

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 19, 1996 in Room 254-E- of the Capitol.

All members were present :

Committee staff present:

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

Conferees appearing before the committee:

Others attending: See attached list

**SUB HB 2711--concerning certain recreational trails; placing certain conditions on the operations of such trails**

The floor was opened to committee discussion on **SUB HB 2711**. Senator Walker provided a balloon of suggested changes to the bill (Attachment 1). Senator Walker stated it was his intention to provide for maintenance of fencing in its current form, but did not want requirements for installation of excess fencing, Page 2 (10).

The opinion was expressed that if the landowner did not have three sides of the property fenced there would be no fence required. A suggestion was made to use language "maintain fencing equivalent to fencing on three other sides of the property". The author preferred to leave reference to the statute out of the bill.

Page 2, lines 31-33 of balloon dealing with maintenance of the trail was discussed and it was suggested that access points needed to be protected. A suggestion was made to use "grant and maintain an easement" and the question arose as to whether or not it was an easement.

Page 3, line 32 part c, as an alternative to (b) concerning liability insurance. The opinion was expressed that bonding for one year's maintenance bond would make the projects unfeasible at the outset and using the alternative of liability insurance would be best. It was pointed out by another member that these two issues are not the same. Another suggestion was to allow people in the area to determine whether they should have a trail or not. A need was expressed for equal responsibility for both parties.

Page 4, lines 35-36, deletes approval from counties and cities. The suggestion was made to change language to include a series of reports to counties and cities as the plan progresses rather than approval. The opinion was expressed that communication isn't fruitful if the recipient has no say in the situation.

Page 4, Section 3 (a) the issue of notice to property owners. The difficulty and expense involved in notification was discussed along with the thought that persons having abandoned rails on their property would know something was being done. It was noted that federal regulations do not include any requirements to share information and the only way property owners would become aware was if they were a party to some negotiations and consequently many were totally unaware any proceedings were in process. There is a very short time frame for involvement and participation. It was stated that you cannot override the federal grant of the trail but that does not preclude expressing opinions and attempting to make sure it is properly done. It was noted that federal law has extensive gaps and the comment was made that the state of Indiana provided a remedy to deal with gaps in the federal law.

Senator Emert, with a second from Senator Tillotson, moved to replace personal notification with publishing legal notice for 3 consecutive weeks in the official county newspaper of the county in which such trail is proposed to be located. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on March 19, 1996.

Senator Lawrence, with a second from Senator Walker, moved to strike "sion" and insert the responsible party shall make subsequent reports to such county commission or commissions as to the status of trail development or operation at intervals determined by the commission and consider all recommendations the commission shall have concerning the trail. The motion carried.

Discussion continued concerning the amount of bonding with the comment it did not appear you could use (b) as an alternative to (a), page 3, line 32. The comment was made that all the state has the power to do under the federal law was to regulate litter control and perhaps law enforcement (appearance of the trail). The issue of bonding was discussed and the amount required. It was noted everyone was being forced to be responsible other than the people choosing to pursue establishment of the trail.

Senator Walker moved to lower the bond to fifty percent of all cost. Senator Lawrence seconded the motion. Division was called for and the motion failed.

Senator Walker moved to insert language making it clear the need to maintain a fence corresponding in class to that maintained by the owner of the adjacent property on the remaining sides of such property. Senator Vancrum seconded the motion and the motion carried.

Discussion concerning lines 32 and 33, Section 2(a) (11) (B) the language "reasonable and prudent".

Senator Walker, with a second from Senator Wisdom moved to omit the requirement to replace bridges inserting "essential to the reasonable and prudent operation of the trail or needed for the use of easements for crossing the trail between adjacent properties". The motion carried.

Senator Walker, with a second from Senator Lawrence moved to report **SUB HB 2711** favorable for passage as amended. The motion carried.

The meeting adjourned at 8:56 a.m.  
The next meeting is scheduled for March 20, 1996.

SENATE ENERGY & NATURAL RESOURCES  
COMMITTEE GUEST LIST

DATE: March 19, 1996

NAME	REPRESENTING
Anne Spiess	Ks. Assoc of Counties
Wes Holt	Ks Co. Commissioners Assoc.
John Jay Rosacker	KDOT
Scott Campers	CITY OF OMAHA
Dennis Schwartz	Ks Rural Water Assoc
STEVE KEARNEY	RAILS TO TRAILS CONSERVANCY
Dave Waldo	KDHE
Meggan Griggs	Rails to Trails Conservancy
Michelle Peterson	Peterson Public Affairs Group
BOB BROWN	Missouri Energy Council
RUTH A. GATEWOOD	DARYL BECKER
BOB ANDERSON	CENTRAL KS. RAILWAY
John Love	Self
Lew Jere Schneider	Ks Livestock Assoc.
Ken Peterson	KS Petroleum Council
DAVID SCHATZGER	PETE Mc GILL & Assoc
Jack Graves	Kan Energy, K Neq, & Oky
Karl Landis	Western Resources
ED SCHAUB	" "

TOM DAY

KCC

1 Full Text of Bill 2711

2

3 Sub. HB 2711--Am. by HCW

4

5 ===== Session

6 of 1996 SUBSTITUTE for HOUSE BILL No. 2711 By Committee on Energy and  
7 Natural Resources 2-23

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9 -----

10

11

12 AN ACT concerning certain recreational trails; placing certain conditions  
13 on the operations of such trails.

14

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

16

17 Section 1. As used in this act:

18

19 (a) ``Adjacent property owner'' means a person or entity, other than  
20 a responsible party, who owns property or facilities on or adjacent to a  
21 recreational trail.

22

23 (b) ``Recreational trail'' means a trail created pursuant to subsection  
24 (d) of 16 U.S.C. 1247 (1983).

25

26 (c) ``Responsible party'' means any person, for-profit entity, not-for-  
27 profit entity or governmental entity that is responsible for developing,  
28 operating or maintaining a recreational trail.

29

30 Sec. 2. (a) The responsible party, at all times after transfer of the  
31 deed to the responsible party, shall:

32

33 (1) Perform the duties imposed by K.S.A. 2-1314 and amendments  
34 thereto along the recreational trail;

35

36 (2) provide for the safety, use and accessibility of existing easements,  
37 utility facilities and access licenses along the recreational trail;

38

- 1 (3) provide for trail-user education and signs regarding trespassing  
2 laws and safety along the recreational trail;  
3
- 4 (4) provide for litter control and the enforcement of laws prohibiting  
5 littering along the recreational trail, including but not limited to trail-  
6 user  
7 education and signs about laws prohibiting littering and the provision of  
8 trash receptacles and the cleanup of trash and litter;  
9
- 10 (5) develop and maintain the recreational trail in a condition that does  
11 not create a fire hazard;  
12
- 13 (6) designate the recreational trail for nonmotorized vehicle use with  
14 exceptions only for motorized wheelchairs and maintenance, law enforce-  
15 ment and emergency vehicles;  
16
- 17 (7) prohibit hunting or trapping on or from the recreational trail;  
18
- 19 (8) provide for law enforcement along the recreational trail;  
20
- 21 (9) grant easements to adjacent property owners to permit such own-  
22 ers to cross the recreational trail in a reasonable manner consistent with  
23 the use of the adjacent property and with K.S.A. 66-301 through 66-303,  
24 and amendments thereto;  
25
- 26 ~~(10) install and maintain fencing between the trail and adjacent prop-~~  
27 ~~erty owners' property to the extent and in the manner required of a~~  
28 ~~railroad under K.S.A. 66-308 through 66-311, and amendments thereto;~~  
29 ~~and~~  
30
- 31 (11) (A) maintain the trail; (B) maintain all bridges, culverts, roadway  
32 intersections and crossings on the trail, essential to the reasonable  
33 and prudent operation of the trail, or cause maintenance thereof by  
34 other parties that have assumed contractual responsibility therefor; and  
35 (C) install and maintain any warranted traffic signs on the trail.  
36
- 37 (b) If the responsible party is not a governmental entity, the respon-  
38 sible party shall file with the county clerk of each county where a portion

1 of the recreational trail is or will be located a bond or proof of an escrow  
2 account in a Kansas financial institution, as defined by K.S.A. 16-117 and  
3 amendments thereto, payable to the county. The bond or proof of an  
4 escrow account shall be filed at the time of transfer of the deed to the  
5 responsible party and annually thereafter. The bond or escrow account  
6 shall be conditioned on the responsible party's performance, and shall be  
7 in an amount agreed upon between the responsible party and the county  
8 commission as sufficient to fully cover the annual costs, of:

- 9
- 10 (1) Weed control along the trail, as required by subsection (a)(1);
  - 11
  - 12 (2) litter control along the trail, as required by subsection (a)(4);
  - 13
  - 14 (3) maintenance of the trail in a condition that does not create a fire  
15 hazard, as required by subsection (a)(5);
  - 16
  - 17 (4) installation and maintenance of fencing between the trail and ad-  
18 jacent property within the county, as required by subsection (a)(10); and
  - 19
  - 20 (5) installation and maintenance of signs along the trail, as required  
21 by subsections (a)(3), (a)(4) and (a)(11)(C).
  - 22

23 If separate bonds are submitted to or escrow accounts established for  
24 the various counties through which the trail transverses, the annual costs  
25 listed above shall be only for that portion of the trail located within the  
26 particular county that is the holder of the bond or beneficiary of the  
27 escrow. A responsible party may submit a single bond or escrow account  
28 with multiple counties respectively as coobligees or cobeneficiaries, but  
29 in that event the annual costs used in computation of the bond amount  
30 shall be for the entire trail length.

31

32 (c) AS AN ALTERNATIVE TO (b), If the responsible party is not a  
33 governmental entity, the respon-  
34 sible party shall file with the county clerk of each county where a portion  
35 of the recreational trail is or will be located, proof of liability insurance  
36 in an amount agreed upon between the responsible party and the county  
37 commission as sufficient. Such proof shall be filed at the time of transfer  
38 of the deed to the responsible party and annually thereafter.

1  
2 (d) The provisions of this section shall apply to all recreational trails,  
3 regardless of when approval to enter into negotiations for interim trail  
4 use is or was received from the appropriate federal agency.

5  
6 Sec. 3. (a) Upon receipt of permission from the appropriate federal  
7 agency to enter into negotiations for interim trail use, the responsible  
8 party shall give written notice to each adjacent property owner that the  
9 responsible party intends to build a recreational trail adjacent to the  
10 prop-  
11 erty owner's property. The responsible party may utilize the addresses to  
12 which real estate tax statements are sent, as maintained by county  
13 officials,  
14 for such notices. Such notice shall be given by first-class mail unless the  
15 notice is returned undelivered, in which case a further notice shall be  
16 given by certified mail.

17  
18 (b) Before commencing development or operation of a recreational  
19 trail, the responsible party shall:

20  
21 (1) Prepare a project plan that includes: (A) The name and address  
22 of the responsible party, (B) an itemized estimate of the costs of the  
23 project and sources of funding for the project, and (C) maps of the rec-  
24 reational trail;

25  
26 (2) submit by certified mail, not later than 180 days after receiving  
27 approval of interim trail use from the appropriate federal agency, the  
28 initial project plan to the county commission of each county where a  
29 portion of the trail is to be located outside of city limits and to the gov-  
30 erning body of each city where a portion of the trail is to be located inside  
31 the city limits;

32  
33 (3) submit the final project plan to the county commission of each  
34 county where a portion of the trail is to be located outside of city limits.  
35 ~~and obtain the approval, by majority vote, of each such county commis-~~  
36 ~~sion; and~~

37  
38 (4) submit the final project plan to the governing body of each city

1 where a portion of the trail is to be located inside the city limits and  
2 ~~obtain the approval, by majority vote, of each such governing body.~~

3  
4 (c) The responsible party shall complete development of a recrea-  
5 tional trail within a period of time equal to two years times the number  
6 of counties in which the recreational trail is located. Such period of time  
7 shall begin only when all cities and counties have given final approval to  
8 the project plan as required by subsections (b)(3) and (4) and the appeal  
9 period pursuant to subsection (d) of 16 U.S.C. 1247 (1983) has expired.

10 Any time during which there is pending any court action challenging the  
11 development or use of the trail shall not be computed as part of the time  
12 limitation imposed by this subsection.

13  
14 (d) The provisions of this section shall apply to only recreational trails  
15 for which approval to enter into negotiations for interim trail use is re-  
16 ceived from the appropriate federal agency on or after the effective date  
17 of this act.

18  
19 Sec. 4. An adjacent property owner has no duty of care to any person  
20 using a recreational trail except that this section shall not relieve an ad-  
21 jacent property owner from liability for injury to another that is a direct  
22 result of such property owner's gross negligence or willful or wanton  
23 misconduct.

24  
25 Sec. 5. A city or county may institute procedures for recourse against  
26 the responsible party pursuant to 16 U.S.C. 1247 (1983) and 49 C.F.R.  
27 .29 (1986) upon the failure of the responsible party to comply with  
28 the provisions of this act.

29 [Sec. 6. If any provision of this act or the application thereof  
30 to any person or circumstances is held invalid, the invalidity does  
31 not affect other provisions or applications of this act which can be  
32 given effect without the invalid provisions or application. To this  
33 end the provisions of this act are severable.]

34  
35 Sec. 6. [7.] This act shall take effect and be in force from and after  
36 its publication in the statute book.