

Approved 3-6-86
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at
Chairperson

9:00 a.m./~~p.m.~~ on February 21, 1986 in room 254-E of the Capitol.

All members were present except:
Sen. Walker was excused.

Committee staff present:

Fred Carman, Revisor
Ben Barrett, Legislative Research Department
Hank Avila, Legislative Research Department
Louise Cunningham, Secretary

Conferees appearing before the committee:

Pat Hubbell, Kansas Railroad Association
Tom Green, Mid-States Port Authority
Mike Beam, Kansas Livestock Association
Tom Tunnell, Kansas Grain and Feed Dealers Association
John Sherman, Attorney, Department of Transportation

The Chairman distributed to the committee copies of a letter from Jerry M. Mallot, President, Wichita Chamber of Commerce dated February 18, 1986 in support of the Southeast Kansas freeway. A copy of the letter and Policy Position Paper is attached. (Attachment 1).

HEARING ON S.B. 377 - Port authorities; acquisition, use and disposition of property.

Tom Green, Mid-States Port Authority, appeared in support of the bill. He said the Port Authority was formed in Northwest and North Central Kansas to attempt to maintain a rail service when Rock Island Railroad went bankrupt. After they bought the property they had statutory trouble about selling the property without putting it up for public bids. Some of this property has grain elevators on it.

This bill would allow the Port Authority to negotiate sales of land where it is in the public interest. It is their feeling that the only way to deal with property on the railroad is by leasing. They can't sell it because they would have to put it up for public bid. Some of the language in the bill is cleanup. They do not feel their secretary should have to be bonded because she does not handle any money.

There was discussion about "disadvantaged business enterprise" and what the definition of it was. It is not defined in the statutes and the committee wanted a definition.

Pat Hubbell, Kansas Railroad Association, was opposed to lines 95-100 on page 3. He distributed copies of H.B. 2998 concerning abandoned railroad right-of-ways and said this is the bill they support. He said land could be condemned with no purpose of operating a railroad and they are trying to get better methods of getting the land back to the landowner. He said they could support S.B. 377 if that section on page 3 is taken out of the bill. (Att. 2).

Mike Beam, Kansas Livestock Association, said he would like to learn more about the bill's impact on farmers and had possible concerns about the amendment on page 3.

Tom Tunnell, Kansas Grain and Feed Dealers Association, said he agrees with Mr. Green's trying to protect the grain elevators in Northwest Kansas. His concern was the language on page 3 and he did not feel properly prepared at this time.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-E, Statehouse, at 9:00 a.m./~~p.m.~~ on February 21, 1986

John Sherman, Attorney, Department of Transportation, said he has been involved with H.B. 2998 and they had no concerns about S.B. 377. This bill would apply when they wish to continue a railroad. They could not build a pipeline or anything else.

ACTION ON S.B. 492

Sen. Norvell said he did not want to do anything that would be detrimental to S.B. 492, so he would like to ask the committee to introduce a bill for a feasibility study for a freeway or tollroad from Wichita to Hutchinson, and Wichita to Great Bend and then connect with I-70 near Hays. This bill would go on its own for a road in the western part of the state and not be a part of S.B. 492.

Sen. Frey asked that it include a study from Wichita to Liberal to go to the Oklahoma border.

A motion was made by Sen. Norvell that this bill be drafted as a committee bill. Motion was seconded by Sen. Frey.

A substitute motion was made by Sen. Hayden to include Coolidge and Garden City in the feasibility study.

This motion died for lack of a second.

The committee reverted back to the original motion which was amended to include the Garden City, Coolidge route to Colorado. The motion carried.

Fred Carman submitted amendments to S.B. 492 which had been requested on February 19th. A copy if attached. (Attachment 3).

A motion was made by Sen. Francisco and was seconded by Sen. Thiessen to recommend S.B. 492 as amended, favorably for passage. Motion carried.

On a motion from Sen. Doyen and a second from Sen. Thiessen the Minutes of February 14, 1986 were approved. Motion carried.

Meeting was adjourned at 10:00 a.m.

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 2-21 Place 254-E Time 9:00
 Hearing on S.B. 377

GUEST LIST

NAME	ADDRESS	ORGANIZATION
Tom Green	2945 Wauwataki Dr Topeka	Mid State Port Authority
John Spurgeon	Topeka	Budget Div
MIKE BEAM	TOPEKA	Ks. Livestock Assn.
EDWARD R. DE SOIGNIE	TOPEKA	Ks. DEPT. OF TRANSPORTATION
Gary Howland	Topeka	Mid States Port Auth.
Mike Germano	"	Ks Railroad Association
Chip Wheeler	"	Legis. Policy Group
Bill Fuller	Manhattan	Ks. Farm Bureau
Kathy Peterson	Topeka	Counc. of Ks Farm Organizations
Katharine Clark	Wichita	Intern
Heroy Jones	Overland Park	B.L.E.
Tom Tunnell	Hutchinson	KANS GRAIN/FEED DEALERS ASSN.
John R. Scheirman	Topeka	KDOT
Pat Caldwell	Topeka	Kans RR. Assn
Bill Green	TOPEKA	REC.

*Review
Pl. Made copies
For T & U
Committee Members -
Bill*



WICHITA

February 18, 1986

AREA
CHAMBER
OF
COMMERCE

Senator Bill Morris
Chairman
Senate Transportation and
Utilities Committee
9822 Hardtner
Wichita, Kansas 67212

Dear Senator Morris:

In November of 1985, the Wichita Area Chamber of Commerce passed a resolution strongly endorsing the completion of an implementation study for a Southeast Kansas Highway, followed by an action plan to begin the process of design, engineering and construction. We support the highway recognizing that it may need to be a turnpike in order to be feasible. Our policy position is enclosed.

During your Senate Committee hearing last week, Charles Belt deferred to Congressman Whittaker on the presentation, but we want you to know how strongly we support the issue and how important we believe it is to develop this highway project for the state as a whole. Today, the highway system in Southeast Kansas is simply not adequate and becomes an effective tool to stop significant interaction especially between South Central and Southeast Kansas.

Your action in supporting an implementation study is greatly needed and we hope you will support this effort whole heartedly.

Sincerely,

Jerry M. Mallot
President

JMM/11h

Enclosure

cc: Sedgwick County Delegation

*ATT. ①
S.T+U 2/21/86*

WICHITA AREA CHAMBER OF COMMERCE
POLICY POSITION
REGARDING A SOUTHEAST KANSAS HIGHWAY

RECOGNIZING THAT TRANSPORTATION ACCESS IS ONE OF THE MOST CRITICAL FACTORS IN ECONOMIC GROWTH AND THAT ACCESS BETWEEN SEDGWICK COUNTY AND SOUTHEAST KANSAS IS POOR AT BEST,

THE WICHITA AREA CHAMBER OF COMMERCE:

- ° STRONGLY SUPPORTS THE CONSTRUCTION OF A SOUTHEAST KANSAS HIGHWAY WHICH WILL ENHANCE ECONOMIC DEVELOPMENT AND GROWTH THROUGHOUT THE STATE, THEREBY BENEFITTING ALL KANSANS
- ° URGES THE KANSAS DEPARTMENT OF TRANSPORTATION TO WORK WITH FEDERAL, STATE, COUNTY AND LOCAL OFFICIALS IN AGGRESSIVELY PURSUING FUNDING ALTERNATIVES TO CONSTRUCT AND MAINTAIN A SOUTHEAST KANSAS HIGHWAY
- ° SOLICITS THE SUPPORT OF THE KANSAS CONGRESSIONAL DELEGATION IN SEEKING FEDERAL FUNDING TO SUPPORT A SOUTHEAST KANSAS HIGHWAY

HOUSE BILL No. 2998

By Committee on Transportation

2-14

0017 AN ACT concerning abandoned railroad right-of-way; release,
0018 failure to file, remedy.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. (a) For purposes of this section, a railroad right-
0021 of-way shall be considered abandoned when the tracks, ties, and
0022 other components necessary for operation of the rail line are
0023 removed from the right-of-way following the issuance of an
0024 abandonment order by the appropriate federal or state authority;
0025 or if, within two years after the issuance of such an order,
0026 removal of such components is not completed and railroad
0027 operating authority is not restored or reissued by an appropriate
0028 court or other federal or state authority; or if no rail line is placed
0029 on the right-of-way within 10 years after the right-of-way is
0030 acquired; except, that a railroad right-of-way shall not be con-
0031 sidered abandoned if the railroad company or any other entity
0032 continues to operate rail service over the right-of-way after
0033 abandonment authority has been issued.

0034 (b) If the grantee or assignee of record of a recorded railroad
0035 right-of-way abandons such right-of-way, such grantee or as-
0036 signee, within 180 days after being requested by any owner of
0037 property servient to the right-of-way, shall file a release of all
0038 right, title and interest in the right-of-way with the register of
0039 deeds of the counties in which the property is located.

0040 (c) If a grantee or assignee of record of a railroad right-of-way
0041 refuses or neglects to file a release when required by subsection
0042 (b), the owner of the property may bring an action in a court of
0043 competent jurisdiction to recover from the grantee or assignee of
0044 record damages in the amount of \$500, together with costs and
0045 reasonable attorney fees for preparing and prosecuting the ac-

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S. T+U 2/21/86

0046 tion. The owner may recover such additional damages as the
0047 evidence warrants, and may obtain injunctive relief to quiet the
0048 title and eject any unauthorized parties from the property.

0049 (d) Any conveyance by any railroad company of any actual or
0050 purported right, title or interest in right-of-way held by such
0051 railroad company for railroad uses and purposes to any party
0052 other than the owner of the servient estate shall be null and void,
0053 unless such conveyance is made with a manifestation of intent
0054 that the railroad company's successor shall maintain railroad
0055 operations on such right-of-way, and the railroad owns market-
0056 able title for such purpose.

0057 (e) As used in this section, "railroad company" has the
0058 meaning of such term as defined in K.S.A. 66-180, and amend-
0059 ments thereto.

0060 Sec. 2. This act shall take effect and be in force from and
0061 after its publication in the statute book.

SUBTITLE IV OF TITLE 49, UNITED STATES CODE

(as amended through 1982)

Public Law 95-473; 95th Congress

AN ACT To revise, codify, and enact without substantive change the Interstate Commerce Act and related laws as subtitle IV of title 49, United States Code, "Transportation".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That certain general and permanent laws of the United States, related to transportation, are revised, codified, and enacted as title 49, United States Code, "Transportation", as follows:

TITLE 49—TRANSPORTATION

Subtitle	Sec.
I. [RESERVED—DEPARTMENT OF TRANSPORTATION]	
II. [RESERVED—TRANSPORTATION PROGRAMS]	
III. [RESERVED—AIR TRANSPORTATION]	
IV. INTERSTATE COMMERCE	10101
V. [RESERVED—MISCELLANEOUS]	

SUBTITLE IV—INTERSTATE COMMERCE

Chapter	Sec.
101. General Provisions	10101
103. Interstate Commerce Commission	10301
105. Jurisdiction	10501
107. Rates, Tariffs, and Valuations	10701
109. Licensing	10901
111. Operations of Carriers	11101
113. Finance	11301
115. Federal-State Relations	11501
117. Enforcement: Investigations, Rights, and Remedies	11701
119. Civil and Criminal Penalties	11901

CHAPTER 101—GENERAL PROVISIONS

Sec.
10101. Transportation policy.
10101a. Rail transportation policy.
10102. Definitions.
10103. Remedies as cumulative.

§ 10101. Transportation policy

(a) Except where policy has an impact on rail carriers, in which case the principles of section 10101a of this title shall govern, to ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to provide

§ 10903. Authorizing abandonment and discontinuance of railroad lines and rail transportation

(a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may—

(1) abandon any part of its railroad lines; or

(2) discontinue the operation of all rail transportation over any part of its railroad lines;

only if the Commission finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance. In making the finding, the Commission shall consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.

(b)(1) Subject to sections 10904-10906 of this title, if the Commission—

(A) finds public convenience and necessity, it shall—

(i) approve the application as filed; or

(ii) approve the application with modifications and require compliance with conditions that the Commission finds are required by public convenience and necessity; or

(B) fails to find public convenience and necessity, it shall deny the application.

(2) On approval, the Commission shall issue to the rail carrier a certificate describing the abandonment or discontinuance approved by the Commission. Each certificate shall also contain provisions to protect the interests of employees. The provisions shall be at least as beneficial to those interests as the provisions established under section 11347 of this title and section 565(b) of title 45.¹

§ 10904. Filing and procedure for applications to abandon or discontinue

(a)(1) An application for a certificate of abandonment or discontinuance under section 10903 of this title, and a notice of intent to abandon or discontinue, must be filed with the Interstate Commerce Commission.

(2) When a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title files an application and notice of intent, the notice shall include—

(A) an accurate and understandable summary of the rail carrier's application and the reasons for the proposed abandonment or discontinuance;

(B) a statement indicating that each interested person is entitled to recommend to the Commission that it approve, deny, or take other action concerning the application; and

¹ Section 115 of P.L. 97-92 provides as follows:

Sec. 115. Notwithstanding any other provision of law or of this joint resolution, none of the funds provided in this or any other Act shall hereafter be used by the Interstate Commerce Commission to approve railroad branchline abandonment in the State of North Dakota by the entity generally known as the Burlington Northern Railroad, or its agents or assignees, in excess of a total of 350 miles: *Provided*, That this section shall be in lieu of section 311 (amendment numbered 93) as set forth in the conference report and the joint explanatory statement of the committee of conference on the Department of Transportation and Related Agencies Appropriations Act, 1982 (H.R. 4209), filed in the House of Representatives on November 13, 1981 (H. Rept. No. 97-331).

(C)(i) a statement that the line is available for subsidy or sale in accordance with section 10905 of this title, (ii) a statement that the carrier will promptly provide to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation, calculated in accordance with section 10905 of this title and (iii) the name and business address of the person who is authorized to discuss sale or subsidy terms for the carrier.

(3) The rail carrier shall—

(A) send by certified mail a copy of the notice of intent to the chief executive officer of each State that would be directly affected by the proposed abandonment or discontinuance;

(B) post a copy of the notice in each terminal and station on each portion of a railroad line proposed to be abandoned or over which all transportation is to be discontinued;

(C) publish a copy of the notice for 3 consecutive weeks in a newspaper of general circulation in each county in which each such portion is located;

(D) mail a copy of the notice, to the extent practicable, to all shippers that have made significant use (as designated by the Commission) of the railroad line during the 12 months preceding the filing of the application; and

(E) attach to the notice filed with the Commission an affidavit certifying the manner in which clauses (A)–(D) of this paragraph have been satisfied, and certifying that clauses (A)–(D) have been satisfied within the most recent 30 days prior to the date the application is filed.

(b) If no protest is received within 30 days after the application is filed, the Commission shall find that the public convenience and necessity require or permit the abandonment or discontinuance. In such a case, the Commission shall, within 45 days after the application is filed, issue a certificate which permits the abandonment or discontinuance to occur within 75 days after the application is filed.

(c)(1) If a protest is received within 30 days after the application is filed, the Commission shall, within 45 days after the application is filed, determine whether an investigation is needed to assist in determining what disposition to make of the application.

(2) If the Commission decides that no investigation is to be undertaken, the Commission shall, within 75 days after the application is filed, decide whether the present or future public convenience and necessity require or permit the abandonment or discontinuance, taking into consideration the application of the rail carrier and any materials submitted by protestants. If the Commission finds that the present or future public convenience and necessity require or permit the abandonment, it shall, within 90 days after the date of application, issue a certificate which permits the abandonment or discontinuance to occur within 120 days after the application is filed.

(3) If the Commission decides that an investigation should be undertaken under this section, the investigation must be completed within 135 days, and an initial decision must be rendered within 165 days, after the date the application is filed. Thirty days after such decision, the initial decision shall become the final decision of

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Transportation and Utilities

Recommends that Senate Bill No. 492

"AN ACT authorizing and directing the Kansas turnpike authority to study the feasibility of constructing a turnpike project or a freeway including the methods of financing thereof; prescribing the location thereof; and making appropriations for the fiscal year ending July 1, 1987, for such purposes."

Be amended:

On page 1, in line 30, by striking "144" and inserting in lieu thereof "44";

On page 2, in line 62, by striking all after the period; by striking all in lines 63 to 66, inclusive, and inserting in lieu thereof the following:

"In addition to the purposes for which expenditures are authorized for fiscal years ending June 30, 1986, and June 30, 1987, from the state highway fund by section 2(a) of chapter 22 of the 1985 Session Laws of Kansas or any appropriations act of the 1986 regular session of the legislature, expenditures are hereby authorized and directed to be made for the purpose of paying the cost of the feasibility study prescribed by this section, except that the total amount of expenditures for such purpose during fiscal years ending June 30, 1986, and June 30, 1987, shall not exceed \$250,000.";

On page 1, in the title, in line 21, by striking "year ending July 1" and inserting in lieu thereof "years ending June 30, 1986, and June 30";

And the bill be passed as amended.

Chairperson

ATT. (3)
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