

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1391

By: Collins

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5
6 AS INTRODUCED

7 An Act relating to roads, bridges and ferries;
8 establishing the Rails Program Division as a separate
9 state agency under a new identity to be known as the
10 Oklahoma Railways Commission; providing for the
11 continuance of certain powers, duties, and
12 responsibilities; providing for transfer of certain
13 property, funds and pending matters; establishing
14 minimum and maximum number of full-time-equivalent
15 positions; authorizing the Oklahoma Railways
16 Commission and the Department of Transportation to
17 enter into certain agreement for transfer of
18 personnel; requiring written consent of employee to
19 be transferred; permitting certain classified
20 employees to retain certain status and salary;
21 requiring certain benefits to be retained by
22 employees; requiring transfers be coordinated with
23 Office of Personnel Management; authorizing the
24 Oklahoma Railways Commission to rent, lease, or own
property; permitting the Oklahoma Railways Commission
to accept certain gifts; providing for funding and
payment of transfer costs; abolishing certain
division; requiring the Director of State Finance to
coordinate transfer of assets and obligations;
requiring the Department of Central Services to
coordinate transfer of property and records;
providing governing body; providing requirements for
eligibility of Commission members; providing member
selection procedure; providing for selection of
Executive Director; authorizing Commission to conduct
certain activities; restricting evidentiary use of
certain information; requiring certain cooperation;
directing certain reporting; creating the Oklahoma
Railways Commission Revolving Fund; funding fund;
providing for expenditures; restricting expenditures
to certain purpose; providing for codification;

1 providing an effective date; and declaring an
2 emergency.

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

5 SECTION 1. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 5000 of Title 69, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Beginning July 1, 2009, the Rails Program Division shall
9 cease to be part of or a division of the Department of
10 Transportation and shall be deemed to be a separate and distinct
11 agency, to be known as the Oklahoma Railways Commission. The Rails
12 Program Division and the Director of the Rails Program Division
13 shall continue to exercise their statutory powers, duties, and
14 responsibilities until the effective date of this act, at which time
15 all records, property, equipment, assets, monies, matters pending,
16 and funds of the Division shall be transferred to the Oklahoma
17 Railways Commission.

18 B. The exercise of the powers granted to the Oklahoma Railways
19 Commission will be in all respects recognized as an essential
20 government function for the benefit of the people of this state, to
21 increase commerce, transportation and prosperity for the people of
22 this state.

23 C. The number of full-time-equivalent employees for the
24 Oklahoma Railways Commission shall not be less than five, nor more

1 than the number of employees currently allowed by law for the Rails
2 Program Division of the Department of Transportation and who
3 transfer to the Oklahoma Railways Commission pursuant to this
4 section. In no event shall the total full-time-equivalent employees
5 of the Rails Program Division transferring to the Oklahoma Railways
6 Commission or electing to remain with the Department of
7 Transportation exceed fourteen full-time-equivalent positions.

8 D. The Oklahoma Railways Commission and the Department of
9 Transportation may enter into an agreement for the transfer of
10 personnel from the Department of Transportation to the Oklahoma
11 Railways Commission. No employee shall be transferred to the
12 Oklahoma Railways Commission except on the freely given written
13 consent of the employee. All classified employees under the Merit
14 System of Personnel Administration who are not transferred to the
15 Oklahoma Railways Commission shall retain the status in the class to
16 which the position occupied by the employee on July 1, 2009, is
17 allocated by the Office of Personnel Management. The salary of the
18 employee shall not be reduced as a result of the position
19 allocation. All employees who are transferred to the Oklahoma
20 Railways Commission shall not be required to accept a lesser grade
21 or salary than presently received. All employees shall retain
22 leave, sick and annual time earned, and any retirement and longevity
23 benefits which have accrued during their tenure with the Department
24 of Transportation. The transfer of personnel between the state

1 agencies shall be coordinated with the Office of Personnel
2 Management.

3 E. The Oklahoma Railways Commission shall be authorized to
4 rent, lease, or own the appropriate office space and property in
5 order to conduct its business. The Oklahoma Railways Commission is
6 authorized to accept gifts, bequests, devises, contributions, and
7 grants, public or private, including federal funds or funds from any
8 other source for use in furthering the purpose of the Oklahoma
9 Railways Commission.

10 F. Funding for the Oklahoma Railways Commission shall be
11 provided for in the appropriation process of the Legislature,
12 revenue from lease operations, and those funds earmarked to the
13 Railroad Maintenance Revolving Fund, in addition to any other
14 funding provided by law. The expenses incurred by the Oklahoma
15 Railways Commission as a result of the transfer required by this
16 section shall be paid by the Oklahoma Railways Commission.

17 G. The division within the Department of Transportation known
18 as the Rails Program Division shall be abolished by the Department
19 of Transportation upon completion of the transfer.

20 H. The Director of State Finance is directed to coordinate the
21 transfer of assets, funds, allotments, purchase orders, liabilities,
22 outstanding financial obligations or encumbrances provided for in
23 this section. The Department of Central Services shall coordinate
24 the transfer of property and records provided for in this section.

1 I. The governing body of the Oklahoma Railways Commission shall
2 consist of six (6) commissioners. One commissioner from Oklahoma
3 City, one from Tulsa, and one from each of four divisible sectors of
4 Oklahoma, shall represent the interests of that district.

5 J. The Oklahoma Railways Commission members shall be selected
6 by a committee consisting of rail transportation consumers, of both
7 freight and passenger service, including public advocates,
8 transportation engineers, recognized experts in rail transportation,
9 elected state officials and other relevant parties.

10 Recommendations from each committee shall be acted upon for the
11 selection of one commissioner from each of the six districts.
12 Commissioners shall serve four-year terms.

13 K. The Executive Director of the Oklahoma Railways Commission
14 shall be selected by the nomination of one or more of the
15 commissioners, elected state officials, public and private
16 organizations or individuals. Vetting and approval shall be by two-
17 thirds (2/3) majority vote of the Commission, to which a term of
18 four (4) years shall be served.

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 5001 of Title 69, unless there
21 is created a duplication in numbering, reads as follows:

22 A. The Oklahoma Railways Commission and its Executive Director
23 acting under its authority is empowered and directed to encourage,
24 foster, and assist in the development of rail transportation in this

1 state and to encourage the establishment of railways and public rail
2 transportation facilities. It shall cooperate with and assist the
3 federal government, the municipalities of this state, and other
4 persons in the development of rail transportation, and shall seek to
5 coordinate the rail activities of these bodies and persons.

6 Municipalities are authorized to cooperate with the Commission in
7 the development of railways and rail facilities in this state.

8 B. The Commission may, insofar as is reasonably possible, make
9 available its engineering and other technical services to any
10 municipality or person desiring them in connection with the
11 planning, acquisition, construction, improvement, maintenance, or
12 operation of rail systems.

13 C. The Commission is authorized on behalf of and in the name of
14 the state, out of appropriations and other monies made available for
15 such purposes, to plan, zone, establish, construct, enlarge,
16 improve, maintain, equip, operate, regulate, protect, and police
17 railroad and rail facilities, either within or without the state,
18 including the construction, installation, equipping, maintenance,
19 and operation of such railways, buildings and other facilities for
20 the servicing of railroad equipment or for the comfort and
21 accommodation of rail passenger travelers. However, the regulatory
22 authority shall not extend to any person employed by, nor to any
23 rail facility or railroad under the exclusive possession, operation,
24 or control of, a person holding a certificate of public convenience

1 and necessity issued by any agency of the United States to operate
2 as a common carrier by rail of persons or property in interstate
3 commerce. For such purposes, the Commission may, by purchase, gift,
4 devise, or lease, acquire property, real or personal, or any
5 interest therein including easements in railway hazards or land
6 outside the boundaries of a rail facility or rail site, as are
7 necessary to permit safe and efficient operation of the state
8 railroads or to permit the removal, elimination, obstruction-marking
9 or obstruction hazards, or to prevent the establishment of rail
10 facility hazards. In like manner, the Commission may acquire
11 existing railroads, rail facilities and related equipment. However,
12 the Commission shall not acquire or take over any railroad, or rail
13 facility owned or controlled by a municipality of this or any other
14 state without the consent of the municipality. The Commission may,
15 by sale, lease, or otherwise, dispose of the property, railroad,
16 rail facility, or portion thereof or interest therein. The
17 disposal, by sale, lease, or otherwise, shall be in accordance with
18 the laws of this state governing the disposition of other property
19 of the state, except that, in the case of disposals to any
20 municipality or state government or the United States for railroad
21 purposes incident thereto, the sale, lease, or other disposal may be
22 effected in the manner and upon the terms the Commission may deem in
23 the best interest of the state.

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1 D. All railroads owned by the state shall be within the primary
2 jurisdiction of the Oklahoma Railways Commission for purposes of
3 design, development, and operation; provided, that railways owned
4 and operated by the state shall be exempt from these provisions
5 during time of a national emergency; and provided further, that any
6 railroad owned by the state may be leased by the Commission to a
7 public or private agency, as it may deem fit.

8 E. The Commission may exercise any powers granted by this
9 section jointly with any municipalities or with the United States.

10 F. In operating railroads or rail facilities owned or
11 controlled by the state, the Commission may enter into contracts,
12 leases, and other arrangements for a term not exceeding twenty-five
13 (25) years with any persons granting the privilege of using or
14 improving any facility or portion thereof or space therein for
15 commercial purposes; conferring the privilege of supplying goods,
16 commodities, things, services, or facilities at the rail facility;
17 or making available services to be furnished by the Commission or
18 its agents at the railway facilities.

19 G. In each such case the Commission may establish the terms and
20 conditions and fix the charges, rentals, or fees for the privileges
21 or services, which shall be reasonable and uniform for the same
22 class of privileges or services and shall be established with due
23 regard to the property and improvements used and the expenses of
24 operation to the state; provided, that in no case shall the public

1 be deprived of its rightful, equal, and uniform use of the
2 railroads, rail facilities or portion or facility thereof.

3 H. The Commission may by contract, lease, or other arrangement,
4 upon a consideration fixed by it, grant to any qualified person for
5 a term not to exceed twenty-five (25) years the privilege of
6 operating, as agent of the state or otherwise, any rail facility
7 owned or controlled by the state; provided, that no person shall be
8 granted any authority to operate the rail facility other than as a
9 public facility or to enter into any contracts, leases, or other
10 arrangements in connection with the operation of the rail facility
11 which the Commission might not have undertaken under any subsection
12 of this section.

13 I. To enforce the payment of any charges for repairs to, or
14 improvements, storage, or care of, any personal property made or
15 furnished by the Commission or its agents in connection with the
16 operation of a railway facility owned or operated by the state, the
17 state shall have liens on the property, which shall be enforceable
18 by the Commission as provided by law.

19 J. In accepting federal monies under this section, the
20 Commission shall have the same authority to enter into contracts on
21 behalf of the state as is granted to the Commission under any
22 subsection of this section with respect to federal monies accepted
23 on behalf of municipalities. All monies received by the Commission
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1 pursuant to this section shall be deposited in the Oklahoma Railways
2 Commission Revolving Fund created pursuant to Section 4 of this act.

3 K. The Commission shall grant no exclusive right for the use of
4 any railroad or railway facility under its jurisdiction. This shall
5 not be construed to prevent the making of contracts, leases, and
6 other arrangements pursuant to any subsection of this section.

7 L. The Commission may enter into any contracts necessary to the
8 execution of the powers granted it by this act. All contracts made
9 by the Commission, either as the agent of the state or as the agent
10 of any municipality, shall be made pursuant to the laws of the state
11 governing the making of like contracts. When the planning,
12 acquisition, construction, improvement, maintenance, or operation of
13 any railroad or railway facility is financed wholly or partially
14 with federal monies, the Commission as agent of the state or of any
15 municipality may let contracts in the manner prescribed by the
16 federal authorities acting under the laws of the United States and
17 any rules or regulations made hereunder.

18 M. The Commission, the Executive Director, or any officer or
19 employee of the Commission designated by it shall have the power to
20 hold investigations, inquiries, and hearings concerning matters
21 covered by the provisions of this act and the rules, regulations,
22 and orders of the Commission. Hearings shall be open to the public
23 and shall be held upon the call or notice the Commission deems
24 advisable. Each member of the Commission, the Executive Director,

1 and every officer or employee of the Commission designated by it to
2 hold any inquiry, investigation, or hearing shall have the power to
3 administer oaths and affirmations, certify to all official acts,
4 issue subpoenas, and order the attendance and testimony of witnesses
5 and the production of papers, books, and documents. In case of the
6 failure of any person to comply with any subpoena or order issued
7 under the authority of this subsection, or on the refusal of any
8 witness to testify to any matters regarding which the person may be
9 lawfully interrogated, it shall be the duty of the district court of
10 any county or of the judge thereof, on application of the Commission
11 or its authorized representative, to compel obedience by proceedings
12 for contempt, as in the case of disobedience of the requirements of
13 a subpoena issued from a district court or a refusal to testify
14 therein.

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 5002 of Title 69, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Facilitating the making of investigations by the Oklahoma
19 Railways Commission in the interest of public safety and promotion
20 of rail usage in the public interest requires, and it is therefore
21 provided, that the reports of investigations or hearings, or any
22 part thereof, shall not be admitted in evidence or used for any
23 purpose in any suit, action, or proceeding growing out of any matter
24 referred to in the investigation, hearing, or report thereof, except

1 in case of any suit, action, or proceeding, civil or criminal,
2 instituted by or in behalf of the Commission or in the name of the
3 state under the provisions of this act or other laws of the state
4 relating to railroads; nor shall any member of the Commission, or
5 the Executive Director, or any officer or employee of the Commission
6 be required to testify to any facts ascertained in, or information
7 gained by reason of, the official capacity of the person, or be
8 required to testify as an expert witness in any suit, action, or
9 proceeding involving any railroads and rail facilities. Subject to
10 the foregoing provisions, the Commission may in its discretion make
11 available to appropriate federal, state and municipal agencies
12 information and material developed in the course of its
13 investigations and hearings.

14 B. The Commission is authorized to confer with or to hold joint
15 hearings with any agency of the United States in connection with any
16 matter arising under this act or relating to the sound development
17 of rail transportation.

18 C. The Commission is authorized to avail itself of the
19 cooperation, services, records, and facilities of the agencies of
20 the United States as fully as may be practicable in the
21 administration and enforcement of this act. The Commission shall
22 furnish to the agencies of the United States its cooperation,
23 services, records, and facilities, insofar as may be practicable.

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1 D. The Commission shall report to the appropriate agency of the
2 United States all rail accidents in this state of which it is
3 informed and shall, insofar as is practicable, preserve, protect,
4 and prevent the removal of the component parts of any train,
5 railroad, rail facility or parts thereof involved in an accident
6 being investigated by it until the federal agency institutes an
7 investigation.

8 E. The Commission may organize and administer programs in
9 cooperation with universities, colleges and schools for the general
10 public. The Commission may also plan and act jointly in cooperative
11 research or high technology programs. As part of these programs,
12 the Commission may create and issue rail transportation films and
13 publications.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 5003 of Title 69, unless there
16 is created a duplication in numbering, reads as follows:

17 There is hereby created in the State Treasury a revolving fund
18 for the Oklahoma Railways Commission to be designated the "Oklahoma
19 Railways Commission Revolving Fund". The fund shall be a continuing
20 fund, not subject to fiscal year limitations, and shall consist of
21 all monies received by the Oklahoma Railways Commission Revolving
22 Fund from appropriations from the Legislature, revenue from lease
23 operations, funds from the Railroad Maintenance Revolving Fund, and
24 any other funding provided by law. All monies accruing to the

1 credit of the Oklahoma Railways Commission Revolving Fund are hereby
2 appropriated and may be budgeted and expended by the Oklahoma
3 Railways Commission for the purpose of encouraging, fostering, and
4 assisting in the development of rail transportation in this state.
5 Expenditures from the Oklahoma Railways Commission Revolving Fund
6 shall be made upon warrants issued by the State Treasurer against
7 claims filed as prescribed by law with the Director of State Finance
8 for approval and payment.

9 SECTION 5. This act shall become effective July 1, 2009.

10 SECTION 6. It being immediately necessary for the preservation
11 of the public peace, health and safety, an emergency is hereby
12 declared to exist, by reason whereof this act shall take effect and
13 be in full force from and after its passage and approval.

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