STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

HOUSE BILL 2897 By: Morrissette

AS INTRODUCED

An Act relating to railroads; amending 66 O.S. 2011, Section 304, as amended by Section 1, Chapter 377, O.S.L. 2013 (66 O.S. Supp. 2013, Section 304), which relates to the Railroad Revitalization Act; modifying the powers of the Department of Transportation regarding the sale of state-owned railroad property; allowing recommendations from and requiring consultation of the Legislature; requiring affirmation by legislative joint resolution prior to sale of railroad property by the Department of Transportation; and providing an effective date.

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

SECTION 1. AMENDATORY 66 O.S. 2011, Section 304, as amended by Section 1, Chapter 377, O.S.L. 2013 (66 O.S. Supp. 2013, Section 304), is amended to read as follows:

Section 304. A. The Department of Transportation is hereby authorized and empowered:

1. To acquire, construct, reconstruct, repair, replace, operate and maintain railroad rights-of-way and trackage projects at such locations and on such routes as it shall determine to be feasible and economically sound;

2. To enter into agreements with the owners of operating railroads for the acquisition and/or use of railroad rights-of-way and trackage on such terms, conditions, rates or rentals as the Department may consider to be in the best interests of the state;

3. To enter directly into agreements with owners of operating railroads or persons intending to operate as common carriers by rail to sell, lease, or sell by lease-purchase agreement any state-owned railroad property on such terms, conditions or amounts as the Department may consider to be in the best interests of the state and to promote the purposes of the Railroad Revitalization Act;

4. Prior to the sale of any railroad asset owned by the State of Oklahoma or the Department of Transportation, a process of request for proposal shall be initiated by the Department of Transportation with consultation by the Office of Management and Enterprise Services. Upon the issue date of a request for proposal regarding the sale of any railroad asset owned by the State of Oklahoma or the Department of Transportation, interested parties will have no less than ninety (90) days to provide a response. Following the close of the ninety-day response period, the Department of Transportation will conduct an evaluation of all submitted proposals, utilizing all available resources, and the Department of Commerce shall conduct an economic impact and/or activity study of all proposals. The Secretary of Transportation, Secretary of Finance, Secretary of Commerce, Secretary of

Agriculture, and Secretary of Energy shall be responsible for preparing a recommendation to the Transportation Commission, based on its evaluation of all submitted proposals including the results of the economic impact and/or activity study, and any recommendations from the Legislature provided the ~~recommendation meets~~ recommendations meet all other statutory requirements needed for action by the Commission. The Secretary of Transportation, Secretary of Finance, Secretary of Commerce, Secretary of Agriculture, ~~and~~ Secretary of Energy and members of the Legislature will have up to ninety (90) days, upon the closing date of the request for proposal, to present ~~its recommendation~~ recommendations to the Transportation Commission. The Transportation Commission will be responsible for consulting with the Legislature in determining if the sale of railroad assets within its jurisdiction is in the best interests of the State of Oklahoma and for authorizing the sale of such assets. ~~If a~~ Any determination ~~is rendered~~ by the Transportation Commission that the sale of any railroad asset within its jurisdiction is appropriate~~, notification~~ must be approved by Joint Resolution of the Senate and the House of Representatives. Notification must be made to the Speaker of the House of Representatives and the President Pro Tempore of the Senate in writing prior to the Commission meeting where final action will take place. All proceeds from the sale shall be deposited into the Railroad Maintenance Revolving Fund;

5. To acquire and hold real or personal property in the exercise of its powers for the performance of its duties as authorized by this act. Surplus property may be disposed of by the Department;

6. To acquire in the name of the Department, by purchase or otherwise on such terms and conditions and in such manner as it may deem proper, or by exercise of the right of condemnation, such public or private lands and personality, including public parks, playgrounds, or reservations, or parts thereof or rights therein, rights-of-way, trackage, property, rights, easements, and interests, as it may deem necessary for carrying out the provisions of the Railroad Revitalization Act;

7. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under the Railroad Revitalization Act, and to employ rail planning and management consultants, consulting engineers, attorneys, accountants, construction and financial consultants, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and to fix their compensation; provided, that all such expenses shall be payable solely from funds made available under and pursuant to the provisions of the Railroad Revitalization Act or from revenues; provided, further, no attorney employed by the Department, nor any member of any law firm of which the member may be connected, shall

ever be paid any fee or compensation for any special or extraordinary services;

8. To receive, accept and expend funds from the state, any federal agency, or from private sources, for rail planning and for administration of railroad assistance projects, and for or in aid of the acquisition, construction, reconstruction, replacement, repair, maintenance and operation of railroad rights-of-way and trackage and for rail service continuation payments to railroad companies for operating losses sustained by reasons of continuing service on a line which may otherwise be abandoned or which may experience a reduced level of service not in the public interest, where such continuation of service is carried out under a written agreement with the Department establishing the terms and conditions for such payments, and to receive and accept funds, aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such funds, aid or contributions may be made;

9. To adopt such rules and to do any and all things necessary to comply with rules, regulations or requirements of the United States Department of Transportation, any successor thereof, the Surface Transportation Board or any federal agency administering any law enacted by the Congress of the United States or having funds available for the purpose of the Department that are not

inconsistent with or contrary to the prohibitions and restrictions of Oklahoma law or public interest;

10. To expend, not to exceed twenty percent (20%) of the funds available in the Railroad Maintenance Revolving Fund during any one (1) year, at locations approved by the Oklahoma Corporation Commission, such Railroad Maintenance Revolving Fund monies as may be budgeted by the Department of Transportation for the purposes of installing signal lights, gate arms, or other active warning devices where any public road, street, or highway crosses a railroad right-of-way; provided, however, nothing in this act shall negate, change, or otherwise modify any existing statutory or common law duty of a railroad company;

11. To expend income and funds from the Railroad Maintenance Revolving Fund in the exercise of any or all of the foregoing powers; and

12. To do all things necessary or convenient to carry out the powers expressly granted in this act.

B. It shall be unlawful for any member, officer or employee of the Department to transact with the Department, either directly or indirectly, any business for profit of such member, officer or employee; and any person, firm or corporation knowingly participating therein shall be equally liable for violation of this provision.

The term "business for profit" shall include, but not be limited to, the acceptance or payment of any fee, commission, gift, or consideration to such member, officer or employee.

Violation of this provision shall constitute a felony and upon conviction shall be punishable by incarceration in the State Penitentiary for a term not to exceed five (5) years or by a fine of not less than Five Hundred Dollars ($500.00) and not more than Five Thousand Dollars ($5,000.00), or by both such imprisonment and fine.

C. All meetings of the Department shall be open public meetings, and all records shall be public records, except when considering personnel.

SECTION 2. This act shall become effective November 1, 2014.

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