HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1411 By: Joyner

COMMITTEE SUBSTITUTE

An Act relating to roads, bridges and ferries; creating the Oklahoma Railways Commission; providing for appointment of members of Commission; providing staggered initial terms; providing standard terms of appointment; specifying certain residency requirements; providing for redistricting appointment procedures; establishing qualifications for commissioners; allowing for reimbursement of certain expenses; allowing removal of commissioners under certain circumstances; providing for appointment of Director; establishing provisions related to Director; allowing delegation; requiring organizational meeting; providing for meetings; requiring annual report; directing office space be provided; establishing the Rails Program Division as a separate state agency under a new identity to be known as the Oklahoma Railways Commission; providing for the continuance of certain powers, duties, and responsibilities; providing for transfer of certain property, funds and pending matters; establishing minimum and maximum number of full-time-equivalent positions; authorizing the Oklahoma Railways Commission and the Department of Transportation to enter into certain agreement for transfer of personnel; requiring written consent of employee to be transferred; permitting certain classified employees to retain certain status and salary; requiring certain benefits to be retained by employees; requiring transfers be coordinated with

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Office of Personnel Management; authorizing the 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 the Office 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 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; providing effective dates; and declaring an emergency.

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 400 of Title 66, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Oklahoma Railways Commission. The Oklahoma Railways Commission shall consist of seven (7) members, who shall be appointed by the Governor and who shall continue in office, as designated by the Governor at the time of appointment, through the last day of the second, third, fourth, fifth, sixth, and seventh calendar years, respectively, following the passage of this

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act, with the initial seventh member remaining in office until the end of the calendar year 2018. The successors of the members initially appointed shall be appointed for terms of six (6) years in the same manner as the members originally appointed under this act, except that any person appointed to fill a vacancy shall be appointed only for the remainder of such term. Each member shall serve until the appointment and qualification of a successor. One member shall be appointed from each congressional district and any remaining members shall be appointed from the state at large. However, when congressional districts are redrawn each member appointed prior to July 1 of the year in which such modification becomes effective shall complete the current term of office and appointments made after July 1 of the year in which such modification becomes effective shall be based on the redrawn districts. Appointments made after July 1 of the year in which such modification becomes effective shall be from any redrawn districts which are not represented by a board member until such time as each of the modified congressional districts are represented by a board member. No appointments may be made after July 1 of the year in which such modification becomes effective if such appointment would result in more than two members serving from the same modified district. To qualify for appointment to the Commission, an appointee shall have the following minimum qualifications:

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1. A citizen and bona fide resident of the state; and

2. Three (3) years' experience in railway activities including but not limited to freight rail, passenger rail or light rail.

Members of the Commission shall receive no salary but shall be entitled to be reimbursed for necessary travel expenses pursuant to the State Travel Reimbursement Act. The members of the Commission may be removed by the Governor for inefficiency, neglect of duty, or malfeasance in office in the manner provided by law for the removal of officers not subject to impeachment.

B. 1. A Director of Railways shall be appointed by the Commission, who shall serve at the pleasure of the Commission. The Director shall be appointed with due regard to such person's fitness, by education and by knowledge of and recent practical experience in railways for the efficient dispatch of the powers and duties duly vested in and imposed upon the Director. The Director shall devote full time to the duties of the office and shall not be actively engaged or employed in any other business, vocation, or employment, nor shall the Director have any pecuniary interest in or any stock in or bonds of any civil railway enterprise. The Director shall be reimbursed for all traveling and other expenses incurred in the discharge of the official duties of the Director, subject to general statutory limitations on such expenses as contained in the State Travel Reimbursement Act.

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2. The Director shall be the executive officer of the Commission and under its supervision shall administer the provisions of this act and rules, regulations, and orders established thereunder and all other laws of the state relative to railways. The Director shall attend all meetings of the Commission, but shall have no vote. The Director shall be in charge of the offices of the Commission and responsible to the Commission for the preparation of reports and the collection and dissemination of data and other public information relating to railways. The Director is hereby empowered to execute all contracts entered into by the Commission.

3. The Commission may, by written order filed in its office, delegate to the Director any of the powers or duties vested in or imposed upon it by this act. Such delegated powers and duties may be exercised by the Director in the name of the Commission.

4. The Director shall appoint, subject to the approval of the Commission, such experts, field and office assistants, clerks, and other employees as may be required and authorized for the proper discharge of the functions of the Commission.

C. The Commission shall, within thirty (30) days after its appointment, organize, adopt a seal, and make such rules and regulations for its administration, not inconsistent herewith, nor inconsistent with, or contrary to, any act of the Congress of the United States or regulations promulgated or standards established

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pursuant thereto, as it may deem expedient and from time to time amend such rules and regulations. At such organizational meeting it shall elect from among its members a chair, a vice chair, and a secretary, to serve for one (1) year, and annually thereafter shall elect such officers, all to serve until their successors are appointed and qualified. The Commission shall schedule meetings at a convenient time and place as they become necessary. Four members shall constitute a quorum, and no action shall be taken by less than a majority of the Commission. Special meetings may be called as provided by the rules and regulations of the Commission. Regular meetings shall be held at the established offices of the Commission, but whenever the convenience of the public or of the parties may be promoted, or delay or expense may be prevented, the Commission may hold meetings, hearings, or proceedings at any other place designated by it. The Commission shall report in writing to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Oklahoma State Senate on or about January 31 of each year. The report shall contain a summary of the proceedings of the Commission during the preceding fiscal year, a detailed and itemized statement of all revenue and of all expenditures made by or in behalf of the Commission, such other information as it may deem necessary or useful, and any additional information which may be requested by the Governor, the Speaker of

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the Oklahoma House of Representatives or the President Pro Tempore of the Oklahoma State Senate.

D. Suitable office space shall be provided by the Department of Central Services for the Commission in the City of Oklahoma City, and the Commission may incur the necessary expense for office rent, furniture, stationery, printing, incidental expenses, and other necessary expenses needed for the administration of this act.

SECTION 2. 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. Beginning January 1, 2012, the Rails Program Division shall cease to be part of or a division of the Department of Transportation and shall be deemed to be a separate and distinct agency, to be known as the Oklahoma Railways Commission. The Rails Program Division and the Director of the Rails Program Division shall continue to exercise their statutory powers, duties, and responsibilities until the effective date of this act, at which time all records, property, equipment, assets, monies, matters pending, and funds of the Division shall be transferred to the Oklahoma Railways Commission.

B. The exercise of the powers granted to the Oklahoma Railways Commission will be in all respects recognized as an essential government function for the benefit of the people of this state, to

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increase commerce, transportation and prosperity for the people of this state.

C. The number of full-time-equivalent employees for the Oklahoma Railways Commission shall not be less than five, nor more than the number of employees currently allowed by law for the Rails Program Division of the Department of Transportation and who transfer to the Oklahoma Railways Commission pursuant to this section. In no event shall the total full-time-equivalent employees of the Rails Program Division transferring to the Oklahoma Railways Commission or electing to remain with the Department of Transportation exceed fourteen full-time-equivalent positions.

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

E. The Oklahoma Railways Commission and the Department of Transportation may enter into an agreement for the transfer of personnel from the Department of Transportation to the Oklahoma Railways Commission. No employee shall be transferred to the Oklahoma Railways Commission except on the freely given written consent of the employee. All classified employees under the Merit System of Personnel Administration who are not transferred to the

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Oklahoma Railways Commission shall retain the status in the class to which the position occupied by the employee on January 1, 2012, is allocated by the Office of Personnel Management. The salary of the employee shall not be reduced as a result of the position allocation. All employees who are transferred to the Oklahoma Railways Commission shall not be required to accept a lesser grade or salary than presently received. All employees shall retain leave, sick and annual time earned, and any retirement and longevity benefits which have accrued during their tenure with the Department of Transportation. The transfer of personnel between the state agencies shall be coordinated with the Office of Personnel Management.

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

G. Funding for the Oklahoma Railways Commission shall be provided for in the appropriation process of the Legislature, revenue from lease operations, and those funds earmarked to the Railroad Maintenance Revolving Fund, in addition to any other

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funding provided by law. The expenses incurred by the Oklahoma Railways Commission as a result of the transfer required by this section shall be paid by the Oklahoma Railways Commission.

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

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

SECTION 3. 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:

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

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

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

C. The Commission is authorized on behalf of and in the name of the state, out of appropriations and other monies made available for such purposes, to plan, zone, establish, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police railroad and rail facilities, either within or without the state, including the construction, installation, equipping, maintenance, and operation of such railways, buildings and other facilities for the servicing of railroad equipment or for the comfort and accommodation of rail passenger travelers. However, the regulatory authority shall not extend to any person employed by, nor to any rail facility or railroad under the exclusive possession, operation, or control of, a person holding a certificate of public convenience and necessity issued by any agency of the United States to operate as a common carrier by rail of persons or property in interstate commerce. For such purposes, the Commission may, by purchase, gift, devise, or lease, acquire property, real or personal, or any

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interest therein including easements in railway hazards or land outside the boundaries of a rail facility or rail site, as are necessary to permit safe and efficient operation of the state railroads or to permit the removal, elimination, obstruction-marking or obstruction hazards, or to prevent the establishment of rail facility hazards. In like manner, the Commission may acquire existing railroads, rail facilities and related equipment. However, the Commission shall not acquire or take over any railroad, or rail facility owned or controlled by a municipality of this or any other state without the consent of the municipality or state.

D. The Commission may not, by sale, lease, or otherwise, dispose of the property, railroad, rail facility, or portion thereof or interest therein that would encumber or prevent future development or expansion of rail operations. The disposal of inoperable, obsolete, or other equipment necessary to the efficient operation of the Commission, by sale, lease, or otherwise, shall be in accordance with the laws of this state governing the disposition of other property of the state, except that, in the case of disposals to any municipality or state government or the United States for railroad purposes incident thereto, the sale, lease, or other disposal may be effected in the manner and upon the terms the Commission may deem in the best interest of the state.

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

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

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

H. In each such case the Commission may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class of privileges or services and shall be established with due regard to the property and improvements used and the expenses of

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operation to the state; provided, that in no case shall the public be deprived of its rightful, equal, and uniform use of the railroads, rail facilities or portion or facility thereof.

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

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

K. In accepting federal monies under this section, the Commission shall have the same authority to enter into contracts on behalf of the state as is granted to the Commission under any subsection of this section with respect to federal monies accepted

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on behalf of municipalities. All monies received by the Commission pursuant to this section shall be deposited in the Oklahoma Railways Commission Revolving Fund created pursuant to Section 4 of this act.

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

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

N. The Commission, the Director, or any officer or employee of the Commission designated by it shall have the power to hold investigations, inquiries, and hearings concerning matters covered by the provisions of this act and the rules, regulations, and orders of the Commission. Hearings shall be open to the public and shall

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be held upon the call or notice the Commission deems advisable. Each member of the Commission, the Director, and every officer or employee of the Commission designated by it to hold any inquiry, investigation, or hearing shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas, and order the attendance and testimony of witnesses and the production of papers, books, and documents. In case of the failure of any person to comply with any subpoena or order issued under the authority of this subsection, or on the refusal of any witness to testify to any matters regarding which the person may be lawfully interrogated, it shall be the duty of the district court of any county or of the judge thereof, on application of the Commission or its authorized representative, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from a district court or a refusal to testify therein.

SECTION 4. 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. In order to facilitate the making of investigations by the Oklahoma Railways Commission in the interest of public safety and promotion of rail usage in the public interest requires, and it is therefore provided, that the reports of investigations or hearings,

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or any part thereof, shall not be admitted in evidence or used for any purpose in any suit, action, or proceeding growing out of any matter referred to in the investigation, hearing, or report thereof, except in case of any suit, action, or proceeding, civil or criminal, instituted by or in behalf of the Commission or in the name of the state under the provisions of this act or other laws of the state relating to railroads; nor shall any member of the Commission, or the Director, or any officer or employee of the Commission be required to testify to any facts ascertained in, or information gained by reason of, the official capacity of the person, or be required to testify as an expert witness in any suit, action, or proceeding involving any railroads and rail facilities. Subject to the foregoing provisions, the Commission may in its discretion make available to appropriate federal, state and municipal agencies information and material developed in the course of its investigations and hearings.

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

C. The Commission is authorized to avail itself of the cooperation, services, records, and facilities of the agencies of the United States as fully as may be practicable in the

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administration and enforcement of this act. The Commission shall furnish to the agencies of the United States its cooperation, services, records, and facilities, insofar as may be practicable.

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

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

SECTION 5. 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:

There is hereby created in the State Treasury a revolving fund for the Oklahoma Railways Commission to be designated the "Oklahoma Railways Commission Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of

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all monies received by the Oklahoma Railways Commission Revolving Fund from appropriations from the Legislature, revenue from lease operations, funds from the Railroad Maintenance Revolving Fund, and any other funding provided by law. All monies accruing to the credit of the Oklahoma Railways Commission Revolving Fund are hereby appropriated and may be budgeted and expended by the Oklahoma Railways Commission for the purpose of encouraging, fostering, and assisting in the development of rail transportation in this state. Expenditures from the Oklahoma Railways Commission Revolving Fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of State Finance for approval and payment.

SECTION 6. Section 1 of this act shall become effective July 1, 2011.

SECTION 7. Sections 2 and 3 of this act shall become effective January 1, 2012.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

COMMITTEE REPORT BY: COMMITTEE ON TRANSPORTATION, dated 03-02-2011 - DO PASS, As Amended.

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