

1 **SENATE FLOOR VERSION**

2 April 10, 2013

3 **AS AMENDED**

4 ENGROSSED HOUSE  
5 BILL NO. 2180

6 By: Joyner, Newell, Cockroft,  
7 Wood, Kouplen, Shannon and  
8 Pittman of the House

9 and

10 Schulz, Paddack, Sharp,  
11 McAffrey and Boggs of the  
12 Senate

13 [ roads, bridges and ferries - Oklahoma Railways  
14 Commission - appointment of members - qualifications  
15 for commissioners - Oklahoma Railways Commission  
16 Revolving Fund - codification - providing effective  
17 dates -

18 **emergency ]**

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

20 SECTION 1. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 400 of Title 66, unless there is  
22 created a duplication in numbering, reads as follows:

23 A. There is hereby created the Oklahoma Railways Commission.  
24 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

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

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

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

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

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

23        2. The Director shall be the executive officer of the  
24 Commission and under its supervision shall administer the provisions

1 of this act and rules, regulations, and orders established  
2 thereunder and all other laws of the state relative to railways.  
3 The Director shall attend all meetings of the Commission, but shall  
4 have no vote. The Director shall be in charge of the offices of the  
5 Commission and responsible to the Commission for the preparation of  
6 reports and the collection and dissemination of data and other  
7 public information relating to railways. The Director is hereby  
8 empowered to execute all contracts entered into by the Commission.

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

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

17 C. The Commission shall, within thirty (30) days after its  
18 appointment, organize, adopt a seal, and make such rules and  
19 regulations for its administration, not inconsistent herewith, nor  
20 inconsistent with, or contrary to, any act of the Congress of the  
21 United States or regulations promulgated or standards established  
22 pursuant thereto, as it may deem expedient and from time to time  
23 amend such rules and regulations. At such organizational meeting it  
24 shall elect from among its members a chair, a vice chair, and a

1 secretary, to serve for one (1) year, and annually thereafter shall  
2 elect such officers, all to serve until their successors are  
3 appointed and qualified. The Commission shall schedule meetings at  
4 a convenient time and place as they become necessary. Four members  
5 shall constitute a quorum, and no action shall be taken by less than  
6 a majority of the Commission. Special meetings may be called as  
7 provided by the rules and regulations of the Commission. Regular  
8 meetings shall be held at the established offices of the Commission,  
9 but whenever the convenience of the public or of the parties may be  
10 promoted, or delay or expense may be prevented, the Commission may  
11 hold meetings, hearings, or proceedings at any other place  
12 designated by it. The Commission shall report in writing to the  
13 Governor, the Speaker of the Oklahoma House of Representatives and  
14 the President Pro Tempore of the Oklahoma State Senate on or about  
15 January 31 of each year. The report shall contain a summary of the  
16 proceedings of the Commission during the preceding fiscal year, a  
17 detailed and itemized statement of all revenue and of all  
18 expenditures made by or in behalf of the Commission, such other  
19 information as it may deem necessary or useful, and any additional  
20 information which may be requested by the Governor, the Speaker of  
21 the Oklahoma House of Representatives or the President Pro Tempore  
22 of the Oklahoma State Senate.

23 D. Suitable office space shall be provided by the Office of  
24 Management and Enterprise Services for the Commission in the City of

1 Oklahoma City, and the Commission may incur the necessary expense  
2 for office rent, furniture, stationery, printing, incidental  
3 expenses, and other necessary expenses needed for the administration  
4 of this act.

5 SECTION 2. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 401 of Title 66, unless there is  
7 created a duplication in numbering, reads as follows:

8 A. Beginning January 1, 2014, 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 January 1, 2014, at which time all records,  
15 property, equipment, assets, monies, matters pending, and funds of  
16 the Division shall be transferred to the Oklahoma Railways  
17 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 January 1, 2014, 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 the Office of Management and Enterprise  
2 Services is directed to coordinate the transfer of assets, funds,  
3 allotments, purchase orders, liabilities, outstanding financial  
4 obligations or encumbrances provided for in this section. The  
5 Office of Management and Enterprise Services shall coordinate the  
6 transfer of property and records provided for in this section.

7 SECTION 3. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 402 of Title 66, unless there is  
9 created a duplication in numbering, reads as follows:

10 A. The Oklahoma Railways Commission and its Director acting  
11 under its authority is empowered and directed to encourage, foster,  
12 and assist in the development of rail transportation in this state  
13 and to encourage the establishment of railways and public rail  
14 transportation facilities. It shall cooperate with and assist the  
15 federal government, the municipalities of this state, and other  
16 persons in the development of rail transportation, and shall seek to  
17 coordinate the rail activities of these bodies and persons.  
18 Municipalities are authorized to cooperate with the Commission in  
19 the development of railways and rail facilities in this state.

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

1 C. The Commission is authorized on behalf of and in the name of  
2 the state, out of appropriations and other monies made available for  
3 such purposes, to plan, zone, establish, construct, enlarge,  
4 improve, maintain, equip, operate, regulate, protect, and police  
5 railroad and rail facilities, either within or without the state,  
6 including the construction, installation, equipping, maintenance,  
7 and operation of such railways, buildings and other facilities for  
8 the servicing of railroad equipment or for the comfort and  
9 accommodation of rail passenger travelers. However, the regulatory  
10 authority shall not extend to any person employed by, nor to any  
11 rail facility or railroad under the exclusive possession, operation,  
12 or control of, a person holding a certificate of public convenience  
13 and necessity issued by any agency of the United States to operate  
14 as a common carrier by rail of persons or property in interstate  
15 commerce. For such purposes, the Commission may, by purchase, gift,  
16 devise, or lease, acquire property, real or personal, or any  
17 interest therein including easements in railway hazards or land  
18 outside the boundaries of a rail facility or rail site, as are  
19 necessary to permit safe and efficient operation of the state  
20 railroads or to permit the removal, elimination or obstruction-  
21 marking of obstruction hazards, or to prevent the establishment of  
22 rail facility hazards. In like manner, the Commission may acquire  
23 existing railroads, rail facilities and related equipment. However,  
24 the Commission shall not acquire or take over any railroad, or rail

1 facility owned or controlled by a municipality of this or any other  
2 state without the consent of the municipality or state.

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

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

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

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

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

18 I. The Commission may by contract, lease, or other arrangement,  
19 upon a consideration fixed by it, grant to any qualified person for  
20 a term not to exceed twenty-five (25) years the privilege of  
21 operating, as agent of the state or otherwise, any rail facility  
22 owned or controlled by the state; provided, that no person shall be  
23 granted any authority to operate the rail facility other than as a  
24 public facility or to enter into any contracts, leases, or other

1 arrangements in connection with the operation of the rail facility  
2 which the Commission might not have undertaken under any subsection  
3 of this section.

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

10 K. In accepting federal monies under this section, the  
11 Commission shall have the same authority to enter into contracts on  
12 behalf of the state as is granted to the Commission under any  
13 subsection of this section with respect to federal monies accepted  
14 on behalf of municipalities. All monies received by the Commission  
15 pursuant to this section shall be deposited in the Oklahoma Railways  
16 Commission Revolving Fund created pursuant to Section 5 of this act.

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

21 M. The Commission may enter into any contracts necessary to the  
22 execution of the powers granted it by this act. All contracts made  
23 by the Commission, either as the agent of the state or as the agent  
24 of any municipality, shall be made pursuant to the laws of the state

1 governing the making of like contracts. When the planning,  
2 acquisition, construction, improvement, maintenance, or operation of  
3 any railroad or railway facility is financed wholly or partially  
4 with federal monies, the Commission as agent of the state or of any  
5 municipality may let contracts in the manner prescribed by the  
6 federal authorities acting under the laws of the United States and  
7 any rules or regulations made hereunder.

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

1 its authorized representative, to compel obedience by proceedings  
2 for contempt, as in the case of disobedience of the requirements of  
3 a subpoena issued from a district court or a refusal to testify  
4 therein.

5 SECTION 4. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 403 of Title 66, unless there is  
7 created a duplication in numbering, reads as follows:

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

1 federal, state and municipal agencies information and material  
2 developed in the course of its investigations and hearings.

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

7 C. The Commission is authorized to avail itself of the  
8 cooperation, services, records, and facilities of the agencies of  
9 the United States as fully as may be practicable in the  
10 administration and enforcement of this act. The Commission shall  
11 furnish to the agencies of the United States its cooperation,  
12 services, records, and facilities, insofar as may be practicable.

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

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

3 SECTION 5. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 404 of Title 66, unless there is  
5 created a duplication in numbering, reads as follows:

6 There is hereby created in the State Treasury a revolving fund  
7 for the Oklahoma Railways Commission to be designated the "Oklahoma  
8 Railways Commission Revolving Fund". The fund shall be a continuing  
9 fund, not subject to fiscal year limitations, and shall consist of  
10 all monies received by the Oklahoma Railways Commission Revolving  
11 Fund from appropriations from the Legislature, revenue from lease  
12 operations, funds from the Railroad Maintenance Revolving Fund, and  
13 any other funding provided by law. All monies accruing to the  
14 credit of the Oklahoma Railways Commission Revolving Fund are hereby  
15 appropriated and may be budgeted and expended by the Oklahoma  
16 Railways Commission for the purpose of encouraging, fostering, and  
17 assisting in the development of rail transportation in this state.  
18 Expenditures from the Oklahoma Railways Commission Revolving Fund  
19 shall be made upon warrants issued by the State Treasurer against  
20 claims filed as prescribed by law with the Director of the Office of  
21 Management and Enterprise Services for approval and payment.

22 SECTION 6. Section 1 of this act shall become effective July 1,  
23 2013.

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1 SECTION 7. Sections 2 and 3 of this act shall become effective  
2 January 1, 2014.

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

7 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
8 April 10, 2013 - DO PASS AS AMENDED

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