

Approved 4-29-87
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

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

9:07 a.m. ~~p.m.~~ on April 7, 1987 in room 254-E of the Capitol.

All members were present except:

Sen. Hoferer and Sen. Vidricksen.

Committee staff present:

Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

John Lamb, Director, Alcoholic Beverage Control Division
Frances Kastner, Kansas Food Dealers' Association
Ken Bahr, Kansas Retail Liquor Dealers' Association
John Myers, Kansas Concerned Merchants for Beer
Harley Duncan, Secretary, Department of Revenue
T.L. Green, General Counsel, Mid-States Port Authority
Chris Wilson, Director of Governmental Relations, Kansas Grain and Feed
Dealers Association
Ed DeSoignie, Department of Transportation

Hearing and consideration on S.B. 404 - Unlawful use of driver's
license on state I.D. card.

John Lamb, Director, Alcoholic Beverage Control Division, said this bill was an effort to remedy the growing problem of the use of fake ID's by minors. ABC supports a stiffer minimum penalty which would be stronger than the current fine of as low as \$1. The bill would impose a minimum penalty of 48 hours imprisonment or 40 hours of public service and a \$250 fine. This would apply to those lending and does not pertain to those using the ID's. He spoke of the recent car-train accident in Lawrence in which four teenagers were killed. He said two of them had fake ID's and at least one of them was intoxicated. A copy of his statement is attached which contains a suggested amendment for stiffer penalties. (Att. 1).

Frances Kastner, Kansas Food Dealer's Association, Inc., said they support this bill and would like to see this practice punished rather than just permitting officials to overlook this flagrant violation of the law. A copy of her statement is attached. (Att. 2).

Ken Bahr, KRLDA, said he agrees with the statements made by Frances Kastner and they also strongly support this bill.

John Myers, Kansas Concerned Merchants for Beer, said they support S.B. 404.

A motion was made by Sen. Hayden and was seconded by Sen. Martin to adopt the suggested amendment made by Director John Lamb. Motion carried.
A motion was made by Sen. Doyen and was seconded by Sen. Francisco to recommend S.B. 404 as amended favorably for passage.

The Committee discussed this and some felt the penalty was too strong and that penalties should remain uniform. It is the judges' fault if the penalty is not severe enough.

The motion did not carry.

Hearing and action on H.B. 2572 - Drivers; licenses, nonresident drivers in state.

Secretary Duncan said this bill was introduced in response to a "Safety

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-E, Statehouse, at 9:07 a.m./~~xxx~~ on April 7, 1987

Recommendation" of the National Transportation Safety Board. It requested that Kansas "take the actions necessary to abolish the requirement in your State that a non-resident driver who is employed by a resident of the State obtain a driver license issued by the State." In interests of safety, regulation and uniformity it is desirable that each driver hold only one license at a time and the license be issued by the driver's state of residence. A copy of his statement is attached. (Att. 3).

A motion was made by Sen. Hayden and was seconded by Sen. Frey to recommend H.B. 2572, as amended by House Committee, favorably for passage. Motion carried.

Hearing and action on H.B. 2465 - Port authorities, powers and duties.

T.L. Green, General Counsel for Mid-States Port Authority, spoke in favor of the bill and referred to a letter which he had mailed to members of the Senate explaining the bill. This letter was dated April 3, 1987 (Att. 4). Also sent to members were sections of the statute repealed. (Att. 5). Mr. Green said the most important change would clear up the contradiction between the Authority's statute and the Tort Claims Act.

This would give immunity to Board of Directors from discretionary functions. It would not exempt them from the operation of the railroad itself. The second important change would allow them to negotiate for the sale of certain real estate.

Chris Wilson, Director of Governmental Relations, Kansas Grain and Feed Dealers Association, spoke in support of the bill and said this would prevent a situation which occurred in Iowa where land under grain warehouses was sold to a third party without the grain firms having the opportunity to negotiate or increase their bids. A copy of her statement is attached. (Att. 6).

Ed DeSoignie, KDOT, said they reviewed this bill and had no objections to it. This would not jeopardize any federal funds and it would strengthen the Port Authority.

A motion was made by Sen. Doyen and was seconded by Sen. Norvell to recommend H.B. 2465 favorably for passage.

A substitute motion was made by Sen. Francisco to amend H.B. 2465 by reinserting the stricken words in lines 130 and 131. Motion was seconded by Sen. Frey. Motion did not carry.

The Committee reverted back to the original motion to pass the bill and the motion carried.

On a motion from Sen. Hayden and a second from Sen. Thiessen the Minutes of March 26, 27, 30 and April 2 were approved. Motion carried.

Meeting was adjourned at 10:00 a.m.

DATE: 4-7-87

GUEST REGISTER
SENATE
TRANSPORTATION AND UTILITIES COMMITTEE

NAME	ORGANIZATION	ADDRESS
T.L. Green	Mid States Port Authority	Topeka
Frances Kastner	Ks Food Dealers Assn	Topeka
John Lamb	ABC	"
RON CALBERT	U.J.U.	NEWTON
Judy Myers	Kansas CMS	Topeka
Ken Bahr	KBLDA	Topeka
Dean P. Reynolds	ABC	Topeka
ED DESOIGNIE	KDOT	TOPEKA
Pat Morgan		Wellington
Lt. BILL JACOBS	KHIP	TOPEKA

MEMORANDUM

TO: Senator Bill Morris
Chairman, Senate Transportation Committee
FROM: John Lamb
Director, Alcoholic Beverage Control Division
DATE: April 1, 1987
SUBJECT: Senate Bill 404

The Alcoholic Beverage Control supports efforts to remedy the growing problem of the use of fake identification by minors. Currently the minimum penalty for using a false ID is a fine of \$1. The ABC would support a stiffer minimum penalty to combat this serious problem.

Senate Bill 404 would apply a minimum penalty of 48 hours imprisonment, or 40 hours of public service and a \$250 fine but the penalty would apply only to those lending fake ID's and does ^{not} pertain to actual users of fake ID's. The ABC, therefore, respectfully submits the following amendment:

Section 1, subsection 3(d): Violation of any provision of ~~subsection (c)~~ **this section** is a misdemeanor punishable by: (1) Imprisonment for not less than 48 consecutive hours nor more than one year or, in the court's discretion, 40 hours of public service; and (2) a fine of not less than \$250 nor more than \$1000. The person convicted must serve either at least 48 consecutive hours imprisonment or 40 hours of public service and pay at least \$250 and court costs before or as a condition of any grant of probation, suspension or reduction of sentence or parole.

Section 2, subsection 3(d): Same language as above.

ATT. 1
T&U 4/7/87



Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205

PHONE: (913) 384-3838

March 31, 1987

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BILL WEST
Abilene

LEROY WHEELER
Winfield

JOE WHITE
Kingman

DIRECTOR OF GOVERNMENTAL AFFAIRS

FRANCES KASTNER

SUPPORTING SB 404

EXECUTIVE DIRECTOR
JIM SHEEHAN
Shawnee Mission

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our membership consists of wholesalers, distributors and retailers of food products throughout the State.

The KFDA has always supported legislation which is designed to reduce or eliminate the use of fake identification cards by minors for any illegal purpose.

We support SB 404 which hopefully will send a strong message to both the user of the fake ID and those who provide or lend the fake ID to the minor that this practice will be punished rather than just permitting officials to overlook this flagrant violation of the laws.

We commend this legislature for introducing SB 404 and we ask you to favorably recommend this bill.

Thank you for the opportunity of presenting the views of the KFDA on this matter. I will be happy to answer any questions you may have.

Frances Kastner, Director
Governmental Affairs, KFDA

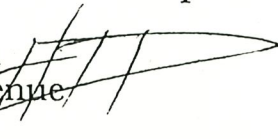
ATT. 2
T&U 4/7/87



KANSAS DEPARTMENT OF REVENUE
Office of the Secretary
State Office Building · Topeka, Kansas 66612-1588

MEMORANDUM

To: The Honorable Bill Morris, Chairman
Senate Committee on Transportation and Utilities

From: Harley T. Duncan 
Secretary of Revenue

Date: April 5, 1987

Re: Testimony - House Bill 2572

House Bill 2572 is requested by the Department of Revenue in response to a "Safety Recommendation" of the National Transportation Safety Board.

Kansas law currently requires that a non-resident commercial driver, employed by a Kansas company, procure a Kansas license. The National Safety Board requests that Kansas

"Take the actions necessary to abolish the requirement in your State that a non-resident driver who is employed by a resident of the State obtain a driver license issued by the State."

The National Transportation Safety Board is seeking, through this proposal, to promote the "one license concept" and to eliminate the concern that commercial drivers hold driver licenses from several states. The ability to secure several licenses makes it difficult to review the driver's complete driving history by any single state.

In the interests of safety, regulation and uniformity, it is desirable that each driver hold only one license at a time, and the license be issued by the driver's state of residence. Multiple licenses enable a driver to spread traffic convictions among two or more states.

Requiring non-resident drivers employed in Kansas to have a Kansas license is in direct contradiction to the one license principle. Therefore the Department of Revenue encourages the passage of House Bill 2572.

The House amendment eliminates a situation wherein a 16-year old nonresident could drive a school bus in Kansas (if allowed to do so in the state of residence) while a 16-year old Kansan would have to have the application approved by a majority of the school board. With the amendment, the nonresident will have to meet the same qualification.

Mid States Port Authority

McDill "Huck" Boyd, Chairman
Ray Nelson, Vice Chairman
John Golden, Secretary
Richard Spencer, Treasurer

April 3, 1987

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Marion Patton
Pete Pratt
Darrel Westervelt

Senator Bill Morris
Room 143-N Capitol Building
Topeka, Kansas 66612

RE: House Bill 2465

Jerry Link, Assistant Treasurer
T. E. Green, General Counsel

Dear Senator Morris;

On Monday, April 6, 1987 the Senate Transportation Committee will conduct hearings on House Bill 2465. As General Counsel to the Mid States Port Authority I would urge you to support House Bill 2465. The Board of Directors, at their February meeting, voted to seek the adoption of all those changes necessary to allow the Authority to operate economically and take advantage of any opportunity for economic development in those counties through which its railroad runs. House Bill 2465 is the result of the Authority's review of its statute. I will attempt to explain each of the amendments which are being requested by the Authority.

The most urgent and important change contained in House Bill 2465 is that which clears up the contradiction between the Authority's statute and the Tort Claims Act.

The Sedgwick County District Court recently ruled that the Tort Claims Act does not apply to the Authority. Though the Authority disagrees and has appealed that decision the language relied upon by the district court is that phrase which the Authority has requested be removed at lines 130 and 131. A reading of the Tort Claims Act makes it clear that the Authority was within the definition of "Governmental entity." Governmental entity is defined as a state or municipality and municipality is defined as "any county . . . or any agency, authority, institution or other instrumentality thereof." The problem arises when considering that the Tort Claims Act was adopted about ten years after the adoption of the Port Authority Act. The Authority has little doubt that it was intended to be included in the Tort Claims Act. The language referred to above creates a contradiction. The additions and deletions in lines 125 through 131 would remove the contradiction.

ATT. 4
4/7/87

You, being an elected official, can understand the importance of the protections provided by the Tort Claims Act. The Board of Directors of the Authority are appointed by the several counties which make up the Authority. They serve without pay and provide an essential government function, as the Port Authority Statute recites. The real protection afforded by the application of the Tort Claims Act to the Authority is that afforded for those decisions made at Board meetings as part of the discretionary functioning of the Authority. As the Authority leased its property to entities not subject to the protection of the Tort Claims Act, the problem of an employee or third party being denied recovery for a casualty loss does not arise. There is insurance to cover any such loss. There is not insurance covering the Authority for acts of its officers and directors, attempts to purchase this type of insurance have been unsuccessful for the simple reason that no company would write this type of coverage for the Board of Directors.

Another of the main changes sought by the Authority is that dealing with the ability to negotiate private sales of its real estate. The Authority currently has the power to sell any of its property and has had this power since its creation (K.S.A. 12-3406(a & j)). If the Authority were to sell any of its property to a "city, county, agency or corporation having the power of eminent domain" it could negotiate the sale (K.S.A. 12-3412). K.S.A. 12-3412 currently requires that any other sale of Authority property be done through a public bidding process. It is only the restriction requiring the bid process that the Authority is seeking to eliminate.

The reasons for seeking this particular change are many. The first among those is a commitment the Authority made to many of the shippers along the railroad concerning protection from the type of predatory practice similarly situated shippers faced in Iowa from the Rock Island Trustee. That practice was to sell the real estate underlying the shipper's improvements to land speculators who raised the rents and extorted huge sums for the purchase of the property. Under the Authority's current statute it would have had to put the land underlying the multi-million dollar improvements of approximately 140 shippers on the public auction block. Not a situation the Authority or the shipper wanted to create. Legislation first seeking these changes was introduced in the 1985 session. It was passed by the Senate in the 1986 session but not acted on by the House.

In the meantime the Authority had to develop a lease program to manage the leases to shippers. The phrase "ancillary property" was coined to describe that property not used specifically for railroad purposes and therefore subject to lease. A lease was written which guaranteed an initial five year term and three renewal options at a fixed increased rate. This form of lease allows a shipper to lock up his property for twenty years at a known price for each of those years. As additional protection the lease includes a first right of refusal clause, which all but eliminates the ability to sell the property to a third party. However, many of the shippers would like the opportunity, at the end of their leases, to acquire the property. Thus, the need for this change for this reason is not as urgent as it has been in the past; but still needed to give effect to the Authority leases and commitments.

There is, however, a current urgent need to allow the Authority to negotiate the sale of property. Since the interim committee meet two groups have approached the Authority concerning acquisition of old depots for community and economic development purposes. The chamber and economic development committee in Clay Center have a proposal being developed to acquire the old depot and reconstruct it for office use. The historical society in Fairbury, Nebraska, is proposing to acquire the depot there for a museum. Neither of these depots are being used by the railroads leasing the lines and are deteriorating rapidly. These structures as they currently exist constitute a liability problem. Both of these groups plan to expend substantial amounts of money in reconstruction. Each prefer to purchase the property. However, to sell a depot a public bid would not mean these groups would be the buyer, nor that the Authority would approve of the use such a bidder might put the property to.

In addition to these two instances there have already been numerous lost opportunities for location of additional shippers or industries along the right-of-way for the reason that the Authority could not enter into negotiations for the sale of land to a private party. Several current shippers have locate improvements to their facilities off the right-of-way for the same reason. This enhances the possibility that that shipper may move its commodity by means other than the railroad. For economic development reasons the Authority must have the flexibility to negotiate sales.

There are numerous safe guards inherent in the method the Authority would use in negotiating sales as well as checks and approvals of other agencies. The Authority has created a lease committee which reviews and approves all leases and would be in

charge of negotiating any sales. Once a sale has been negotiated the full Board of Directors would review and approve it. At the same time the operating railroad would review and approve the sale. Once these steps have been completed the transaction, with all the supporting reasons and documents, would be sent to the Federal Railroad Administration for a release of the mortgage on the property to be sold. The money from any sale would be deposited in the trust fund established for the repayment of the Federal obligations. Thus not available for general Authority operations.

The house added additional safeguards to the statute. The House amendments require an independent appraisal, a sale for no less than the appraised value and any current lessee has the right of first refusal. These amendments comport with procedures the Authority would require in any sale.

Whether the Authority should be allowed to negotiate private sales was the focus of the interim committee. Attached is a copy of that report. As the report reflects there was no opposition to allowing this method of sale. Unfortunately, I was not able to attend the last meeting of the interim committee. If I had been present I am sure that I could have resolved the problems the committee had and hope to be able to do so at the hearing on House Bill 2465.

A good number of the other changes made in House Bill 2465 are to remove that language which was inserted during the 1981 session for the benefit of the Kansas City, Kansas, Port Authority. The 1981 changes were made to specifically allow the construction of a one-hundred million dollar General Motors plant. As I have previously explained the plant was never built and the Kansas City, Kansas, Port Authority has been disbanded. There is therefore no longer any need for much of the language which is been removed.

Chief among the deletions sought in House Bill 2465 are sections 3415a and 3415b. These two provisions provide for payment in lieu of taxes where a bond issue is used to construct an industrial-use facility. (These provisions are attached). Those who were here in 1981 will recall the outcry of the many taxing districts in Wyandotte County when they learned a General Motors plant might be exempt from taxation. Thus, the stimulus for the addition of these two provisions to the statute. This language was inserted specifically for

Kansas City and duplicates, in principal, that provision found in section 3413 which provides

" If there remains, at the end of any calendar year, any surplus of such funds after providing for the above uses and reserves therefore, the board of directors may pay such surplus into the general funds of the political subdivisions creating and comprising the port authority in proportion to their taxable tangible property valuation as adjusted by the assessment ratio of the state."

To allow these provisions to remain in the Authority's statute serves no practical purpose, while leaving the impression that the Authority must make some form of payment in lieu of taxes. One of the benefits which attracted a railroad to Kansas and the Authority's property was the tax exempt status of the Authority's property.

Currently the Authority has one outstanding bond issue. That issue is secured solely by property in Clay County. (This was done to minimize the approvals required for issuance.) Applying the above payment in lieu of taxes provisions to the Authority's current bond issue would provide only for Clay County to receive payments. This would not be an acceptable condition for the other twelve counties which comprise the Authority. The other language quoted above allows any such payments to be made to all the counties which comprise the Authority.

Another significant deletion from the existing statute is section 3410 (copy attached). Part of this section has been in the statute book since 1969 when the act was originally passed. However, an exception was added in 1981 for industrial-use facilities (GM plant) and railroad facilities (MSPA). The section should have been deleted then. It makes little sense to enter into protracted negotiation with a potential rail operator or business to construct a facility when that carrier or business knows that its competitor can request a bidding process for the operation of the intended facility and undercut it because it has no development costs.

Additionally, the way section 3410 currently reads, the Authority would not want to amend its official plan for fear that somebody might attempt to impose the bidding process on facilities which are already under lease. This section serves no useful purpose I can conceive, except perhaps the future employment of attorneys to litigate its meaning and application.

In reviewing the Authority's statute it became obvious that a problem existed concerning the provisions which required approval of the counties which "created" the Authority. Since its creation one county (Wabaunsee) has withdrawn. Thus, current language would require the Authority, in some instances, to seek Wabaunsee county's approval for some actions. The House amendments take care of this problem by generally substituting the word "comprise" for "created."

The following is a brief page-by-page description of each change requested by the Authority.

Page one, lines 43-44: Revisor's correction.

Pages two and three, lines 83-88: This is language adopted in 1981 for Kansas City. It no longer has any relationship to any Authority.

Page four, lines 122-123: The preceding language "land surveyed or examined for port locations," is not clear as applied to the Authority. Several Board members are shippers and actually have leases with the Authority. This language permits the Authority's current practice without being concerned with what the preceding language means.

Page four, lines 125-131: This deletion removes language which has recently been used in court to suggest the Authority is not covered under the Tort Claims Act. The addition specifically references the Tort Claims Act to clarify any confusion which may have existed.

Pages five and six, lines 194-198: Partially revisor's corrections. The Authority elects a Chairman, Vice-Chairman, Secretary and Treasurer from its membership. In its rules and regulations the Authority has created two special officer positions which are paid and appointed by the Board of Directors. These changes conform the statute to the practical method adopted by the Authority.

Page six, lines 227-228: This reference is to that section of the act which defines "area of jurisdiction." This addition establishes that there is just one definition of the jurisdiction of the Authority. (The language "within the area of its jurisdiction" could be deleted with the same result.)

Page 9, line 315: By adding the word "convey" it removes the necessity of calling every document of conveyance a lease or a contract for sale. It further emphasizes the Authority's power to transfer property.

Page 10, lines 358-373: Deleting language from 1981 session for the Kansas City Port Authority.

Page 10, lines 375-376: Removes language inserted in 1981 session for the Kansas City Port Authority.

Page 11, lines 381 and 385-389: deletes those provisions requiring that sale of land be bid.

Page 11, lines 383-384: Requires publication in the Kansas Register of all bids to be taken on contract items. This conforms to three years of practice and avoids the more onerous publication provisions found elsewhere.

Pages 11, lines 389-393: Provides an exception to the acceptance of the low bid requirement on contract items. Current Federal guidelines, as they have been explained to the author, requires this on certain projects where definite goals of DBE participation has been established.

Page 11, lines 402-414: Specifically allows the negotiation of sale of property and deletes language which them becomes duplicitous

Page 12. lines 419-420: Removes a reference to a section which will be repealed.

Page 12, Section 10: These changes remove the bonding requirement of the secretary and requires the treasurer and his assistant be bonded. The secretary to the Authority keeps no funds of the Authority nor does he have responsibilities which would require a surety.

Page 13, lines 467-473: The problem with this language was that it did not contemplate a multi-county authority which had property running through several dozen cities and counties. If the Authority were to issue bonds secured by the entire railroad it would take the approval of all the cities and counties through which the railroad runs. This change would require the thirteen counties which make up the Authority to approve any bond issue.

House Bill 2465
Page 8
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Page 13, lines 477-478: Use of seals is an antiquated practice that only causes problems at the time of execution of bonds and agreements. The Authority has one but nobody seems to know for sure where it is.

Page 14, lines 519-538: This is another deletion of language inserted in 1981 for the sole benefit of Kansas City Port Authority.

Page 15, lines 549-556: Another deletion of 1981 language.

Page 16, lines 569-573: Same correction as made a page 13. Same amendment needs to be made.

The Authority appreciates your patience in reading this and studying this matter. If you have any suggestions for additional amendments, questions or problems with House Bill 2465, please call me at 273-0727. If I can be of assistance to you in any other way please do not hesitate to call.

The Authority urges the amendment and favorable passage to the House of House Bill 2465.

Sincerely,

T. L. Green

SECTIONS OF STATUTE REPEALED

K.S.A. 12-3410
K.S.A. 12-3415a
K.S.A. 12-3412b

ATT. 5
T&U 4/7/87

12-3415a. Same; filing with board of tax appeals, required; payments in lieu of taxes excluded from valuation for school finance. (a) Whenever a city or county approves the issuance of revenue bonds requested by a port authority for the purpose of paying all or any part of the cost of financing an industrial-use facility, such city or county shall file a timely statement with the board of tax appeals containing the same information with respect to such proposed issuance as is required in K.S.A. 12-1744a, and amendments thereto.

(b) The county appraiser shall compute the assessed valuation for all properties for which payments in lieu of taxes are received under the provisions of K.S.A. 12-3401 *et seq.*, and amendments thereto, in the manner prescribed for the computation of valuation for property for which payments in lieu of taxes are paid under the provisions of K.S.A. 12-1742, and amendments thereto, but shall not include such amount in the computation of the adjusted valuation of school districts under the provisions of K.S.A. 72-7040, and amendments thereto. The county appraiser shall compute such assessed valuation for all properties for which payments in lieu of taxes are received pursuant to agreements entered into both prior to and following the effective date of this act.

12-3415b. Same; leases and lease-purchase agreements; payments in lieu of taxes, distribution. Leases and lease-purchase agreements between a port authority and the user of its facilities may provide for payment in lieu of taxes to the port authority. Payments in lieu of taxes shall include all fees or charges paid for services normally and customarily paid from the proceeds of general property tax levies, except for extraordinary services provided for a facility or an extraordinary level of services required by a facility. Any such payment shall immediately upon receipt of same be transmitted by the port authority to the county treasurer or treasurers of the county or counties in which the facility is located. Each county treasurer shall apportion such payment among the taxing subdivisions of this state in which the facility is located. The payment in lieu of taxes shall be divided by the county treasurer among such taxing subdivisions in the same proportion as the amount of the total tax rate mill levy of each individual taxing subdivision bears to the aggregate of such levies of all the taxing subdivisions among which the division is to be made. The county treasurer shall pay such amounts over to the said taxing subdivisions at the same time or times as their regular operating tax rate mill levy is paid to them.

12-3110. Same; participation of private enterprise; bids for facilities; exception for industrial-use or railroad facility. The port authority shall foster and encourage the participation of private enterprise in the development of the port facilities to the fullest extent it deems practicable in the interest of limiting the necessity of construction and operation of such facilities by the port authority. For this purpose the port authority shall upon a written request by any person, partnership, or corporation, filed with the secretary of the board of directors within 30 days following the journalization of the order of the adoption of a plan as provided in K.S.A. 12-3407 and 12-3408, and amendments thereto, submit a proposal to provide, operate, and maintain any facility included in such plan, by publication of any invitation for bids therefor based upon specifications prepared for and approved by the board of directors.

Except where the facility is determined to be an industrial-use facility or a railroad facility, the board of directors shall accept the low bid of the person, partnership, or corporation to construct and operate such facility or facilities in accordance with its official plan.

RE: PROPOSAL NO. 34 -- MID-STATES PORT
AUTHORITY POWERS

Proposal No. 34 directs the Committee to study the statutory provision applicable to the Mid-States Port Authority relating to acquisition and disposition of property.

Background

Creation of the Mid-States Port Authority. The statutes pertaining to a port authority can be found in K.S.A. 12-3401 *et seq.* A port authority is a quasi-municipal corporation. It may levy taxes, but only after an affirmative vote of the electorate within its jurisdictional boundaries. Joint port authorities may be created by cooperative agreement of the governing bodies of any cities or counties. The jurisdiction of a joint port authority is all of the territory of the counties or cities creating it, and any property outside which is conveyed to it.

The original enactment of the Port Authority Act in 1969 was primarily intended to allow cities and counties broad authority to deal with local transportation problems. The legislative history of the Act indicates that the primary intent was to allow cities and counties to take advantage of available federal funding to improve local airport and waterport facilities.

During the last decade a major economic problem in Kansas, as well as elsewhere, has been the decline and discontinuance of rail service. While many facets of the economy have been affected by this, it has had an especially significant impact on the agriculture industry which already was experiencing very difficult times. At the time of the 1980 Legislative Session, concern centered around the Rock Island Railroad bankruptcy. The Rock Island had been ordered liquidated by the bankruptcy court. Although the Federal Railroad Administration had required railroads interested in acquiring any

segment of the Rock Island to declare their intentions, no railroad had expressed an interest in acquiring large segments of the Rock Island in Kansas. As a consequence, the 1980 Legislature amended the Port Authority Act to include railroads, so as to allow cities and counties a means to aid themselves in maintaining essential rail service. Amendments made it clear that the Legislature intended the use of the Act to include railroad facilities, such as stations, sidings, tracks, switches, and other railroad facilities. The amendments also enabled a port authority to acquire portions of the Rock Island Railroad, so long as the acquisition was consistent with the declared purposes of the port authority, *i.e.*, promote general welfare and economic development of cities and counties.

Pursuant to the 1980 enabling legislation, the Mid-States Port Authority (MSPA) was formed on May 29, 1980, by a joint cooperative agreement of the counties of Clay, Cloud, Decatur, Jewell, Norton, Phillips, Republic, Riley, Sheridan, Sherman, Smith, Thomas, Wabaunsee, and Washington.

MSPA Financing. The Kansas Department of Transportation (KDOT) has responsibilities under state law relating to development of railroad facilities within the state. In this respect, in order to provide railroad service to northwest Kansas, KDOT developed a program for the acquisition and rehabilitation of railroad lines formerly operated by the Rock Island Railroad.

In a letter dated April 27, 1984, Mr. John Kemp, Secretary, KDOT, requested State Finance Council action to approve the expenditure of federal funds for the purpose of acquiring and rehabilitating railroad facilities in northern Kansas. KDOT requested approval from the State Finance Council in order to provide to the MSPA \$18.0 million in federal funds for rehabilitation of railroad facilities. On May 10, 1984, the State Finance Council approved the expenditures to MSPA for such acquisition.

As a result of the MSPA's acquisition of the Rock Island Railroad, the MSPA has entered into a financing agreement with the Federal Administration in notes which are guaranteed by the Administration. The MSPA is to be reimbursed for the federal financing of the MSPA's operations to the extent of any amount guaranteed by the MSPA. The MSPA has entered into an agreement with the MSPA Authority.

As part of the MSPA's operations, the MSPA has received \$1.45 million in railroad revenue.

The agreement between the MSPA and the MSPA Authority provides for the MSPA to issue a bond to the MSPA Authority in the amount of \$6.0 million. The MSPA Authority has provided a \$1.45 million guarantee to the MSPA Authority for the MSPA's operations.

Operation of the MSPA Authority is primarily for the purpose of operating the MSPA Authority's railroad. The MSPA Authority has a statutory authority to operate the MSPA Authority's railroad. The MSPA Authority has a statutory authority to operate the MSPA Authority's railroad. The MSPA Authority has a statutory authority to operate the MSPA Authority's railroad.

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As a result of this action, the MSPA has entered into a financing agreement with the Federal Railroad Administration whereby the Authority issued \$18.0 million in notes which were purchased by the Federal Railroad Administration. As part of the agreement to receive federal financial assistance, the state of Kansas agreed to reimburse the Federal Railroad Administration 50 percent of any amounts in default as defined by the Kansas guarantee. Kyle Railways, Inc., also has entered into an agreement to guarantee certain obligations of the Authority.

As part of the agreement, the MSPA has issued \$1.0 million in railroad facilities revenue bonds.

The agreement provides that the MSPA use \$12.0 million of loan funds and the proceeds of the \$1.0 million bond issue to purchase certain rail properties. The balance of \$6.0 million in loan funds, and grants from Kansas and Colorado in the amounts of approximately \$1.45 million and \$0.5 million, respectively, are to be used to rehabilitate the properties.

Operation of MSPA Facilities. The MSPA has statutory authority to own and operate the rail line. The MSPA has chosen to lease the line to an operating carrier, Kyle Railroad Company, a Kansas corporation, wholly owned by Kyle Railways, Inc. The MSPA also has leased a line in Nebraska to the Union Pacific Railroad. The MSPA chose to lease the line to an operator primarily for two reasons: operating a railroad is a complicated business, and acquiring enough rolling stock to run a railroad is difficult and expensive.

MSPA owns 466 miles of railroad which was formerly a part of the Chicago, Rock Island & Pacific Railroad Company. MSPA leases the line from Limon, Colorado, on the west to Mahaska and Clay Center, Kansas, on the east to the Kyle Railroad Company. The line from Fairbury to Hallam, Nebraska, is leased to the Union Pacific Railroad. This latter line presently is not being operated and there are no plans in the near future to operate it.

In addition, the MSPA has approximately 150 leases of ancillary property along the length of its right-of-way. The leases are largely to grain elevator and co-op operators. There are also some industrial and agricultural leases.

MSPA reports that it continues to meet its obligations as they become due and does not presently anticipate problems in meeting its future obligations. Since acquisition of the railroad on May 15, 1984, MSPA has retired \$360,000 of its bonded indebtedness and deposited in excess of \$1.5 million into trust for the purpose of retiring indebtedness when it begins to become due in 1989.

The final phases of the rehabilitation project are being completed in Kansas this year. The work performed should allow Kyle Railroad Company to operate at speeds between 30 and 40 miles per hour. This improvement will aid operations and ensure future rail service in north-west Kansas.

1985 Senate Bill No. 377. During the 1985 Legislative Session, the Committee on Federal and State Affairs at the request of MSPA introduced S.B. 377. The bill was assigned to the Senate Committee on Transportation and Utilities. Upon adjournment of the 1986 Session, S.B. 377 died in the House Committee on Transportation. The bill served as the vehicle for this interim study.

The main purpose of the bill was to change language in the MSPA statute which requires properties being disposed of to be sold at public auction or by other public bidding procedures. The proposed legislation, among other things, would allow MSPA to negotiate a sale directly with an interested party. It was reported that while the railroad was controlled by the trustee for the Rock Island, many existing leaseholders (co-ops and grain elevator operators) were told that their property could be sold to some other party if the current

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leaseholder did not agree to pay high prices for the land. Part of the goal of the MSPA was to acquire the ancillary properties to eliminate this type of pressure. However, MSPA cannot now sell the property directly to the leaseholder because it would be in the position of bidding against unknown third parties. In addition, it was reported that industrial development prospects have indicated an interest in acquiring land to build various facilities, which would include shipping goods by rail. Due to the public bid requirement, the avenue of direct negotiation has been unavailable to the MSPA.

A second provision allowed the port authority to obtain by eminent domain, without the obligation to restore, relocate, or duplicate, property or a facility which has been certified by the Interstate Commerce Commission for abandonment or which is being liquidated in a legal proceeding. The Kansas Railroad Association proposed this amendment to ensure that a port authority could not condemn the right-of-way until a railroad company had completely discontinued service.

The other changes proposed by S.B. 377 were technical in nature.

Hearings

The following organizations presented testimony to the Committee as summarized below.

MSPA. The bill upon which the study was based was requested by MSPA to allow it to sell real estate on a negotiated basis. The bill also was intended to eliminate some inconsistencies created by the last major revision to the statute. Since S.B. 377 was introduced, MSPA has entered into approximately 150 long-term leases with various tenants along the right-of-way. It was these tenants that S.B. 377 was designed to benefit by allowing MSPA to negotiate sales with them without putting the property up for bid. Though the immediate problem has been solved, MSPA still recommends changing

the law to permit negotiated sales. This would provide increased flexibility in efforts at industrial development along the right-of-way.

KDOT. KDOT explained its role and activities concerning provision of rail services in Kansas. KDOT has been involved in several programs relating to the rail system, and some of these efforts have been directly supportive of the MSPA as a local governmental entity seeking to maintain rail service in a portion of the state.

KDOT's entry into rail transportation programs and the creation of MSPA by its constituent counties both occurred against a background of problems in the railroad industry which were affecting the public interest. During the decade of the 1970s the bankruptcies of the Penn Central, the Milwaukee Road (Chicago-Milwaukee-St. Paul and Pacific Railroad) and the Rock Island focused attention on such problems as excess track capacity, deteriorating infrastructure, and increased competitive pressure from trucks.

Kansas participated for several years as an active party in the Rock Island bankruptcy case on issues relating to the public interest. Much of the legal effort was in support of MSPA's efforts to purchase certain rail lines from the Rock Island trustee.

To aid in financing the rehabilitation of Rock Island property, KDOT allocated federal grants to MSPA in 1982 and 1984, contingent upon consummation of the purchase. MSPA also applied for low interest loans from the Federal Railroad Administration to serve as the primary funding source for purchase and rehabilitation.

At present, KDOT is involved with MSPA in two capacities. First, as guarantor of the \$18.0 million federal loan, it serves as a conduit for all federal funds passing to MSPA. Until the loan is fully repaid, KDOT has a contingent liability as a guarantor of last

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fault, after all the resources of MSPA, the Kyle Rail-
road Company, and the Kyle parent corporation are
exhausted, the federal government would be entitled to
recover one-half of any remaining debt from the state of
Kansas. If those contingencies occur, it would be
necessary for KDOT to seek an appropriation from the
Legislature to be channeled through the railroad
rehabilitation loan guarantee fund to the federal
government.

Second, with regard to grant funds, KDOT has had a
more direct role. As grant administrator, it has over-
seen the use of labor and materials by MSPA on the por-
tion of the project financed by grant funds.

KDOT made no specific recommendations concerning
the issue addressed in Proposal No. 34.

Kansas Railroad Association. The Kansas Railroad
Association, in discussing 1985 S.B. 377 as amended by
the Senate Committee on Transportation and Utilities,
had raised some concern about those aspects relating to
the jurisdiction and power of eminent domain of a port
authority. The Kansas Railroad Association had wanted
assurance that MSPA could not condemn the right-of-way
until a railroad company had completely discontinued
railroad service.

The Kansas Railroad Association has no objection to
the MSPA proposal to amend the statute to permit it the
option of negotiating the sale of its property.

Kansas Grain and Feed Dealers Association. The
Kansas Grain and Feed Dealers Association stated that
almost all Kansas grain warehouses are situated on a
railroad line. Often, the property on which the grain
elevators are located is owned by the railroad to which
the adjacent line belongs and is leased by the grain
company. This was the case with the line abandoned by
the Rock Island Railroad which now is owned by the MSPA.

The present law requires real estate to be sold to the highest responsible bidder. This requirement invites problems, such as those which have occurred in Iowa, where real estate upon which elevator facilities were constructed, was sold away by public auction from the facility owners. The Association supports an amendment proposed by MSPA to permit MSPA to enter into negotiations with elevator operators and owners regarding the purchase of the leasehold upon which their facilities are located.

Conclusions and Recommendations

During the course of the Committee's review of the statutory provision relating to the power of MSPA to acquire and dispose of property, the MSPA spokesperson stated that the issue which had prompted the request for S.B. 377 had been resolved. MSPA accomplished this by entering into leases with tenants along the railroad right-of-way.

The Committee recognizes that all those who appeared before it, the MSPA, Kansas Railroad Association, and the Kansas Grain and Feed Dealers Association, expressed support for an amendment that would give MSPA the option of negotiating the sale of property. Nevertheless, Committee members were reluctant to recommend such a change in the law. A negotiation process could produce the desirable consequences MSPA described; however, under other circumstances, it could be used as a device to extract concessions greater than would result if a bidding process were used. In addition to this specific issue, S.B. 377 contained other provisions, the effects of which are not clearly understood. As a result of uncertainties that continue to surround the proposal and because the matter that prompted the introduction of S.B. 377 has been resolved, the Committee concluded that the need for legislation on this issue presently is not justified.

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Respectfully submitted,

Rep. Rex Crowell, Chair-
person
Special Committee on
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Rep. Herman Dillon
Rep. Kenneth Green
Rep. Don Sallee
Rep. Eugene Shore
Rep. Lawrence Wilbert

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KANSAS GRAIN & FEED DEALERS

Association

1722 NORTH PLUM, BOX 949

A/C 316 662-7911

HUTCHINSON, KANSAS 67504-0949

STATEMENT OF THE
KANSAS GRAIN AND FEED DEALERS ASSOCIATION
TO THE
SENATE TRANSPORTATION COMMITTEE
SENATOR BILL MORRIS, CHAIRMAN
REGARDING H.B. 2465
APRIL 7, 1987

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM CHRIS WILSON, DIRECTOR OF GOVERNMENTAL RELATIONS OF THE KANSAS GRAIN AND FEED DEALERS ASSOCIATION (KGFDA). OUR MEMBERS CONSTITUTE THE STATE'S GRAIN WAREHOUSING AND MERCHANDISING INDUSTRY.

THANK YOU FOR THE OPPORTUNITY TO COMMENT ON H.B. 2465, REGARDING PORT AUTHORITIES. WE SUPPORT THE BILL; THE SPECIFIC SECTION WHICH WOULD AFFECT THE GRAIN INDUSTRY IS SECTION 6 (B), ON PAGE 10 OF THE BILL, LINES 0354 THROUGH 0359.

THIS SECTION WOULD ALLOW A PORT AUTHORITY TO SELL PROPERTY BY PUBLIC BID OR THROUGH NEGOTIATION. SOMETIMES, THE LAND ON WHICH A GRAIN WAREHOUSE FACILITY IS LOCATED BELONGED TO THE RAILROAD AND SUBSEQUENTLY BECOMES THE PROPERTY OF A PORT AUTHORITY. WHILE SUCH GRAIN FIRMS CERTAINLY WOULD EXPECT TO PAY A COMPETITIVE PRICE FOR THE LAND ON WHICH THEY RESIDE, THEY NEED TO HAVE THE OPPORTUNITY TO PURCHASE THE LAND FOR SUCH A PRICE. THIS SECTION OF H.B. 2465 WOULD PROVIDE GREATER LIKELIHOOD THAT THEY WOULD HAVE THAT OPPORTUNITY. THIS COULD AVOID A SITUATION WHICH OCCURRED IN IOWA WHERE LAND UNDER GRAIN WAREHOUSES WAS SOLD TO A THIRD PARTY WITHOUT THE GRAIN FIRMS HAVING THE OPPORTUNITY TO NEGOTIATE OR INCREASE THEIR BIDS. OBVIOUSLY, HAVING A THIRD PARTY OWNER OF THE LAND ON WHICH SUCH VALUABLE BUILDINGS REST POSES A MAJOR PROBLEM FOR A GRAIN FIRM.

THEREFORE, WE SUPPORT H.B. 2465 AND REQUEST YOUR FAVORABLE CONSIDERATION OF THE BILL.

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