

Approved: 3-26-96
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on March 18, 1996 in Room 254-E- of the Capitol.

All members were present except:
Senator Phil Martin

Committee staff present: Dennis Hodgins, Legislative Research Department
Ardan Ensley, Revisor of Statutes
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:
Roth Gatewood, Topeka
Michael Adams, Rails to Trails Coalition of Kansas
Kim Gulley, Kansas League of Municipalities
John Love
Bud Newell, Kansas Horse Council
Art Brown, MidAmerica Lumber Association
Written testimony only, Jackie Girouard, Topeka
William Craven, Sierra Club, Kansas Natural Resources Council
Written testimony only, Mike Engleman
Mike Beam, Kansas Livestock Association
Written testimony only, Wes Holt, Kansas County Commissioners Association

Others attending: See attached list

Chairman Sallee reconvened the meeting at 8:00 a.m. and asked whether the Sub-committee on **HB 2041** had completed their report. The Chairperson stated the committee would meet on adjournment today and the report would be heard during that meeting. He also stated that **HB 2965** on which hearings were scheduled for 8:00 a.m. March 18 would be held in the afternoon meeting.

CONTINUATION OF SUB 2711--Concerning certain recreational trails; placing certain conditions on the operation of such trails

Roth Gatewood, Attorney, Topeka, told the Committee he now was representing Daryl Becker, a conferee who presented testimony on Friday. Mr. Gatewood appeared in support of **SUB HB 2711**, stating the same information presented to the committee by Charles Montange on Friday was the same that Mr. Becker presented to the Interstate Commerce Commission by petition for reconsideration of the trail through Mr. Becker's farm. This petition was filed in April, 1994, languished in that Commission without action for fifteen months and was ultimately declined in July, 1995. Mr. Becker, with no other option available, filed litigation in Washington, D.C. at his own expense.

Mr. Gatewood stated the Interstate Commerce Commission does not appear to have any concerns about private land owners, trail operators and private citizens. He stated the problem addressed by this bill provides a local forum by which the people with direct interest in the trail must consider the propriety of the operation. It is a necessary adjunct to the federal legislation which has absolutely no provisions or regulations in it by which you can govern these trail operations. The ICC order establishing the trails merely says to make a contract with the railway company with no recorded entry of that contract with any public agency, it is strictly a private arrangement between the railway company and the trail operator with no controls. There are numerous gaps in the federal legislation and regulations which can be filled by legislation such as **SUB HB 2711**. Mr. Gatewood stated Indiana had a comparable problem which was addressed by the 1995 Legislature. Indiana enacted a bill, quite similar to **SUB HB 2711**. Up to this point in time that legislation has not been challenged on constitutional grounds or any other grounds. It provides a forum by which these trails can be regulated and controlled and Mr. Gatewood expressed the opinion that Kansas can provide the same control.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on March 18, 1996.

Michael Adams appeared in opposition to **SUB HB 2711** stating the requirements of the bill are so numerous and burdensome that the net effect would be to essentially prohibit the establishment of any new rail-trails in the state of Kansas (Attachment 1). Mr. Adams told Committee members that development of recreational trails is a high priority for many communities and rail-trails are an economical way to provide these types of recreational facilities for multiple user groups.

Mr. Adams stated that the U. S. Supreme Court upheld the constitutionality of railbanking in 1990 and the Court's doctrine of preemption under the Supremacy Clause is applicable to the bill.

Kim Gulley, Assistant General Counsel, League of Kansas Municipalities, presented testimony in opposition to **SUB HB 2711** stating the substitute bill contains fewer onerous provisions than the original bill but the League remains opposed to the bill in its current form (Attachment 2).

Ms. Gulley stated the substitute bill still applies to cities with all provisions in Section 3 applying to a city attempting to establish a rails to trails project and further expressed concern that imposing such restrictions on every rails to trails project to appease those concerned with isolated problems is not good policy. Ms. Gulley stated the make-up of a particular trail should be left to the locally elected officials operating the trail and in the event the bill passes out favorable requested local governments be exempted from the provisions of the bill.

John W. Love, Jr., appeared in support of **SUB HB 2711** stating the bill would solve existing problems (Attachment 3). Mr. Love expressed concern about numerous issues, especially exposure to liability problems due to easy access, lack of proper fencing and supervision which leaves an adjacent landowner in a very vulnerable position.

Mr. Love's testimony includes statistics from "Survey of Existing Linear Parks and Trails in the United States" noting the difficulties experienced with the trails and asked committee members how they would feel if these statistics applied to a trail through their back yard. A short video in the area of 89th street and Tecumseh road showed trash, dumped building debris and brush on the trail and within sight of Mr. Love's back door.

Bud Newell, Kansas Horse Council, presented testimony stating his opinion that Kansas has a saleable commodity with history and heritage which can help small communities (Attachment 4). Mr. Newell stated this issue is not one of property rights but it is a privacy right. He further noted that most of the opposition's testimony has come from incompleting trails. Mr. Newell recommended **SUB HB 2711** be killed in committee with a cooperative solution being struck by all citizens of Kansas. A short video was shown concerning trails in Michigan, which appear to be under management of state entities.

Jackie Girouard, past President of Kansas Prairie Packers, presented written testimony only, in opposition to **SUB HB 2711** stating that although the substitute bill had been modified, the requirements imposed are unduly restrictive and, in many cases, unnecessary (Attachment 5). Ms. Girouard stated access to most of Kansas' unique outdoors is available only to those who own land or personally know landowners who are willing to allow its use.

Art Brown, representing the Retail Building Material Dealers in the State of Kansas in support of **SUB HB 2711** (Attachment 6). Mr. Brown stated many abandoned railroad lines are located directly next to members' business or even go directly through members' places of business. He stated that lack of notification to adjacent land owners seemed to violate their property rights set forth in Section 3 of the bill. Section 2 of the bill lists provisions to deal with fire hazard issues, motorized vehicles, safety and litter. Local units of government should have input with trails located in their venue.

Mr. Brown noted many compromises were made between the original bill and the substitute bill with numerous sub-committee meetings in the House prior to the substitute bill passing the House by a vote of 119-5. He urged favorable passage of **SUB HB 2711**.

William J. Craven, Kansas Natural Resource Council, Sierra Club, presented testimony in opposition to **SUB HB 2711** stating the bill imposes onerous requirements on developers of recreational trails so as to make such projects impossible or extraordinarily difficult (Attachment 7). Mr. Craven pointed out three of the most objectionable portions indicated in his testimony.

Mr. Craven told the Committee that relief should come from Congress, not trail developers. He stated there is no reason provisions need to be put on private trail developers. He noted that successful trail projects depend on cooperation and support by and between landowners, trail developers and cities and counties and suggested further work toward cooperation before passing any legislation.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on March 18, 1996.

Mike Engleman provided a fact sheet on Railbanking, pictures taken on the Prairie Spirit Rail Trail and an article from the Farmland News concerning rails and trails (Attachment 8).

Mike Beam, Kansas Livestock Association, presented testimony in support of **SUB HB 2711** stating that many landowners adjacent to railroads have deeds which honor the railroad easements and which state the land is to revert to the landowner if and when a railroad ceases to exist (Attachment 9). Mr. Beam told the Committee that the National Trails System Act has virtually circumvented the reversionary property interests of thousands of landowners across America.

The Interstate Commerce Commission ruling requires the trail user to assume any legal liability (unless the user is immune from liability) and accept full responsibility for management of the right-of-way and payment of taxes assessed against the property.

Mr. Beam listed projects already developed, proposed or pending throughout the state and noted the bill lays out ground rules in Kansas and provides some landowner/public safety guidelines for rails to trails stating it is a positive step and requested favorable consideration.

Written testimony was presented from Wes Holt, President, Kansas County Commissioners Association, which voices concern over **SUB HB 2711** and the effects the legislation would have on local home rule power and control over establishment of new recreational trails as well as established trails now operated and maintained by local government (Attachment 10).

Discussion followed and questioned how Home Rule Power can operate under the Federal law. Kim Gulley stated there are two separate issues, one is Home Rule where a city or local government is operating a trail and which differs greatly from authority to veto the trail.

The issue of fencing requirements, Page 2, line 3, were discussed, especially how much of the right-of-ways were really fenced by the railroad. A Farm Bureau representative stated usually the landowner had followed railroad law and dealt with fencing accordingly.

A committee member furnished copies of the statute dealing with fencing to the Committee (Attachment 11) and questioned how many railway right of ways in the state of Kansas have that type of fence. A conferee noted if the landowner did not already have a hog type fence on three sides a similar fence could not be required. He stated most fences were just 4 wire fence and that was the intention of the substitute bill.

Senator Lee made a motion to approve minutes of March 11, 12, 13, 14 and 15, 1996. Senator Wisdom seconded the motion and the motion carried.

The Chairperson stated the committee would meet upon adjournment of the Senate.

The meeting adjourned at 9 a.m.

The next meeting is scheduled for 4 p.m., March 18, 1996.

SENATE ENERGY & NATURAL RESOURCES
COMMITTEE GUEST LIST

DATE: March 18, 1996

NAME	REPRESENTING
STEVE KEARNEY	RAILS TO TRAILS CONSERVANCY
Bud Newell	Kansas Horse Council
Gladys Wunder	
Dak Lambley	Ks. Dept. of Agric.
Jon Kyles	KCC
John Love	SELF
ROTH A. GATEWOOD	DARYL BECKER
Michael J Engeman	Kansas Horse Council
ORVILLE W. BOBO	SELF
Louise Schneider	Ks Livestock Assn.
Jean Barba	Barba & Associates
Mike Beam	Ks Livestock Assn.
Doc Brown	mid-America Lumbermen
Walter Porter	Chesapeake Lumbermen
Mike Adams	Rails to Trails Coalition of Kansas

Testimony of Michael Adams
Rails-to-Trails Coalition of Kansas
Substitute H.B. 2711--Am. by HCW
Senate Energy & Natural Resources Committee
March 15, 1996

Chairman Sallee and members of the committee, thank you for the opportunity to appear on this bill. The Rails-to-Trails Coalition of Kansas is strongly opposed to substitute HB 2711 as amended. The requirements of this bill are so numerous and burdensome that the net effect would be to essentially prohibit the establishment of any new rail-trails in the state of Kansas.

The Kansas Heritage Trails Plan was developed through a State of Kansas inter-agency task force directed by Senate Resolution 1843 and House Resolution 6027. The plan's goal is: " To preserve historic trails and transportation corridors while providing access and opportunities for current and future recreation." The citizens of Kansas have shown a growing need for safe and healthy recreational opportunities. Development of additional recreational trails is a high priority for many communities. Rail-trails are currently an economical way to provide these types of recreational facilities for multiple user groups by using existing transportation easements. Rail-trails also provide economic benefits, since trail users spend money in the communities these trails pass through.

HB 2711 provides numerous disincentives for the development of recreational trails along railroad right-of-ways. Even though there are extensive Kansas laws establishing a landowner's responsibilities for maintaining their land, this bill attempts to place further restrictions on trail developers. Requiring the approval of each county and city along a proposed recreational trail essentially gives each jurisdiction the power to veto the project for non-specific reasons. This veto power conflicts with the intent of the National Trails System Act to preserve existing railroad corridors as transportation easements. Currently many government and municipal agencies are taking a phased approach to development of recreational projects as funding becomes available. The provisions of this bill which put a time limit on development will make it even harder for such projects to be implemented and fulfilled. The bill imposes additional burdens on private developers, such as non-profit groups, by requiring financial assurance in the form of a performance bond or escrow account. This is an unprecedented requirement. Private groups often use volunteer labor to help develop and/or maintain recreational facilities. Private developers should not be required to basically pay in advance to guarantee timely development and maintenance of a trail. Individually these provisions might not appear to be much of a hardship, but when combined into a comprehensive list they become burdensome requirements that most landowners would not wish upon themselves in a million years.

Nearly all rail-trails in Kansas are the result of railbanking the corridors under the National trails System Act. Under the provisions of this act a rail line is not formally abandoned and remains under the jurisdiction of the US Department of Transportation during interim trail use. The U.S. Supreme Court upheld the constitutionality of railbanking in 1990. The Court's doctrine of preemption under the Supremacy Clause is applicable to the bill. When Congress enacted legislation creating and regulating the railbanking of corridors, it preempted the field, and supplementary state legislation circumventing the intent of Congress would be considered null and void.

We respectfully request that Substitute H.B. 2711 not be passed. Numerous Kansas and federal laws currently apply to this type of land use and also provide for recourse against the responsible party should they fail to comply with the current laws.

I thank you for your time and am available to answer questions at the appropriate time.

Senate Energy & Natural Resources
March 18 1996
Attachment 1



**League of
Kansas
Municipalities**

**Legal Department
300 S.W. 8th
Topeka, Kansas 66603
Phone: (913) 354-9565/ Fax: (913) 354-4186**

Legislative Testimony

To: Senate Energy and Natural Resources Committee

From: Kim Gulley, Assistant General Counsel

Date: March 15, 1996

Re: Opposition to Sub. HB 2711

Thank you for allowing the League to appear today in opposition of Sub. HB 2711. While the substitute bill contains fewer onerous provisions than the original bill, we remain opposed to the bill in its current form for several reasons.

Although some have suggested that the substitute bill no longer applies to cities, the language of the bill does not support this contention. Rails to trails projects are administered mostly by not-for-profit agencies or local government entities. The requirements in Sec.2 (a) (1)-(11) of the bill would apply to all current and future rails to trails projects, including those administered under the authority of local governing bodies. Cities who currently operate rails to trails projects view these provisions as unnecessary intrusions on their ability to operate the trail. Cities who are currently negotiating in an attempt to establish rails to trails projects view these provisions as a means to end further rails to trails projects in Kansas. Furthermore, all of the provisions in Sec. 3 would apply to any city attempting to establish a rails to trails project.

This is clearly an example of a strictly local problem. While we understand that there are a few disgruntled property owners in some areas who would prefer that the land in question revert back to their ownership, there are other areas of the state where rails to trails projects are supported by the surrounding communities. It is unfair to impose these restrictions on every rails to trails project in the state to appease those concerned with isolated problems.

We believe that the make-up of a particular trail should be left to the locally elected officials operating the trail. We therefore request that you do not recommend Sub. HB 2711 favorably for passage. In the alternative, if you do decide to pass this bill out favorably, we request that local governments be exempted from the provisions of this bill.

*Senate Energy & Natural Res.
March 18, 1996
Attachment 2*

To: Chairperson Don Salee and
Members of the Senate Energy & Natural Resources Committee

From:

John W. Love, Jr. (Adjacent land owner to abandoned track)
8750 SE Tecumseh Rd.
Berryton, KS

Thank you for the opportunity to voice my support of SUBSTITUTE for HOUSE BILL No. 2711. I believe the proposals in this bill would help solve existing problems. My family and I have already encountered dumping, trespassing, noxious weeds, litter, hunting from the abandoned track bed, one fire, lack of an access road for us to cross the abandoned track, and unauthorized motorized vehicles (including ATVs, trucks, motorcycles). Keeping in mind that our section of the proposed trail is a mere quarter mile long, you can begin to see the magnitude of the abuses adjacent landowners must deal with. The sheriff's department lacks the funding and manpower to monitor activities on the abandoned track. SUBSTITUTE for HOUSE BILL No. 2711 would address this problem.

One of my family's major concerns is our exposure to liability problems. Easy access into the proposed trail, lack of proper fencing and supervision leaves an adjacent landowner in a very vulnerable position. SUBSTITUTE for HOUSE BILL No. 2711 would address this problem.

On this 90 second video, I would like to show you one of the most recent negative incidents occurring on the proposed trail adjacent to our home. Photos are attached. This unsightly pile of rubble can be seen from Tecumseh Road and from our back door. The materials were dumped sometime near the middle of November, 1995. To date, no trail proponent has made an attempt to remove the trash. SUBSTITUTE for HOUSE BILL No. 2711 would address this problem.

Senate Energy & Natural Res.
March 18, 1996
Attachment 3

“Survey of Existing Linear Parks and Trails in the United States” by PARKS, Portland, Oregon reports:

VANDALISM is a slight to moderate problem along 83% of the existing trails.

TRESPASSING is a slight to moderate problem along 48% of the existing trails.

LITTERING is a slight to moderate problem along 77% of the existing trails.

ILLEGAL VEHICLES were reported to be a slight to moderate problem along 77% of the existing trail. They were considered to be a serious or acute problem along 11% of the existing trails.

If these statistics applied to a proposed trail through your back yard, would you support this bill?

We are relying on your sense of duty as elected officials to protect the rights of adjacent landowners. Please support this important bill.

Thank you, Chairperson Salee and Committee Members for your consideration of these desperately needed regulations.





SENATE AND NATURAL RESOURCES COMMITTEE, RE: SUB. H.B. 2711.

Mr. Chairman and Members of the Committee, good morning. I am Bud Newell, President of the Kansas Horse Council which has 500 members and approximately 2,000 horse owners. I own a breeding farm for Arabian horses, and a half-mile of Oregon Trail ruts a few miles east of Topeka. Last year we entertained about 6,000 people from all over the United States and from several foreign countries on the Trail with dinner and history about the area. I mention these facts to you because Kansas is, and has, a marketable commodity in our heritage and history.

In addition to the above, I have traveled this State for 35 years as a sales professional in the area of orthopedic implants. I have been in every small community where a doctor or hospital was located. Today, many of these small communities are drying up and going away. Tourism dollars could help stabilize these communities and spark new businesses and opportunities. Substitute House Bill 2711 attempts, and is written, to cut this important lifeline by obstructing and delaying the development of recreational trails which create the need for cafes, bed & breakfasts, livery stables, bicycle shops, and other entities which create employment and broaden our tax base.

Mr. Montange, RTC, on Friday presented his testimony. I cannot improve on any part of his delivery except to say that this issue is not about property rights, as some would have you believe. The real issue is privacy, and this was very well identified by testimony on Friday, including trail users asking for water; rifles being shot on the right-of-way; and Morel mushrooms being violated. Note that all of these events occurred on an uncompleted trail. Also it should be noted that the testimony from Wichita did not involve a completed trail; only one in the planning stage.

The proponents of Sub. HB2711 plant only fear, and fan the fires of distrust and deception. Their action seems unique only for Kansas. Why should Kansas be a negative model in the establishment of recreational areas?

Topeka-Parnell, A. K. Salvage fiasco can be fixed by working in unison with RTC, who knows the laws and how to apply pressure. Mr. Montagne has already filed the beginning of the end and A. K. Salvage will soon disappear. Of interest will be what is done with the rail corridor after A. K. Salvage is gone and the corridor is de-banked.

Topeka-Overbrook can be fixed, and it will come to fruition in the near future unless interference and obstruction prevail, preventing timely completion, as has been the case in Franklin County and the Spirit Trail.

We, the Kansas Horse Counsel, recommend this bill be killed in committee while a cooperative win-win solution is struck by all the citizens of Kansas and the special-interest proponents of Sub. HB2711. I will close with a short film and take your questions at the appropriate time.

Respectfully submitted by Bud Newell, President K.H.C.

**TESTIMONY BEFORE THE SENATE COMMITTEE
ON ENERGY AND NATURAL RESOURCES
REGARDING SUBSTITUTE FOR H.B. 2711
March 18, 1996**

Mr. Chairman and Members of the Committee:

I am Jackie Girouard, Topeka resident and past President of the Kansas Prairie Packers. Prairie Packers is a local organization of people who enjoy a wide variety of outdoor activities, including hiking, backpacking, bicycling and canoeing. Thank you for the opportunity to provide testimony in opposition to this legislation.

Although the Substitute Bill has been modified slightly from the original bill, I believe that this proposed legislation will seriously impair or possibly halt the development of additional recreational trails in Kansas. The requirements imposed by this proposal are unduly restrictive and, in many cases, unnecessary. Because of the costs involved and the absence of a profit motive, most recreational trails will be developed by public entities, and largely through public funding sources. Under these circumstances, the concerns of all interested parties including adjoining landowners are generally well protected.

In cases where nongovernmental entities might be involved in recreational trail development, those groups' best interest would reside with preserving the trail and its environs, not degrading them, as was apparently assumed in drafting this legislation. In fact, some of the requirements of this bill, such as weed removal, fireproofing, and fencing, would, themselves, degrade the environment and diminish the quality of the outdoor experience provided by such trails. If strictly interpreted, the result could be a trail consisting of a rock or other fire-resistant surface between two stretches of fence, liberally dotted with signs and patrolled by a uniformed guard. Faced with the prospect of creating a recreational trail that resembles a demilitarized zone, not to mention the accompanying costs, most "responsible parties" will simply not proceed.

Kansans will be poorer for the loss. Most of the trails that have been developed in the state are located around reservoirs and in urban areas. Although those are nice facilities and many are well used, they tend to be quite similar. New programs such as rail banking and transportation enhancement funding have created additional opportunities for the development of recreational trails in recent years. Kansas citizens long accustomed to having to go to surrounding states such as Colorado, Arkansas, and Missouri in search of more varied outdoor recreational experiences have enthusiastically responded to those new programs, and proposed development projects have substantially exceeded the funding available. Access to most of Kansas' unique outdoors is available only to those who own land or personally know landowners who are willing to allow its use for that purpose. If this bill passes, that will continue to be the case. I respectfully urge you not to approve Substitute for H.B. 2711. Thank you.

*Senate Energy & Natural Res.
March 18, 1996
Attachment 5*



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MID-AMERICA LUMBERMENS ASSOCIATION

TESTIMONY FOR THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE ON HOUSE BILL NO. 2711

MARCH 15, 1996

Mr. Chairman, members of the Committee. My name is Art Brown and I appear before you today representing the retail Building Material Dealers in the State of Kansas as a proponent of House Bill # 2711.

Our interest in this bill is generated due to the attrition of rail service that has been evident in the rural areas of our State. In days gone by, lumber was primarily purchased by rail car. Now, due to diminished rail service and higher raw material costs, most of our membership purchase their needs by truck. This still does not alter the fact that there are many miles of rail abandonment throughout the State of Kansas. Some of it is located directly next to our members business. Some actually goes directly through a members place of business. Therefore, the future of the disposition of these abandonments is of great importance to us.

A saying attributed to the early Native Americans states that you should never judge a man until you have



*Senate Energy & Natural Res.
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Attachment 6*

walked a mile in his mocassins. As I proceed I hope you see the objectivity of this saying is the focus of this testimony.

As a proponent I would state that we feel that common sense and responsibility are the cornerstones of this issue. If a rail trail is designated, common sense would dictate responsible parties involved would notify adjacent land owners. We could probably fill the room with land owners who had no idea an abandonment running through their property today, could be a rail trail tomorrow. We find the lack of notification to adjacent land owners as a rather high handed attitude, not to mention a violation of their property rights. This notification process is found in Sec. 3 of the bill.

Common sense would dictate that if you have said trail running through a part of your property, that it should be maintained in a satisfactory manner, if for nothing else, so the trail could be utilized. We are not asking for any exotic expenditures of funding from the developers of these trails. The current trail being developed in South East Kansas is an example of sensible trail management. If such provisions are being implemented for this trail, we feel such criteria should be utilized for all subsequent trail development.

We would ask you, again, in the area of common sense, should not these trails be safe? Should they not be as litter free as possible?

Should a trail be as free from fire hazards as possible? Should not a trail be free from motorized vehicles so that users can enjoy a safe recreationing experience? These provisions are dealt with in Section 2 of the bill, along with other responsible and common sense provisions.

In the spirit of good planning and harmony within the communities where the trail is located, should not local units of government have input as to whether they want to become involved in a trail development? Maybe the citizens in their area do not want a trail in their community or city. If so, and that is the will of the majority, then that is their choice to make that decision. These provisions are on page 3 of the bill lines 11 thru 29.

Finally, any responsible developer must be able to prove they have the financial ability to develop this trail in a safe and usable manner. They also would need to have a plan for such trail development. Planning is not only a logical thing to do, it is the smart thing to do, which again is just common sense. Thus the bonding provision was inserted on page 2 of the bill, lines 12-19 and the planning provisions on page 3, lines 13 thru 16.

Many provisions were compromised from the original bill as it was written. There were several sub-committee meetings in the House and enough changes to warrant this substitute bill which did pass the

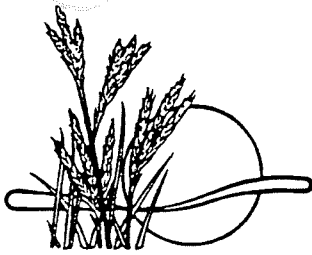
House by a vote of 119-5. As you in the Legislature are aware if all parties walk away from an issue a little unhappy, then the chances are you have probably completed a good piece of Legislation.

I think the opponents and us will agree on one thing and that is we are not totally satisfied with the product you see before you today.

Speaking for ourselves, we can live with the bill the way it is written. Obviously our opponents feel they have given a great deal on this issue. When you look at the original bill and then this substitute bill, we feel we have given in the spirit of compromise and good faith and speaking for our membership, we feel we have given enough.

We are hopeful that the common sense of this testimony has come through to you. Think of a trail through your property. How would you like for it to look? How would you like for it to be maintained? At some point during the proponents testimony, you will see some pictures of an undeveloped trail, one that was purchased as a rail trail in 1989. Imagine if that was a trail going through or by your property. Common sense would dictate you would not like it. Quite simply, we ask you pass out House Bill # 2711 favorably for passage and show that Kansas certainly has a "good neighbor" policy with rail trails and their adjacent land owners.

I thank you for this opportunity to testify on this issue and stand for any questions or comments.



Kansas Natural Resource Council

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Testimony of Bill Craven
Kansas Natural Resource Council and
Kansas Sierra Club
Sub. for H.B. 2711
Senate Energy and Natural Resources Committee
March 14, 1996

Thank you for the opportunity to appear on this bill. The Kansas Sierra Club and the Kansas Natural Resource Council strongly oppose this bill. The bill imposes such onerous requirements on developers of recreational trails so as to make such projects impossible or extraordinarily difficult. In a state which ranks near the bottom in terms of public recreational opportunities, this bill sends the wrong message.

On the House side, following the committee hearings, a subcommittee met to work the bill over. Substantial progress was made, but the bill is still objectionable.

Three of the most objectionable portions are:

(1) On page 3, lines 24-30, the bill requires cities or counties to approve trail projects. This requirement is contrary to the federal legislation which preempts that sort of requirement. I am aware of the view that this should somehow be a matter left to the counties or the cities. If you have that view, your relief must be obtained from Congress, not from trail developers. In the real world, it is very difficult to get all of the affected cities and counties to line up to support a trail project and there is no reason for that requirement given the federal grant of the right of way. I have been known to litigate laws passed (or not passed) by the state which run contrary to federal law. I have encountered criticism that such litigation runs contrary to what some believe is a "states' rights" approach. Passage of this bill will again raise the possibility that litigation challenging this statute in federal court will be brought. I want the committee have in its record the fact that this issue was squarely presented to it.

SUBSTITUTE LANGUAGE: Strike paragraph 3 and 4 in Section 3 on page 3.

(2) Page 2, lines 11-36, require private trail developers to post a bond. Page 2, lines 36-42 also require private trail developers to have liability insurance. This is an example of an onerous financial requirement. The fact is that one or the other of these is sufficient. If damages are sought and ordered paid, the aggrieved party will recover only once. There is no reason for requiring a trail developer to commit to establishing two pots of money.

SUBSTITUTE LANGUAGE: This can be fixed by amending page 2, lines 37-42 by adding: "As an alternative to (b)," at the beginning of the paragraph.

(3) In Osage County, someone burned a trestle on the right of way of a proposed trail project. Page 2, lines 7-10 would seem to require the trail developer to reconstruct that bridge, regardless of the fact that no one associated with the project burned the bridge. Most significantly, the trestle is not essential to the trail. Hikers and bikers can follow the right of way without replacing the bridge.

SUBSTITUTE LANGUAGE: Page 2, line 8, add "essential to the reasonable and prudent operation of the trail" after the word "trail."

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Attachment 7



In conclusion, I want to say one more thing: Proposed trail projects in Kansas are sorely needed. The entire program has been hurt by shrill voices and misunderstandings on both sides of the debate. This bill isn't going to help the state moderate the debate or reduce the rhetoric. The plain fact of the matter is that successful trail projects depend on cooperation and support by and between landowners, trail developers, and affected cities and counties. Instead of passing this bill, I would urge the committee to send a strong signal that what the state needs is a cooling off period. You can send that message by refusing to pass legislation which is punitive, ill-considered, and probably illegal. What the state needs is a little time so that the very few trail projects Kansas has in the works have a chance to develop. If legislation is needed, there is plenty of time to consider it after real--and not imagined--problems develop.

RAILBANKING

What, Where, Why, When and How?

In 1983, concerned by the rapid contraction of America's rail network, the U.S. Congress amended the National Trails System Act to create the railbanking program. Railbanking is a method by which lines proposed for abandonment can be preserved through interim conversion to trail use.

If the title to an about-to-be-abandoned rail corridor is in question and there is any interest in trail use, the line should be preserved through railbanking. On the reverse side of this fact sheet is a 'boilerplate' letter that can be used to file railbanking and public use condition requests with the Surface Transportation Board (STB), formerly the Interstate Commerce Commission.

Some railroad rights-of-way contain easements that revert back to adjacent landowners when an abandonment is consummated. However, if a line is railbanked, the corridor is treated as if it had not been abandoned. As a result, the integrity of the corridor is maintained, and any reversions that could break it up into small pieces are prevented.

Railbanking can be requested by either a public agency or a qualified private organization. The railbanking request must be sent to the STB in Washington, D.C., and must at the very minimum include a "Statement of Willingness To Assume Financial Responsibility" (see reverse side). Since the abandoning railroad company must agree to negotiate a railbanking agreement, a copy of the request for railbanking must be served on the railroad at the same time it is sent to the STB.

A Public Use Condition (PUC) request is a separate request that is complementary to a request for railbanking. If a PUC request is made to the STB, the STB will place a restriction on the abandonment that prevents the railroad company from selling off or otherwise disposing of any property or trail-related structures, such as bridges or culverts, for a period of 180 days after the abandonment is authorized. This public use condition gives the prospective trail manager some breathing room for preparing an offer to the railroad. (The public use condition is also a good backup device should the railroad not agree to railbanking since the STB will issue public use conditions regardless of whether the railroad agrees.)

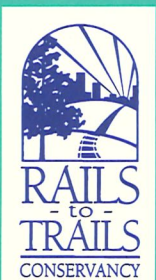
There are several other important points regarding railbanking:

1. A railbanking request is not a contract and does not commit the interested party to acquire any property or to accept any liability. It invites negotiation with the railroad company under the umbrella of railbanking. A party filing a "Statement of Willingness To Assume Financial Responsibility" is not accepting any financial responsibility. It is merely expressing an interest in possibly doing so.
2. The tracks and ties on a railbanked line can be removed. However, bridges and trestles must remain in place, and no permanent structures can be built on the right-of-way.
3. Under railbanking, there will likely still be an actual sale of the property, and the railroad will likely still want compensation. Railbanking is not generally a method for obtaining a free trail.
4. A railbanked line is subject to possible future restoration of rail service. Any railroad can apply to the STB to resume rail service on a railbanked corridor. However, if the STB restores rail service, the trail agency is entitled to fair market value for the corridor. The terms and conditions of a transfer back to rail service would be determined by the STB.
5. The attached letter can only be filed on a rail line that is still under the authority of the STB. Generally, the STB loses authority 30 days after the effective date of an abandonment. Even if you miss the deadline, you should file the letter anyway along with an explanation as to why you need additional time. The STB may be able to reassert jurisdiction over the abandonment.

A more thorough discussion of railbanking and other legal issues related to rails-to-trails conversions is available in *Secrets of Successful Rail-Trails: An Acquisition and Organizing Manual for Converting Rails into Trails*, which is available from RTC for \$19.95 (\$16.95 for RTC members) plus \$4.50 for shipping and handling.

For text of "boilerplate" letter, see other side.

Senate Energy & Natural Res.
March 18, 1996
Attachments



Following letter requests both a public use condition and railbanking. The items in italics be completed by the prospective trail agency or group.

[Date]

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
12th & Constitution Ave., NW
Washington, DC 20423

Re: [Name of Railroad Company]-Abandonment-[Name of County and State] AB-xx (Sub-no. yy)[STB Docket Number]

Dear Mr. Williams:

This comment should be treated as a protest or a petition for reconsideration in the above-captioned proceeding. This comment is filed on behalf of [Agency Name] which is a *[political subdivision or government agency interested in transportation and/or natural resources, private public interest organization interested in conservation and/or recreation, etc.]*, which is hereinafter referred to as 'Commenter'.

While not taking a position on the merits of this abandonment, Commenter requests issuance of a Public Use Condition as well as a Certificate or Notice of Interim Trail Use rather than an outright abandonment authorization between [endpoint a] and [endpoint b].

A. Public Use Condition

Commenter requests the STB to find that this property is suitable for other public use, specifically trail use, and to place the following conditions on the abandonment:

1. An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties and signal equipment, except of public use on reasonable terms. The justification for this condition is that *[example: the rail corridor in question is along a scenic river and will connect a public park to a major residential area. The corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with local plans. In addition, the corridor provides important wildlife habitat and greenspace and its preservation as a recreational trail is consistent with that end.]* The time period sought is 180 days from the effective date of the abandonment authorization. Commenter needs this much time because *[example: we have not had an opportunity to assemble or to review title information, complete a trail plan or commence negotiations with the carrier.]*
2. An order barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels. The justification for this condition is that these structures have considerable value for recreational trail purposes. The time period requested is 180 days from the effective date of the abandonment authorization for the same reason as indicated above.

B. Interim Trail Use

The railroad right-of-way in this proceeding is suitable for railbanking. In addition to the public use conditions sought above, Commenter also makes the following request:

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d), and 49 C.F.R. §1152.29, [Agency Name] is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by [Name of Railroad Company] and operated by _____.

The property, known as the _____ extends from railroad milepost ____ near [endpoint a] to railroad milepost ____ near [endpoint b] a distance of ____ miles in _____ County, _____. The right-of-way is part of a line of railroad proposed for abandonment in STB Docket No. AB-xx (Sub-no. yy).

A map depicting the right-of-way is attached.

[Agency Name] acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

By my signature below, I certify service upon [Railroad Company and address], by U.S. Mail, postage prepaid, first class, this ____ day of 19____.

Respectfully submitted,

Name

on behalf of: _____



Prairie Spirit Rail Trail: Typical Road Crossing



Prairie Spirit Rail Trail: Typical Bridge



Prairie Spirit Rail Trail: Trail-Head, Richmond Kansas



Prairie Spirit Rail Trail: Typical Trail Surfacing

Popularity of Rails-to-Trails grows as once wary farmers see positive impacts

Bill Horine, from Nevada, Iowa, took a "hike" this summer to see first hand the effects of turning railroad rights of way into hiking trails. This is his story.

If there ever was an idea that caught the fancy of the public it was the Rails-to-Trails concept. In simple terms, this is the conversion of abandoned railroad rights of way into linear parks with hard surfaced trails in place of rails.

The public can enjoy these trails for hiking, biking, walking and horseback riding.

These right of way parks became popular almost overnight. They pass through land containing flowers and grasses that have nearly disappeared with the settling of our country.

And they are ideal nesting locations for birds and other wildlife.

When the railroads were built, the companies chose the shortest and flattest routes from one town to another. The grades were minimal. Consequently, these converted railroad beds provide ideal walking and biking areas for family use. They are also popular with senior citizens and handicapped persons who cannot handle rough trails.

To give an idea how this "Rails-to-Trails" concept has caught on, consider that the first two trails of this type were opened in the Midwest during the mid-1960s. By 1985 there were about 100 trails in use. As of September 1992, there were 514 Rail-Trails in use from coast to coast with a total mileage exceeding 6,400 miles. The Midwest leads the nation in numbers of trails and mileage.

The railroads in the early days acquired land in a number of ways. Sometimes the land was purchased outright. Other times, easements were granted with a number of options available should the line be abandoned. In some localities the state or federal government owned the land traversed by the railroad. The many different owners along any one stretch of right of way made acquiring the land for recreational use by a state, local or private entity very difficult.

Adjoining landowners had concerns about recreational trails being established on old rail

lines. Farmers worried about hikers stealing livestock or vandalizing crops.

Rick and Diana Spence, who farm on the edge of LaPorte City, Iowa, expressed their concerns. "The abandoned rail line that formerly linked Waterloo and Cedar Rapids passed right through our farm, close to our buildings.

"When we first heard about the plans for the trail we were less than enthusiastic. We attended the meetings and tried to get laws passed and lawsuits initiated to stop what we felt was a real menace to our well-being," Rick said. "We headed up a group of farmers and took the issue to court. We fought it for about a year and finally decided it wasn't worth it and that we should negotiate.

"In retrospect, it's funny, cause now I think this trail is the greatest thing going. None of the

"In retrospect, I think this trail is the greatest thing going."

— Rick Spence
Farmer

fears we had have come to pass. There are perhaps 15,000 people using the Cedar Valley Nature Trail every year. Many of them access the trail through our farm."

Rick operates a fertilizer business and says that the trail riders always stop and ask permission to go to the trail.

"We have formed many friendships with the trail users, and hear from them throughout the year and at Christmas," Rick said.

Mrs. Michael Andorff and her husband live along the 52-mile Cedar Valley Nature Trail and had the same concerns as their neighbors. They, too, are now enthusiastic about the trail.

"We finally decided it wasn't such a bad thing after all. Many of those living along the trail use it," she said.

"We live two miles out of Brandon (Iowa), and I never would let our kids ride their bikes to town along the gravel road in front of our place. They now use the trail to bike to town and I have no worries about traffic."

Mrs. Andorff was also able to

cash in on the economic value of the trail. "I have operated a Bed and Breakfast for nearly five years. It just seems to grow, and now we sometimes have four different couples staying on weekends," she said.

In the past, as train traffic ceased, many of the small towns along the way started to "die." The pedestrian and bike traffic on these now converted trails has given many of the "off the beaten path" towns a new lease on life.

Take for example the Root River Trail, recently developed by the State of Minnesota. This scenic area in southeast Minnesota has long been one of the state's best kept secrets. The trail extends from Fountain to Rushford, a distance of 35 miles. The trail occupies the 100-foot right of way of the old Southern Minnesota Railroad and parallels the winding Root River as it flows past soaring limestone bluffs and through hardwood forests. The five small towns along the way have experienced a resurgence not unlike when the railroad first came through the valley.

Steve Speer, who operates a bar and grill in Fountain, says, "The trail has had a definite impact on my restaurant sales. Anywhere from 50 to 150 people stop by on an average weekend throughout the summer."

Dick Lee, mayor of Peterson, Minn., says, "Business has been excellent in my gift shop in the short while I have been open. Our little town of 250 people has come back to life.

"Old buildings are being reconstructed and the local bed and breakfast business has been excellent. These things would never have happened had it not been for the Trail."

Lee adds, "Several ice cream parlors and sandwich shops have come in. The trail users seem very appreciative of what we have for them. They like to pause and just enjoy the scenery. We have also built picnic shelters along the trail for the hikers."

He adds, "Trail users keep the trail clean and do not leave garbage along the way."

Don Wielander, banker in Fountain, had these comments, "In the last couple of years I expect we average at least one inquiry a month from people in the Twin Cities wondering about purchasing property and the possibility of obtaining loans in this area.

"People have just recently become aware of what we have down here," Wielander said. "There are several new homes going up as well as weekend retreats. The trail brought the people here and made them aware of the scenic beauty of southeast Minnesota."

These same sentiments are being expressed by people living in the small towns along the



This view is from the bluffs above the Katy Trail State Park along the Missouri was the former road bed of the Missouri-Kansas-Texas (MKT) Railroad, better

recently opened Great Western Trail, running from Des Moines to Martensdale, Iowa, and the towns along the KATY trail in central Missouri, which follow the Missouri River from Marthasville, near St. Louis, past the scenic bluffs in central Missouri near Jefferson City to Franklin. This trail will eventually be extended to Sedalia in west central Missouri.

Following is a list of rail trails in Farmland's trade territory: Wisconsin, 39 trails covering 752 miles; Minnesota, 22 trails - 486 miles; North Dakota, one trail -

17 miles; South Dakota, one trail - 104 miles; Wyoming, one trail - 22 miles; Colorado, 13 trails - 76 miles; Idaho, four trails - 64 miles; Nebraska, four trails - 50 miles; Iowa, 37 trails - 545 miles; Illinois, 29 trails - 324 miles; Missouri, four trails - 210 miles; Kansas, one trail - one mile; Oklahoma, three trails - 12 miles and Texas, three trails - 27 miles.

For information on the trails, contact Rails-to-Trails Conservancy, 1400 16th Street, N.W., Suite 300, Department 292, Washington, D.C. 20036.



*A Century of Service
1894-1994*

Testimony

presented by

Mike Beam

Executive Secretary, Cow-Calf/Stocker Division

regarding

Sub. House Bill 2711 - Recreational Trails

before the

Senate Energy and Natural Resources Committee

March 15, 1996

Kansas Livestock Association (KLA) members from several areas of the state have voiced concern and frustration with the governmental process for authorizing recreational trails along abandoned railroad right-of-ways. We believe Substitute for House Bill 2711 is a positive step the 1996 Kansas Legislature can take in addressing some of our concerns.

At issue is the practice of "railbanking", which is the term describing the use of abandoned railroad corridors as hiking and biking trails by the public.

When railroads were built, they acquired right-of-way property by several methods. Some of the land was deeded to the railroad, but in a majority of cases, railroads were granted an easement across private property for use as a rail corridor. Many landowners adjacent to railroads have deeds which honor the easement and state the land is to revert to the landowner if and when a railroad ceases to exist.

In 1986, the Kansas Legislature passed legislation (K.S.A. 66-525) specifying abandoned railroad right-of-way property is to be transferred back to adjoining property owners. This issue was addressed because the rail industry was in the process of abandoning many rail corridors in Kansas and other areas of the country. Other states passed similar legislation, and the federal government (Interstate Commerce Commission) also honored these **“reversionary interests”**.

In 1983, Congress amended the National Trails System Act to make it possible for state/local governments and private organizations to convert railroad right-of-ways to recreational trails. This is accomplished by giving the Interstate Commerce Commission (ICC) authority to suspend an abandonment proceeding if the railroad and a sponsoring trail group reach agreement to use the right-of-way corridor as a trail. **This law has virtually circumvented the reversionary property interests of thousands of landowners across America!**

Once ICC honors a request for negotiating a trail, they give the railroad and trail sponsor 180 days to reach agreement. ICC may also extend this period, **and does so frequently!** It’s not uncommon for ICC to grant three or more 180 day extensions, dragging out the abandonment for years.

Any ICC ruling authorizing a trail states it’s for “interim trail use”, which gives the railroad the option to later reactivate the corridor for rail transportation. The ICC ruling also requires the trail user to assume any legal liability (unless the user is immune from liability) and accept full responsibility for management of the right-of-way and payment of taxes assessed against the property.

According to the National Park Service (NPS), there are about 600 “Rails to Trails” projects in the United States, which cover approximately 7,000 miles. There are about 600 additional projects pending. Several pending projects are located in Kansas and I’ll summarize these projects later in my testimony.

Congress has also established a funding mechanism for these recreational trails. The Intermodal Surface Transportation Efficiency Act (ISTEA) targets a portion of fuel tax revenue for “alternative transportation” projects. This money is sent to states and administrated by state transportation departments for projects that may include pedestrian or biking trails. Kansas has received approximately \$5 million annually. To be eligible for these funds, the trail must be sponsored by a public entity (i.e. Wildlife and Parks) that provides 20% of the funds needed to develop the project.

What is the extent of Rails to Trails projects in Kansas? I’ll share with you what I’ve picked up in my conversations with the Kansas Department of Transportation and ICC.

I've been told of two small projects within the city limits of Coffeyville and Leavenworth. However, there are several more extensive projects developed, proposed, or pending:

- ⇒ **Prairie Spirit Trail** - This 50 mile trail from Ottawa to Iola is the only state operated trail to date. The 1994 and 1995 legislatures appropriated \$350,000 of Economic Development Incentive Fund (EDIF) monies to be used by the Kansas Department of Wildlife and Parks to develop two phases of the trail. These dollars were used to match \$1.9 million dollars of ISTEA funds.
- ⇒ **Ark Valley Trail** - Last year, the city of Wichita proposed the development of a 36 mile stretch between Valley Center and Medora on a Burlington rail line. Previously, the county commissions of Sedgwick, Harvey and Reno rejected an invitation to sponsor this trail. It became a very contentious issue and it appears the advocates of this plan have discontinued this initiative.
- ⇒ **Topeka to Parnell** - T and P Railway Inc. (T & P) filed for an abandonment of a 41 mile stretch of rail corridor between Topeka and Parnell. This line runs through Shawnee, Jefferson, and Atchison counties. T & P reached an agreement with American Trails Association, Inc. to develop a recreational trail along this line. Landowners along this line have filed legal action to challenge the ICC ruling. They contend the rail line is abandoned and the property should be deeded back to adjoining landowners.
- ⇒ **Harper to Anthony** - The Central Kansas Railroad has agreed to negotiate with Jennings and Company on a nine mile recreational trail between Harper and Anthony. ICC gave both parties 180 days from November 27, 1995 to work out an agreement in lieu of abandoning the rail line.
- ⇒ **Herington to Osawatomie** - It's been reported the Rails-to-Trails Conservancy (RTC) has reached an agreement to take over the 130 mile Missouri Pacific line between Herington and Osawatomie and Lomax to Overbrook. It appears RTC has accepted responsibility for this right-of-way. At this time, it's unknown by adjoining landowners how they will maintain the land until it's developed as a trail.
- ⇒ **Landon Trail** - In 1990, a 17 mile stretch of Missouri Pacific Railroad right-of-way was deeded to a private non-profit group, the Rails to Trails Coalition of Kansas. The trail starts in southeast Topeka and extends into Osage County. If you observe this trail today, you'll find much of it's undeveloped and impassable.

How does this bill, HB 2711, address our concerns with the management and development of recreational trails on railroad right-of-ways?

Sub. HB 2711 Requires Trail Sponsors or “Responsible Parties” to:

- Control noxious weeds.
- Provide law enforcement and control littering.
- Maintain trail in a condition to avoid fire hazards.
- Designate trail for nonmotorized vehicle use, except for law enforcement, wheel chairs, and maintenance/emergency vehicles.
- Install and maintain fences according to current railroad fence laws.
- Grant easements to adjacent property owners when appropriate.
- Maintain bridges, culverts, roadway intersections, and warranted signs.
- Honor existing utility easements and access licenses.
- If trail sponsor is not a governmental entity, they must submit a bond or escrow monies to cover weed control, fence, and litter costs.
- Provide proof of liability insurance (except for governmental entities).

For Trail Sponsors Entering into negotiations after effective date of bill:

- Provide written notice to adjoining landowners of plans to develop trail.
- Prepare and present a project plan to cities and counties where trail is to be developed.
- Receive approval from county commissions and cities where trail is planned.
- Develop trail within a period equal to two years x number of counties in which the trail is located. *(Time won't start until all counties/cities have given approval and is stopped if there is pending legal action.)*

Other Provisions:

- Cities/counties may institute procedures for recourse or termination of interim trail use if responsible parties fail to meet provisions of bill.
- Adjacent landowners would have no duty of care to persons using trail except for injuries which are a direct result of the property owner's gross negligence or willful or wanton misconduct.

Substitute for HB 2711 does not address the reversionary property rights problem so adamantly expressed by our members. We hope Congress will address this issue. If this committee has any suggestions for addressing this unfairness, we welcome such opportunity.

This bill does lay out the ground rules in Kansas and provides some landowner/public safety guidelines for rails to trails. As I said in the beginning, it's a positive step and we respectfully ask this committee for your favorable consideration. Thank you!



**Kansas County
Commissioners
Association**

215 S.E. 8th
Topeka, Kansas 66603-3906
(913) 233-2271

March 18, 1996

To: Senate Energy and Natural Resources

Senator Don Sallee, Chairman

From : Wes Holt, President
Kansas County Commissioners Association

To the Committee;

The County Commissioners Association wishes to voice concerns over Sub. HB 2711 and the effects this legislation would have on local control over the establishment of new recreational trails as well as established trails now operated and maintained by local government.

We have many concerns about the list of requirements as they would pertain to local government. We do not believe that the requirements for fencing, law enforcement, and other maintenance items in the legislation are necessary and are excessive. We believe that these requirement must be a local decision.

Local Government under Home Rule Power has the necessary controls in place pertaining to the establishment of trails in counties and cities.

This legislation does not differentiate between new and existing trails and we believe would place additional requirements on trails already established. Local government needs to retain the flexibility to determine the extent that a trail is developed within their jurisdiction.

We are in agreement with the KS League of Municipality and the KS Dept. of Transportation that where a government entity is deemed the responsible party, that entity should be exempted from the provisions of this legislation. Thank you for your consideration of our concerns.

Sincerely

Wes Holt, President

Kansas County Commissioners Association

Senate Energy & Natural Res.
March 18, 1996
Attachment 16

66-308. Construction of fences; hog-tight fence defined. (a) Any person, persons or corporations owning land by or through which any railroad or any electric interurban line has been or may be constructed, who has enclosed or may enclose the same or any part thereof, and adjacent to the line of such railroad or interurban line, with either a lawful fence or a hog-tight fence, may demand of such railroad or interurban company that it enclose its line next thereto with a lawful fence or hog-tight fence corresponding in class of fence to that maintained by the owner, and maintain the same except that the following shall constitute a hog-tight fence for the purpose of this act: A woven-wire fence not less than 26 inches high with not less than seven cables and meshes not to exceed six inches in length. The bottom mesh shall not be more than three inches wide; the second not more than three and one half inches wide, the third not more than four inches wide, the fourth not more than four and one half inches wide, the fifth not more than five inches wide, and the sixth not more than six inches wide. The bottom wire of the woven-wire fence shall be placed not to exceed two inches from the surface of the ground. And in addition to the woven wire already prescribed there shall be not less than three barbed wires placed above the woven wire. The first barbed wire above the woven wire shall be placed four inches above the top of the woven-wire fence. The second barbed wire shall be placed eight inches above the first barbed wire, and the third barbed wire to be placed eight inches above the second barbed wire; in all, 48 inches. The posts shall be of ordinary size for fence purposes and set in the ground at least two feet deep and not to exceed 16 feet apart. The barbs on the barbed wire shall not exceed six inches apart, such wire to be of not less than No. 13 standard gauge or wires having not less than 950 pounds breaking strength.

(b) For purposes of this section, an electrically charged wire fence described in K.S.A. 29-109 shall not be deemed a lawful fence.

History: L. 1885, ch. 154, § 1; L. 1897, ch. 168, § 1; L. 1909, ch. 189, § 1; R.S. 1923, 66-308; L. 1986, ch. 195, § 7; July 1.

Research and Practice Aids:

Railroads — 411(1).

C.J.S. Railroads § 559 et seq.

CASE ANNOTATIONS

1. This act declared constitutional and valid. *Mo. Pac. Rly. Co. v. Harrelson*, 44 K. 253, 255, 24 P. 465.

2. To recover value of fence landowner must prove it lawful. *Mo. Pac. Rly. Co., v. Youngstrom*, 47 K. 349, 351, 27 P. 982.

3. Fence voluntarily built; liability for neglect to keep in repair. *Stanley v. Railway Co.*, 88 K. 84, 87, 127 P. 620.

4. Company builds fence under agreement; no occasion for a demand. *Stanley v. Railway Co.*, 88 K. 84, 87, 127 P. 620.

5. Contract to maintain crossing without gates not against public policy. *Atkinson v. Railway Co.*, 95 K. 828, 831, 149 P. 430.

6. Private farm crossings; public utilities commission without jurisdiction. *Railroad Co. v. Utilities Commission*, 98 K. 667, 669, 158 P. 863.

7. Gate must not be more than twenty-four inches above ground. *Roman v. St. Louis-S. F. Rly. Co.*, 120 K. 585, 588, 245 P. 115.

8. Railroad not liable where landowner failed to complete fence. *Samuelson v. Union Pacific Rld. Co.*, 136 K. 831, 832, 18 P.2d 122.

PUBLIC UTILITIES

RAILROADS AND OTHER CARRIERS; DUTIES AND LIABILITIES

66-309. Notice to railroad upon failure to build fence. Whenever a railroad corporation, or the lessee, person, company or corporation operating any railroad, shall neglect or refuse to build such fence as provided in this act, the owner or occupant of the lands adjoining such railroad, or over or through where the railroad track is or may be laid, may give notice in writing to such corporation, or the lessee thereof, or the persons operating such railroad, to build such fence within sixty days, except during the months of December and January, after the service of such notice. Such notice shall describe the lands on which said fence is required to be built. Service of such notice may be made by delivering the same to any ticket or station agent of said corporation or the person, corporation or lessees operating such railroad.

History: L. 1885, ch. 154, § 2; March 17; R.S. 1923, 66-309.

Research and Practice Aids:

Notice to railroad to build hog-tight fence, *Vernon's Kansas Forms* § 8764.

66-310. Landowner may build; recovery of value, interest and attorney's fee. If the party so notified shall refuse to build such fence in accordance with the provisions of this act, the owner or occupant of the land required to be fenced shall have the right to enter upon the land and track of said railroad company, and may build such fence; and the person so building such fence shall be entitled to the value thereof from such corporation or party operating or using such railroad, to be recovered with interest at the rate of one percent per month from the time such fence was built, together with a reasonable attorney's fee for the prosecution of any suit to recover the same.

History: L. 1885, ch. 154, § 3; March 17; R.S. 1923, 66-310.

Law Review and Bar Journal References:

"Recovery of Attorney Fees in Kansas," *Mark A. Furney*, 18 *W.L.J.* 535, 562 (1979).

66-311. Making fence hog-tight. Any person owning or occupying land adjoining any railroad track of any railroad company shall have the right to attach to the fence constructed along the track or right-of-way of said railroad company any wires, boards or other materials so as to make the fence of said railroad company sufficient to prevent any hogs or pigs from getting upon the track of said railroad company.

History: L. 1885, ch. 154, § 4; March 17; R.S. 1923, 66-311.

*Senate Energy & Natural Res
March 18, 1986
Attachment 11*