

HOUSE BILL No. 2123

AN ACT relating to railroads; concerning the transfer of certain powers, duties and functions of the state corporation commission to the Kansas department of transportation; amending K.S.A. 66-105, 66-154, 66-154a, 66-154b, 66-155, 66-230, 66-525, 66-532 and 66-1217 and repealing the existing sections; also repealing K.S.A. 44-564, 66-103, 66-112, 66-145, 66-146, 66-148, 66-149, 66-153, 66-157 through 66-163, 66-166, 66-168, 66-173, 66-174, 66-180, 66-181, 66-182, 66-201 through 66-216, 66-224, 66-225, 66-226, 66-235 through 66-241, 66-244 through 66-249, 66-277, 66-278, 66-285 through 66-294, 66-2,108, 66-2,109, 66-2,111, 66-2,112, 66-2,113, 66-2,119, 66-304 through 66-307, 66-319 and 66-320.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Except as otherwise provided by law, all of the powers, duties and functions of the state corporation commission as it relates to railroads are hereby transferred to and conferred and imposed upon the Kansas department of transportation.

(b) All rules and regulations of the state corporation commission referencing railroads in existence on the date of passage of this act shall be reviewed by the Kansas department of transportation prior to July 1, 2005. Any such rules and regulations which the Kansas department of transportation does not notify the state corporation commission to retain shall be revoked by the state corporation commission prior to the effective date of this act. Any rules and regulations which the Kansas department of transportation notified the state corporation commission to retain shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the Kansas department of transportation until revised, amended, revoked or nullified pursuant to law.

(c) When any conflict arises as to the disposition of any power, function or duty in relation to the transfer of this authority, such conflict shall be resolved by the governor, whose decision shall be final.

(d) The Kansas department of transportation shall take custody of all state corporation commission records, memoranda, writings, entries, prints, representations or combinations thereof relating to railroads. Any conflict as to the proper disposition of records arising under this section and resulting from the transfer shall be determined by the governor, whose decision shall be final.

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

(f) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this act.

New Sec. 2. As used in article 2 of chapter 66 of the Kansas Statutes Annotated, and amendments thereto, "railroad company" means and shall include any incorporated railroad company, express or transportation company, other common carrier, sleeping car company, private-car company, railroad-bridge company, person or persons, lessee, assignees, trustee, receiver, partnership, joint-stock company or corporation engaged wholly, partially, jointly or severally in laying out, constructing, owning, operating, using or maintaining any railroad operated by steam or electricity, or other motive power, or any portion or part of such railroad line. As used in this section, "person" means any persons, partnerships, joint-stock companies or corporations.

Sec. 3. K.S.A. 66-105 is hereby amended to read as follows: 66-105. ~~The term "common carriers,"~~ As used in this act, "*common carriers*" shall include all ~~railroad companies, express companies, street railroads, suburban or interurban railroads, sleeping-car companies,~~ freight-line companies, equipment companies, pipe-line companies, and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state.

Sec. 4. K.S.A. 66-154 is hereby amended to read as follows: 66-154. It shall be unlawful for any ~~railroad company or other~~ common carrier to grant, or for any consignee or consignor to receive, any rebate or drawback, or enter into any arrangement whereby such consignee or consignor shall directly or indirectly receive a lower rate for transporting freight

than the rate fixed by the orders of this commission or the published schedules of such railroad company. It shall be unlawful for any railroad company or other common carrier to grant any special privileges to any person, firm, or corporation, either in the way of a preference in furnishing cars, sidetrack facilities, sites for elevators, mills, or warehouses, or any other form of preference, privilege, or discrimination. It shall be unlawful for any railroad company or other common carrier, or any agent or employee thereof, or for any person, firm or corporation to enter into any secret agreement with any firm, person or corporation for the purpose of giving any firm, person or corporation any special privileges, favors or discriminations in favor of such firm, person, or corporation.

Sec. 5. K.S.A. 66-154a is hereby amended to read as follows: 66-154a. No ~~railroad company or other~~ common carrier shall charge, demand or receive from any person, company or corporation an unreasonable, unfair, unjust or unjustly discriminatory or unduly preferential rate or charge for the transportation of property, or for hauling or storing of freight, or for use of its cars, or for any service afforded by it in the transaction of its business as a ~~railroad company or~~ common carrier; and upon complaint in writing made to the corporation commission that an unfair, unjust, unreasonable or unjustly discriminatory or unduly preferential rate or charge has been exacted, such commission shall investigate ~~said~~ *such* complaint, and if sustained, shall make a certificate under its seal setting forth what is, and what would have been, a reasonable and just rate or charge for the service rendered, which shall be prima facie evidence of the matter therein stated.

Sec. 6. K.S.A. 66-154b is hereby amended to read as follows: 66-154b. It shall be lawful for any ~~railroad company or other~~ common carrier to refund to any person, company or corporation any unreasonable, unfair, unjust or unjustly discriminatory or unduly preferential rate or charge which it has exacted, received or collected from any shipper, in accordance with the certificate referred to in K.S.A. 66-154a, *and amendments thereto*.

Sec. 7. K.S.A. 66-155 is hereby amended to read as follows: 66-155. It is hereby made the duty of the attorney of the corporation commission to make a special study of the ~~railroad and~~ public utilities laws of this and other states and the interstate commerce act, to prosecute and defend all suits and proceedings in behalf of the state, in the name of the state, in connection with the acts of the ~~said~~ corporation commission, and on behalf of parties complaining of unjust discriminations by a ~~railroad or other~~ public utility, or other violations of this act, ~~and he~~. *The attorney* shall, when ~~he~~ *such attorney* believes or when ~~he~~ *such attorney* is notified by the corporation commission that it has knowledge or good reason to believe that any classification, rate or charge made by any ~~railroad company or other~~ public utility in this state is unjust, unreasonable, or discriminating, whether such rate or charge is local, special, or general, or other matters concerning such company in the operation of its ~~road or~~ utility in the state of Kansas, is unreasonable or discriminative or violative of the laws of Kansas, make complaint ~~thereof~~ in writing to the corporation commission, in the name of the state on ~~his~~ *such attorney's* relation, and ~~said~~ *the* corporation commission shall ~~thereupon~~ proceed to consider and determine such complaint in all respects as is provided for the hearing and determination of complaints in other cases.

Sec. 8. K.S.A. 66-230 is hereby amended to read as follows: 66-230. When any railroad runs through any improved and fenced farm lands and between an occupied dwelling and other main farm buildings; or wherever at the time of the passage of this act, any railroad right of way lies alongside of and contiguous to a public highway through any improved and fenced farm land upon which is a dwelling actually occupied as a farm residence, and it is necessary for the occupants of ~~said~~ *such* dwelling to pass across the right of way of ~~said~~ *the* railroad in order to reach the main public highway or get to their farm lands to cross ~~said~~ *the* railroad, then and in either case ~~said~~ *the* railroad company shall, at the request in writing of the owner of such farm, make and maintain proper cattle guards on such railroad on both sides of the crossing so used for farm purposes. ~~In~~ *in* case of the refusal of such railroad to construct and maintain such cattle guards within a period of thirty days after such request, the owner of such farm shall have the right to apply to the corporation commission for the

~~state of Kansas for an order directing such railroad to construct such cattle guards, and the said corporation commission shall have jurisdiction and authority to hear and investigate the question of the necessity for such cattle guards at such crossing. Such hearing and investigation shall be conducted by said corporation commission in the same manner and upon the same notice as is provided in K.S.A. 66-101 *et seq.* for the holding of hearings and investigations by said commission.~~

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

Sec. 9. K.S.A. 66-525 is hereby amended to read as follows: 66-525.

(a) For purposes of this section, a railroad right-of-way shall be considered abandoned when:

(1) The tracks, ties, and other components necessary for operation of the rail line are removed from the right-of-way following the issuance of an abandonment order by the appropriate federal or state authority; ~~or~~

(2) if, within two years after the exercise of such an order, removal of such components is not completed and railroad operating authority is not restored or reissued by an appropriate court or other federal or state authority; or

(3) if no rail line is placed on the right-of-way within 10 years after the right-of-way is acquired; ~~except that~~. A railroad right-of-way shall not be considered abandoned if the railroad company or any other entity continues to use the right-of-way for railroad purposes after abandonment authority has been issued.

(b) If the grantee or assignee of record of a recorded railroad right-of-way abandons such right-of-way, such grantee or assignee shall:

(1) Remove crossbucks and modify signal devices or install “exempt” signs at all locations within 90 days of abandonment; and

(2) file a release of all right, title and interest in the right-of-way with the register of deeds of the counties in which the property is located, within 180 days after being requested by any owner of property servient to the right-of-way.

(c) If a grantee or assignee of record of a railroad right-of-way refuses or neglects to file a release when required by subsection (b), the owner of the servient property may bring an action in a court of competent jurisdiction to recover from the grantee or assignee of record damages in the amount of \$500, together with costs and reasonable attorney fees for preparing and prosecuting the action. The owner may recover such additional damages as the evidence warrants, and may obtain injunctive relief to quiet the title and eject any unauthorized parties from the property.

(d) A grantee or assignee of railroad right-of-way, at any time, may file a general release of all right, title and interest in the right-of-way of one or more particular rail lines or portions thereof with the register of deeds of the county or counties in which such property is located. If such action has been taken, the grantee or assignee shall be relieved of any further obligation under this section to file individual releases of any right-of-way included in such a general release.

(e) Within 30 days after entering abandoned railroad right-of-way property upon the tax rolls pursuant to K.S.A. 79-401 *et seq.*, and amendments thereto, the county clerk of each county in which such property is so entered shall forward to the most recent railroad company holder of such property for right-of-way purposes, a certified list of the names and addresses of all property owners so entered upon the tax rolls following abandonment.

Within 30 days after receipt of such certified list by the railroad company, it shall send a notice of abandonment by first-class mail to each

landowner at the address provided. The grantee or assignee of record of a recorded railroad right-of-way who abandons such right-of-way and provides the notice of such abandonment required by this subsection shall incur no civil or criminal liability for failure to notify any person who claims, or may claim, ownership of property servient to the abandoned right-of-way, nor shall such grantee or assignee incur any civil or criminal liability for notifying any person who has no legal claim to ownership of property servient to the abandoned right-of-way. The notice required by this subsection shall not create any legal right, be construed as a warranty or guarantee, nor shall such notice impair or cloud any lawful claim, right, title or interest of any person.

(f) Any conveyance by any railroad company of any actual or purported right, title or interest in property acquired in strips for right-of-way to any party other than the owner of the servient estate shall be null and void, unless such conveyance is made with a manifestation of intent that the railroad company's successor shall maintain railroad operations on such right-of-way, and the railroad owns marketable title for such purpose.

(g) As used in this section, "railroad company" has the meaning of such term as defined in ~~K.S.A. 66-180~~ *section 2*, and amendments thereto.

Sec. 10. K.S.A. 66-532 is hereby amended to read as follows: 66-532. As used in this act:

(a) "Good faith" means honesty in fact in the conduct of the transaction concerned;

(b) "improvement" means any public grain warehouse, building or other structure permanently affixed to railroad land;

(c) "lease" means any agreement between a railroad and a tenant, under the terms of which a tenant occupies the surface of railroad land;

(d) "person" includes an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association or any other legal or commercial entity and any successor or successors in interest thereto;

(e) "public grain warehouse" means any public warehouse or public grain warehouse, as defined in K.S.A. 34-223, and amendments thereto;

(f) "railroad" means any railroad company as defined in ~~K.S.A. 66-180~~ *section 2*, and amendments thereto, and any successor or successors in interest thereto;

(g) "railroad land" means any land acquired by a railroad in strips for right-of-way and any parcel or tract acquired by a railroad adjacent to its right-of-way, to aid in the construction, maintenance and accommodation of its railway and which is occupied pursuant to a lease by a tenant who owns improvements thereon;

(h) "railroad operations" means the movement, storage or servicing of railroad equipment used for transporting persons or freight;

(i) "successor in interest" includes any agent, successor, assignee, trustee, receiver or other person acquiring interests or rights in railroad land, including, but not limited to, the owner or holder of any servient estate or right of reversion relating to railroad land; and

(j) "tenant" means any public warehouseman, as defined in K.S.A. 34-223, and amendments thereto, or other person primarily engaged in the sale or distribution of fertilizer or agricultural chemicals used or useful in the production of agricultural crops, occupying railroad land in good faith pursuant to a lease.

Sec. 11. K.S.A. 66-1217 is hereby amended to read as follows: 66-1217. Any mortgage of real property or of both real property and personal property, including fixtures, or a security interest in fixtures alone, made by a corporation which is a railroad company as defined in ~~K.S.A. 66-180~~ *section 2*, and amendments thereto, or a public utility as defined in K.S.A. 66-104, and amendments thereto, shall be recorded in the office of the register of deeds of the county or counties in which the real property is located, and when so recorded shall be a lien on the real property and fixtures described in the mortgage or security agreement from the time of recording. If the instrument so provides, the instrument shall be a lien on any real property and fixtures thereafter acquired subject to the mortgage or security agreement from the time of acquisition. If such mortgage or security agreement includes personal property, a copy of such mortgage or security agreement certified as true by the debtor or creditor, or

an officer of either, shall also be filed with the secretary of state in accordance with part 5 of article 9 of the uniform commercial code and amendments thereto and accompanied by the form prescribed by K.S.A. 84-9-521(a), and amendments thereto, which must indicate in box 10 of the form that the lien is filed in accordance with this section. When so filed the mortgage or security agreement shall be a lien on such property described in such mortgage or security agreement from the time of such filing, and if the instrument so provides, shall be a lien on any property thereafter acquired subject to the mortgage or security agreement from the time of acquisition. The lien thereon shall be enforceable in accordance with the laws of this state governing mortgages of real estate. No other recording or filing of any such instrument shall be necessary, notwithstanding the provisions of any other statute. The instrument shall be effective upon the record until terminated and the filing officer shall remove the record one year after termination.

Sec. 12. K.S.A. 44-564, 66-103, 66-105, 66-112, 66-145, 66-146, 66-148, 66-149, 66-153, 66-154, 66-154a, 66-154b, 66-155, 66-157 through 66-163, 66-166, 66-168, 66-173, 66-174, 66-180, 66-181, 66-182, 66-201 through 66-216, 66-224, 66-225, 66-226, 66-230, 66-235 through 66-241, 66-244 through 66-249, 66-277, 66-278, 66-285 through 66-294, 66-2,108, 66-2,109, 66-2,111, 66-2,112, 66-2,113, 66-2,119, 66-304 through 66-307, 66-319, 66-320, 66-525, 66-532 and 66-1217 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.