

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE.

The meeting was called to order by Chairperson Gary K. Hayzlett at 1:43 p.m. on February 26, 1998 in Room 526-S of the Capitol.

All members were present except: Representative Joann Flower

Committee staff present: Hank Avila, Legislative Research Department
Reed Holwegner, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
J. Patterson, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

The following bill was worked by the committee:

HB 2715 - Enacting Railroad leasing act

Representative McClure passed around a balloon to the committee for an amendment to **HB 2715**. The change is on page 2, line 17 to line 21, leaving the words "appurtenances thereto". (Attachment 1)

Representative McClure made a motion to add the amendment to the bill.

Representative Powers asked for clarification of the bill. Representative Ray asked how this will change the problem between grain operators and the railroad. Doug Wareham, Kansas Grain and Feed Dealer Association answered that it's just a clarification for the problems. Representative Pauls asked why they are striking "rail sidings" from the bill. Mr. Wareham replied that it is included already in the definition. Tom Tunnell, Kansas Grain and Feed Dealer Association, told the committee that they are talking about rail leases and right of way. Pat Hubbell, Kansas Railroads, explained the items that were pre-empted by the federal government under the definition of transportation were the following: a locomotive, a car, a vehicle, a vessel, a warehouse, a wharf, a pier, a dock, a yard, property, facilities, instrumentality, or equipment of any kind related to the moving of passengers or property by rail. They are trying to protect themselves with this amendment is at sometime in the future when this case goes somewhere, and federal pre-emptions involved. that maybe their property won't be under this definition or that property that is adjacent to the right-of-way won't be under the new definition of transportation which is pre-empted by the federal law. Representative Howell where one would go with a dispute.

Representative McKinney seconded the motion and the motion to amend carried. Representatives Powers, Ray and Pauls voted no.

Representative Shore made a motion to have lines 12-33 on page 1 to be stricken, Representative McClure seconded.

Representative Dillon made a substitute motion to table the bill until an interim summer session, Representative Powers seconded. The motion did not carry.

Representative Shore's motion carried.

Representative Shore made a motion subject to the uniform arbitration act with the appointment of the panel, Representative Dreher seconded.

Representative McKinney wants to leave the arbitration to the commission. The three person panel would consist of the grain and feed people, the railroad and they would choose a third. Representative McKinney

feels a written amendment would be needed for this bill. He feels it has a far reaching affect on the bill and that it needs to be studied before it's passed. He opposes the amendment. Representative Powers wanted the interim committee for this bill. Representative Schwartz asked if there is fiscal note for this bill. Representative wanted clarification of the amendment. The amendment will affect Section 4 where the word commission is and change to arbitration panel.

The motion carried with Representative McKinney voting no.

Representative McKinney relayed a story from one of his constituents who felt that they had been treated unfairly by the railroad. He is for the **HB 2715**. Representative Pauls questioned the language on page 5, lines 12 - 16. She wants to know what the "setting purpose" means. Mr. Wareham told the committee that he would get the answer and provide the committee with it. Representative Powers asked if Iowa has arbitrators. Mr. Wareham told him yes.

Representative Schwartz made a motion to pass the bill as amended favorably, Representative McClure seconded.

Representative Pauls voiced her concerns about the bill and urged the committee to vote it out of committee. Representative Powers didn't know the bill was blessed and what is the hurry to pass it out. Representative Schwartz questioned what will be gained by giving more time to this bill. Representative Howell questioned what would be "unconscionable". Bruce Kinzie replied that there is a list of items that cannot be in a list and if one of them is in a lease that it would be unconscionable. That is stated in Section 3 of the bill. Representative Pauls has made a request to the Attorney General opinion on the bill. She is waiting for a response. She would like the committee to wait for their response before passing it out.

The motion carried 9-5.

The meeting was adjourned at 2:45 p.m.

House Transportation
2-26-98
Attachment 1

2 (c) "good faith" means honesty in fact in the conduct of the trans-
action concerned;

3 (d) "improvement" means any building or other structure perma-
4 nently affixed to land;

5 (e) "lease" means any lease, license, permit or other arrangement,
6 under the terms of which a tenant occupies railroad land;

7 (f) "person" includes an individual, corporation, government, govern-
8 mental subdivision or agency, business trust, estate, trust, partnership,
9 limited liability company, association or any other legal or commercial
10 entity and any successor or successors in interest thereto.

11 (g) "railroad" means any railroad company as defined in K.S.A. 66-
12 180, and amendments thereto, and its successor or successors in interest.

13 (h) "railroad land" means any and all interests in any tract or parcel
14 of real property which is or has been owned, held or used by a railroad
15 and which is or has been occupied by a person who has made or acquired
16 any improvement or improvements thereon pursuant to a lease, license
17 or permit granted to such person by such railroad, together with all rail
18 sidings and trackage, access rights and appurtenances thereto, except that,
19 railroad land shall not include any property which is subject to the exclu-
20 sive jurisdiction of the federal surface transportation board or its succes-
21 sors;

(h) "railroad land" means any and all interest in any tract or parcel of real property which is or has been owned, held or used by a railroad and which is or has been occupied by a person who has made or acquired any improvement or improvements thereon pursuant to a lease, license or permit granted to such person by such railroad, together with all rail sidings and trackage, access rights, and appurtenances thereto, except that railroad land shall not include any property which is subject to the exclusive jurisdiction of the federal surface transportation board or its successors;

22 (i) "successor in interest" includes any agent, successor, assignee,
23 trustee, receiver or other person acquiring interests or rights by operation
24 of law or otherwise including, but not limited to, the owner or holder of
25 any servient estate or right of reversion relating to railroad land; and

26 (j) "tenant" means any person occupying railroad land in good faith
27 pursuant to any lease, license or permit granted to such person by a
28 railroad.

29 Sec. 3. (a) No lease may provide that:

30 (1) Any party agrees to waive or to forego rights or remedies under
31 this act;

32 (2) any party agrees to confess judgment on a claim arising out of the
33 lease;

34 (3) any party agrees to pay another party's attorney fees;

35 (4) any party agrees to the exculpation or limitation of any liability of
36 another party arising under law or to indemnify such other party for that
37 liability or the costs connected therewith;

38 (5) the term of the lease is less than one year;

39 (6) rent is payable in advance for any period of more than one year;

40 (7) the lease may be terminated prior to the end of the term of the
lease, other than for just cause, at the election or option of any party;

41 (8) improvements made or owned by the tenant become the property
42 of any other person at any time prior to six months after termination of
43