for obtaining declaratory relief; providing for authority of court in certain situations; providing for presentation of evidence; prohibiting dispossession of certain parties of property under lease; providing for compensation; authorizing certain condemnation; providing for amendment to Oklahoma Constitution; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 401 of Title 66, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Oklahoma Railroad Leasing Act".

B. The provisions of the Oklahoma Railroad Leasing Act shall not apply to or affect any valid lease entered into prior to the effective date of this act, but the provisions of the Oklahoma Railroad Leasing Act shall apply to and govern any renewal, extension, or modification of any such lease where such renewal, extension, or modification is effected on or after the effective date of this act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 402 of Title 66, unless there is created a duplication in numbering, reads as follows:

As used in this Oklahoma Railroad Leasing Act:

1. "Commission" means the Corporation Commission;
2. "Fair market value" means the amount in terms of money that a well-informed buyer is justified in paying and a well-informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion;
3. "Good faith" means honesty in fact in the conduct of the transaction concerned;
4. "Improvement" means any building or other structure permanently affixed to land;
5. "Lease" means any lease, license, permit, or other arrangement, under the terms of which a tenant occupies railroad land;

6. "Person" includes an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, or any other legal or commercial entity, and any successor or successors in interest thereto;

7. "Railroad" means any railroad company as defined in Title 66 of the Oklahoma Statutes, and its successor or successors in interest;

8. "Railroad land" means any and all interests in any tract or parcel of real property which is or has been owned, held, or used by a railroad and which is or has been occupied by a person who has made or acquired any improvement or improvements thereon pursuant to a lease, license, or permit granted to such person by such railroad, together with all rail sidings and trackage, access rights, and the appurtenances thereto. The term "railroad land" shall not mean or include any property which is subject to the exclusive jurisdiction of the federal Surface Transportation Board or its successors;

9. "Successor in interest" includes any agent, successor, assignee, trustee, receiver, or other person acquiring interests or rights by operation of law or otherwise including, but not limited to, the owner or holder of any servient estate or right of reversion relating to railroad land; and

10. "Tenant" means any person occupying railroad land in good faith pursuant to any lease, license, or permit granted to such person by a railroad.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 403 of Title 66, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by the Oklahoma Railroad Leasing Act, no lease executed on or after the effective date of this act shall provide that:

1. Any party agrees to waive or to forego rights or remedies pursuant to the Oklahoma Railroad Leasing Act;

2. Any party agrees to confess judgment on a claim arising out of the lease;

3. Any party agrees to pay another party's attorney fees;

4. Any party agrees to the exculpation or limitation of any liability of another party arising under law or to indemnify such other party for that liability or the costs connected therewith;

5. The term of the lease is less than one (1) year;

6. Rent is payable in advance for any period of more than one (1) year;

7. The lease may be terminated prior to the end of the term of the lease, other than for just cause, at the election or option of any party;

8. Improvements made or owned by the tenant become the property of any other person at any time prior to six (6) months after termination of the lease;

9. Any party agrees that such party must remove improvements from the railroad land upon termination of the lease;

10. A tenant shall have less than six (6) months after termination of the lease within which to remove the tenant's buildings or other improvements from the railroad land; or

11. Any party agrees to assume the defense or to pay the costs of defending any claim or other proceeding brought against another party, relating to the lease or the railroad land, including, but not limited to, attorney fees and expenses, investigator's fees and expenses, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments.

B. Except as otherwise provided by the Oklahoma Railroad Leasing Act, a provision prohibited by subsection A of this section included in a lease on or after the effective date of this act is unenforceable. If any party deliberately uses a lease provision

known by such party to be prohibited by subsection A of this section, the other party or parties may recover actual damages and reasonable attorney fees and expenses.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 404 of Title 66, unless there is created a duplication in numbering, reads as follows:

A. 1. When any person seeks to lease railroad land, the railroad shall extend a written offer to lease to the tenant, allowing the tenant sixty (60) days to respond. If such person and tenant are unable to agree upon any term or provision of such offer to lease, either or both parties may make written application to the Corporation Commission to resolve the disagreement. The application shall be made within sixty (60) days after the tenant's receipt of the railroad's offer. The Corporation Commission shall hear the controversy and make a final determination of a fair lease rental and all other terms of the transaction which were in dispute, within ninety (90) days after the application is filed. The determination is a final agency action. All correspondence shall be by certified mail.

2. The Corporation Commission's determination shall be just and equitable. In any determination of the fair lease rental for the property, each party shall select one appraiser and each appraisal shall be paid for by the party for whom the appraisal is prepared. The two appraisers shall select a third appraiser and the costs of this appraisal shall be divided equally between the parties. If the appraisers selected by the parties cannot agree on selection of a third appraiser, the Commission shall appoint a third appraiser and the costs of this appraisal shall be divided equally between the parties.

3. The Corporation Commission's determination and order is final for the purpose of review by the Supreme Court. The Supreme Court's scope of review shall be confined to whether there is

substantial evidence to support the Corporation Commission's determination and order.

B. The offer made herein shall be in person or by certified mail to the last-known address of the offeree.

C. The value of a tenant's improvements shall not be considered in determining the fair lease rental.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 405 of Title 66, unless there is created a duplication in numbering, reads as follows:

A. 1. When a railroad seeks to sell its interest in railroad land under any other circumstance other than for continued use of the railroad land for railroad purposes, the railroad shall extend a written offer to sell such interest at a fair market value price to the tenant, allowing sixty (60) days from the time of receipt for a written response. If a disagreement arises between the parties concerning the price or other terms of the sale transaction, either or both parties may make written application to the Corporation Commission to resolve the disagreement. The application shall be made within sixty (60) days from the time an initial written response is served upon the railroad by the person wishing to purchase the property. The Corporation Commission shall hear the controversy and make a final determination of the fair market value of the railroad's interest in the railroad land and the other terms of the transaction which were in dispute, within ninety (90) days after the application is filed. The Corporation Commission's determination is a final agency order. All correspondence shall be by certified mail.

2. The decision of the Corporation Commission shall be binding on the parties, except that a person who seeks to purchase the real property may withdraw the offer to purchase within thirty (30) days after receipt of the decision of the Corporation Commission. If a withdrawal is made, the railroad may sell the railroad's interest in

the railroad land without further order of the Corporation Commission.

B. To assist the Corporation Commission in its determination of the fair market value under subsection A of this section, the Corporation Commission may order that the fair market value of the railroad's interest in the railroad land be appraised by three (3) disinterested appraisers. The railroad and tenant shall each designate an appraiser and those two shall designate a third appraiser. The railroad and tenant shall each pay one-half (1/2) of the reasonable costs and expenses of such appraisals.

C. The fair market value of the railroad's interest in the railroad land shall include only the value of the railroad's interest therein and shall not include the value of any interest or improvement which is not owned by the railroad.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 406 of Title 66, unless there is created a duplication in numbering, reads as follows:

Any action to enforce any provision of the Oklahoma Railroad Leasing Act or to determine any controversy arising out of a lease shall be deemed an action concerning real property and must be brought in the county in which the railroad land is situated, except if it be an entire tract situated in two or more counties, the action may be brought in any district court of the county in which a part thereof is situated. Any person having an interest in railroad land may obtain declaratory relief with regard to any questions concerning any person's interest in the railroad land, questions concerning the construction or validity of the lease or any provision thereof, or any other questions arising out of the lease or related to the railroad land.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 407 of Title 66, unless there is created a duplication in numbering, reads as follows:

A. If a district court, as a matter of law, finds:

1. A lease or any provision thereof was unconscionable when made, the district court may refuse to enforce the lease, enforce the remainder of the lease without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result; or

2. A settlement in which a party waives or agrees to forego a claim or right pursuant to the Oklahoma Railroad Leasing Act or under a lease was unconscionable at the time it was made, the district court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid any unconscionable result.

B. If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease, provision, or settlement to aid the court in making the determination.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 408 of Title 66, unless there is created a duplication in numbering, reads as follows:

A. Where any tenant, while peacefully occupying railroad land under a lease granted by a railroad, has in good faith made improvements thereon or paid obligations in connection therewith, such tenant shall not be dispossessed by a party establishing a superior right, claim, or title to such railroad land, until such tenant is fully compensated therefore.

B. If in any action the judge concludes that a tenant described in subsection A of this section should be dispossessed, the judge shall before entering final judgment determine the compensation due such tenant under the provisions of subsection A of this section, or

if requested by either party, the judge shall submit the question to a jury for determination.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 409 of Title 66, unless there is created a duplication in numbering, reads as follows:

Any tenant whose lease of railroad land is terminated or subject to termination by reason of the abandonment by the railroad of the railroad land for railroad purposes, or by the proposed sale or other disposition of the railroad land by the railroad or its successor in interest, such tenant shall have the right to acquire by condemnation any interest in the railroad land, including a fee simple title thereto, in accordance with Chapter 2 of Title 66 of the Oklahoma Statutes. In any such proceeding, the compensation for the taking of such interest in the railroad land shall not include any valuation or compensation for any improvements situated on the railroad land which are not owned by the railroad or its successor in interest prior to the termination of such lease.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 410 of Title 66, unless there is created a duplication in numbering, reads as follows:

If this act, or any provision hereof is, or may be deemed to be, in conflict or inconsistent with any of the provisions of Section 18 through Section 34, inclusive, of Article IX of the Constitution of the State of Oklahoma, then, to the extent of any such conflicts or inconsistencies, it is hereby expressly declared this entire act and this section are amendments to and alterations of said sections of the Constitution, as authorized by Section 35 of Article IX of said Constitution.

SECTION 11. This act shall become effective November 1, 1998.

46-2-9288 KSM

