

## HOUSE BILL No. 2858

By Committee on Transportation

2-12

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9 AN ACT relating to the state corporation commission; transferring cer-  
10 tain powers to the department of transportation; concerning railroads;  
11 amending K.S.A. 66-105, 66-106, 66-154, 66-154a, 66-154b, 66-155,  
12 66-230 and 66-319 and repealing the existing sections; also repealing  
13 K.S.A. 66-103, 66-112, 66-145, 66-146, 66-148, 66-149, 66-153, 66-  
14 157, 66-158, 66-159, 66-160, 66-161, 66-162, 66-163, 66-166, 66-168,  
15 66-173, 66-174, 66-180, 66-181, 66-182, 66-201 through 66-216, 66-  
16 224, 66-225, 66-226, 66-234 through 66-241, 66-244 through 66-249,  
17 66-273, 66-274, 66-277, 66-278, 66-285 through 66-294, 66-2,108, 66-  
18 2,109, 66-2,111, 66-2,112, 66-2,113, 66-2,119, 66-2,120, 66-304, 66-  
19 305, 66-306, 66-307 and 66-320.

20  
21 *Be it enacted by the Legislature of the State of Kansas:*

22 New Section 1. (a) Except as specifically provided by law, all powers,  
23 duties and functions of the state corporation commission as it relates to  
24 the regulation of railroads under the provisions of chapter 66 of the Kan-  
25 sas Statutes Annotated is hereby transferred to and conferred and im-  
26 posed upon the Kansas department of transportation.

27 (b) Except as specifically provided by law, the Kansas department of  
28 transportation shall be the successor in every way to the powers, duties  
29 and functions of the state corporation commission contained in chapter  
30 66 of the Kansas Statutes Annotated, which relate to the regulation of  
31 railroads, in which the state corporation commission was vested prior to  
32 the effective date of this act. Every act performed in the exercise of such  
33 powers, duties and functions by or under the authority of the state cor-  
34 poration commission shall be deemed to have the same force and effect  
35 as if performed by the state corporation commission in which such pow-  
36 ers, duties and functions were vested prior to the effective date of this  
37 act.

38 (c) Except as specifically provided by law, whenever the state cor-  
39 poration commission, or words of like effect, is referred to or designated  
40 by a statute, contract or other document when in reference to the regu-  
41 lation of railroads, such reference or designation shall be deemed to apply  
42 to the Kansas department of transportation.

43 (d) All rules and regulations of the state corporation commission re-

1 ferencing the regulation of railroads in existence on the effective date of  
2 this act shall continue to be effective and shall be deemed to be duly  
3 adopted rules and regulations of the Kansas department of transportation  
4 until revised, amended, revoked or nullified pursuant to law.

5 New Sec. 2. When any conflict arises as to the disposition of any  
6 power, function or duty in relation to the transfer of this authority, such  
7 conflict shall be resolved by the governor, whose decision shall be final.

8 New Sec. 3. (a) The Kansas department of transportation shall suc-  
9 ceed to and have the legal custody of all records, memoranda, writings,  
10 entries, prints, representations or combinations thereof of any act, trans-  
11 action, occurrence or event relating to the regulation of railroads and the  
12 performance of the powers, duties and functions of the state corporation  
13 commission transferred to the Kansas department of transportation. Any  
14 conflict as to the proper disposition of records arising under this section  
15 and resulting from the transfer shall be determined by the governor,  
16 whose decision shall be final.

17 (b) No suit, action or other proceeding, judicial or administrative,  
18 lawfully commenced or which could have been commenced, by or against  
19 any state agency mentioned in this act, or by or against any officer of the  
20 state in such officer's official capacity or in relation to the discharge of  
21 such officer's official duties, shall abate by reason of the governmental  
22 reorganization affected under the provisions of this act. The court may  
23 allow any such suit, action or other proceeding to be maintained by or  
24 against the successor of any such state agency or any officer affected.

25 (c) No criminal action commenced or which could have been com-  
26 menced by the state shall abate by the taking effect of this act.

27 New Sec. 4. Every railroad shall file with the secretary of the Kansas  
28 department of transportation an annual report and such monthly or other  
29 regular reports, or special reports and such other information as the sec-  
30 retary may require. Annual reports shall be filed on or before May 1 for  
31 the preceding calendar year unless otherwise specified by rules and reg-  
32 ulations adopted by the secretary of transportation.

33 Sec. 5. K.S.A. 66-105 is hereby amended to read as follows: 66-105.  
34 The term "common carriers," as used in this act, shall include all ~~railroad~~  
35 ~~companies, express companies, street railroads, suburban or interurban~~  
36 ~~railroads, sleeping-car companies,~~ freight-line companies, equipment  
37 companies, pipe-line companies, and all persons and associations of per-  
38 sons, whether incorporated or not, operating such agencies for public use  
39 in the conveyance of persons or property within this state.

40 Sec. 6. K.S.A. 66-106 is hereby amended to read as follows: 66-106.  
41 (a) The state corporation commission shall have power to adopt reason-  
42 able and proper rules and regulations to govern its proceedings, including  
43 the assessment and taxation of costs on any complaint provided for in

1 K.S.A. 66-133, and amendments thereto, and to regulate the mode and  
2 manner of all investigations, tests, audits, inspections and hearings not  
3 specifically provided for herein, except that no person desiring to be pres-  
4 ent at any investigation or hearing by the commission shall be denied  
5 admission.

6 (b) The state corporation commission may:

7 (1) Confer with officers of other states and officers of the United  
8 States on any matter pertaining to the state corporation commission's  
9 official duties; and

10 (2) (A) enter into and establish fair and equitable cooperative agree-  
11 ments or contracts with or act as an agent or licensee for the United  
12 States, or any official, agency or instrumentality thereof, or ~~any railroad,~~  
13 public utility or similar commission of another state, for the purpose of  
14 carrying out the state corporation commission's duties; (B) to that end  
15 receive and disburse any contributions, grants or other financial assistance  
16 as a result of or pursuant to such agreements or contracts; and (C) make  
17 joint investigations, hold joint hearings within or outside the state and  
18 issue joint or concurrent orders in conjunction or concurrence with such  
19 official, agency, instrumentality or commission.

20 (c) The attorney general, when requested, shall give the state cor-  
21 poration commission or the attorney for the commission such counsel and  
22 advice as the commission or the attorney for the commission may from  
23 time to time require. It is hereby made the duty of the attorney general  
24 to aid and assist the commission and the attorney for the commission in  
25 all hearings, suits and proceedings in which the commission or attorney  
26 for the commission requests the attorney general's assistance.

27 Sec. 7. K.S.A. 66-154 is hereby amended to read as follows: 66-154.  
28 It shall be unlawful for any ~~railroad company or other~~ common carrier to  
29 grant, or for any consignee or consignor to receive, any rebate or draw-  
30 back, or enter into any arrangement whereby such consignee or consignor  
31 shall directly or indirectly receive a lower rate for transporting freight  
32 than the rate fixed by the orders of this commission or the published  
33 schedules ~~of such railroad company~~. It shall be unlawful for any ~~railroad~~  
34 ~~company or other~~ common carrier to grant any special privileges to any  
35 person, firm, or corporation, either in the way of a preference in furnish-  
36 ing cars, sidetrack facilities, sites for elevators, mills, or warehouses, or  
37 any other form of preference, privilege, or discrimination. It shall be  
38 unlawful for any ~~railroad company or other~~ common carrier, or any agent  
39 or employee thereof, or for any person, firm or corporation to enter into  
40 any secret agreement with any firm, person or corporation for the purpose  
41 of giving any firm, person or corporation any special privileges, favors or  
42 discriminations in favor of such firm, person, or corporation.

43 Sec. 8. K.S.A. 66-154a is hereby amended to read as follows: 66-

1 154a. No ~~railroad company or other~~ common carrier shall charge, demand  
2 or receive from any person, company or corporation an unreasonable,  
3 unfair, unjust or unjustly discriminatory or unduly preferential rate or  
4 charge for the transportation of property, or for hauling or storing of  
5 freight, or for use of its cars, or for any service afforded by it in the  
6 transaction of its business as a ~~railroad company or~~ common carrier, ~~and~~.  
7 Upon complaint in writing made to the corporation commission that an  
8 unfair, unjust, unreasonable or unjustly discriminatory or unduly prefer-  
9 ential rate or charge has been exacted, ~~such the~~ commission shall investi-  
10 gate ~~said the~~ complaint, and if sustained, shall make a certificate under  
11 its seal setting forth what is, and what would have been, a reasonable and  
12 just rate or charge for the service rendered, which shall be prima facie  
13 evidence of the matter ~~therein~~ stated.

14 Sec. 9. K.S.A. 66-154b is hereby amended to read as follows: 66-  
15 154b. It shall be lawful for any ~~railroad company or other~~ common carrier  
16 to refund to any person, company or corporation any unreasonable, un-  
17 fair, unjust or unjustly discriminatory or unduly preferential rate or charge  
18 which it has exacted, received or collected from any shipper, in accord-  
19 ance with the certificate referred to in K.S.A. 66-154a, *and amendments*  
20 *thereto*.

21 Sec. 10. K.S.A. 66-155 is hereby amended to read as follows: 66-155.  
22 It is hereby made the duty of the attorney of the corporation commission  
23 to make a special study of the ~~railroad and~~ public utilities laws of this and  
24 other states and the interstate commerce act, to prosecute and defend all  
25 suits and proceedings in behalf of the state, in the name of the state, in  
26 connection with the acts of the ~~said~~ corporation commission, and on be-  
27 half of parties complaining of unjust discriminations by a ~~railroad or other~~  
28 public utility, or other violations of this act, ~~and he~~. *The attorney for the*  
29 *corporation commission* shall, when ~~he~~ *such attorney* believes or when  
30 ~~he~~ *such attorney* is notified by the corporation commission that it has  
31 knowledge or good reason to believe that any classification, rate or charge  
32 made by any ~~railroad company or other~~ public utility in this state is unjust,  
33 unreasonable, or discriminating, whether such rate or charge is local,  
34 special, or general, or other matters concerning such company in the  
35 operation of its ~~road or~~ utility in the state of Kansas, is unreasonable or  
36 discriminative or violative of the laws of Kansas, make complaint thereof  
37 in writing to the corporation commission, in the name of the state on ~~his~~  
38 *such attorney's* relation, and ~~said the~~ corporation commission shall there-  
39 upon proceed to consider and determine such complaint in all respects  
40 as is provided for the hearing and determination of complaints in other  
41 cases.

42 Sec. 11. K.S.A. 66-230 is hereby amended to read as follows: 66-230.  
43 When any railroad runs through any improved and fenced farm lands and

1 between an occupied dwelling and other main farm buildings; or wher-  
2 ever at the time of the passage of this act, any railroad right of way lies  
3 alongside of and contiguous to a public highway through any improved  
4 and fenced farm land upon which is a dwelling actually occupied as a farm  
5 residence, and it is necessary for the occupants of ~~said~~ such dwelling to  
6 pass across the right of way of ~~said~~ the railroad in order to reach the main  
7 public highway or get to their farm lands to cross ~~said~~ the railroad, then  
8 and in either case ~~said~~ the railroad company shall, at the request in writing  
9 of the owner of such farm, make and maintain proper cattle guards on  
10 such railroad on both sides of the crossing so used for farm purposes. ~~In~~  
11 ~~case of the refusal of such railroad to construct and maintain such cattle~~  
12 ~~guards within a period of thirty days after such request, the owner of such~~  
13 ~~farm shall have the right to apply to the corporation commission for the~~  
14 ~~state of Kansas for an order directing such railroad to construct such cattle~~  
15 ~~guards, and the said corporation commission shall have jurisdiction and~~  
16 ~~authority to hear and investigate the question of the necessity for such~~  
17 ~~cattle guards at such crossing. Such hearing and investigation shall be~~  
18 ~~conducted by said corporation commission in the same manner and upon~~  
19 ~~the same notice as is provided in K.S.A. 66-101 et seq. for the holding of~~  
20 ~~hearings and investigations by said commission.~~

21 ~~—In case such commission, after full hearing, shall find such cattle guards~~  
22 ~~to be reasonably necessary for the use of the owner of such farm, such~~  
23 ~~commission shall have power and authority to require by order said rail-~~  
24 ~~road to construct and maintain such cattle guards at such farm crossing,~~  
25 ~~and to enforce such order in the same manner as other orders of the~~  
26 ~~commission may be enforced under the provisions of chapter 238 of the~~  
27 ~~Laws of 1911. And It shall not be necessary for the occupants of such~~  
28 ~~land to keep the gates in the fences at such farm crossings closed where~~  
29 ~~such cattle guards are installed. *Provided further, That said* except that~~  
30 ~~the railroad company shall not be responsible for damage done to stock~~  
31 ~~at such crossing described under this act when the gates at such crossing~~  
32 ~~are open.~~

33 Sec. 12. K.S.A. 66-319 is hereby amended to read as follows: 66-319.  
34 Any provision in a contract of shipment with any ~~railroad company, or~~  
35 ~~express company;~~ or other common carrier, providing in substance as a  
36 condition precedent to a recovery for loss or damage for any cause, in-  
37 cluding delays in transit, that notice in writing be given such ~~railroad~~  
38 ~~company,~~ express company or other common carrier, and which provision  
39 fixes the time at which ~~said~~ such notice shall be given within a period of  
40 less than ~~twenty (20)~~ 20 days after such claim for loss or damage shall  
41 arise, shall be unlawful and void.

42 Sec. 13. K.S.A. 66-103, 66-105, 66-106, 66-112, 66-145, 66-146, 66-  
43 148, 66-149, 66-153, 66-154, 66-154a, 66-154b, 66-155, 66-157, 66-158,

1 66-159, 66-160, 66-161, 66-162, 66-163, 66-166, 66-168, 66-173, 66-174,  
2 66-180, 66-181, 66-182, 66-201 through 66-216, 66-224, 66-225, 66-226,  
3 66-230, 66-234 through 66-241, 66-244 through 66-249, 66-273, 66-274,  
4 66-277, 66-278, 66-285 through 66-294, 66-2,108, 66-2,109, 66-2,111, 66-  
5 2,112, 66-2,113, 66-2,119, 66-2,120, 66-304, 66-305, 66-306, 66-307, 66-  
6 319 and 66-320 are hereby repealed.

7 Sec. 14. This act shall take effect and be in force from and after its  
8 publication in the statute book.