

Approved: 4-30-98  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:50 a.m. on April 29, 1998 in Room 531N of the Capitol.

All members were present except: Senator Feleciano (excused)

Committee staff present: Mike Heim, Research Department  
Gordon Self, Revisor of Statutes  
Mary Blair, Committee Secretary

Conferees appearing before the committee: none

Others attending: see attached sheet

### **HB 2715 - Enacting the railroad leasing act**

#### **Senate Substitute for HB 2715 - An act relating to leases of railroad lands; establishing rights, duties, obligations and remedies for certain tenants of railroad land**

The Chair briefly reviewed the progression of **HB 2715**. Mike Heim reviewed a draft of **Senate Substitute for HB 2715**. He stated that the main thrust of the bill addresses mediation of disputes between the railroad and a tenant and provides a more narrow focus than the bill passed in the House. Referring to a Supplemental Note on **HB 2715**, As Amended by Senate Committee on Judiciary, he detailed the bill's provisions. (attachment 1) Following discussion, Senator Harrington made a motion that **HB 2715**, as amended by the substitute bill, be passed out favorably. Senator Schraad seconded. Carried.

### **HB 2422 - Transfer of real property on death of owner; relating to an heir who files a notification of interest in title**

#### **SB 474 - Corporations relating to filing of articles of incorporation and other instruments**

The Chair briefly reviewed **SB 474**, a bill which he stated negates the need for corporations and other entities to file articles of incorporation at both the office of the register of deeds and the office of the secretary of state. He stated that he was advised by Revisor Self that this subject is referenced in nearly twenty other statutes and he recommended amending these "clean up statutes" into **HB 2422**. Following discussion Senator Schraad made a motion that **HB 2422**, as amended by a substitute bill, be passed out favorably. Senator Harrington seconded. Carried.

The meeting adjourned at 11:04 a.m.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 4/28/98

NAME	REPRESENTING
Helen Stephens	KPOA / KSA
Whitney, Jamaica	KS Bar Assn.
Fred [unclear]	
Sherry [unclear]	KTLA
Ron Smith	

SESSION OF 1998

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2715**

As Amended by Senate Committee on  
Judiciary

**Brief\***

H.B. 2715 enacts the Railroad Leasing Act. The bill regulates lease agreements between railroad companies and public warehousemen or other persons primarily engaged in the sale or distribution of fertilizer or agricultural chemicals. The bill requires mediation of disputes, requires compensation for tenant improvements to railroad land in certain cases, and requires purchasers of railroad lands to abide by the lease agreements and provisions of this act.

All disputes regarding lease terms and conditions shall be resolved by negotiation, mediation or, if necessary, by court action, as provided in the act. The parties shall first negotiate in good faith to resolve any dispute. If each such dispute has not been resolved by negotiation within 60 days after negotiation is requested in writing, then upon the written request of either party, the parties shall agree upon an independent, qualified mediator to assist the parties in the resolution of each such dispute. If the parties are unable to agree upon a mediator within 30 days after such written request, then upon application of either party, the district court shall appoint an independent, qualified mediator.

If the parties are not successful in resolving a dispute arising under a lease through negotiation and mediation, either party may commence an action in district court to resolve the dispute.

The bill provides that a lease may not be terminated prior to the end of its term, except: (1) by agreement of the parties; (2) by reason of a party's breach or default in the performance of the terms and conditions of the lease, where the defaulting party has

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.ink.org/public/legislative/fulltext-bill.html>.

*Senate Judiciary  
4-29-98  
Attachment 1*

been given written notice of default and a reasonable opportunity to cure the default, but has failed to do so; or (3) where the railroad land which is subject to the lease is reasonably needed by the railroad for railroad operations. A lease shall be for a term of not less than one year unless otherwise agreed to by the parties.

A lease may not require that one party to the lease indemnify, defend, or hold the other party to the lease harmless for liabilities caused by the other party's negligence. A lease may provide for the imposition of a penalty and a reasonable rate of interest, and interest may accrue if the tenant fails to pay the lease rental when due under the terms of the lease. If a dispute arises as to the lease rental provided in a lease renewal, no penalty shall be imposed and no interest shall accrue during the time when the dispute is being resolved as provided in this act, if the tenant remains current on the rental required by the preceding lease.

A lease may require the tenant to remove the tenant's improvements upon termination of the lease, in which event the tenant shall have not less than six months following termination to remove the improvements. Until the improvements have been removed, the tenant shall pay monthly rent.

In regard to lease renewal, if a railroad unreasonably refuses to renew a lease, whether or not the tenant is required to remove its improvements under the terms of the lease, or if a railroad terminates a lease when the railroad needs the land for rail operations, the tenant shall not be ejected until the tenant is fully compensated for the improvements.

In the event any railroad land is sold, any lease shall be assigned to the purchaser as part of the transaction, and the purchaser shall succeed to the rights and obligations of the railroad under the lease and the provisions of this act. In the event any railroad land is abandoned by a railroad, any person establishing a superior right or title to the railroad land shall be deemed to be a successor in interest to the railroad for purposes of this act and shall succeed to the rights and obligations of the railroad under the lease and the provisions of the act. The tenant shall not be dispossessed by any such person unless and until the tenant is fully compensated by such person for the tenant's improvements, except that such person shall have the right to set

off any obligation then due to the person from the tenant under the lease.

If unconscionability is put into issue by a party or by the court, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease or any provision of the lease to aid the court in making the determination. If a court, as a matter of law, finds a lease or any provision thereof was unconscionable when made, the court may refuse to enforce the lease, enforce the remainder of the lease without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

The provisions of H.B. 2715 shall not apply to or affect any valid lease entered into prior to the effective date of this act.

### **Background**

Conferees who appeared in support of H.B. 2715 in the House emphasized that railroads currently impose whatever lease terms and rents they want, due to the railroads' ability to terminate a lease on short notice and require the tenant to remove the tenant's permanent structures from the land. Conferees also raised questions about title to the land and the tenant's right to use of the land when railroad land is abandoned or transferred by the railroads.

Conferees who testified against H.B. 2715 stated that various provisions in the bill are constitutionally suspect under the due process clause, the nondelegation doctrine, the interstate commerce clause, the takings provision, and the doctrine of preemption. They indicated that the Act's limitations on the traditional rights of railroads appear disproportionate to the harm that the bill seeks to remedy. It was noted that railroad property is regulated exclusively by the Surface Transportation Board as provided by the Interstate Commerce Commission Termination Act of 1995 thus preempting state law.

The House Committee amended the bill by striking the preamble, removing certain language from the definition of "railroad land," and replacing the Corporation Commission as

arbitrators of disputes between the railroads and a tenant with arbitrators selected by the parties.

The House Committee of the Whole deleted the provisions which would have allowed a public warehouse or public grain warehouse whose lease or occupancy of railroad land was terminated by abandonment by a railroad of the railroad land or by sale or other disposition to have acquired by condemnation interest in the railroad land, including fee simple title. The other amendment was technical.

The Senate Committee amendments represent a compromise agreement among the various parties favoring and opposing the original bill.

No fiscal note is available for the amended version of the bill.