

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2842

By: Joyner

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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

1 to certain purpose; providing for codification; and
2 providing an effective date.

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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, 2010, 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. All full-time-equivalent employee positions for the Oklahoma
9 Railways Commission shall not be under the Merit System of Personnel
10 Administration and shall be considered unclassified service. All
11 employees shall serve at the pleasure of the Director of the
12 Oklahoma Railways Commission.

13 E. The Oklahoma Railways Commission and the Department of
14 Transportation may enter into an agreement for the transfer of
15 personnel from the Department of Transportation to the Oklahoma
16 Railways Commission. No employee shall be transferred to the
17 Oklahoma Railways Commission except on the freely given written
18 consent of the employee. All classified employees under the Merit
19 System of Personnel Administration who are not transferred to the
20 Oklahoma Railways Commission shall retain the status in the class to
21 which the position occupied by the employee on July 1, 2010, is
22 allocated by the Office of Personnel Management. The salary of the
23 employee shall not be reduced as a result of the position
24 allocation. All employees who are transferred to the Oklahoma

1 Railways Commission shall not be required to accept a lesser grade
2 or salary than presently received. All employees shall retain
3 leave, sick and annual time earned, and any retirement and longevity
4 benefits which have accrued during their tenure with the Department
5 of Transportation. The transfer of personnel between the state
6 agencies shall be coordinated with the Office of Personnel
7 Management.

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

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

22 H. The division within the Department of Transportation known
23 as the Rails Program Division shall be abolished by the Department
24 of Transportation upon completion of the transfer.

1 I. The Director of State Finance is directed to coordinate the
2 transfer of assets, funds, allotments, purchase orders, liabilities,
3 outstanding financial obligations or encumbrances provided for in
4 this section. The Department of Central Services shall coordinate
5 the transfer of property and records provided for in this section.

6 J. The governing body of the Oklahoma Railways Commission shall
7 consist of one commissioner according to each Congressional district
8 currently existing, subject to reapportionment.

9 K. The Oklahoma Railways Commission members shall be selected
10 by a committee consisting of rail transportation consumers, of both
11 freight and passenger service, including public advocates,
12 transportation engineers, recognized experts in rail transportation,
13 elected state officials and other relevant parties.
14 Recommendations from each committee shall be acted upon for the
15 selection of one commissioner from each of the six districts.
16 Commissioners shall serve four-year terms.

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

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

4 A. The Oklahoma Railways Commission and its Executive Director
5 acting under its authority is empowered and directed to encourage,
6 foster, and assist in the development of rail transportation in this
7 state and to encourage the establishment of railways and public rail
8 transportation facilities. It shall cooperate with and assist the
9 federal government, the municipalities of this state, and other
10 persons in the development of rail transportation, and shall seek to
11 coordinate the rail activities of these bodies and persons.

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

14 B. The Commission may, insofar as is reasonably possible, make
15 available its engineering and other technical services to any
16 municipality or person desiring them in connection with the
17 planning, acquisition, construction, improvement, maintenance, or
18 operation of rail systems.

19 C. The Commission is authorized on behalf of and in the name of
20 the state, out of appropriations and other monies made available for
21 such purposes, to plan, zone, establish, construct, enlarge,
22 improve, maintain, equip, operate, regulate, protect, and police
23 railroad and rail facilities, either within or without the state,
24 including the construction, installation, equipping, maintenance,

1 and operation of such railways, buildings and other facilities for
2 the servicing of railroad equipment or for the comfort and
3 accommodation of rail passenger travelers. However, the regulatory
4 authority shall not extend to any person employed by, nor to any
5 rail facility or railroad under the exclusive possession, operation,
6 or control of, a person holding a certificate of public convenience
7 and necessity issued by any agency of the United States to operate
8 as a common carrier by rail of persons or property in interstate
9 commerce. For such purposes, the Commission may, by purchase, gift,
10 devise, or lease, acquire property, real or personal, or any
11 interest therein including easements in railway hazards or land
12 outside the boundaries of a rail facility or rail site, as are
13 necessary to permit safe and efficient operation of the state
14 railroads or to permit the removal, elimination, obstruction-marking
15 or obstruction hazards, or to prevent the establishment of rail
16 facility hazards. In like manner, the Commission may acquire
17 existing railroads, rail facilities and related equipment. However,
18 the Commission shall not acquire or take over any railroad, or rail
19 facility owned or controlled by a municipality of this or any other
20 state without the consent of the municipality or state.

21 D. The Commission may not, by sale, lease, or otherwise,
22 dispose of the property, railroad, rail facility, or portion thereof
23 or interest therein that would encumber or prevent future
24 development or expansion of rail operations. The disposal of

1 inoperable, obsolete, or other equipment necessary to the efficient
2 operation of the Commission, by sale, lease, or otherwise, shall be
3 in accordance with the laws of this state governing the disposition
4 of other property of the state, except that, in the case of
5 disposals to any municipality or state government or the United
6 States for railroad purposes incident thereto, the sale, lease, or
7 other disposal may be effected in the manner and upon the terms the
8 Commission may deem in the best interest of the state.

9 E. All railroads owned by the state shall be within the primary
10 jurisdiction of the Oklahoma Railways Commission for purposes of
11 design, development, and operation; provided, that railways owned
12 and operated by the state shall be exempt from these provisions
13 during time of a national emergency; and provided further, that any
14 railroad owned by the state may be leased by the Commission to a
15 public or private agency, as it may deem fit.

16 F. The Commission may exercise any powers granted by this
17 section jointly with any municipalities or with the United States.

18 G. In operating railroads or rail facilities owned or
19 controlled by the state, the Commission may enter into contracts,
20 leases, and other arrangements for a term not exceeding twenty-five
21 (25) years with any persons granting the privilege of using or
22 improving any facility or portion thereof or space therein for
23 commercial purposes; conferring the privilege of supplying goods,
24 commodities, things, services, or facilities at the rail facility;

1 or making available services to be furnished by the Commission or
2 its agents at the railway facilities.

3 H. In each such case the Commission may establish the terms and
4 conditions and fix the charges, rentals, or fees for the privileges
5 or services, which shall be reasonable and uniform for the same
6 class of privileges or services and shall be established with due
7 regard to the property and improvements used and the expenses of
8 operation to the state; provided, that in no case shall the public
9 be deprived of its rightful, equal, and uniform use of the
10 railroads, rail facilities or portion or facility thereof.

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

21 J. To enforce the payment of any charges for repairs to, or
22 improvements, storage, or care of, any personal property made or
23 furnished by the Commission or its agents in connection with the
24 operation of a railway facility owned or operated by the state, the

1 state shall have liens on the property, which shall be enforceable
2 by the Commission as provided by law.

3 K. In accepting federal monies under this section, the
4 Commission shall have the same authority to enter into contracts on
5 behalf of the state as is granted to the Commission under any
6 subsection of this section with respect to federal monies accepted
7 on behalf of municipalities. All monies received by the Commission
8 pursuant to this section shall be deposited in the Oklahoma Railways
9 Commission Revolving Fund created pursuant to Section 4 of this act.

10 L. The Commission shall grant no exclusive right for the use of
11 any railroad or railway facility under its jurisdiction. This shall
12 not be construed to prevent the making of contracts, leases, and
13 other arrangements pursuant to any subsection of this section.

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

1 N. The Commission, the Executive Director, or any officer or
2 employee of the Commission designated by it shall have the power to
3 hold investigations, inquiries, and hearings concerning matters
4 covered by the provisions of this act and the rules, regulations,
5 and orders of the Commission. Hearings shall be open to the public
6 and shall be held upon the call or notice the Commission deems
7 advisable. Each member of the Commission, the Executive Director,
8 and every officer or employee of the Commission designated by it to
9 hold any inquiry, investigation, or hearing shall have the power to
10 administer oaths and affirmations, certify to all official acts,
11 issue subpoenas, and order the attendance and testimony of witnesses
12 and the production of papers, books, and documents. In case of the
13 failure of any person to comply with any subpoena or order issued
14 under the authority of this subsection, or on the refusal of any
15 witness to testify to any matters regarding which the person may be
16 lawfully interrogated, it shall be the duty of the district court of
17 any county or of the judge thereof, on application of the Commission
18 or its authorized representative, to compel obedience by proceedings
19 for contempt, as in the case of disobedience of the requirements of
20 a subpoena issued from a district court or a refusal to testify
21 therein.

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

1 A. In order to facilitate the making of investigations by the
2 Oklahoma Railways Commission in the interest of public safety and
3 promotion of rail usage in the public interest requires, and it is
4 therefore provided, that the reports of investigations or hearings,
5 or any part thereof, shall not be admitted in evidence or used for
6 any purpose in any suit, action, or proceeding growing out of any
7 matter referred to in the investigation, hearing, or report thereof,
8 except in case of any suit, action, or proceeding, civil or
9 criminal, instituted by or in behalf of the Commission or in the
10 name of the state under the provisions of this act or other laws of
11 the state relating to railroads; nor shall any member of the
12 Commission, or the Executive Director, or any officer or employee of
13 the Commission be required to testify to any facts ascertained in,
14 or information gained by reason of, the official capacity of the
15 person, or be required to testify as an expert witness in any suit,
16 action, or proceeding involving any railroads and rail facilities.
17 Subject to the foregoing provisions, the Commission may in its
18 discretion make available to appropriate federal, state and
19 municipal agencies information and material developed in the course
20 of its investigations and hearings.

21 B. The Commission is authorized to confer with or to hold joint
22 hearings with any agency of the United States in connection with any
23 matter arising under this act or relating to the sound development
24 of rail transportation.

1 C. The Commission is authorized to avail itself of the
2 cooperation, services, records, and facilities of the agencies of
3 the United States as fully as may be practicable in the
4 administration and enforcement of this act. The Commission shall
5 furnish to the agencies of the United States its cooperation,
6 services, records, and facilities, insofar as may be practicable.

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

14 E. The Commission may organize and administer programs in
15 cooperation with universities, colleges and schools for the general
16 public. The Commission may also plan and act jointly in cooperative
17 research or high technology programs. As part of these programs,
18 the Commission may create and issue rail transportation films, audio
19 visual program, electronic media and publications.

20 SECTION 4. This act shall become effective November 1, 2010.

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