

MINUTES OF THE HOUSE TOURISM COMMITTEE.

The meeting was called to order by Chairperson Barbara P. Allen at 1:30 p.m. on February 18, 1997 in Room 522-S of the Capitol.

All members were present except: Rep. Presta - excused
Rep. Toelkes - excused
Rep. O'Neal - excused
Rep. Adkins - excused
Rep. Shriver - excused

Committee staff present: Carolyn Rampey, Legislative Research Department
Tom Severn, Legislative Research Department
Rena Jefferies, Revisor of Statutes
Nancy Kirkwood, Committee Secretary

Conferees appearing before the committee: Gary Sherrer, Lt Governor, Secretary KDOCH, proponent
Jan Peters - President, TIAK, proponent
Steve Williams - Secretary, Wildlife and Parks, proponent
Judy Billings - Director, Lawrence Convention and Visitors Bureau, proponent

Others attending: See attached list

Chairperson Allen brought the Committee's attention to the hearing on **HB2348 - tourism study.**

Chairperson Allen recognized Gary Sherrer, Secretary, KDOCH, proponent. **HB2348** will help determine a long-term strategic plan for tourism. Before many decisions are made about the direction of tourism in Kansas, and in what projects we should be investing our tourism funds, the state would hire a consulting firm with the credentials to give us insight on that point of view. Fiscal Note estimated to be \$100,000 for the comprehensive study.

Jan Peters, President, TIAK, proponent, was recognized by Chairperson Allen (**Attachment 1**)

Chairperson Allen closed the hearing on **HB2348 - tourism study.**

Chairperson Allen opened the hearing on **HB2350 - lake resort study**, by bringing the Committee's attention to the testimony of Gary Sherrer, proponent. Gary Sherrer said that the secretary of Wildlife and Parks and he were in agreement on this bill and were looking forward to working together to bring this to a reality. Funding for this study would come out of the two secretaries' current budgets.

Chairperson Allen recognized Steve Williams, Secretary, Wildlife and Parks, proponent (**Attachment 2**) Secretary Williams passed out to the committee copies of the park fee fund receipts by category that was requested by Rep. Wempe (**Attachment 3**)

Chairperson Allen recognized Jan Peters, President, TIAK, proponent (**Attachment 4**)

Judy Billings, Director, LCVB, proponent, stated that about 10 years ago, Lawrence was working on this type of project, and that her community supports this type of activity, and would work with the secretaries in any way it could.

Chairperson Allen closed the hearing on **HB2350.lake resort study.**

Chairperson Allen opened the hearing on **HB2374 - establishing a state tourism fund and a council on tourism.**

CONTINUATION SHEET

MINUTES OF THE HOUSE TOURISM COMMITTEE, Room 522-S of the Capitol, at 1:30 p.m.
February 18, 1997

Chairperson Allen welcomed Gary Sherrer to the committee. The tourism council being created in HB2374 would review the proposed tourism projects, and would determine for inclusion in the KDOCH secretary's budget proposed expenditures from the newly created tourism fund. The legislature would then approve or disapprove recommended projects from the fund.

Chairperson Allen recognized Jan Peters, proponent (Attachment 5)

Chairperson Allen closed the hearing on HB2374 - establishing a state tourism fund and a council on tourism.

Chairperson Allen informed the committee it would be working all bills previously heard on Wednesday, February 19th. The 1996 supp KSA66-525 was passed out to the committee with the Attorney General's Opinion of railroad right-of-way; abandonment; requirements; release; notice.95-4 (Attachment 6)

The meeting adjourned 2:15 p.m.

The next meeting is scheduled for February 19, 1997.



Travel
Industry
Association of
Kansas

Jayhawk Tower
700 S.W. Jackson St., Suite 702
Topeka, Kansas 66603-3758
913 /233-9465 FAX 913 /357-6629

DATE: February 18, 1997
TO: HOUSE TOURISM COMMITTEE
FROM: Jan Peters, President
RE: Tourism Study (HB-2348)

Madam Chairwoman and members of the committee, my name is Jan Peters. I am the President of the Travel Industry Association of Kansas (TIAK). The legislative goals of TIAK are to support public policy which will:

- **Insure adequate public access to natural resources which provide recreational opportunities**
- **Sustain historical preservation**
- **Create an environment conducive to tourism business**
- **Provide for the promotion and marketing of tourism activities, attractions, events and businesses**
- **Assure the adequate servicing of the tourist**
- **Encourage efficiency in state government through partnerships**

TIAK supports HB-2348. As discussed in our informational presentation to you earlier this month, the last study done for the department was in 1991. We believe a long-range strategic plan for the Kansas tourism industry would:

- identify roles of existing tourism entities
- identify industry strengths and weaknesses
- allow for more effective planning and marketing
- strengthen the public/private tourism partnership in Kansas

We agree that the members you have identified to serve on a tourism council are the people who can make things happen for tourism in this state.

We thank you for introducing the bill and respectfully request that you recommend the bill favorably for passage.

*House Tourism
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Attachment 1*



STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
900 SW Jackson, Suite 502
Topeka, KS 66612
913/296-2281 FAX 913/296-6953



TO: Representative Barbara Allen, 21st District

FROM: Steven A. Williams, Secretary of Wildlife and Parks

SUBJECT: Testimony on HB 2350

DATE: February 17, 1997

HB 2350, by Committee on Tourism, is new legislation requiring the Kansas Department of Wildlife and Parks (KDWP) and the Kansas Department of Commerce and Housing (KDCH) to jointly direct and implement a feasibility study regarding the potential of developing lake resorts in Kansas. The study shall consider accessibility to any potential project, public transportation systems, facilities, and any other factors that may affect tourism to a given site.

The feasibility study required by this bill would be completed by January 1, 1998. The KDWP and KDCH would be required to present a report to the 1998 Legislature, the legislative committees on tourism, and the Governor. The bill becomes effective upon publication in the Kansas Register.

The provisions of HB 2350 require the KDWP and the KDCH to conduct a feasibility study regarding the potential of developing lake resorts in Kansas. The bill is not explicit in defining whether such resorts shall be on property currently managed by the KDWP or whether such study should consider all potential lake sites within Kansas. The scope of the required study would vary considerably depending on the defined parameters.

The two agencies would develop a request for proposal depending on the defined parameters of the study. The proposed study would not include any estimated costs for development of a resort but would be directed to study potential sites for the location of a lake resort.

The fiscal impact of the required study cannot be estimated at this time. The cost of any lake resort study would be dependent on the number of sites evaluated. A study conducted by the KDWP and KDCH in 1989 regarding the potential of a resort on six reservoirs within the state required an expenditure of \$12,000. This study was of limited scope but did consider the

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feasibility of developing a vacation/lodge complex at the six reservoirs which were studied. It should also be noted that a 1991 study as to the potential of developing a resort facility at Clinton Reservoir required an expenditure of \$86,500.

The requirements contained within HB 2350 would have minimal long range impact on the KDWP. The implementation of any recommendations contained within the feasibility reports required by this bill would have significant impact on future operations of the Department depending a future actions taken by the Legislature.

WP\test2350

PARK FEE FUND RECEIPTS BY CATEGORY
 (Data by calendar year)

18-Feb-97

Permit Types Issued by KDWP:	1994	1995	1996
Annual Motor Vehicle Permits	41,799	52,799	43,281
Daily Motor Vehicle Permits	239,356	237,079	216,623
Annual Camping Permits	5,670	5,330	0
Daily Camping Permits	83,446	76,761	122,270
14 Day Camping Permits	0	0	911
Utility Permits	115,056	138,526	78,361
Revenue from Permits:	1994	1995	1996
Annual Motor Vehicle Permits	\$657,300	\$567,600	\$755,594
Daily Motor Vehicle Permits	\$718,068	\$710,461	\$865,835
Annual Camping Permits	\$198,450	\$189,109	\$0
Daily Camping Permits	\$250,338	\$233,156	\$610,841
14 Day Camping Permits	\$0	\$0	\$46,001
Utility Permits	\$575,280	\$692,630	\$480,384

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Travel
Industry
Association of
Kansas

Jayhawk Tower
700 S.W. Jackson St., Suite 702
Topeka, Kansas 66603-3758
913 /233-9465 FAX 913 /357-6629

DATE: February 18, 1997
TO: HOUSE TOURISM COMMITTEE
FROM: Jan Peters, President
RE: Resort Study (HB-2350)

Madam Chairwoman and members of the committee, my name is Jan Peters. I am the President of the Travel Industry Association of Kansas (TIAK). The legislative goals of TIAK are to support public policy which will:

- **Insure adequate public access to natural resources which provide recreational opportunities**
- **Sustain historical preservation**
- **Create an environment conducive to tourism business**
- **Provide for the promotion and marketing of tourism activities, attractions, events and businesses**
- **Assure the adequate servicing of the tourist**
- **Encourage efficiency in state government through partnerships**

TIAK supports HB-2350. For many years, those of us in the business of marketing and promotion of travel and tourism have bemoaned the fact of the non-existence of resort facilities in Kansas. There are few private lakes and seemingly little incentive for purely private development. We believe the first step toward anything worthwhile is good planning and so we wholeheartedly agree that a study needs to be complete before the Legislature considers specific proposals.

We thank you for introducing the bill and respectfully request that you recommend the bill favorably for passage.

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Travel
Industry
Association of
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Jayhawk Tower
700 S.W. Jackson St., Suite 702
Topeka, Kansas 66603-3758
913 /233-9465 FAX 913 /357-6629

DATE: February 18, 1997
TO: HOUSE TOURISM COMMITTEE
FROM: Jan Peters, President
RE: Tourism Fund & Council (HB-2374)

Madam Chairwoman and members of the committee, I must deviate from our normal presentation format and simply say WOW! This is more than we could ever have hoped or dreamed for! We believe you are really serious about increasing the economic impact of tourism in this state.

We thank you, we applaud you, we pledge to do everything we can to assist the council and you.

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common carrier on whose line or lines the loss, damage or injury was sustained the amount of such loss, damage or injury, as it may be required to pay to the owner of such property, as evidenced by any receipt, judgment or transcript thereof.

History: L. 1911, ch. 240, § 1; R.S. 1923, 66-304; L. 1995, ch. 98, § 17; Apr. 13.

CASE ANNOTATIONS

9. Whether shipment within state of goods purchased by seller outside of state is interstate or intrastate commerce examined; section does not impose strict liability. Southwest Business Systems, Inc. v. Western Kansas Xpress, Inc., 19 K.A.2d 861, 863, 865, 878 P.2d 833 (1994).

66-305.

CASE ANNOTATIONS

3. Whether shipment within state of goods purchased by seller outside of state is interstate or intrastate commerce examined. Southwest Business Systems, Inc. v. Western Kansas Xpress, Inc., 19 K.A.2d 861, 863, 878 P.2d 833 (1994).

Article 5.—POWERS OF RAILROAD COMPANIES



66-525. Railroad right-of-way; abandonment, when; requirements; release; notice.

(a) For purposes of this section, a railroad right-of-way shall be considered abandoned when the tracks, ties, and other components necessary for operation of the rail line are removed from the right-of-way following the issuance of an abandonment order by the appropriate federal or state authority; or if, within two years after the exercise of such an order, removal of such components is not completed and railroad operating authority is not restored or reissued by an appropriate court or other federal or state authority; or if no rail line is placed on the right-of-way within 10 years after the right-of-way is acquired; except, that a railroad right-of-way shall not be considered abandoned if the railroad company or any other entity continues to use the right-of-way for railroad purposes after abandonment authority has been issued.

(b) If the grantee or assignee of record of a recorded railroad right-of-way abandons such right-of-way, such grantee or assignee shall: (1) Remove crossbucks and modify signal devices or install "exempt" signs at all locations within 90 days of abandonment; and (2) file a release of all right, title and interest in the right-of-way with the register of deeds of the counties in which the property is located, within 180 days after being requested by any owner of property servient to the right-of-way.

(c) If a grantee or assignee of record of a railroad right-of-way refuses or neglects to file a release when required by subsection (b), the owner of the servient property may bring an action in a court of competent jurisdiction to recover from the grantee or assignee of record damages in the amount of \$500, together with costs and reasonable attorney fees for preparing and prosecuting the action. The owner may recover such additional damages as the evidence warrants, and may obtain injunctive relief to quiet the title and eject any unauthorized parties from the property.

(d) A grantee or assignee of railroad right-of-way, at any time, may file a general release of all right, title and interest in the right-of-way of one or more particular rail lines or portions thereof with the register of deeds of the county or counties in which such property is located. If such action has been taken, the grantee or assignee shall be relieved of any further obligation under this section to file individual releases of any right-of-way included in such a general release.

(e) Within 30 days after entering abandoned railroad right-of-way property upon the tax rolls pursuant to K.S.A. 79-401 et seq., and amendments thereto, the county clerk of each county in which such property is so entered shall forward to the most recent railroad company holder of such property for right-of-way purposes, a certified list of the names and addresses of all property owners so entered upon the tax rolls following abandonment.

Within 30 days after receipt of such certified list by the railroad company, it shall send a notice of abandonment by first-class mail to each landowner at the address provided. The grantee or assignee of record of a recorded railroad right-of-way who abandons such right-of-way and provides the notice of such abandonment required by this subsection shall incur no civil or criminal liability for failure to notify any person who claims, or may claim, ownership of property servient to the abandoned right-of-way, nor shall such grantee or assignee incur any civil or criminal liability for notifying any person who has no legal claim to ownership of property servient to the abandoned right-of-way. The notice required by this subsection shall not create any legal right, be construed as a warranty or guarantee, nor shall such notice impair or cloud any lawful claim, right, title or interest of any person.

(f) Any conveyance by any railroad company of any actual or purported right, title or interest

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in property acquired in strips for right-of-way to any party other than the owner of the servient estate shall be null and void, unless such conveyance is made with a manifestation of intent that the railroad company's successor shall maintain railroad operations on such right-of-way, and the railroad owns marketable title for such purpose.

(g) As used in this section, "railroad company" has the meaning of such term as defined in K.S.A. 66-180, and amendments thereto.

History: L. 1986, ch. 247, § 1; L. 1987, ch. 258, § 1; L. 1993, ch. 105, § 1; July 1.

Attorney General's Opinions:

Railroad right-of-way; abandonment; requirements; release; notice. 95-4.

Article 12.—MISCELLANEOUS PROVISIONS

66-1226. Alternative fuels; coordination by commission; duties; report. (a) For the purpose of this section:

(1) "Commission" means the state corporation commission;

(2) "alternative fuel" means any fuel defined as alternative fuel by 42 U.S.C.A. 13211(2).

(b) The commission shall coordinate and facilitate communication with other state agencies concerning alternative fuels and the duties provided for in this section. The commission shall specifically communicate and cooperate with:

(1) The secretary of transportation or the secretary's designee;

(2) the secretary of administration or the secretary's designee;

(3) the secretary of revenue or the secretary's designee;

(4) the secretary of health and environment or the secretary's designee;

(5) a designee of the state board of education who has experience with, or knowledge about, school bus transportation; and

(6) the secretary of agriculture or the secretary's designee.

(c) The commission shall:

(1) Develop a time table for the conversion of motor vehicles from conventional fuels to alternative fuels for the state of Kansas;

(2) develop criteria for which motor vehicles can or should be converted to alternative fuels;

(3) determine locales throughout the state with sufficient number of state-owned motor ve-

hicles or fleet motor vehicles to make feasible appropriate refueling systems;

(4) identify problems that need to be overcome and possible solutions for implementing programs promoting alternative fueled motor vehicles;

(5) coordinate with the federal government, cities, counties, school districts and private motor vehicle fleet owners regarding co-op fueling stations, co-opted conversion functions and other alternative fuel matters to enable a cooperative atmosphere among such entities.

(6) develop a statewide plan and program for alternative fueled motor vehicles.

(d) The commission may invite private sector representatives of energy production industry, motor vehicle manufacturing industry, public utility industry or such other persons who can provide information on alternative fueled motor vehicles to testify to or participate with the commission in exercising its duties.

(e) The commission shall make a report to the governor and the legislature on or before the first day of the regular legislative session of 1995. Such report shall include a report on the progress in obtaining the goals established in subsection (c). The commission shall make its final report and recommendations to the governor and the legislature on or before the first day of the regular legislative session in 1996.

History: L. 1994, ch. 212, § 1; July 1.

Article 13.—MOTOR CARRIERS

66-1302.

CASE ANNOTATIONS

2. Cited; whether rental truck used to move personal belongings is a "motor carrier" examined; "motor carrier" defined. *State v. Campbell*, 19 K.A.2d 778, 781, 875 P.2d 1010 (1994).

66-1313a. Inspection of motor carrier equipment; inspection stations; certificates; rules and regulations; fees. Except as otherwise authorized under other laws of this state, a motor carrier who holds a certificate of convenience and necessity, a certificate of public service, a contract carrier permit, a private carrier permit or an interstate license from the state corporation commission, upon application to the commission, may be designated to establish an authorized inspection station for the inspection of the motor vehicles, trailers and semitrailers operated in this state by such motor carrier for compliance with the



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 6, 1995

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 95- 4

The Honorable Gerald T. Henry
State Representative, Forty-Eighth District
3515 Neosho Road
Cummings, Kansas 66016

Re: Public Utilities--Powers of Railroad Companies--
Railroad Right-of-Way; Abandonment, When;
Requirements; Release; Notice

Synopsis: The national trails system act, 16 U.S.C. § 1247(d), enacted to preserve established railroad rights-of-way for future reactivation of rail service, authorizes the interstate commerce commission (ICC) to permit such rights-of-way to be used on an interim basis as recreational trails. In lieu of abandonment the ICC may approve the railroad right of way as an interim trail if the request is made before abandonment of the line has been consummated and if the trail use group reaches an agreement with the railroad company. If no agreement is reached and the ICC approves the abandonment, state law governs the disposition of the abandoned railroad property. Cited herein: K.S.A. 1993 Supp. 66-525; 16 U.S.C. § 1241; 49 U.S.C. § 10903; 49 C.F.R. § 1152.29.

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Dear Representative Henry:

You inquire about the interpretation of K.S.A. 1993 Supp. 66-525 dealing with the disposition of abandoned railroad

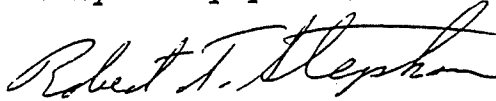
property in Kansas. You indicate that "Rails to Trails Task Force" of the Glacial Hills Resource Conservation and Development Council, Inc. (RC&D) is studying the possibility of converting the old Atchison, Topeka and Santa Fe rail line into a hiking/biking trail. You inquire whether K.S.A. 1993 Supp. 66-525 authorizes the sale or donation of the abandoned rail line to RC&D pursuant to the national trails system act, 16 U.S.C. § 1241 et seq.

The abandonment of railroad lines is governed by federal law. No railroad can be abandoned without the interstate commerce commission's (ICC) approval. 49 U.S.C. § 10903(a). Chicago & N.W. Transportation Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 313, 101 S.Ct. 1124, 1128, 67 L.Ed.2d 258 (1981). The national trails system act (trails act), enacted to preserve established railroad rights-of-way for future reactivation of rail service, authorizes the ICC to permit such rights-of-way to be used on an interim basis as recreational trails. 16 U.S.C. § 1247(d) The concept is known as "railbanking," whereby the use of a railroad right of way as a recreational trail on an interim basis is not considered an abandonment of rail use for purposes of any state law, so long as the right of way is subject to restoration for rail service. 16 U.S.C. § 1247(d). During a proposed abandonment or discontinuance, groups who seek to establish a trail on a railroad right-of-way may file an interim trail use statement with the ICC within the 30-day protest and comment period. 49 C.F.R. 1152.29(b)(1). If an agreement is reached between the railroad and the trail use group, the railroad right-of-way becomes railbanked. The national trails system act preempts any state law that deals with disposition or transfer of abandoned railroad property. Glosemeyer v. Missouri-Kansas-Texas Railroad Co., 685 F. Supp. 1108, 1114 (E.D. Mo. 1988).

It is only in the absence of a trail use agreement and the issuance of a certificate of abandonment by the ICC that state law is applicable. The agreements are voluntary and the trails act does not give the ICC the power to condemn railroad rights-of-way for interim trail use and railbanking. 2 ICC2d 591, 596 (1985). In other words, the abandonment of railroad property is governed and approved by the ICC and subject to the national trails system act. The disposition of abandoned railroad rights-of-way is governed by state law when no voluntary agreement is reached. Hayfield Northern Railroad Co. v. Chicago and North Western Transportation Co., 467 U.S. 622, 81 L.Ed.2d 527 (1984).

K.S.A. 1993 Supp. 66-525(a) governs the disposition of abandoned railroad rights-of-way but does not apply because the ICC issued a Decision and Notice of Interim Trail Use or Abandonment on March 30, 1994, giving the railroad in question and a different trail group, American Trails Association, Inc. 180 days to enter into an interim trail use agreement. We understand that an order providing for an interim trails use/railbanking has been implemented pursuant to a negotiated agreement, making K.S.A. 1993 Supp. 66-525 inapplicable.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General

RTS:JLM:GE:jm



League of
Kansas
Municipalities

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

February 18, 1997

Chairman Barbara P. Allen
House Tourism Committee
300 S.W. 10th Ave. Room #174-W
Topeka, KS 66612-1504

Re: HB 2324

Dear Chairman Allen:

During the hearing on HB 2324, I noticed that there was some confusion concerning legal issues (e.g., title) surrounding these projects. I am enclosing a copy of a presentation that I made before the City Attorneys Association of Kansas last fall. This paper may answer some of the legal questions posed during the hearing.

At our annual convention in October, members of the League of Kansas Municipalities adopted the following policy statement on rails to trails:

Rails to trails projects can be used to preserve existing transportation corridors, promote local tourism, and provide recreational activities for Kansans. The legislature should not impose restrictions on rails to trails projects that are operated by cities or exist within city limits. Cities should have the authority to establish requirements for rails to trails projects that are operated by cities or exist within city limits. While we recognize the importance of working with adjacent land owners to ensure safety along the trails, cities should make the final determination about the rules that govern such projects.

This statement makes it clear that cities have a strong interest in preserving and promoting rails to trails projects in Kansas.

I hope that the enclosed paper will help to clear up some of the confusion in this area. Please do not hesitate to contact me if I can provide any further information on this subject.

Sincerely,

Kimberly A. Gulley
Assistant General Counsel

enclosure

Recreational Options: The Legal Challenges Facing Rails to Trails Projects

Presented to
The City Attorneys Association of Kansas
October 25, 1996
Atchison, Kansas

by

Kimberly A. Gulley
Assistant General Counsel
League of Kansas Municipalities

Rails to Trails Projects in Kansas

I. What are Rail-Trails?

The phenomenon known as rails-to-trails was created by the National Trails System Act, 16 U.S.C. § 1241 *et seq.* Through a process called "railbanking," railroad corridors are converted into trails which are operated by state and local entities as well as private organizations.

A. *Purpose of the Act*

Congress specified three purposes for allowing interim trail uses on corridors formerly operated by railroads:

- Preserve the corridor for future reactivation of rail service;
- Protect rail transportation corridors; and
- Encourage energy efficient transportation use.

16 U.S.C. § 1247(d). The intent was clearly to discourage the actual legal "abandonment" of rail corridors and encourage the use of this unique land in a way in which benefits state and local communities. Congress acknowledged that these corridors may be needed in the future to provide rail or other surface transportation. Once the railroad has legally "abandoned" the line and title passes to the adjacent landowners, there is little hope of recreating the corridor for future transportation needs.

Further, rails-to-trails is part of the National Trail Systems Act which was designed to "provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation...." 16 U.S.C. §1241(a). Our local communities certainly have an interest in providing outdoor recreation for their citizens as well as preserving natural and historic resources.

B. *Railbanking Procedure*

Rails to trails projects are established along rail lines that are no longer in operation. In order for a rail corridor to be railbanked, there is a voluntary agreement between the railroad company which owns the land and an agency interested in developing a trail. The two parties petition the Surface Transportation Board (STB - formerly the Interstate Commerce Commission) for permission to allow an "interim trail use." The agreement usually specifies: the amount of compensation, if any, to be paid to the railroad; the railroad's responsibility for removing tracks, etc.; the time frame for the completion of the project.

The remaining part of the process involves a legal fiction. While the railroad has literally pulled up stakes and no longer participates in the operation of the corridor when a rail-trail has been established, the corridor has not been legally "abandoned." Rather than an abandonment, the Act refers to an "interim" trail use. 16 U.S.C. §1247(d). The STB maintains jurisdiction over the corridor during the interim trail use. This means that if at any time the STB determines that it is in the best interest of the country to return the corridor to railroad or other transportation use, it may do so.

A railroad must petition the STB for permission to abandon a rail line. 49 U.S.C. § 10903(a). In the event that an abandonment is allowed, state law governs the disposition of the property. Under Kansas law, property must be deeded to the owner of property servient to the railroad right-of-way within 180 days. K.S.A. 66-525(b). The Kansas Attorney General's Office has opined that an interim trail use allowed under the National Trails System Act is not an abandonment, and therefore, state law concerning the property disposition is not applicable to a rail-trail. Attorney General Opinion No. 95-4.

II. Legal Challenges

Rails to trails projects have faced both political and legal challenges. Most of the political opposition to these projects comes from those individuals or groups who would like to see the property that is no longer being used by the railroad returned to the adjacent landowners. The legal challenges to rails to trails projects have focused on the constitutionality of the National Trails System Act.

A. Takings Clause - Fifth Amendment

“...nor shall private property be taken for public use, without just compensation.”
U.S. Const, Amend. V

Some have challenged rails-to-trails projects as takings of private property without just compensation in violation of the Fifth Amendment to the U.S. Constitution. This argument is based on the theory that if the trail use would not have been allowed, the STB would have permitted the land to be abandoned and the property would have been deeded back to the adjacent property owners. Clearly, there is an issue as to whether one who has merely the possibility of ownership in private property is due just compensation under the Fifth Amendment. After all, the rail-trail is not the only thing standing between the adjacent landowner and ownership of the property. The STB must exercise its discretionary authority to grant the abandonment by the railroad before the property is transferred to the adjacent property owner.

At least one circuit has declared that interim trail use pursuant to the National Trails System Act is not a Fifth Amendment taking. *Glosemeyer v. Missouri-Kansas-Texas Railroad*, 879 F.2d 316 (8th Cir. 1989). While it is impossible to know how courts will handle this issue in the future, it is difficult to understand how a takings claim based upon the mere possibility of future ownership could be upheld. To date, the Supreme Court has heard only one rails-to-trails case.

In *Presault v. Interstate Commerce Commission*, the Supreme Court did not specifically determine whether the Act created a taking. Rather, the Court held that because the Tucker Act remedy was available for the property owners to make such takings claim, there was no need to determine whether a taking occurred. *Presault v. Interstate Commerce Commission*, 494 U.S. 1, 110 S.Ct. 914 (1990). The Court opined that as long as a mechanism for providing just compensation was available, there could be no Fifth Amendment taking. *Id.*

B. Commerce Clause

"The Congress shall have Power...To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes...." U.S. Const. Art 1., § 8, cl. 3.

As with many acts of Congress, the National Trails System Act has been challenged on the basis that Congress exceeded the bounds of its authority under the Commerce Clause. However, the Supreme Court found a rational basis for the Act holding that the congressional objectives to promote travel, preserve natural and historic resources, and preserve railroad rights-of-ways for future reactivation were reasonable. *Presault*, 494 U.S. at 18-19, 110 S.Ct. at 925.

Although the Court has settled the issue of whether Congress had the authority to establish interim trail usage on railroad rights-of-ways, the issue of whether states are preempted from regulating these trails has yet to be determined. In the area of public highways, the Supreme Court recognized the power of states to regulate the use of the highways. *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 529 (1959). However, the Court also made it clear that in some cases such regulation may become so burdensome as to unconstitutionally interfere with interstate commerce. *Id.*

With respect to railroad transportation, the Court has prohibited state legislation that burdened or discriminated against interstate commerce. *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945). As noted above, in a rail-trail situation the STB maintains jurisdiction over the corridor during the interim trail use. Under this analysis, one can make the argument that any state regulation which imposes significant burdens or impedes the development of rail-trails is an unconstitutional interference with interstate commerce.

C. Kansas - Sub H.B. 2711

Despite the outcries from the trail enthusiasts that the proposed legislation was unconstitutional, the 1996 Kansas Legislature imposed significant requirements on rails-to-trails projects. L. 1996, ch. 223 and ch. 252 (attached).

Operators of Existing and Future Rail-Trails Must:

- Eradicate noxious weeds
- Preserve existing easements, utility facilities and access licenses
- Provide trail-user education regarding trespassing laws and safety
- Provide for litter control
- Practice fire safety
- Designate the trail for nonmotorized vehicle use

- Prohibit hunting or trapping
- Provide law enforcement
- Grant easements to adjacent property owners to cross the trail

In addition, Sub. H.B. 2711 contains a fencing requirement that is a bit difficult to interpret. L. 1996, ch. 223, sec. 2(a)(10). If there is currently any fencing between the trail and the adjacent property owner, the trail operator is responsible for the maintenance of that fence. If the property owner installs any fencing between the trail and the adjacent property, the trail operator is responsible for the maintenance of the fence. If the adjacent property has fencing on the remaining three sides, the trail operator must install a corresponding fence between the trail and the adjacent property. Finally, if the adjacent property owner so requests, the trail operator must pay one-half of the cost of installing fencing between the trail and the adjacent property owner.

If the trail operator is not a governmental entity, they must file a bond with the county clerk to ensure the performance of weed control, litter control, fire safety, fencing and sign requirements. For portions of the trail within city limits, the governing body of the city may waive or supplement these requirements. L. 1996, ch. 223, sec.2(e).

Operators of Future Rail-Trails Must:

- Give written notice to each adjacent property owner
- Prepare a project plan with itemized costs and maps of the trail
- Submit the plan to the county commission and/or city governing body where the trail is to be located
- Complete the trail within two years times the number of counties in which the trail is located

III. Recreational Trail Options for Cities

A. Rail-Trail Uses

The Rails to Trails Conservancy works to promote and protect the development of rails to trails projects in the United States. They envision:

“A vast network of trails across the nation connecting city centers to rural landscapes and countless communities to each other...linking neighborhoods to workplaces and congested areas to open spaces...serving both transportation needs and the demand for close-to-home recreation.”

Whether this vision will become a reality remains to be seen. However, rails-to-trails projects have provided recreational opportunities for:

- bicyclists
- walkers
- runners
- in-line skaters
- people with disabilities
- cross-country skiers
- equestrians; and
- outdoor enthusiasts of all kinds

Local governments have gotten involved for two main reasons. First, there is a growing demand by the citizens of our communities for local government to provide valuable recreational opportunities. Second, many localities have realized that rails-to-trails projects can be an efficient means of promoting tourism by highlighting the natural and historic resources of the area.

B. Status of Current Rail-Trails in Kansas

The Rails to Trails Conservancy reports the following information on the status of rails to trails projects in Kansas.

Trails Currently Open and in Use (20.9 miles)

Prairie Spirit	18.0 miles	Richmond to Welda is operating at the present time, with a planned expansion to result in a trail extending from lola to Ottawa for a total of 53 miles.
Whistlestop Park	1.8 miles	Elkhart
Lawrence Rail Trail	1.1 miles	Lawrence

There are 21 projects at various stages of the railbanking process. When completed, these projects will equal a total of 455 miles. A few of the more notable projects are as follows:

Lindsborg to McPherson

Herington to Osawatomie (Flint Hills Nature Trail)

Lomax to Overbrook

Topeka to Overbrook (Landon Trail)

The Lawrence Rail Trail and Whistlestop Park in Elkhart are operated by the cities. The Prairie Spirit Trail is being operated by the Kansas Horse Foundation.