

Approved February 8, 1990
Date

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Rex Crowell at
Chairperson

1:30 ~~am~~ p.m. on February 6, 1990 in room 519-S of the Capitol.

All members were present except:

Representative Gross, excused.

Committee staff present:

Bruce Kinzie, Revisor of Statutes
Hank Avila, Legislative Research Department
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Rep. Vince Snowbarger
Mr. Don Seifert, City of Olathe
Ms. Melanie Caro, Kansas Department of Revenue
Mr. Jim Keller, Kansas Department of Revenue
Ms. Theresa Hodges, Kansas Department of Health & Environment

The meeting was called to order by Chairman Crowell, and the first order of business was a hearing on HB-2731 concerning bonds required for special fuel users.

Representative Vince Snowbarger, sponsor of HB-2731, briefed the Committee on the contents of the bill.

Mr. Don Seifert, City of Olathe, testified in support of HB-2731.
(See Attachment 1)

Ms. Melanie Caro, Kansas Department of Revenue, spoke in favor of HB-2731. (See Attachment 2)

The hearing on HB-2731 ended.

The next order of business was a hearing on HB-2658 concerning revocation or suspension of drivers' licenses as a result of DUI.

Mr. Jim Keller, Kansas Department of Revenue, testified in support of HB-2658. (See Attachment 3)

Discussion and questioning by the Committee followed Mr. Keller's remarks.

Ms. Theresa Hodges, Kansas Department of Health and Environment, testified in favor of HB-2658. (See Attachment 4)

The hearing on HB-2658 ended.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~am~~/p.m. on February 6, 1990

The next business taken up was the receiving of bill requests from Committee members.

Representative George Dean requested that legislation be introduced concerning the withholding of special city and county highway funds from certain cities and counties. (See Attachment 5)

A motion was made by Representative Dean that this be introduced as a Committee bill. The motion was seconded by Representative Dillon. Motion carried.

Representative Marvin Smith requested a bill be introduced concerning the licensing of school bus drivers. (See Attachment 6)

A motion was made by Representative Smith that this be introduced as Committee legislation. The motion was seconded by Representative Lucas. Motion carried.

Representative Marvin Smith requested legislation be introduced concerning rural business and farm and ranch directional signs. (See Attachment 7)

A motion was made by Representative Smith that this be introduced as a Committee bill. The motion was seconded by Representative Lucas. Motion carried.

The minutes of the House Transportation Committee meeting held on February 5, 1990 were approved as written.

The meeting was adjourned at 2:15 p.m.


Rex Crowell, Chairman

GUEST LIST

COMMITTEE: Transportation

DATE: 2-6-90

PLEASE PRINT

NAME	ADDRESS	COMPANY/ORGANIZATION
Daryl Conway	Topeka, KS	Close Up
Lynn Clayson	Soldier, KS	Close Up
Ramona Doerksen	Hillsboro, KS	Tabor College
Karolyn Hagen	Hillsboro, KS	Tabor College
Yvonne Decker	Hillsboro, KS	Tabor College
Tim Reese	Hillsboro, KS	Tabor College
Denise Uebel	Hillsboro, KS	Tabor College
Jimmie M. Kett	Lawrence, KS.	"
Teresa Martens	Fresno, CA	Tabor College
Opal Hiebert	Hillsboro, KS	Tabor College
Charlene Klassen	Reedley, CA	Tabor College
Gaye Neuenchwander	Hillsboro, KS	Tabor College
Karen Melinda Benson	Olathe, KS.	Indian Trail Jr. High
Josh Baze	Olathe, KS	Indian Trail Jr. High
Zach Baze	Olathe, KS	Indian Trail
Lisa Catalina	Olathe, KS.	Indian Trail
Doc Courser	Shawnee, KS.	Indian Trail Student Council
Warren Hoemann	Overland Park	Yellow Freight System
Mary Turkinton	Topeka	Kmca
Wendy Peltow	Lawrence, KS	Reps. Lynch, Gregory & Sawyer
ED DE SOIGNE	TOPEKA	KANSAS CONTRACTORS ASSOC.
Melanie D. Caros	Topeka	Kansas Dept of Revenue
John Sauer	Topeka	Peace officers



CITY OF OLATHE

MEMORANDUM

TO: Members of the House Committee on Transportation

FROM: Don Seifert, Planning and Development Director *DS*

SUBJECT: House Bill Number 2731: Bonds for Special Fuel Users

DATE: February 6, 1990

On behalf of the city of Olathe, I want to thank the Committee for agreeing to introduce House Bill 2731 and for the opportunity to appear today. This will not be the most weighty issue the Committee will deal with this session, but it is a matter of some importance and principle to local units of government.

Kansas statutes require special fuel dealers and users to be licensed and obtain a bond payable to the State of Kansas to secure payment of special fuel taxes. K.S.A. 79-3478 requires a minimum \$1,000 bond or an additional amount as determined by the Director of Taxation. In our case, the city of Olathe is required to obtain a \$2,500 bond to secure payment of taxes that presently average about \$1,300 to \$1,500 monthly.

House Bill 2731 would amend K.S.A. 79-3478 to exempt cities, counties, and townships from the special fuel users bond requirement. The expense of the bond is not the issue. The annual bond premium only amounts to \$100, although it has doubled in the last two years. The issue is more a matter of fairness and trust. Cities and counties will not become insolvent or flee the state to avoid payment of taxes. We believe the bond premium is simply an unnecessary expense to local taxpayers that only benefits our insurance carriers. When you consider the number of local government units throughout the state that use special fuel, the cost is significant.

We have visited with staff in the Department of Revenue about this bill and believe they have no objections. We would appreciate the Committee's favorable consideration of this bill.

DS:sj

Attach. 1

Melan E



KANSAS DEPARTMENT OF REVENUE

Office of the Secretary
Robert B Docking State Office Building
915 SW Harrison St
Topeka Kansas 66612-1588

To: The Honorable Rex Crowell
House Committee on Transportation

From: Mark A. Burghart, General Counsel
Department of Revenue

Date: February 6, 1990

Subject: HB 2731

Thank you for the opportunity to appear before you to discuss House Bill 2731. House Bill 2731 as introduced amends K.S.A. 79-3478 to provide that any city, county or township is exempted from the bonding requirements for special fuel (diesel) tax.

Historically, Kansas cities, counties and townships have remitted their respective special fuel taxes without problem. The Department has not had to resort to collecting on a bond for these types of entities. We agree with the testimony given by the a representative of the City of Olathe that it is unlikely that a city, county, or township would be unable to meet, or try to avoid paying its tax liability. For these reasons, the Department of Revenue does not oppose House Bill 2731.

Att. 2

MEMORANDUM

TO: The Honorable Rex Crowell, Chairman
House Transportation

FROM: James G. Keller
Attorney, Legal Services Bureau
Kansas Department of Revenue

DATE: February 7, 1990

SUBJECT: House Bill 2658

I appreciated the opportunity to appear before you yesterday in support of legislation requested by the Department of Revenue. House Bill 2658 is the result of Department recommendations regarding the Implied Consent and DUI laws.

BACKGROUND

Several amendments have been made in recent years to K.S.A. 8-1001, et seq., and 8-1567 in an effort to combat drunk driving. This legislative proposal is an effort to clarify certain aspects of such prior legislation. The bill contains the following changes:

1. K.S.A. 8-255 is amended to state that the Division of Vehicles is authorized to revoke as well as suspend driving privileges. This simply makes K.S.A. 8-255 consistent with other statutes which require the division to revoke driving privileges in certain cases.
2. K.S.A. 8-255(c) and 8-1002(k) are both amended to make it clear that the administrative hearing officer in hearings involving a mandatory suspension, including that required under the implied consent law, must either affirm or dismiss the administrative action. In cases where the administrative action is discretionary, however, the hearing officer can exercise greater discretion in applying driver's license sanctions, depending upon the circumstances.

3. K.S.A. 8-259 is amended to clarify that judicial review of administrative action is not allowed in those cases where the administrative action is based upon a court conviction for the offenses listed in K.S.A. 8-254 or for a DUI conviction. (Since appeal was available from the underlying conviction.) In all other cases judicial review is available and subject to the act for judicial review.

4. K.S.A. 8-1014(f) is amended to clarify that the division shall issue a restricted driver's license only when the driving privileges are restricted not when suspended. This corrects unclear and contradictory wording previously in the statute.

5. K.S.A. 8-1474 is amended to eliminate a statutory reference that a suspension of a driver's license must be for a "specifically designated period" in recognition that several other statutes now require the division to suspend for an indefinite period for specific offenses.

6. K.S.A. 8-1567 is amended to allow evidence other than a breath or blood test taken within two hours to support a conviction for operating or attempting to operate a vehicle with an alcohol concentration of .10 or more. Other competent evidence (including expert testimony) could be used to arrive at a determination that the person operated or attempted to operate with an alcohol concentration of .10 or more. The present provision allowing prosecution based only upon a breath or blood test taken within 2 hours is also retained. Some district courts have refused to allow evidence other than a test taken within the two-hour period in a prosecution under the present "per se" statute. This change would simply allow other evidence to be used to prove a person had an alcohol concentration of .10 or more at the time of operation or attempted operation.

The Department requests that "(1)" be placed after the wording "subsection (f)", on lines 15-16, page 10 of the bill to limit the reference to "other competent evidence" in K.S.A. 8-1013 to only subsection (1) of that statute which refers to alcohol concentration tests obtained more than two hours after operation or attempted operation of a vehicle. This change would avoid possible problems with regard to partial test results under the implied consent law.

7. K.S.A. 8-1567(m) is amended to comport with the change in K.S.A. 8-1014 last year which makes driver's license suspensions resulting from DUI convictions the responsibility of the Division of Vehicles rather than the convicting court.

8. K.S.A. 8-1567(q) is added to provide a definition of "alcohol concentration" in the DUI statute. The definition is identical to that set out in K.S.A. 8-1013. Some courts have refused to apply the 8-1013 definition to the DUI statute.

RECOMMENDATION

The Department urges the committee to support House Bill 2658 with the single change set out in item 6 above.



State of Kansas

Mike Hayden, Governor

Department of Health and Environment
Kansas Health and Environmental Laboratory

Forbes Field, Bldg. 740, Topeka, KS 66620-0002

(913) 296-1619

FAX (913) 296-6247

Stanley C. Grant, Ph.D., Secretary

Testimony presented to
House Transportation Committee

by

The Kansas Department of Health and Environment

House Bill 2658

Section 6 of HB2658 redefines the charges of illegal operation of a vehicle.

K.S.A. 8-1001 (f) (1) defines the requirements of the procedure to obtain a test for alcohol and/or drugs. The person must "submit to and complete a test." The Intoxilyzer 5000 is used extensively throughout Kansas. With this instrument, if a person does not provide a deep lung sample, the instrument will indicate the concentration of alcohol in the sample delivered, but will flag the result as "Deficient sample--value printed is highest obtained." Currently, this type of test result has been regarded as a refusal--the person did not complete the test.

K.S.A. 8-1013 provides a definition of "other competent evidence" as (1) alcohol concentration tests obtained from samples taken two hours or more after the operation or attempted operation of a vehicle, and (2) readings obtained from a partial alcohol concentration test on a breath testing machine.

Section 6(a)(1) would allow breath tests taken more than two hours after an arrest to be used as "per se" evidence. It would also allow a partial reading of .10 or more to be used as "per se" evidence.

Basically, the KDHE is not opposed to this more strict interpretation, but we are concerned that by allowing partial breath reading to be considered "per se" evidence, it may jeopardize the ability to charge a person with a refusal if the test is not completed and the result is below .10.

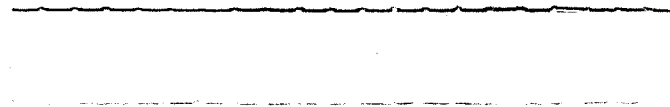
Testimony presented by: Theresa L. Hodges, Section Chief
Laboratory Improvement Program Office
Kansas Health and Environmental Laboratory
February 6, 1990

Attach. ✓

Dean
2-6-90

9 RS 2179

HOUSE BILL NO. _____



AN ACT relating to roads and highways; withholding special city and county highway funds from certain cities and counties.

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

Section 1. If the certification required under the provisions of subsection (a) of 23 U.S.C. 141, shows that the state of Kansas is not in compliance with 23 U.S.C. 154 and the secretary of the United States department of transportation reduces the state of Kansas' apportionment of federal-aid highway funds by 10%, the secretary of the Kansas department of transportation shall certify to the state treasurer those cities and counties which are not in compliance with 23 U.S.C. 154 and the state treasurer shall withhold 10% of the funds payable to such cities or counties under the provisions of K.S.A. 79-3425c, and amendments thereto, until the reductions of federal-aid highway funds have been restored.

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

Attach. 5

BILL NO. _____

AN ACT relating to the qualifications of school bus drivers;
providing for certain waivers.

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

Section 1. (a) Any person employed as a school bus driver or applying to become a school bus driver, who fails to meet the minimum qualifications for the physical examination required by the Kansas department of transportation, may be permitted to drive a school bus, if the school district, nonpublic school or other employer, requests the secretary of transportation to provide a waiver for that portion of the physical examination failed by such person. The secretary must determine, based on the facts submitted, that the person would be or is a satisfactory school bus driver.

(b) The waiver shall not exceed two years and shall be renewable, upon submission to and approval of, a new application.

(c) A copy of the letter granting a waiver under the provisions of this section shall be kept on file at the office of the school district, the nonpublic school or other employer and shall be retained by that office for a minimum of two years from the date the waiver was granted.

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

Attach. 6

HOUSE BILL NO. _____

By Representative Smith

AN ACT relating to the advertising control act; concerning rural business and farm and ranch directional signs; amending K.S.A. 68-2233 and repealing the existing section.

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

Section 1. K.S.A. 68-2233 is hereby amended to read as follows: 68-2233. After March 31, 1972, and subject to the provisions of K.S.A. 68-2237, and amendments thereto, no sign shall be erected or maintained in an adjacent area, except the following: (a) Directional and other official signs, including, but not limited to, signs pertaining to natural wonders or scenic or historical attractions, which are required or authorized by law and which comply with rules and regulations which shall be promulgated by the secretary of transportation relative to their lighting, size, number, spacing and such other requirements as may be appropriate to implement the provisions of this act: Provided,--That, Such rules and regulations shall not be inconsistent with, nor more restrictive than, such national standards as may be promulgated from time to time by the secretary of the department of transportation of the United States, pursuant to subsection (c) of section 131 of title 23 of the United States code;

(b) signs advertising the sale or lease of property upon which they are located, except that there shall not be more than one ~~(1)~~ such sign which is visible to traffic proceeding in any one direction on any one interstate or primary highway;

(c) signs advertising activities conducted on the property on which they are located, including, without limiting the generality of the foregoing, goods sold, stored, manufactured, processed or mined thereon; services rendered thereon; and

entertainment provided thereon;

(d) signs erected in business areas on or before March 31, 1972; and

(e) signs which are to be erected in business areas and which will comply when erected with the provisions of K.S.A. 68-2234, and amendments thereto; and

(f) rural business and farm or ranch directional signs erected in accordance with section 2.

New Sec. 2. (a) As used in this section:

(1) "Rural area" means a sign site outside the limits of an incorporated city despite the zoning, if any, that may be in place;

(2) "element" means a component, complete in itself, of a single or multmessage sign structure;

(3) "structure" means a total sign unit. A structure may carry one or more elements.

(b) Signs not exceeding 32 square feet in informational display area per element giving directions to off-highway businesses, farms or ranches shall be allowed in rural areas. Such signs may be a single sign element or a multielement sign structure.

(c) The secretary of transportation may adopt such rules and regulations to implement the provisions of this section.

Sec. 3. K.S.A. 68-2233 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.