

Approved

4/22/83

Date

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Rep. Rex Crowell at \_\_\_\_\_  
Chairperson

1:30 ~~a.m.~~p.m. on February 17, 1983 in room 519-S of the Capitol.

All members were present ~~except~~:

Committee staff present:

Fred Carman, Revisor of Statutes  
Hank Avila, Legislative Research  
Pam Somerville, Committee Secretary

Conferees appearing before the committee:

Rep. Bill Buntен  
Pat Hubbell, Kansas Railroad Association  
Bill Green, Kansas Corporation Commission  
Mary Turkington, Kansas Motor Carriers Association  
Neil Roth, Phillipsburg, Farmer  
Don Sloop, Lyndon, Farmer

The meeting was called to order by Chairman Crowell. The first order of business was a hearing on HB 2355. Rep. Buntен, sponsor of HB 2355 was recognized.

Rep. Buntен gave a brief history of why he had introduced HB 2355, explaining that the tariffs are so difficult to read that one is dependent upon the carrier for determining the applicable freight rates. Rep. Buntен is requesting that when a rate is quoted by a carrier, that rate shall apply whether or not it is erroneously low.

Several committee members raised questions regarding the procedure followed when the rate quoted is different from the rate actually charged, and whether the shipper or carrier paid excess charges. Rep. Buntен replied it was the shipper's responsibility to pay excess charges when the rate quoted by the carrier was lower than it should have been.

The Chairman asked Rep. Buntен if the bill deals with interstate rates rather than intrastate rates and whether the State would have any jurisdiction in such a matter. Rep. Buntен said it may be the case that the State would not have jurisdiction, but something needed to be done to help the small shipper.

Pat Hubbell, Kansas Railroad Association, presented testimony in opposition to HB 2355.

Rep. Erne asked Mr. Hubbell if a tariff is binding that is stated on the bill of lading. Mr. Hubbell replied that it was not. Rep. Erne asked if it was normal practice for the railroad to complete bills of lading. Mr. Hubbell replied that it varied as to the type of shipper.

Rep. Dempsey asked Mr. Hubbell if there was such a thing as "human error"? Mr. Hubbell replied that the ICC does not recognize any error and that the amount charged by the carrier must be the accurate amount appropriate to that specific shipment.

Bill Green, Kansas State Corporation Commission, presented testimony in opposition to HB 2355. Mr. Green explained that HB 2355 requires railroads to bill a shipper based on the price quoted to the shipper by the agent for the railroad. If the rate quoted is higher or lower than the rate approved by the Commission, the shipper would be required to pay the rate quoted and not the rate billed or on file with the

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,  
room 519-S Statehouse, at 1:30 ~~xxx~~/p.m. on February 17, 1983

Commission. The effect of the bill would be to create an opportunity for railroads to engage in price discrimination among shippers if they so desire.

The Chairman opened the meeting to questions.

Rep. Cloud inquired whether there was a law that required railroads to quote what they publish. Mr. Green stated he did not think so, and that the issue was an interstate rather than intrastate issue. The Chairman asked Mr. Green to clarify whether the State of Kansas had any authority regarding interstate rates. Mr. Green indicated the State does not.

Rep. Wilbert asked Mary Turkington, Kansas Motor Carriers Association, seated in the audience, if the rates being discussed applied to trucking rates. Ms. Turkington stated the trucking industry must charge the published rate.

The next order of business was HB 2288. Mr. Bill Green, Kansas State Corporation Commission, briefed the committee on HB 2288. Mr. Green stated the bill was requested by KCC to reconcile two bills that were passed in the 1982 session. The two bills that need reconciling are 1982 session HB 2717, amending publication requirements for notices for hearing requirements for intrastate common and contract applications, and the second bill, 1982 session SB 511 amending the standard the commission shall apply in granting common contract carrier applications. (Attachment 1).

Mary Turkington, Kansas Motor Carriers Association, presented testimony on HB 2288. (Attachment 2). She requested the bill be amended to require that applicants show that the proposed service "will provide a useful public purpose" in addition to the current criteria of "fit, willing and able".

Committee discussion ensued. Rep. Knopp asked clarification of HB 2288. Mr. Carman reiterated that HB 2288 was designed to clean up the statutes reconciling the two bills passed in last year's session.

The next item for discussion was HB 2225.

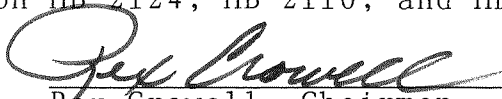
Mr. Neil Roth, Phillipsburg, presented testimony in support of HB 2225. Mr. Roth explained to the committee that with the current mileage limitations, the farmer supplying feedlots could not market his product effectively. He cited examples that most feedlots were a greater distance from the hay production areas than the 50 mile limit currently imposed. Mr. Roth also explained to the committee the reasoning for the desired 14'6" height on the round hay bales. The current limitation of 13'6" allows only hauling loads of one high whereas the increased height would allow two high if they were staggered. Mr. Roth stated he had measured the loads two high and they averaged 14'6" depending on the amount of settling of the hay.

The Chairman opened the meeting to committee questions. Rep. Cloud asked Mr. Roth whether he could travel more than 50 miles, single stacked. Mr. Roth replied that he could not.

The next conferee, Mr. Don Sloop, Lyndon, reiterated Mr. Roth's testimony stating it was necessary for both changes to be enacted to realize the greatest efficiency for the hay hauler.

Several committee members expressed concerns as to what other states requirements were. Rep. Cloud requested Mr. Avila to provide information to the committee regarding potential safety problems of increasing the height of the loads and to report on other states' laws.

The Chairman explained to the committee that action would be taken Monday (2/24) on HB 2124, HB 2110, and HB 2287. The meeting was adjourned at 2:35 p.m.

  
Rex Crowell, Chairman

GUEST LIST

COMMITTEE: Transportation

DATE: 2/18/83

PLEASE PRINT

NAME	ADDRESS	COMPANY/ORGANIZATION
BINK GREEN	SOR	S.C.C.
Merle Hise	Topoka	Ks Good Roads Assn
Honey Tenholder	Topoka	Ks Motor Carriers
July Hutchins	Topoka	Ks. Motor Carriers
Tom Whitaker	Topoka	Ks Motor Carriers Assn
MARY TURKINGTON	Topoka	Ks Motor Carriers Assn
Janet Bauman	Neodesha	Wilson Co. Farm Bureau
Jim Bauman	✓	✓
Joe + Dana Newland	✓	✓
Jack + Charlotte McGee	✓	German Co-op Neodesha
Ken + Jane Schneider	Topoka	W.M.
Conrad Seaves	Topoka	Speaker's office
Gerald Kelly	Topoka	K.A.W.S.
Michael C. Germain	Topoka	Ks Railroad Association
RON CALBERT	Newton	U.I.U.
STEPHEN FERRIER	LAWRENCE	---
Ken G. Yowell	Topoka	
Don S. Vliet	London	FARMER
Neal L. Roth	Phillipsburg, Mo.	FARMER
Linda Roth	Phillipsburg	Daughter
Shari Roth	Phillipsburg	Daughter
Jared Roth	Phillipsburg	Son
Mike Blam	Topoka	KLA
Shirley Montgomery	SOR	Revenue
HENRY BRADEN	SOR	K.A.T.





JOHN CARLIN  
RICHARD C. (PETE) LOUX  
JANE T. ROY  
PHILLIP R. DICK  
CAROL J. LARSON  
BRIAN J. MOLINE

Governor  
Chairman  
Commissioner  
Commissioner  
Executive Secretary  
General Counsel

State Corporation Commission

Fourth Floor, State Office Bldg.  
Ph. 913/296-3355  
TOPEKA, KANSAS 66612-1571

STATEMENT PRESENTED ON FEBRUARY 17, 1983, TO THE  
HOUSE TRANSPORTATION COMMITTEE BY THE STATE  
CORPORATION COMMISSION OF KANSAS ON H.B. 2288

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM BILL GREEN, ADMINISTRATOR OF THE TRANSPORTATION DIVISION OF THE STATE CORPORATION COMMISSION. I APPEAR HERE TODAY REPRESENTING THE COMMISSION IN SUPPORT OF H.B. 2288.

H.B. 2288 IS A BILL REQUESTED BY THE STATE CORPORATION COMMISSION OF KANSAS TO CORRECT A CONTRADICTION IN TWO STATUTES WHICH WERE AMENDED TWICE DURING THE 1982 LEGISLATIVE SESSION. (K.S.A. 66-1,112B AND K.S.A. 66-1,114).

THE TWO BILLS OF CONCERN TO THE COMMISSION ARE H.B. 2717 WHICH AMENDED THE NOTICE OF HEARING REQUIREMENT FOR INTRASTATE COMMON AND CONTRACT APPLICATIONS BY REQUIRING THAT THEY BE PUBLISHED IN THE KANSAS REGISTER BI-MONTHLY. THE SECOND BILL S.B. 511 AMENDED THE STANDARD THE COMMISSION SHALL APPLY IN THE GRANTING OF COMMON AND CONTRACT CARRIER APPLICATIONS.

Attachment 1

BECAUSE THE REVISOR'S OFFICE DID NOT RECONCILE THE TWO BILLS DURING THE 1982 LEGISLATIVE SESSION, IT IS NOW NECESSARY FOR THIS H.B. 2288 TO CORRECT THIS CONFLICT IN LAW AND AVOID LITIGATION.

THE SPECIFIC PROBLEM IS:

H.B. 2717 CONTAINED THE NEW NOTICE OF HEARING REQUIREMENTS AND THE OLD ENTRY STANDARD, WHILE S.B. 511 CONTAINED THE OLD NOTICE OF HEARING REQUIREMENTS AND THE NEW ENTRY STANDARD.

THE COMMISSION BELIEVES THIS BILL TO BE A NECESSARY PIECE OF LEGISLATION AND I WOULD ENCOURAGE THE MEMBERS OF THE COMMITTEE TO GIVE FAVORABLE CONSIDERATION TO THIS BILL.

2/17/83



STATEMENT

By The

KANSAS MOTOR CARRIERS ASSOCIATION

-----  
With respect to H.B. 2288 which repeals  
existing sections of K.S.A. 66-1,114,  
66-1,112i and 66-1,114a.

-----  
Presented to the House Transportation Committee,  
Rep. Rex Crowell, Chairman; Statehouse, Topeka,  
Thursday, February 17, 1983.

-----  
MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Mary Turkington, Executive Director of the Kansas Motor Carriers Association and appear here this afternoon on behalf of our 1,550 members and the highway transportation industry.

House Bill 2288 is not as simple a "clean up" measure as it may appear to be.

The 1982 session of the Legislature, with strong support from Chairman Rex Crowell, substantially revised the guidelines by which the Kansas Corporation Commission regulates intrastate operations of the motor carrier industry. These changes apparently were considered because of regulatory changes adopted at the federal level in 1980.

Attachment 2



In the 1982 session, Senate Bill 510 which established guidelines for antitrust immunity for collectively-published freight rates was adopted.

Senate Bill 511 which revised the Kansas motor carrier entry policy also was adopted.

In addition, House Bill 2717 which prescribed how notices were to be published in the KANSAS REGISTER was enacted.

Until the adoption of Senate Bill 511, K.S.A. 66-1,114 stated in part:

"If the Commission finds from the evidence that the proposed service or any part thereof will promote the public convenience and necessity the commission shall issue the certificate; otherwise such certificate shall be denied. Before granting a certificate to a public motor carrier, the commission shall take into consideration other existing transportation facilities in the territory for which a certificate is sought, and in case it appears from the evidence that the service furnished by existing transportation facilities is reasonably adequate, the commission shall not grant such certificate."

The Corporation Commission believed that this language was too restrictive and argued successfully that this wording should be removed from the statute.

Our industry maintained throughout that this provision permits the Commission to deny applications as well as to grant them. The language was deleted in Senate Bill 511.

Senate Bill 511 and House Bill 2717, in the 1982 session, both amended the same section of the statutes. The language indicated above, for whatever reason, was not deleted from H.B. 2717. The two bills were never reconciled and if you examine the statutes today, you will find both sections of the statutes published as the law of Kansas.



There presently are cases filed in court involving these statutes.

Our industry testimony before this Committee in 1982 and before the Senate Transportation & Utilities Committee emphasized the need to be consistent with the language in the federal act if Kansas was to revise its motor carrier entry policy. We urged that the same basic criteria be incorporated for motor carrier entry policy at both the state and federal levels -- if changes indeed were to be made.

The language in the federal act excerpted from the "Motor Carrier Entry Policy section" states:

"Except as provided in this section, the Interstate Commerce Commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the Commission under sub-chapter II of chapter 105 of this title as a motor common carrier of property if the Commission finds --

"(A) that the person is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission; and (emphasis supplied)

"(B) on the basis of evidence presented by persons supporting the issuance of the certificate, that the service proposed will serve a useful public purpose, responsive to a public demand or need;

"unless the Commission finds, on the basis of evidence presented by persons objecting to the issuance of a certificate, that the transportation to be authorized by the certificate is inconsistent with the public convenience and necessity. . . ."



Accordingly, in 1982, our industry offered an amendment which would have retained the "fit, willing and able criteria" and the language that would have required the Commission to have determined "from the evidence" that the proposed service would have served a useful public purpose.

To this day, our industry is unable to understand what valid objection the Committee had to that amendment. In any event, the amendment did not prevail and we did not pursue that amendment on the House floor.

We advised the Committee in 1982 that our industry could accommodate the language which shifted the burden to a protestant to prove that an application should not be granted, but we also testified that we were deeply concerned that the broadened entry policy would encourage an influx of applications from out-of-state carriers who simply would seek authority to serve points in Kansas at the "carrier's convenience."

Let me briefly explain that the regulatory laws which grant a given carrier a "certificate of convenience and necessity," makes that carrier a quasi-public utility and requires that carrier to serve all shippers in the area the carrier is authorized to serve without discrimination as to quality of service and without discrimination as to rates and charges. The carrier assumes the obligation to provide service accordingly.

Our concern was expressed to this Committee that out-of-state carriers would seek statewide intrastate authority but would serve only Kansas points that were convenient for the carrier.



We must report to you that this wave of applications before the Kansas Commission has materialized. The greatest influx of applications has been from out-of-state carriers in Missouri, Oklahoma, Nebraska, and now even Colorado. These out-of-state carriers seek the Kansas authority only to fill the equipment that is emptying out in Kansas. Such out-of-state carriers have sought the Kansas authority not because they are interested in serving Kansas shippers on a point-to-point basis to meet the shipper's needs -- but primarily to "skim off" desirable freight which might be moving back toward the out-of-state carrier's home domicile.

Such carriers would perform Kansas intrastate transportation service only when it suited the carrier -- or was convenient for the carrier -- to provide this transportation service. Kansas shippers could not depend on such service to meet daily shipping needs. The Kansas carrier who is and has been providing that daily, dependable point-to-point service, and who is depending on the volume of shipments moving between Kansas points to maintain his transportation business, is the one who is exploited by such out-of-state applications.

The Committee also should be aware that most of these out-of-state applications have sought state-wide general commodity authority from the Kansas Commission. General commodity authority, incidentally, covers every type of commodity that moves -- unless the application is restricted to be more specific as to the type of commodity to be hauled.



Kansas carriers, many of whom have been serving in Kansas for two or three generations, are beginning to find that opposition to these out-of-state applications is causing a substantial drain on their energy and money. Needless to say, there has been a tremendous expense and effort by the Kansas carriers in fighting the out-of-state carriers who have sought to take advantage of the new entry statutes in Kansas. Without question, if the out-of-state applications do not diminish, Kansas carriers can no longer oppose these applications and the Commission presently has little alternative but to approve an unopposed application.

The Committee should understand fully that our Kansas carriers cannot, with any degree of success, apply for similar authority in the states of Oklahoma, Missouri, Nebraska or Colorado, and expect to be successful. The entry requirements for these states I am advised, are not as liberal as the revised Kansas entry provisions.

I want to give the Kansas Corporation Commission credit in this area. Up to this time the Commission has denied or approved only realistically restricted applications in many of these instances. We deeply appreciate the Commission's perception to date but also are aware that only the extraordinary efforts of protestants have made the denial possible. We sincerely believe that there needs to be some criteria that applications for authority should meet some public need.

We are here today to request once more that you amend K.S.A. 66-1,114 to reflect the same basic criteria that is included in the federal language as a guideline for our state's motor carrier entry policy.



We have suggested only two simple amendments to H.B. 2288 to assure our industry, the shippers of Kansas and the Commission that protest efforts will be recognized and that any application for proposed service in this state will be evaluated on the basis that the applicant is "fit, willing and able" and that the proposed service "will serve a useful public purpose."

The proposed amendment is attached to this statement. The amendment takes nothing away from the Commission's ability to grant new applications. It does give the Commission the same basic entry guidelines as contained in the federal legislation and it does, in our industry's opinion, give recognition to the testimony presented by protestants to applications.

To this degree, this request may be considered a "selfish interest" amendment offered on behalf of those carriers who are Kansas businessmen and women, who employ Kansas people, serve Kansas shippers and who are fighting to stay in business in the face of one of the roughest recessions we have experienced. Our industry presently is estimated to have some 40 percent excess capacity. In other words, we have 40 percent more trucks than there are goods to haul primarily because of the recession.

Our industry expects to continue to provide dependable, economical transportation service to Kansas shippers. We do need the amendment we have requested today in the interest of Kansas shippers and carriers.

We will indeed appreciate your consideration of this request.

We will be pleased to respond to any questions you may have.

####



Proposed amendment to H.B. 2288

Page 1, beginning with line 0035

Commission finds that the proposed service or any part thereof, is proposed to be performed by the applicant, will serve a useful public purpose, and that the applicant . . .

Page 2, beginning with line 0063

thereof, is proposed to be performed by the applicant, will serve a useful public purpose, and that the . . .