

## LEGISLATIVE BILL 463

Approved by the Governor April 12, 1996

Introduced by Transportation Committee: Kristensen, 37, Chairperson;  
Avery, 3; Coordsen, 32; Day, 19; Jones, 43; Matzke, 47;  
Pedersen, 39; Pirsch, 10

AN ACT relating to the Light-Density Rail Line Assistance Act; to amend sections 74-1401 to 74-1402.01, 74-1405 to 74-1406, 74-1407.01, 74-1410, 74-1410.01, 74-1412.01 to 74-1415.01, 74-1415.04, 74-1415.05, 74-1419.02, 74-1420 to 74-1420.03, 74-1427, and 74-1429, Revised Statutes Supplement, 1994; to change provisions relating to revitalization projects; to define and redefine terms; to change, eliminate, and provide powers and duties of the Nebraska Railway Council and the Department of Roads; to eliminate the division of railroads; to change provisions relating to grants, loans, and funding; to harmonize provisions; to repeal the original sections; to outright repeal sections 74-1415.02, 74-1419.01, and 74-1419.03, Revised Statutes Supplement, 1994; and to declare an emergency.  
Be it enacted by the people of the State of Nebraska,

Section 1. Section 74-1401, Revised Statutes Supplement, 1994, is amended to read:

74-1401. (1) The Legislature finds that:

(a) Within the State of Nebraska light-density rail lines exist which are in need of ~~revitalization~~ rehabilitation or improvement;

(b) ~~in~~ In some cases the railroads owning light-density rail lines are not financially able to ~~revitalize~~ rehabilitate or improve them or there is not sufficient economic incentive for the railroads to ~~revitalize~~ rehabilitate or improve them;

(c) ~~the~~ The present condition of certain light-density rail lines imperils the public safety and well-being;

(d) ~~continued~~ Continued use of properly maintained and operated light-density rail lines is necessary for the economic and physical well-being of the citizens of this state;

(e) ~~properly~~ Properly maintained and operated light-density rail lines will contribute significantly to the conservation of limited energy resources;

(f) ~~properly~~ Properly maintained and operated light-density rail lines can avoid significant increased maintenance and construction costs on state highways and county roads caused by increased truck traffic resulting from shipments diverted if light-density rail lines are abandoned;

(g) ~~there~~ There are light-density rail lines outside this state which connect with and provide substantial overhead traffic to light-density rail lines within the state, and because of the revenue provided by this overhead traffic, the continued existence of these out-of-state lines may be vital to the long-term viability of some of Nebraska's light-density rail lines; ~~and~~

(h) ~~there~~ There are light-density rail lines which may need to be railbanked so the right-of-way may be used for future rail or other transportation purposes; ~~and~~

(i) There may be a need for rail facility construction, including new connections between two or more existing rail lines, intermodal freight terminals, industrial sidings, and relocation of existing rail lines for the purpose of improving the quality and efficiency of rail freight service.

(2) It is the intent of the Legislature, pursuant to the findings of subsection (1) of this section, to create a mechanism for the public purpose of acquiring, revitalizing, rehabilitating or improving, and operating light-density rail lines and providing light-density rail facility construction which will serve the public and will allow such mode of transportation to remain viable in the private and public sectors of the economy. The Legislature intends that such mechanism serve the public purpose by balancing the needs of carriers, shippers, and the public, promote adequate and efficient rail, highway, and county road transportation services, and increase the attractiveness of investing in light-density rail lines and rail-service-oriented enterprises relating to light-density rail line operations. The Legislature encourages efforts to restructure the light-density rail line system on an economically justified basis through financing mechanisms that will assure adequate acquisition, rehabilitation or improvement, operation, and construction revitalization and operation of

facilities.

(3) The Legislature has identified approximately eight hundred thirty miles of light-density rail lines on which the benefits of expending public funds to maintain rail service potentially outweigh the associated costs.

(4) The Legislature hereby declares that acquisition, ~~revitalization~~ rehabilitation or improvement, and operation of the light-density rail lines and construction of rail facilities in of Nebraska through the encouragement of private investments and the use of federal and state funds is a public purpose and use for which public money provided by the sale of bonds and appropriations of the Legislature may be borrowed, expended, advanced, loaned, or granted. Such activity is a proper governmental function and can best be accomplished by the creation of a division of railroads within the Department of Roads to carry out the powers and duties specified in the Light-Density Rail Line Assistance Act. ~~It is also necessary and proper to create as a separate body politic a Nebraska Railway Council with the powers and duties specified in the Light-Density Rail Line Assistance Act.~~ The necessity for the provisions of the act to protect the health, safety, and general economic welfare of all the people of this state is hereby declared as a matter of legislative determination.

Sec. 2. Section 74-1402, Revised Statutes Supplement, 1994, is amended to read:

74-1402. For purposes of the Light-Density Rail Line Assistance Act, the definitions found in sections 74-1402.01, 74-1405, 74-1405.01, 74-1405.02, 74-1406, 74-1407.01, 74-1410, 74-1410.01, and to 74-1412.01 and sections 4, 5, 9, 12, and 15 to 17 of this act shall be used.

Sec. 3. Section 74-1402.01, Revised Statutes Supplement, 1994, is amended to read:

74-1402.01. Acquiring carrier ~~shall mean means~~ means a business entity which acquires by purchase, lease, or otherwise a light-density rail line, except carriers acquiring an abandoned rail line, with the intent of operating the light-density rail line for the purpose of continuing the commercial transportation of goods or passengers over ~~such~~ the light-density rail line.

Sec. 4. Acquisition project means a project to acquire, by purchase, lease, or other appropriate method, a line of railroad or other rail properties or an interest in a line of railroad or other rail properties for existing or future rail freight service or to maintain existing transportation corridors for future rail or other transportation uses.

Sec. 5. Benefit-cost methodology means the methodology to be used for calculating the ratio of benefits to costs of the projects considered for financial assistance as established by the Federal Railroad Administration on July 1, 1990, pursuant to 49 U.S.C. app. 1654(N).

Sec. 6. Section 74-1405, Revised Statutes Supplement, 1994, is amended to read:

74-1405. Council ~~shall mean means~~ means the Nebraska Railway Council.

Sec. 7. Section 74-1405.01, Revised Statutes Supplement, 1994, is amended to read:

74-1405.01. Divesting carrier ~~shall mean means~~ means a common carrier or business entity engaged in the transportation of goods by rail which divests itself of a light-density rail line by sale, lease, or otherwise.

Sec. 8. Section 74-1405.02, Revised Statutes Supplement, 1994, is amended to read:

74-1405.02. Division ~~shall mean the division of railroads means the~~ area of responsibility for rail planning activities within the Department of Roads.

Sec. 9. Facilities means the track, ties, roadbed, and related structures, including terminals, team tracks and appurtenances, bridges, tunnels, and other structures used or usable for rail service operations.

Sec. 10. Section 74-1406, Revised Statutes Supplement, 1994, is amended to read:

74-1406. Federal act ~~shall mean means~~ means the Department of Transportation Act, Public Law 89-670, which act also includes the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94-210, and all amendments to the Department of Transportation Act, or any federal act providing for the assistance of local light-density rail lines.

Sec. 11. Section 74-1407.01, Revised Statutes Supplement, 1994, is amended to read:

74-1407.01. Light-density rail line ~~shall mean means~~ means any rail line classified as a light-density line by the United States Department of Transportation pursuant to the federal act or by the division under the Light-Density Rail Line Assistance Act. ~~Light-density rail line acquisition, revitalization, or operation shall mean any acts taken to restore, improve, or~~

maintain access to transportation services provided by a light-density rail line. Acquisition shall include the purchase of light-density rail lines to sustain operations and service or to maintain existing transportation corridors for future rail or other transportation uses.

Sec. 12. Operation project means a state-funded project to assist a rail carrier in financing the operation of a rail line.

Sec. 13. Section 74-1410, Revised Statutes Supplement, 1994, is amended to read:

74-1410. Plan shall mean means the current state rail system plan and any additions to such the plan promulgated by the division with the advice of the council.

Sec. 14. Section 74-1410.01, Revised Statutes Supplement, 1994, is amended to read:

74-1410.01. Railbanking shall mean means the purchase of abandoned light-density rail lines for future rail or other transportation purposes.

Sec. 15. Rail carrier means a person or entity providing railroad transportation for compensation who or which is subject to the jurisdiction of the Interstate Commerce Commission under subchapter 1 of 49 U.S.C. chapter 105.

Sec. 16. Rail facility construction project means the construction of rail or rail-related facilities, including new connections between two or more existing lines, intermodal freight terminals, sidings, and relocation of existing lines, for the purpose of improving the quality and efficiency of rail freight service.

Sec. 17. Rehabilitation or improvement project means a project for replacing, repairing, or upgrading, to the extent necessary to permit adequate and efficient rail freight service, facilities needed to provide service on a rail line.

Sec. 18. Section 74-1412.01, Revised Statutes Supplement, 1994, is amended to read:

74-1412.01. Revolving fund shall mean means the Light-Density Rail Line Assistance Revolving Fund.

Sec. 19. Section 74-1413, Revised Statutes Supplement, 1994, is amended to read:

74-1413. (1) There is hereby created the The Nebraska Railway Council, is created as a body politic and corporate, not a state agency, but an independent instrumentality. The State of Nebraska shall not be responsible for the debts, contracts, general obligations, or liabilities of the council or its members or agents, including tort claims. The council shall consist of eight members to be appointed by the Governor with the approval of a majority of the Legislature as follows:

(a) One light-density rail line shipper;  
 (b) One railroad management employee;  
 (c) One public service commissioner;  
 (d) Two members of the general public. One member from the general public shall be a person experienced in private or public finance, and the other member from the general public shall be a person experienced in marketing;

(e) One railroad maintenance-of-way employee;  
 (f) One representative from the Department of Economic Development;

and

(g) One representative from the Department of Agriculture.  
 The Director-State Engineer shall be serve as an ex officio member of the council.

(2) The Governor shall appoint council members for four-year terms. In appointing the original council members, the Governor shall (a) appoint the light-density rail line shipper and one of the members of the general public for one-year terms, (b) appoint the railroad management employee and one of the members of the general public for two-year terms, (c) appoint the public service commissioner and the railroad maintenance-of-way employee for three-year terms, and (d) appoint the representatives from the Department of Agriculture and the Department of Economic Development for four-year terms. The Governor shall fill vacancies caused by any reason, except that an appointment to fill a vacancy shall be only for the remainder of the unexpired term. The Governor may remove any council member for just cause.

(3) The council members shall have an interest in and knowledge of railroads and railroad-related functions. A Any council member shall abstain from voting on any decision or policy of the council if such the decision or policy will result in any financial benefit or detriment to him or her, any member of his or her family, or any business with which he or she is associated, which and the benefit or detriment is distinguishable from the effects of such the actions on the public generally or a broad segment of the

public.

~~(3)~~ (4) To assist the transition from the Branch Rail Revitalization Council to the Nebraska Railway Council, each member of the Branch Rail Revitalization Council serving on September 6, 1991, shall serve after such date as a member of the Nebraska Railway Council until a successor is nominated, approved, and acting as a member of the Nebraska Railway Council.

~~(4)~~ (5) Members of the council who are not employed by the State of Nebraska may receive a per diem of sixty dollars, not to exceed six thousand dollars in any one year, and all members of the council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

~~(5)~~ (6) There shall be no liability for damages on the part of and no cause of action in tort of any nature shall arise against the council or its agents or employees for any action taken by any of them in the performance of their powers and duties under the Light-Density Rail Line Assistance Act, unless such the action is grossly negligent.

Sec. 20. Section 74-1414, Revised Statutes Supplement, 1994, is amended to read:

74-1414. The council shall be responsible for administering programs and funds for light-density rail line acquisition, rehabilitation or improvement, operation, and rail facility construction projects revitalization, and operation implemented pursuant to the Light-Density Rail Line Assistance Act and the federal act, ~~7~~ except that all planning functions required for participation in the federal act shall be performed by the division.

Sec. 21. Section 74-1415, Revised Statutes Supplement, 1994, is amended to read:

74-1415. The council may do all things necessary to implement the Light-Density Rail Line Assistance Act, including, but not limited to:

- (1) Entering into agreements and contracts for the sale, lease, or purchase of tangible, intangible, real, and personal property;
- (2) Suing and being sued in its own name;
- (3) Hiring a director and necessary staff personnel;
- (4) Entering into agreements and contracts with state and federal agencies, political subdivisions, railroads, and other persons;
- (5) Collecting, administering, and expending funds;
- (6) Issuing bonds;
- (7) Borrowing ~~or lending~~ money;
- (8) loaning federal funds, state funds, or both for approved projects;

(9) Purchasing shares of stock or otherwise investing in light-density rail line acquisition, rehabilitation or improvement, or rail facility construction projects; or revitalization; and

~~(9)~~ (10) Purchasing and entering into agreements for the operation of a light-density rail line; and

(11) Entering into agreements and performing necessary functions to grant or loan federal funds for local rail freight assistance projects pursuant to 49 U.S.C. app. 1654.

The council shall not obligate or expend state funds for repayment of federal funds granted or loaned to a rail carrier pursuant to 49 U.S.C. app. 1654.

Sec. 22. Section 74-1415.01, Revised Statutes Supplement, 1994, is amended to read:

74-1415.01. (1) The council may invest funds for a light-density rail line acquisition, revitalization, or operation rehabilitation or improvement, operation, or rail facility construction project after the council finds, based upon the findings of the benefit-cost study consideration of the project and such additional investigation as the council makes and the council incorporates in its minutes, that:

(a) The project has a ratio of benefits to costs which is greater than one as calculated in accordance with the benefit-cost methodology;

(b) The proceeds of the investment will be used only to facilitate light-density rail line acquisition, revitalization, or operation rehabilitation or improvement, operation, or rail facility construction projects;

~~(b)~~ (c) The project has a reasonable chance of success;

~~(c)~~ (d) Participation by the council is necessary to the success of the project or the retention of associated rail service in the state;

~~(d)~~ (e) The project has the reasonable potential to create or maintain employment within the state;

~~(e)~~ (f) Others have already made or are contractually committed to make a substantial financial and time commitment to the project;

~~(f)~~ (g) There is a reasonable possibility that the council will recoup at least its initial investment; and

~~(g)~~ (h) Binding commitments have been made to the council for adequate reporting of financial data, which reporting shall include an annual report and an annual audit of the financial and operational records of the project, as determined by the council and for such control on the part of the council as shall be is considered prudent over the management of the project so as to protect the investment, including, in the discretion of the council, the right of access to financial and other records relating to the project.

(2) The council shall request a business plan, including a description of the project and its management, a proposed operating plan, and a statement of the amount, timing, and projected use of the capital required.

(3) After receiving information from the division on the feasibility of a project pursuant to section 74-1419.02, the chairperson of the council shall designate one or more members of the council to personally inspect the fragment, section, or line to be acquired, rehabilitated or improved, operated, or constructed and report to the council. The inspection shall take into consideration the following factors: Cost of maintenance, estimated cost of future improvements, a description of traffic service provided, whether other facilities provide comparable service, and the relationship of the fragment, section, or line to an integrated light-density rail line system.

(4) Prior to the council making a decision on a project, it may hold a public hearing on the proposed project. The council shall give written notice of the time and place of the hearing, not less than two weeks prior to the time of the hearing, to the political or governmental subdivisions or public corporations affected by the proposal.

(5) In carrying out its functions under this section, the council shall create an investment committee to assist in evaluating potential investments. The membership of the investment committee may include both members and staff of the council and persons drawn from sources other than the council who are recognized for outstanding knowledge and leadership in their fields, all of whom shall serve at the pleasure of the council. Members of the investment committee shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

~~(3)~~ (6) The council shall not make an investment in any light-density rail line revitalization rehabilitation or improvement project in excess of the amount necessary to own more than seventy percent of such project. This subsection shall not apply to the outright purchase and operation of a light-density rail line by the council.

~~(4)~~ (7) The council shall adopt procedures to carry out this section.

~~(5)~~ (8) An acquiring carrier using funds pursuant to the Light-Density Rail Line Assistance Act shall give priority in hiring to employees of the divesting carrier performing service in connection with the affected light-density rail line. To assert priority, the employee shall be qualified by experience and training to perform the available job.

(9) ~~The~~ ~~(6)~~ Beginning January 1, 1992, the council shall submit an annual report to the Legislature detailing investments and purchases made pursuant to this section. The report shall include a statement for each project of ~~(\*)~~ the current amount invested in each light-density rail line, ~~(b)~~ and a statement for each acquisition or operation project of (a) the current market value of assets of the company operating each light-density rail line and the current salvage value of each such line, ~~(\*)~~ (b) the market value of the assets of the company operating each light-density rail line, ~~(c)~~ (c) the salvage value of each light-density rail line at the time of the initial investment by the council, and ~~(\*)~~ (d) the number and market value of any light-density rail line being operated by the council.

Sec. 23. Section 74-1415.04, Revised Statutes Supplement, 1994, is amended to read:

74-1415.04. No investment in any acquisition, rehabilitation or improvement, operation, or rail facility construction project acquiring or operating entity shall be approved unless the council's investment is secured by a first lien on any combination of real and personal property the value of which is at least one hundred twenty percent of the amount of the investment.

Sec. 24. Section 74-1415.05, Revised Statutes Supplement, 1994, is amended to read:

74-1415.05. No acquisition of property shall be made by the council nor any interest in any acquiring or operating entity purchased. The council shall not acquire any property or invest in any acquisition, rehabilitation or improvement, operation, or rail facility construction project unless an independent certified appraiser verifies that the value of the property proposed to be acquired or to be held as security is at least one hundred

twenty percent of the purchase price to be paid. The council shall select the independent certified appraiser. The entity requesting the financial assistance shall bear the cost of the appraisal.

Sec. 25. Section 74-1419.02, Revised Statutes Supplement, 1994, is amended to read:

74-1419.02. (1) The division shall conduct research on basic railroad problems, plan and assist in the development of rail transportation, develop and maintain a federal-state relationship with regard to programs relating to railroads, assist any public or private agency or corporation in coordinating railroad services with those of other transportation modes, and recommend, prepare, and review plans and specifications for any project to be proposed to the council.

(2) The division shall:

(a) Conduct studies and investigations and act in an advisory capacity to the council in the establishment of broad policies for carrying out the Light-Density Rail Line Assistance Act;

(b) Advise the public regarding the policies, conditions, and activities of the division;

(c) Hold hearings, make investigations, studies, and inspections, and do all other things necessary to carry out the duties imposed upon it by law;

(d) Advance information and advice conducive to providing adequate and safe railroads in the state;

(e) Submit to the council its written advice regarding the feasibility of the acquisition, rehabilitation or improvement, or operation of a fragment or section of light-density rail line or of an entire light-density rail line or a rail line facility construction project when proposed by the division;

(f) Furnish necessary assistance to the council in making its inspection and study of any proposed project;

(g) Perform all planning functions required for participation in the federal act; and

(h) Make data and information of the division available to the council.

(3) The Department of Roads shall adopt and promulgate rules and regulations necessary for the division to carry out its duties under the Light-Density Rail Line Assistance Act and to participate in the federal act.

Sec. 26. Section 74-1420, Revised Statutes Supplement, 1994, is amended to read:

74-1420. (1) There is hereby created the Light-Density Rail Line Assistance Cash Fund which shall be used by the council to carry out its responsibilities under the Light-Density Rail Line Assistance Act. The fund may be used:

(a) To defray the expenses of the council;

(b) To purchase shares of stock or otherwise invest to facilitate light-density rail line acquisition or ~~revitalization~~ rehabilitation or improvement projects;

(c) To purchase and enter into agreements for the operation of a light-density rail line; and

(d) To carry out the purposes described in section 74-1415.01.

(2) The State Treasurer shall credit to the fund any money (a) appropriated to the fund by the Legislature, (b) donated as gifts, bequests, grants, or other contributions to the fund from public or private sources, and (c) received pursuant to section 74-1415.01. Money made available by any department or agency of the United States may also be credited to the fund if so directed by the Director-State Engineer or may be credited to the revolving fund pursuant to section 74-1420.01. Any money in the Light-Density Rail Line Assistance Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 27. Section 74-1420.01, Revised Statutes Supplement, 1994, is amended to read:

74-1420.01. (1) There is hereby created the Light-Density Rail Line Assistance Revolving Fund which shall be used by the council to carry out its responsibilities under the Light-Density Rail Line Assistance Act. The revolving fund shall consist of any money credited to the revolving fund pursuant to section 74-1420, any loan repayment money received, any interest received on such money, and other funds as the council may designate. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The revolving fund may be used to carry out the purposes of the

## Light-Density Rail Line Assistance Act.

(3) State and federal light-density rail line assistance funds shall not be commingled. The use of federal funds held in the revolving fund is restricted by rules and regulations of the Federal Railroad Administration. No loans or grants using the revolving fund shall be disbursed until written approval is received from the Federal Railroad Administration.

Sec. 28. Section 74-1420.02, Revised Statutes Supplement, 1994, is amended to read:

74-1420.02. The division is encouraged to solicit and may expend any federal funds which may become available for program administration or any light-density rail line acquisition, revitalization, or operation as provided in the Light-Density Rail Line Assistance Act projects allowable under the federal act.

Sec. 29. Section 74-1420.03, Revised Statutes Supplement, 1994, is amended to read:

74-1420.03. The council may accept gifts, donations, money, and services, including in-kind resources, for any purpose allowable under the Light-Density Rail Line Assistance Act.

Sec. 30. Section 74-1427, Revised Statutes Supplement, 1994, is amended to read:

74-1427. (1) If the governing body of a political subdivision determines that it is necessary or beneficial to expend local tax funds for acquisition, revitalization rehabilitation or improvement, or operation of a light-density rail line or rail facility construction, including the issuance of bonds for the purposes set forth in the Light-Density Rail Line Assistance Act, the governing body shall by resolution place the proposition for such expenditure or bond issue on the general or primary election ballot or in odd-numbered years only call for a special election in such political subdivision for the purpose of approving such expenditure of local tax funds.

(2) The resolution calling for the election and the election notice shall show the proposed purpose for which such local tax funds will be expended and the amount of money sought.

(3) Notice of the election shall state the date the election is to be held and the hours the polls will be open. Such notice shall be published in a newspaper that is published in or of general circulation in such political subdivision at least once each week for three weeks prior to such election. If no such newspaper exists, notice shall be posted in at least three public places in the political subdivision for at least three weeks prior to such election.

(4) The proposition appearing on the ballot in any election shall state the purpose for which such local tax funds will be spent, the amount of local tax funds to be so expended, and the source from which the revenue will be raised. Such proposition shall be adopted if approved by a majority of those voting in such election.

(5) If a special election is called, the governing body shall prescribe the form of the ballot to be used.

Sec. 31. Section 74-1429, Revised Statutes Supplement, 1994, is amended to read:

74-1429. Sections 74-1401 to 74-1429 and sections 4, 5, 9, 12, and 15 to 17 of this act shall be known and may be cited as the Light-Density Rail Line Assistance Act.

Sec. 32. Original sections 74-1401 to 74-1402.01, 74-1405 to 74-1406, 74-1407.01, 74-1410, 74-1410.01, 74-1412.01 to 74-1415.01, 74-1415.04, 74-1415.05, 74-1419.02, 74-1420 to 74-1420.03, 74-1427, and 74-1429, Revised Statutes Supplement, 1994, are repealed.

Sec. 33. The following sections are outright repealed: Sections 74-1415.02, 74-1419.01, and 74-1419.03, Revised Statutes Supplement, 1994.

Sec. 34. Since an emergency exists, this act takes effect when passed and approved according to law.