Approved: 3-31-99
Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Senator Audrey Langworthy at 11:10 a.m. on March 23, 1999, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Don Hayward, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Senator Steve Morris
David Heinemann, Kansas Corporation Commission
Leslie Kaufman, Kansas Farm Bureau
Steve Rome, Southwest Kansas Irrigation Association
Justin Hamlin, southwest Kansas Irrigation Association
Shirley Sicilian, Department of Revenue

Others attending: See attached list.

The minutes of March 16, 17, and 18, 1999, were approved.

**HB 2272–Nonprofit public utilities not subject to KCC regulation; size limits.**

Senator Steve Morris testified in support of **HB 2272**. He explained that the bill simply increases the membership number allowed for a nonprofit utility from fifty to one hundred. The higher limit would give added flexibility to these utilities to allow them to function with multiple family member/multiple landlord agreements common to irrigated farming operations in southwest Kansas. (Attachment 1)

David Heinemann, Kansas Corporation Commission (KCC) appeared in support of **HB 2272**. Last spring, many irrigators in southwest Kansas were confronted with the fact that the lower pressures in the Hugoton gas field would leave them with inadequate pressure to operate their irrigation wells. Following a suggestion by KCC, eight nonprofit utilities were created. Recently, the nonprofit utilities have become concerned about the number limitation and how the customer limit is to be determined in the case of a sale or transfer. Mr. Heinemann said KCC shares their concern, and he believes the bill addresses the problem. (Attachment 2)

Leslie Kaufman, Kansas Farm Bureau, expressed support for the concepts contained in **HB 2272**. Kansas Farm Bureau is concerned with gas delivery challenges in southwest Kansas and supports legislative actions designed to provide a dependable, timely, uninterrupted supply of affordable natural gas for irrigation and other agricultural purposes. The limited expansion of nonprofit utilities provided in the bill is a means of preserving the viability of the nonprofit utility as a fuel delivery option. (Attachment 3)

Steve Rome, Southwest Kansas Irrigation Association, followed with further testimony in support of **HB 2272.** He explained that, due to the declining pressure in the Hugoton gas field, irrigators were unable to receive adequate gas pressure to run their irrigation engines. Utilities did not come forward to serve them with a replacement supply of natural gas for irrigation, and diesel, propane, and electricity are not long-term economical solutions for irrigators' needs. They found a solution to their problem in a statute, 66-104(c); however, the statute currently limits customers to fifty. The bill will insure that every landowner that has invested in the nonprofit utility can be a customer and, therefore, be guaranteed access to the system even if the relationship between the landowner and tenant changes. In conclusion, Mr. Rome emphasized that it was never the intent of the irrigators to compete with the for profit utilities in urban areas. They feel they were justified in their actions of creating nonprofit utilities based on the fact that the existing utilities were not responding in a timely and economical manner to solve they crisis they faced. (Attachment 4)

Justin Hamlin, Southwest Kansas Irrigation Association, testified in strong support **HB 2272**. He emphasized that irrigators did not create nonprofit utilities because they wanted to do so but because it was necessary. Mr. Hamlin briefly discussed the background of the bill and concluded, with the current fifty customer cap, eventually someone will be denied the right to become a customer of the nonprofit utility. (Attachment 5)

There being no others wishing to testify, the hearing on **HB 2272** was closed. Senator Langworthy reminded the Committee that the bill ties in with **SB 78** which passed the Senate on February 25,1999. Staff informed the Committee that **SB 78** passed the House on March 23 with five substantive amendments.

Senator Langworthy called upon Chris Courtwright, Legislative Research Department, for a briefing on the following bills:

**HB 2037–Sales taxation; exempting certain sales of materials and services relating to rehabilitation of railroad track and facilities and to grain storage facilities.**

At the outset, Senator Langworthy called attention to a packet of statements in support of **HB 2037** submitted by the Kansas Grain Sorghum Producers Association (Attachment 6), the Kansas Association of Wheat Growers (Attachment 7), the Kansas Grain and Feed Association (Attachment 8), the Kansas Cooperative Council (Attachment 9), the Kansas Farm Bureau (Attachment 10), and the Central Kansas Railway and Kansas Southwestern Railway (Attachment 11).

Mr. Courtwright explained that **HB 2037** is a sales tax measure that would exempt materials and services purchased for the original construction, reconstruction, repair, or replacement of grain storage facilities, including rail sidings providing access to such facilities. An additional exemption would be provided for certain materials and services purchased by shortline railroads for construction, renovation, repair, or replacement of track and facilities used directly in interstate commerce. He noted that the original bill as recommended by the Governor would have only applied to commercial facilities. The fiscal note on the bill as passed by the House is approximately $926,000 for fiscal year 2000 but was originally $736,000.

**HB 2226–Alternative-fueled motor vehicles; concerning certain incentives.**

Mr. Courtwright noted that a hearing on **HB 2226** is scheduled for March 24. He explained that it would expand and enhance the income tax credits under K.S.A. 79-32,201 such that the credits would be available to taxpayers who make expenditures for alternative-fuel fueling stations as well as qualified alternative-fueled motor vehicles. Also, the dollar amounts that exist in the current statute for the credit for the vehicles would be increased. In addition, the loan program for these vehicles that would be expanded. The Department of Revenue believes that the expansion of the income tax credit section of the law would reduce receipts by approximately $165,000. Mr. Courtwright added that it has been estimated that the expansion of the loan program would cost approximately $700,000.

**HB 2543--Enacting the Kansas Commerce and Industry Tax Reform and Reduction Act of 1999.**

Mr. Courtwright explained that the bill would:

1. Provide refundable income tax credits for property taxes timely paid on certain low-producing oil and gas leases. Such credits would be retroactive to property tax year 1998.

2. Expand the sales tax exemption for certain machinery and equipment to include such machinery and equipment which is an "integral part" of a manufacturing production process. Also exempt would be oil and gas drilling services and supplies, and drilling pumping and monitoring equipment, used at a well site or in oil and gas exploration. An exemption for property consumed in production also would be expanded to include property consumed within one year. As amended by the House Taxation Committee, an exemption would be provided for concrete mixer trucks.

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE, Room 519-S Statehouse, at 11:10 a.m. on March 23, 1999.

3. Expand from 15 to 20 percent the amount of business machinery and equipment property taxes actually and timely paid for all property tax years starting in 1999 which may be claimed as refundable credits against income, premiums, or privilege tax liability.

4. Repeal the severance tax on oil.

5. Expand the property tax exemption in K.S.A. 79-201w for certain "low-cost" items of machinery, equipment, materials, and supplies from $250 to $500.

6. Provide a sales tax exemption for certain sales of tangible personal property and real property damaged or destroyed in the state as a result of weather-related events or occurrences declared to be federal disasters by the President of the United States when federal grants have been authorized. No such sales would be exempt unless they occurred within three years of the date of the weather-related disaster declaration. Refunds would be authorized for any sales taxes paid for such purposes on and after October 1, 1998, but prior to the effective date of the bill, provided the claims are filed on or before July 1, 2000. Refunds would be authorized on all such sales which occur after weather-related disasters but before disaster declarations, provided claims are made within nine months. Mr. Courtwright explained that this provision was originally contained in another House bill and was added by the House Committee of the Whole.

The original bill dealt only with income tax credits for property taxes on certain low-production oil leases. The House Taxation Committee added the provisions described in items numbered one through five. The current estimate of the fiscal note on the bill for the year 2000 is $47.73 million for all the provisions in the bill. Senator Lee requested that the fiscal note be recalculated, especially with regard to the oil credit, because the valuations in the oil fields are dramatically decreasing. She noted that the valuation of oil property is related to the price of oil. She asked that the revised fiscal note reflect the relationship of the price of oil at the well head and the valuation of the land.

Ms. Sicilian, Department of Revenue, stood to clarify that **HB 2543** would exempt from sales taxation the purchase of any items, including automobiles, that were damaged or destroyed by an event that was declared to be a disaster. The Department interprets the bill to include any items replaced within three years of the disaster. The bill would also apply to indirect purchases by contractors who repair homes which were damaged by a disaster. The sales tax exemption applies to purchases related to property damaged or destroyed by a disaster whether the items are insured or not.

Senator Langworthy announced that the Committee will consider possible action on bills previously heard at the next meeting. She planned to discuss **SB 228** and asked that other members notify her if they have an interest in a discussion of other bills.

The meeting was adjourned at 12:00 p.m.

The next meeting is scheduled for March 24, 1999.

# SENATE ASSESSMENT AND TAXATION COMMITTEE
## GUEST LIST

DATE: March 23, 1999

| NAME | REPRESENTING |
|---|---|
| Robert E Kuhlmul | Ks Independent Oil + Gas Assoc |
| Don Schnacke | KIOGA |
| Hal Hudson | NFIB/Kansas |
| Kim Gulley | LKM |
| Susan Bachand | SWKIA |
| Jon K Miles | KEC |
| Leslie Kaufman | Ks Farm Bureau |
| Jack Glaves | Ory Duke + KN Energy |
| Jim Langford | DOB |
| Jeffrey W. Wright | Kansas Gas Service |
| Otto Sitz | Kansas Corp. Commission |
| JAKE FISHER | WHITNEY DAMRON |
| Dave Holthaus | Western Resources |
| Dave Callent | EAGLE CREEK CORP. |
| Gary L Reed | ARKAN Petroleum, INC. |
| Joe Lieber | KS. Co-op Council |
| Doug Wareham | KGFA / KFCA |
| TOM BRUNO | Allen & ASSOC |
| SCOTT SCHNEIDER | MGA |

SENATE ASSESSMENT AND TAXATION COMMITTEE
GUEST LIST

DATE: March 23, 1999

| NAME | REPRESENTING |
|---|---|
| Wendy Harms | KS Ready Mixed Concrete Assn. |
| Pat Brown | mid Am Lumbermen |
| Bill Fuller | Kansas Farm Bureau |
| [illegible] | Ks Taxpayers Network |
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STATE OF KANSAS

STEVE MORRIS
SENATOR, 39TH DISTRICT
600 TRINDLE
HUGOTON, KS 67951
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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
CHAIRMAN: AGRICULTURE
SRS TRANSITION OVERSIGHT
VICE CHAIR: ENERGY AND NATURAL RESOURCES
MEMBER: ORGANIZATION, CALENDAR AND RULES
STATE BUILDING CONSTRUCTION
UTILITIES
WAYS AND MEANS

SENATE TAX AND ASSESSMENT COMMITTEE

HB 2272 MARCH 23, 1999

Madame Chairman and Committee Members:

Thank you for letting me testify today. This bill, HB 2272, increases the number of members allowed for a non-profit utility from fifty to one hundred. In many cases there are several landlords and several family members involved with a single farming operation. These numbers change periodically because of landlords adding or subtracting tracts of land leased to a tenant. Also, the number of family members may change as children return from college or another job. These family members may be involved with separate farming operations in addition to the primary operation. This in turn could involve more landlords.

Starting a new non-profit utility is a very complex process and is very capital intensive. The higher limit on membership would give added flexibility to these units so they can function with the multiple family member/multiple landlord arrangements common to irrigated farming operations in Southwest Kansas.

I would be glad to answer any questions.

Senate Assessment + Taxation
3-23-99
Attachment 1

**SENATE ASSESSMENT & TAXATION COMMITTEE**

**Testimony presented by David J. Heinemann, Executive Director**
**Kansas Corporation Commission**
**March 23, 1999**
**House Bill 2272**

Madame Chairman, ladies and gentlemen of the committee. The Commission appears today as a proponent of House Bill 2272 and would like to offer the following comments to the committee.

K.S.A. 66-104c was adopted by the legislature in 1990 at the request of the Commission to allow a small number of customers to provide their own utility services without having to go through the expense of being a regulated utility under certain limited circumstances. The Commission would still control the service territory and the nonprofit utility would still have to meet natural gas pipeline safety standards.

Last Spring many irrigators in Southwest Kansas were confronted with the fact that the lower pressures in the Hugoton gas field would leave them with inadequate pressure to operate their irrigation wells. The Commission staff suggested to the irrigators that 66-104c might be an option to consider. As a result of this initiative 8 separate nonprofit utilities were created to help the irrigators respond to their need to obtain natural gas for irrigation purposes. Commission staff worked long and late hours to expedite the certification of these nonprofit utilities.

Recently, members of the nonprofit utilities have shared with us concerns about the number limitation and how the customer limit is to be determined in the case of a sale or transfer. The Commission shares those concerns and believes that the clarifications contained in House Bill 2272 addresses our mutual concerns. The Commission respectfully requests this committee to recommend House Bill 2272 for passage.

Senate Assessment + Taxation
3-23-99
Attachment 2

# PUBLIC POLICY STATEMENT

## SENATE COMMITTEE ON ASSESSMENT & TAXATION

### Re: HB 2272 - Increasing the number of members in a nonprofit utility.

**March 22,1999**
**Topeka, Kansas**

**Prepared by:**
**Leslie J. Kaufman, Assistant Director**
**Public Affairs Division**
**Kansas Farm Bureau**

Chair Langworthy and members of the Senate Committee on Assessment & Taxation. Thank you for the opportunity to appear before you today and share our support for the general concepts contained in HB 2272. I am Leslie Kaufman. I serve Kansas Farm Bureau as the Assistant Director of Public Affairs.

Farm Bureau is extremely concerned with gas delivery challenges in Southwest Kansas. We, as an organization, have established a task force to study various issues surrounding gas gathering and natural gas delivery in the region. The task force is just beginning its work. Our elected leadership and our Resolutions Committee, which coordinates our policy development process, are also following these matters.

Farmers and ranchers need fuel supply options for sustaining various types of agricultural production. No where is this more evident than in irrigated farming. Farm Bureau policy supports legislative and regulatory actions designed to insure access to

Senate Assessment + Taxation
3-23-99
Attachment 3

and provide a dependable, timely, uninterrupted supply of affordable natural gas for irrigation and other agricultural purposes.

One fuel supply option for many Southwest Kansas irrigators was the formation of nonprofit utilities (NPU) for distributing natural gas. These NPU's are filling a need other traditional utilities were unable to meet. Farm Bureau supports the opportunity farmers and ranchers are provided in Kansas to create these NPU's. We encourage the Kansas Legislature to preserve this opportunity. It is our support for the general concept of nonprofit utilities that brings us before your committee today.

In our opinion, part of the Legislature's role in preserving the ability to form NPU's is to ensure that legislation allows formation in such a way that the utilities are economically viable. It does little good to have the opportunity to form a nonprofit utility codified in statue if the actual perameters are so narrow that creation is economically unfeasible.

Obviously, the current statute is not so narrow that it completely discourages NPU development or one would not see the nonprofit utilities that have developed in Southwest Kansas. This does not preclude the possibility of improving the statutory structure of NPU's. One such improvement could be increasing the number of members in an NPU as contemplated in HB 2272.

Farm Bureau has not enacted policy articulating a "magic number" for NPU membership. But, we realize that "economies of scale" and the ability to spread costs over a greater number of customers can have a significant impact on the economic viability of nonprofit utilities. As pressures in the Southwest Kansas gas fields decline, it is possible that more and more farmers and ranchers will be considering the formation of nonprofit utilities. As such, we respectfully request the Committee look favorably on HB 2272's goal of limited expansion of NPU membership as a means of preserving the viability of the nonprofit utility as a fuel delivery option. Thank you.

Testimony of Steve Rome to the Senate Assessment
and Taxation Committee
March 23,1999

Madam Chairman and members of the committee, my name is Steve Rome and I am involved in an irrigated farming operation in Southwest Kansas in Stevens County. I currently serve as the President of SWKI-Stevens North, Inc., a non-profit utility created under statute 66-104(c). I want to thank you for the opportunity to testify in support of House Bill 2272. I want to give you a brief history of the events leading up to the need for this bill.

A little less than two years ago, I testified before two legislative committees; at which time we explained that the declining pressure in the Hugoton Gas Field was causing the producers to install compressors to maintain the production of their gas wells. As a consequence of installing such compression there was a lowering of the gathering system pressure, which in turn caused a situation where an insufficient volume of gas would flow through the lines irrigators had installed from the gas wells to their irrigation engines.

**Problem:**

- Irrigators were unable to receive adequate gas pressure to run their irrigation engines.
- Utilities were not coming forward to build lines to serve us with a replacement supply of natural gas for irrigation ( one utility asked that irrigators commit to purchase gas before the conditions, terms and prices were stated). We also had a desire not to put ourselves in the position we currently in;- being totally dependent on someone else for a very important component of our businesses.
- Diesel, propane, and electricity were not long term economical solutions for our needs.

**Solution:**

The Southwest Kansas Irrigation Association brought irrigators together to look for a solution. Statute 66-104(c) was identified and we started the long process of forming seven non-profit utilities in Stevens County, one in Meade County and some irrigators in Grant and Stanton Counties are currently investigating this statute as a solution to a similar problem that has been identified in their area. Irrigators have banded together to create Non-Profit Utilities (NPU). A NPU is a non-profit corporation to whom the Kansas Corporation Commission has issued a certificate of public convenience and necessity to deliver natural gas to its members. NPUs are a self-help solution for irrigators to solve their own problems by building a distribution pipeline to bring a reliable and economical natural gas supply to their own irrigation wells from transmission lines with adequate pressure. To create an NPU, irrigators have organized themselves into a corporation (NPU) researched the law and engineering (hired professionals in both areas), and agreed upon a distribution pipeline design, a set of rules both to govern their pipeline and to pay for the pipeline.

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Attachment 4

NPU Accomplishments:

- We have obtained a Kansas Corporation Commission certificate of public convenience and necessity. We were able to quickly obtain our certificate because of the direct and extensive support of the KCC staff.
- We have formed non-profit utilities so that collectively our membership can build and own their own gas distribution lines.
- We had an engineer design, prepare cost estimates, and submit bids to competent construction firms that are currently building these systems to meet KCC safety standards for pipelines.
- We have a pipeline designed and in several cases partially installed so that everyone who is now a member can have wells included.
- We have been able to secure pipeline connections (taps) for gas delivery from high-pressure lines (with a durable supply of gas).
- It is the presence of the non-profit utilities that has created new access to irrigation natural gas.
- We have also used our group status as a non-profit utility to negotiate a gas price significantly lower than can be expected for individual irrigators.

Since this was actually only the second time the statute (66-104c) had been used, there were many questions and skepticism that had to be addressed. We were learning as we went. There were many questions for the KCC as to how they should look at a non-profit utility (NPU) and whether they saw a problem with this statute being used in this manner. The KCC has really been supportive during this process and went beyond the call of duty to make things happen in a timely manner. Because the compressor project was somewhat a new venture for the gas companies, they had a hard time giving us an indication as to how much time we had to get these systems built. So from day one it has felt like we have been in a crisis situation.

During the decision phase of this process many irrigators were looking for and continue to look for other sources of energy for irrigation. A few farmers bought diesel engines and there is currently one in my own shop in case of an emergency. At out request, our county agent had a K- State economist complete an economic study of different energy sources and at the current price, diesel is competitive. There are several concerns we have with converting to diesel engines:

1.) The cost of a new engine is $10,000 to $15,000;
2.) The logistics of scheduling fuel deliveries on a weekly basis;
3.) The environmental and economic concerns of vandalism to these tanks,resulting in leakage;
4.) The volatility of the price of diesel considering that oil prices are at an all time low.

Even though diesel engines would have been considered tax exempt, they have not been a popular solution.

Obviously, the cost of building these systems had to come from the proceeds of each member's operation, but unfortunately this problem came at a time when irrigators were receiving record low prices for the commodities they produce. The producer cannot automatically ask a higher price for the product he sells to offset the additional expense to build this system.

I am including a copy of statute 66-104c on the back of my testimony. As you can see one of the limitations we have had to deal with in the formation of the NPUs is that we were limited to 50 customers. We were aware of this when we started in Stevens county and that is the reason there are seven NPUs. We have been able to get all the irrigation engines covered that currently want to be customers. The problem we are trying to currently solve is to make sure that every landowner that has invested in the utility can be a customer and therefore be guaranteed access to the system even if the relationship between the landowner and tenant changes. Currently an tenant/irrigator may be a customer that covers multiple landowners. That tenant may no longer be involved with one of the landowners but would need to keep his customer/member status with the NPU to cover the remaining wells he continues to operate. If we allow all of the landowners that have currently invested in the NPU to become customer/members there is no room for additional customers that may need to come on in the future. This situation could also be encountered if a piece of property that is currently owned by one person is split when the property is passed on to multiple owners through inheritance and there becomes a need for multiple customers where currently there is room for only one. With the current economic situation in agriculture it is frustrating to duplicate costs in the operation of our utility (ie: multiple insurance policies that would not have been needed if we could have created fewer NPUs). One example of the problem we are facing is with a 84 year old neighbor of ours named Hubert ( Boots ) Lewis. He and his 94 year old landowner decided rather than to make the investment into a natural gas pipeline they would buy diesel engines and diesel tanks. This is America and we have no problem with them making that choice. Only time will tell if one option was better than the other. What does concern us is if " Boots " or one of the other irrigator neighbors that have currently decided not to become a customer want to do so in the future and the system has the capacity, we may not be able to allow that under the current law because of the customer limitation. We also have another neighbor that has decided because of low grain prices he cannot afford to make the expenditure at this time. When asked what he plans to do he says he thinks he has enough pressure to get him through this season. If and when his pressure runs out our utility has the same concern as to how we serve him if we are at our customer limit.

In conclusion, it was never the intent of the irrigators of Southwest Kansas to compete with the for profit utilities in urban areas. But we do feel that we were justified in our actions of creating the NPUs based on the fact that the existing utilities were not responding in a timely and economical manner to solve the crisis we were faced with. The few for-profit utilities that finally met with us didn't think they could deal with the whole county for several years. That really left the other counties that have followed with pressure problems with no good solution. The reference to economical was not only to the fact that one irrigation rate was being charged to the whole state regardless of location but it also refers to the fact they wanted guarantees of usage before they were willing to spend more time on designing a system. At that time we weren't sure we how much pressure was left and how soon we needed to find a solution. Based on the fact that the pressure problem we faced several years ago is continuing to move to other areas and the options those irrigators have are limited, it appears to be justifiable to support the continued use of 66-104c in rural areas. This would allow people to have some say in the solution to their problem and by allowing the expansion of the number of customers from 50 to 100 this still should not put the for-profit utilities in a non-competitive situation in urban areas. I want to thank you for this opportunity and would be glad to answer any questions you might have.

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History: L. 1965, ch. 223, § 1; April 25.

Research and Practice Aids:
Electricity ⇐ 1.
C.J.S. Electricity § 1 et seq.

**66-104c. Certain nonprofit public utilities not subject to commission jurisdiction.** (a) Except as otherwise provided in subsection (b), no nonprofit public utility shall be subject to the jurisdiction, regulation, supervision and control of the state corporation commission if the utility meets the following conditions: (1) Every customer, household or meter owner is an automatic owner of the utility and has an equal vote on matters concerning the utility; (2) the utility employs no full-time employees; and (3) the utility has no more than 50 customers.

(b) The state corporation commission shall retain jurisdiction and control over the service territory of a utility described in subsection (a) and over all matters concerning natural gas pipeline safety.

History: L. 1990, ch. 239, § 1; July 1.

**66-104d. Certain electric cooperative public utilities not subject to commission jurisdiction; conditions; exceptions.** (a) As used in this section, "cooperative" means any cooperative, as defined by K.S.A. 17-4603 and amendments thereto, which has fewer than 15,000 customers and which provides power principally at retail.

(b) Except as otherwise provided in subsection (f), a cooperative may elect to be exempt from the jurisdiction, regulation, supervision and control of the state corporation commission by complying with the provisions of subsection (c).

(c) To be exempt under subsection (b), a cooperative shall poll its members as follows:

(1) An election under this subsection may be called by the board of trustees or shall be called not less than 180 days after receipt of a valid petition signed by not less than 10% of the members of the cooperative.

(2) The proposition for deregulation shall be presented to a meeting of the members, the notice of which shall set forth the proposition for deregulation and the time and place of the meeting. Notice to the members shall be written and delivered not less than 21 nor more than 45 days before the date of the meeting.

(3) If the cooperative mails information to its members regarding the proposition for deregulation other than notice of the election and the ballot, the cooperative shall also include in such mailing any information in opposition to the proposition that is submitted by petition signed by not less than 1% of the cooperative's members. All expenses incidental to mailing the additional information, including any additional postage required to mail such additional information, must be paid by the signatories to the petition.

(4) If the proposition for deregulation is approved by the affirmative vote of not less than a majority of the members voting on the proposition, the cooperative shall notify the state corporation commission in writing of the results within 10 days after the date of the election.

(5) Voting on the proposition for deregulation shall be by mail ballot.

(d) A cooperative exempt under this section may elect to terminate its exemption in the same manner as prescribed in subsection (c).

(e) An election under subsection (c) or (d) may be held not more often than once every two years.

(f) Nothing in this section shall be construed to affect the single certified service territory of a cooperative or the authority of the state corporation commission, as otherwise provided by law, over a cooperative with regard to service territory, charges for transmission services, sales of power for resale, wire stringing and transmission line siting, pursuant to K.S.A. 66-131, 66-183, 66-1,170 *et seq.* or 66-1,177 *et seq.*, and amendments thereto.

(g) (1) Notwithstanding a cooperative's election to be exempt under this section, the commission shall investigate all rates, joint rates, tolls, charges and exactions, classifications and schedules of rates of such cooperative if there is filed with the commission, not more than one year after a change in such cooperative's rates, joint rates, tolls, charges and exactions, classifications or schedules of rates, a petition signed by not less than 5% of all the cooperative's customers or 3% of the cooperative's customers from any one rate class. If, after investigation, the commission finds that such rates, joint rates, tolls, charges or exactions, classifications or schedules of rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, the commission shall have the power to fix and order substituted therefor such rates, joint rates, tolls, charges



4-5

# Justin Hamlin's Testimony on House bill 2272

Mrs. Chairman and fellow committee members. Thank you for giving me the chance to explain to you why House bill 2272 is so important to the Non-Profit Utilities and the farmers that have created them.

The Kansas statue 66-104c states that the NPU's(non-profit utility) can have no more than 50 customers. This requirement can have devastating effects on the NPU's and the citizens of Steven's county.

As we went through the process of developing these NPU's we all had some confusion on the rented ground if the land owner or the tenant should be the customer of the NPU. After hours of discussion we came to the conclusion that the tenant is the best choice for the position because in many cases the tenant handles all the bills for the landowner. If the tenant is going to be receiving the bill then he or she would have to be the customer.

After looking a little further into this situation the land owners came to the conclusion that they would like to be a customer of the NPU also. The reason for this is if for some reason the tenant quit farming the ground and the NPU already had 50 customers then the landowner could not become a customer on a line that they had already paid around $15,000.00 to irrigate their ground. In all reality it is best for the land owner and the tenant to be a customer of the NPU.

Keep in mind that the NPU was created by a group of farmers that needed to solve a irrigation gas problem (we had no gas to run our motors) that no other utility was willing to solve. The farmers are asking for your support on this bill because they have a problem and not because they want to serve natural gas to the entire western portion of Kansas. We created the NPU's because we had to. There is so much work that goes into one of these that I do not think anyone would want to do something like this.

Now that I have explained how the tenant/landowner situation has an effect on this bill, I would like to add the domestic gas problem in on this. In the process of the compressors lowering the pressure, they have lowered it enough to now cause problems with the domestic gas users. The NPU's have done a good job of taking care of these people but this also adds up on the 50 customer list. We are happy to take care of the domestic gas needs but with the 50 customer cap we will eventually come to a time were we will have to deny some one the right to become a customer of the NPU. The problem has been brought up that what if someone would put in a trailer park on the out skirts of the city limits and wanted to become a customer of the NPU. Under the existing statues it states that every household is a customer. If the trailer park consist of 30 houses then the NPU just gained 30 customers.

I don't know if this will ever happen but if you want to look into the future it is very possible for this to take place. If it did we would be at or above our 50 customer limit at that time and be forced to deny any further access to the NPU line.

Thank you,

Justin Hamlin
President of SWKI-Stevens-E.C., Inc.

Senate Assessment + Taxation
3-23-99
Attachment 5

Kansas Grain Sorghum Producers Association

Kansas Corn Growers Association

## STATEMENT

**TO:** Senate Committee on Assessment and Taxation
**FROM:** Jere White, Executive Director
**DATE:** 22 March 1999
**SUBJECT:** H.B. 2037

The Kansas Corn Growers Association and Kansas Grain Sorghum Producers Association ask for committee support of H.B. 2037. If there were ever a time when the importance of an adequate grain handling and storage infrastructure for Kansas was apparent, the past two years had to be just that.

Bumper crops and sagging exports have Kansas busting at the bins. Our growers have asked that some level of incentive promoting the increased construction and renovation of grain storage facilities be established. HB-2037 is a solid step towards that end. It is important to our industry that the incentives be applied to all facilities, commercial or private. Merely making this incentive available to one segment or the other will not provide relief in a fashion relative to the real world needs of Kansas grain storage. Many farmers will be unable, in this tough farm economy, to secure the investment capital needed to make on-farm improvements. Their only hope of seeing improvements is through commercial channels.

Total demand for grain storage is at an unprecedented level. The slight break of a sales tax exemption might be enough for the farmer or commercial enterprise to go forth and help provide the storage we need today. While the current most critical need is for increased grain storage, period, we believe that the ever increasing opportunities for specialty trait identity preserved grains will make these investments wise ones for all that choose to and are able to invest. It will also be a wise investment for the State of Kansas, as growers capture the opportunity for increased markets, profits and future income tax liability.

On behalf of the corn and grain sorghum industry in Kansas, and the over six million acres of production it provides, we urge this committee to move H.B. 2037 favorably.

P.O. BOX 446, GARNETT, KS 66032-0446 • PHONE (785) 448-6922 • FAX: (785) 448-6932
www.ksgrains.com/corn • jwhite@kanza.net



Senate Assessment & Taxation
3-23-99
Attachment 6

KANSAS ASSOCIATION of WHEAT GROWERS

P.O. Box 1266 • Manhattan, KS 66505-1266 • (785) 587-0007 • FAX (785) 587-0003

The following statement is submitted on behalf of the Kansas Association of Wheat Growers (KAWG). The KAWG is a nonprofit association of producers with a membership of over 3000 representing over 50% of the wheat production in the State of Kansas. KAWG supports House Bill 2037 and requests that you consider it favorably.

With limited grain storage space and another record wheat harvest ahead, wheat producers in Kansas definitely favor increased on farm and commercial grain storage. We feel that grain producers and storage facilities need good incentives for them to expand their capacity when grain prices are at a low. Storing grain on the ground leaves it subject to damage by the weather, birds and vandalism. This instance takes high quality grain possibly used for food and makes it questionable to use as feed grain. Another year of grain on the ground after harvest would be of great detriment to the wheat producers in Kansas. The largest wheat producing state should correct this problem and HB2037 is a step in the right direction.

Marketing of grain is becoming more and more crucial for producers. Successful marketing of grain requires grain storage operations to expand their holding capacity. With white wheat and more identity preserved grains coming into Kansas markets, on farm storage is now more important than ever. We need to see more of these incentives to give agriculture a boost into the 21st century.

Thank you for the opportunity to provide testimony in full support of HB2037. If you have questions or need any additional information, feel free to contact Brett Myers, Executive Vice President of the Kansas Association of Wheat Growers at 785-587-0007.

Senate Assessment & Taxation
3-23-99
Attachment 7

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*Association*

# Submitted on behalf of the

# Kansas Grain and Feed Association

# Regarding

# H.B. 2037

# to the

# Senate Assessment & Taxation Committee

# Senator Audrey Langworthy, Chair

# March 23, 1999

**KGFA, promoting a viable business climate through sound public policy for more than a century.**

Senate Assessment & Taxation
3-23-99
Attachment 8

The following statement is submitted on behalf of the Kansas Grain and Feed Association regarding House Bill 2037. The KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. Our membership includes over 1,250 Kansas business locations and represents 99% of the commercially licensed grain storage in the state.

KGFA supports House Bill 2037 and respectfully requests positive consideration of this bill. During the past two years, record production of wheat and feed grains coupled with weak foreign demand has created an undeniable need for increased grain storage capacity in our state. Shortages of commercial grain storage capacity in high yield areas of Kansas led to over 32 million bushels of grain being piled on the ground in 1997 and over 70 million bushels of grain on the ground in 1998.

While considerable efforts have been made by the commercial grain industry to address the lack of storage space experienced the past two years, the members of KGFA believe the sales tax exemption on materials and services purchased for the construction, reconstruction, repair or replacement of grain storage facilities will provide added incentive for new growth within our industry. KGFA members also believe growth within the commercial grain storage industry in Kansas is paramount to limiting losses due to spoilage from grains stored on the ground. Furthermore, the introduction of new identity preserved grains will require dedicated grain storage and handling facilities that protect the integrity of these new commodities.

Most importantly, KGFA members believe there is an immediate need for growth within the Kansas grain storage industry due primarily to the growing level of grain stocks on hand in the state of Kansas. Enclosed with this statement is a series of fact sheets including a report of the current grain storage situation in Kansas, an update on Kansas production figures and a December 1st grain stocks update. Reviewing the enclosed information might lead one to believe that Kansas currently has adequate grain storing capacity when one compares the total of commercial and on-farm storage capacity to the annual grain production in our state. However, all one has to do is view the fact sheet entitled, "Kansas Grain Stocks as of December 1st" to realize the immediate need for additional storage space in our state. With carryover grain stocks continuing to rise, the need for additional storage space becomes even more important than ever for 1999.

Thank you for the opportunity to share comments in support of House Bill 2037. If you have questions or require additional information please contact Doug Wareham, KGFA Vice President, Government Affairs at (785) 234-0461.

# Kansas Storage Situation

## COMMERCIAL GRAIN STORAGE CAPACITY IN BUSHELS:

| 1999 | 1998 |
|---|---|
| 882,848,000 | 822,482,527 |

| 1997 | 1996 | 1995 |
|---|---|---|
| 742,220,000 | 761,920,000 | 817,020,000 |

## *ON FARM STORAGE:*

| 1999 | 1998 | 1997 | 1996 |
|---|---|---|---|
| 400,000,000 | 400,000,000 | 400,000,000 | 400,000,000 |

*Source: Ag Statistics NASS USDA*

4-8

# Kansas Production Figures

## Four Major Crops

| | **1996** | **1997** | **1998** |
|---|---|---|---|
| **Soybeans** | **74,000,000 bu.** | **88,800,000 bu.** | **75,000,000 bu.** |
| **Sorghum** | **354,200,000 bu.** | **273,000,000 bu.** | **264,000,000 bu.** |
| **Corn** | **357,200,000 bu.** | **386,100,000 bu.** | **418,950,000 bu.** |
| **Wheat** | **255,200,000 bu.** | **506,000,000 bu.** | **494,900,000 bu.** |
| **Total** | **1,040,600,000 bu.** | **1,253,900,000 bu.** | **1,252,850,000 bu.** |

***Source: Ag Statistics NASS USDA***

4-8

# Kansas Grain Stocks as of December 1st

**December 1, 1998 - 760,567,000 bu.**

**December 1, 1997 - 714,627,000 bu.**

**December 1, 1996 - 635,490,000 bu.**

*Source: Ag Statistics NASS USDA*

Testimony on HB 2037
Senate Assessment and Taxation Committee
March 23, 1999
Prepared by Joe Lieber
Kansas Cooperative Council

Madam Chairman and members of the committee, I'm Joe Lieber, Executive Vice President of the Kansas Cooperative Council. The Council has a membership of nearly 200 cooperative businesses. Approximately 130 of these members are in the grain storage business.

The Council supports HB 2037 as it came out of the House of Representatives.

It is well documented that in 1997 and 1998, Kansas had to put millions of bushels of grain on the ground. It is predicted that if Kansas has a good wheat crop this year, we will have to put even more grain on the ground. The reason for this is that a high percentage of grain from last year is still in the elevators.

HB 2037 would allow grain elevators to get a sales tax exemption on materials and services purchased for the original construction, re-construction, repairs or replacement of grain storage facilities.

HB 2037, as amended in the House, also allows grain facilities to have the same exemptions on railroad track that is owned or leased by the grain facilities.

Again, we would like to ask for your support on HB 2037. Thanks.

Senate Assessment & Taxation
3-23-99
Attachment 9

# PUBLIC POLICY STATEMENT

## SENATE COMMITTEE ON ASSESSMENT AND TAXATION

## RE: HB 2037 – Provides a sales tax exemption on the labor and materials used in the construction or repair of grain warehouses and track for shortline railroads.

**March 23, 1999**
**Topeka, Kansas**

**Prepared by:**
**Bill R. Fuller, Associate Director**
**Public Affairs Division**
**Kansas Farm Bureau**

Chair Langworthy and members of the Senate Committee on Assessment and Taxation, we appreciate this opportunity to express strong support for HB 2037. Today the Committee is receiving a staff briefing on this important tax proposal that has been recommended by the Special Committee on Rail Transportation and by Governor Bill Graves during the State-of-the-State message delivered to the legislature at the beginning of the 1999 Session.

My name is Bill Fuller. I serve as the Associate Director of the Public Affairs Division for Kansas Farm Bureau. My remarks reflect the policy adopted at the 80th Annual Meeting of Kansas Farm Bureau by the 435 farmers and ranchers serving as delegates and representing the 105 county Farm Bureaus:

> ***"We encourage the legislature and the Governor to examine the feasibility of creating tax incentives and/or a low-interest loan program to assist in construction of on-farm grain storage facilities."***

Senate Assessment + Taxation
3-23-99
Attachment 10

The past two years have been especially challenging to most farmers and ranchers. While crop yields have been good in many areas, commodity prices have been extremely low. In fact some prices have set record lows. A shortage of storage and inadequate transportation has resulted in large quantities of grain being piled on the ground. The result is damaged, lower quality grain at even a lower price. It is estimated $4.6 to $ 11.4 million was lost in the value of the grain stored on the ground in 1998. This loss has a negative impact both on farmer's income and the Kansas economy.

As originally drafted, HB 2037 provided the sales tax exemption to only "commercial" grain storage. Farm Bureau recommended an amendment to include "on-farm" grain storage. The amendment was adopted. The estimated cost to the state resulting from reduced sales tax receipts by including on-farm storage is $86,000. We suggest the cost is modest when compared to the benefits what will be gained by increasing marketing opportunities, reducing transportation problems and reducing losses from storing grain on the ground. We believe the exemption should apply to all grain storage, both commercial and on-farm.

We respectfully encourage the Committee to approve HB 2037 as amended and advance the measure to the full Senate.

Thank you!

ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.
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*LL. M TAXATION
**LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

**MEMORANDUM**

TO: Senator Audrey Langworthy, Chair, and Members of Senate Committee on Assessment and Taxation

FROM: W. Robert Alderson, Kansas Legal Counsel for Central Kansas Railway and Kansas Southwestern Railway

DATE: March 23, 1999

RE: House Bill No. 2037

I am Bob Alderson and, as noted above, I serve as Kansas legal counsel for Central Kansas Railway (CKR) and Kansas Southwestern Railway (KSW). CKR and KSW are two of the short-line railroads owned by OmniTRAX, Inc., a Denver-based holding company. Both CKR and KSW are headquartered in Wichita, and together they own and operate more than 1,200 miles of track in Kansas. Along with the state's 15 other short-line railroads, CKR and KSW would be very favorably affected by the passage of House Bill No. 2037.

To assist your review and understanding of the effect of the sales tax exemption for regional and short-line railroads proposed in this bill, I have attached a copy of the testimony by William A. Frederick, President of both CKR and KSW, which was presented to the House Committee on Taxation during that committee's hearing on this bill. If your review of HB 2037 or the attached testimony of Mr. Frederick indicates the need for additional information, please do not hesitate to contact me.

Senate Assessment & Taxation
3-23-99
Attachment 11

**CENTRAL KANSAS RAILWAY, L.L.C.**

1825 West Harry
Wichita, Kansas 67213
Telephone (316) 263-3113
Fax (316) 263-5563
http://www.omnitrax.com

OmniTRAX®

# TESTIMONY OF WILLIAM A. FREDERICK, PRESIDENT

# CENTRAL KANSAS RAILWAY/KANSAS SOUTHWESTERN RAILWAY

# BEFORE THE HOUSE COMMITTEE ON TAXATION

# JANUARY 26, 1999

Chairman Adkins and Members of the Committee:

My name is William A. Frederick, and I am President of the Central Kansas Railway (CKR) and the Kansas Southwestern Railway (KSW). I am appearing today in support of 1999 House Bill No. 2037. Before discussing the specific provisions of that bill, however, I want to briefly provide the Committee with some background which prompted the bill's introduction, as well as to describe in general terms the operations of CKR and KSW.

CKR and KSW are two of the 13 railroads in the United States and Canada owned by OmniTRAX, Inc., a Denver-based holding company. Both CKR and KSW are headquartered in Wichita, and they currently have 101 employees. Combined, CKR and KSW operate 1,257 miles of track in Kansas and Colorado, and they comprise the third largest railroad in Kansas, outsized only by the two Class I railroads, Burlington Northern Santa Fe and the Union Pacific.

CKR and KSW are shortline railroads which operate over a system of what were formerly branch lines of Union Pacific and Burlington Northern Santa Fe. Here, I should note that "shortline" is a term of convenience, not definition. For purposes of the Uniform System of Accounts applicable to rail carriers subject to the Interstate Commerce Act, shortlines are Class III railroads, i.e., rail carriers having annual operating revenues of $20,000,000 or less.

Shortline railroads represent an important and growing segment of the North American rail network. As the Class I railroads withdraw from the branch lines they formerly operated and move towards long haul, unit train type operations, both they and the shippers are becoming more and more dependent on shortlines providing service to and from the lighter density branch lines. This is particularly true in a state such as Kansas, a state with the fourth largest number of rail miles (5,580) in the United States. Thus, as is the case with most shortline railroads, CKR and KSW originate or terminate traffic on their lines and interchange that freight with the large Class I railroads at terminal locations.

The essential points of difference between Class I and shortline or regional railroads include the following:

- The Class I railroads are large, mainline railroads (167,000 miles in North America), generally operating in a "hook and haul" method with long trains over long distances.
- Class I railroads include such giants of the industry as Union Pacific, Burlington Northern Santa Fe, Kansas City Southern, Norfolk Southern and CSX.
- Shortlines are local or regional railroads that feed the Class I railroads traffic or deliver it for them.
- The gross revenues that shortlines derive from their operations are considerably less than the revenues derived by the Class I's, which by the federal classification are railroads having annual operating revenues of $250,000,000 or more.

The shortline operating advantages include:

- A local and regional focus
- Localized customer service
- Innovative pricing
- Organization flexibility
- Cost efficiencies
- Quick responses to shippers' service requests

In Kansas today there are 17 shortline railroads operating on 2,724 miles of track, nearly one-half of the state's total railroad miles. Most of these shortlines were formed after 1980. In fact, the majority of them were founded in the 1990's. The characteristics most of them share are that the lines comprising the shortline systems are light density, they face severe competitive pressures from the trucking industry and have many rail line segments in need of rehabilitation. There are lines in Kansas that are so light density they did not meet current federal guidelines to receive rehabilitation money. This means that, over time, those lines will be subject to abandonment. Additionally, the higher density lines operated by the Kansas shortlines will need significant upgrades and rehabilitation to meet the needs of shippers in the future. This effort may include not only rail improvements but also new or rebuilt bridges, new or improved crossings, crossing closings and similar projects.

The need for improved or upgraded rail lines stems from at least three sources. First, many of the lines now operated by shortlines suffered over the years from deferred maintenance by the former Class I owners. Second, car weights have increased significantly over the past few years, with bigger car sizes on the horizon. Many of the lines in Kansas simply cannot handle these heavier cars. Third, generally speaking, shortlines cannot afford to fund both normalized maintenance and rehabilitation at the same time.

The following generalized statements can be made regarding the situation now confronting Kansas shortlines:

- Shortlines have to make hard economic choices as to where to spend their scarce capital dollars.

- Prior federal programs designed to assist with the rehabilitation of light density lines have not existed since 1995.

- Kansas does not currently fund any state level programs designed to assist shortline railroads rehabilitate light density lines.

- Many shippers who previously used rail have switched to truck for a variety of reasons, and that traffic will not likely return to rail.

- Technological changes in the rail industry have far outstripped the ability of shortlines to handle traffic moving in this State. For example, car size has inexorably increased and is now going from 263,000 pound cars to 286,000 pound cars. The existing infrastructure (i.e., bridges and rail) is not capable of sustaining that weight.

This is the context within which three separate groups -- the Governor's Grain Transportation and Storage Task Force, the Special Committee on Rail Transportation and Transportation 2000 Study Group -- studied rail transportation needs during last interim. All of these groups concluded that shortline railroads are an important, vital part of the state's transportation system, and made various recommendations for strengthening the state's shortline rail system.

Early last summer, Governor Graves appointed a Grain Transportation and Storage Task Force to discuss short-term and long term solutions to the various grain storage and transportation issues. Lt. Governor Gary Sherrer and Allie Devine, Kansas Secretary of Agriculture, co-chaired the task force. Representatives of the grain industry, the rail industry, producer organizations and the motor carrier industry comprised the task force. It made a number of short-term and long-term recommendations to address the state's grain storage and transportation problems. A number of tax incentives were suggested, including a sales tax exemption for labor and materials to repair, maintain or construct grain storage and railroad infrastructure.

Among the charges given to the Special Committee on Rail Transportation, was the direction to review issues with respect to rail transportation of agricultural products, including shortline railroad access in rural Kansas, and the impact of loss of rail line on highway transportation. At the conclusion of its study, the Special Committee on Rail Transportation stated in its final report:

> "The Committee believes that rail transportation is one part of a multi-faceted transportation system and that it is in the economic interest of the citizens that the rail system of the state is viable. The Committee believes that there is a need to develop a state rail policy, provide the necessary incentives and environment for rail lines, including shortlines, to remain as a vital part of the state's transportation infrastructure."

Toward that end, the Committee recommended that the 1999 Legislature consider various proposals for providing financial assistance to shortlines, including the enactment of three tax incentives. The first of these is a sales tax exemption for labor, materials, and equipment used in the construction, maintenance, repair or rehabilitation of railroad infrastructure, similar to the exemption proposed in HB 2037. The other tax measures recommended by the interim committee were an income tax credit for property tax paid on rail machinery and equipment and income tax incentives for shortlines to construct rapid load or other shipper facilities.

In convening the Transportation 2000 Study Group last June, Governor Graves asked the study group to assess the transportation needs of the state, and he urged members of the study group to look beyond the traditional emphasis on roads and determine the needs of the state's entire transportation infrastructure. Transportation 2000's study was conducted pursuant to a series of 12 Town Hall meetings held in the various geographic regions of the state. In Transportation 2000's Report to the Governor, it was stated:

> "Throughout the Town Hall meetings, the Transportation 2000 Study Group heard about needs in aviation, public transit, rail, highways and local jurisdictions. The Study Group concluded that there is a state interest in maintaining adequate aviation and rail systems as well as highway and public transit."

Later, in support of its recommendation for a state-funded rail program to assist Kansas shortlines with track rehabilitation, the Report concluded:

> "The Study Group recognizes the importance of shortline railroads in the transportation of agricultural and other products and the cost to highway maintenance by failing to support shortline railroads."

Many of the recommendations made by these three interim study groups have been included in the budget presented by Governor Graves to the 1999 Legislature. Of pertinence here is the fact that, among Governor Graves' tax reduction recommendations is a proposal to provide new sales tax exemptions for grain storage and transportation, and HB 2037 embodies that recommendation. HB 2037 would amend K.S.A. 1998 Supp. 79-3606, by adding at the end of that statute two new sales tax exemptions. The first of these, as shown in new subsection (ccc), would exempt all sales of materials and services purchased by any Class II or Class III railroad for the construction, renovation, repair or replacement of railroad track and facilities used directly by such railroad in interstate commerce.

That exemption is substantially the same as the recommendations made by the Governor's Grain Transportation and Storage Task Force and the Special Committee on Rail Transportation, except that:

- Neither of these interim groups limited its recommended exemption to Class II and III railroads.

- The exemption provided in HB 2037 also includes a "pay back" provision which, in essence, provides for recoupment of the sales tax avoided on any track or facility for which tax-exempt purchases were made pursuant to the exemption, if such track or facility is not operational for five years succeeding the allowance of the exemption.

- Neither of these interim groups limited the exemption to track and facilities "used directly in interstate commerce." I see no reason why the exemption should be so limited. I am not intimately familiar with the operations of the other 16 shortlines in Kansas, but there may well be some which have lines that handle only intrastate traffic. Does the Committee believe that maintenance and rehabilitation of these lines should be excluded from the exemption?

- The Special Committee on Rail Transportation included purchases of "equipment" as well as labor and materials in its recommended exemption. I would respectfully request that HB 2037 be amended to include equipment used for the construction, renovation, repair or replacement of railroad track and facilities. In my 1999 maintenance budget there is a $300,000 Jackson tamper scheduled to be purchased. It will be used for the purposes set forth in HB 2037, and I am confident other shortlines acquire similar items of equipment from time to time. It would be very beneficial if these purchases could be made sales tax exempt.

As noted previously, many of the lines now operated by shortlines suffered over the years prior to acquisition by the shortlines from deferred maintenance, and as a general rule, shortlines cannot afford to finance both normalized maintenance and rehabilitation at the same time. The proposed exemption is directed at that situation, providing some relief for smaller railroads in their efforts to maintain and rehabilitate their lines. The fiscal note for this exemption, as shown in the Governor's budget documents, shows a cost of $200,000 for FY 2000 and an annual cost of $300,000 thereafter. Although this is a relatively small cost, the amount of savings to shortlines can be of great benefit, since shortline railroads have significantly lower operating margins than do the Class I railroads.

For example, on an annual maintenance budget which averaged $2,020,716 for each of calendar years 1997 and 1998, CKR and KSW combined paid an average of $120,466 in sales tax in those years. Based upon the 1999 budget, we anticipate paying approximately $188,100 in sales tax in connection with our planned maintenance for both railroads during 1999. For smaller railroads like CKR and KSW, the prospect of saving as much as $120,000 in sales taxes annually for the combined roads, as a result of the proposed exemption, would provide a significant enhancement to our maintenance and rehabilitation budgets. An addition of $120,000 in our combined budgets would permit us to install an additional 4,000 ties, or surface approximately 45 miles of roadbed.

Although I have not visited with management of the other shortlines in Kansas, I would anticipate similarly favorable results for those shortlines, as well. Accordingly, based upon the findings and recommendations of the various interim study groups, and for the reasons noted above, I would respectfully request that the House Committee on Taxation amend House Bill No. 2037 as I have recommended above and that the amended bill be recommended favorable for passage.

Thank you for the opportunity of appearing before the Committee and presenting my views. I would be happy to respond to any questions you might have.