Approved: March 18, 2003
Date

MINUTES OF THE HOUSE TAXATION COMMITTEE.

The meeting was called to order by Vice Chairman Huff at 9:00 a.m. on March 6, 2003 in Room 519-S of the Capitol.

All members were present except:	Chairman John Edmonds Rep. Vaughn Flora Rep. Ed O'Malley Rep. Bonnie Sharp
Committee staff present:	Chris Courtwright, Legislative Research Department April Holman, Legislative Research Department Gordon Self, Office of the Revisor of Statutes Carol Doel, Committee Secretary
Conferees appearing before the committee:	Pat Hubbell, Kansas Railroads Christy Caldwell, Greater Topeka Chamber of Commerce Marlee Carpenter, Kansas Chamber of Commerce and Industry Tom Whitaker, Kansas Motor Carriers Bob Alderson, Mid States Port Authority
Others attending:	See attached sheet

Vice Chairman Huff opened the floor for bill introductions. Hearing none he opened the hearing on **HB 2098**, and asked Chris Courtwright, Legislative Research Department to give an overview of the bill. The bill would repeal five sales tax exemptions. Two of those were already defunct. The three existing exemptions that would be repealed are tangible personal property purchased by a railroad or public utility for consumption or movement directly and immediately into interstate commerce; secondly, all sales of materials of services using repair, servicing, altering, maintaining, manufacturing, re-manufacturing or modification of railroad rolling stock for use in interstate or foreign commerce; finally, all sales of property or services purchased directly by port authority or by contractor.

Following Mr. Courtwright's overview of the bill, Vice-Chairman Huff recognized Pat Hubbell, representing Kansas Railroads, as an opponent of **HB 2098**. They feel that repeal of the exemptions would significantly increase the costs to construct, maintain and operate the rail transportation system required by many Kansas shippers to access the US and world markets and that the costs incurred to produce good s or provide a service must be included in the prices charged to the customer. Significantly increasing the tax burden of the railroad industry and, ultimately, its customers during the present difficult economic times, would impose an additional hardship on that segment of the Kansas business community during a time when they can least afford it. (Attachment 1) Also included in Mr. Hubbell's testimony, was a report on *Railroad Rolling Stock Exemptions In States Close to Kansas* (Attachment 2)

Christy Caldwell, Vice President of Government Relations for the Greater Topeka Chamber of Commerce was next to appear in opposition to **HB 2098**. It is their belief that if this legislation is enacted, it will severely handicap the efforts to convince BSNF (Burlington Northern Santa Fe) officials that Kansas is serious about wanting to keep the repair shops here. (Attachment 3) Ms. Caldwell also submitted with her testimony a press release from the Topeka Capital-Journal (Attachment 4), and a commentary written by Bill Mertens (Attachment 5)

Representing KCCI (Kansas Chamber of Commerce and Industry) was Marlee Carpenter in opposition to **HB 2098**. Ms. Carpenter stated that KCCI opposes the bill because passage of this legislation would increase the costs of transportation services and make Kansas companies absorb the costs or make them non-competitive within the region or nation as a whole. (Attachment 6)

MINUTES OF THE HOUSE TAXATION COMMITTEE at 9:00 a.m. on March 6, 2003- in Room 519-S of the Capitol.

Kansas Motor Carriers was represented by Tom Whitaker in opposition to **HB 2098**. He stated that repeal of this sales tax exemption puts Kansas-based carriers at a competitive disadvantage compared to motor carriers based in surrounding states who have this exemption. Also disadvantaged by repeal of the sales tax exemption would be truck dealers, engine companies, parts and accessory stores, truck stops with service facilities and many other Kansas companies who depend on the purchasing power of the motor carriers industry to stay in business. (Attachment 7)

Bob Alderson, general counsel for Mid-States Port Authority, appeared before the committee to give testimony in opposition to **HB 2098**. In his testimony, Mr. Alderson made the following comments regarding the repeal of the tax exemption:

* Short lines have to make hard economic choices as to where to spend their scarce capital dollars.

* 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 short lines to handle traffic moving in this state.

For the above reasons, the sales tax exemptions afforded Kyle and other short-line railroads play an important part in the economic viability of these rail carriers and, as a consequence, in the stability of the state's transportation system. (Attachment 8) Mr. Alderson also included for committee review, background information on Mid-States Port Authority (Attachment 9)

Vice-Chairman Huff asked if anyone else wished to appear before the committee regarding **HB 2098**. Hearing no one else who wished to address the bill, Vice-Chairman Huff closed the hearing.

With no further business before the committee, meeting was adjourned at 10:13 a.m.

HOUSE TAXATION COMMITTEE

GUEST LIST

DATE March 6, 2003

NAME	REPRESENTING
Christy Caldwell	Topeka Chamber of Comm.
[illegible] Hubbell	KS Railroads
Diane Gruver	Kansas Co-op Council
Bernie Koch	Wichita Area Chamber of Commerce
Tom Whitaker	KS Motor Carriers Association
George Petersen	KTN
Deann Williams	KMCA
Doug Wareham	KGFA / KARA
Kevin Barone	Hein Law Firm
Bill Brady	KS Gov't Consulting
James Johnson	Inter Gen Coalition
Hal Peterjohn	KS Taxpayers Network
Kelsey Finke	Ellsworth H.S.
Laura Homeier	" "
Cheri Mount	" "
Katie Kanak	" "
Dustin Engelken	" "
Daniel Allen II	" "
Gordon Homeier	" "
Marlee Carpenter	Kansas Chamber
Stuart Little	Western Energy

KANSAS RAILROADS

PATRICK R. HUBBELL

800 SW JACKSON
TOPEKA, KS 66612

(785) 235-6237

Tax Committee
Opposition to HB 2098 – Repeal of S/U Tax Exemptions
March 6, 2003

- **What Does HB 2098 Do:** HB 2098 repeals the sales/use tax exemptions for certain railroad and port authority property. The current exemptions subject to the proposed repeal are found in Kan. Stat. Ann. §79-3606 Section 1 (f), (y), and (z).

- **Railroad Economics:** Repeal of the exemptions would significantly increase the costs to construct, maintain and operate the rail transportation system required by many Kansas shippers to access the US and world markets. Like any other viable business operation, the costs incurred to produce a good or provide a service must be included in the prices charged to the customer. Significantly increasing the tax burden of the railroad industry and, ultimately, its customers during the present difficult economic times would impose an additional hardship on that segment of the Kansas business community during a time when they can least afford it.

    - *Track Materials*: The costs required to construct and maintain the Kansas rail transportation system have been and will continue to be borne solely by the owner railroad companies. Increasing the tax burden will directly reduce the amount of capital available for those purposes.

    - *Fuel*: As most of you know from personal experience, the price of fuel has significantly increased over the past few months. In fact, the industry's current fuel cost is 36% greater than its average cost in 2002. It is difficult to estimate how much higher fuel costs can go given the uncertain situations in Iraq and Venezuela. Repeal of the exemptions would artificially increase a major cost or railroad service above that already imposed by extreme market conditions.

    - *Repair Parts:* The railroad industry currently operates a major locomotive facility in Topeka and performs spot repair operations in Kansas City and other Kansas locations. As the industry continues to review its repair work strategy in an effort to achieve greater efficiency and lower costs, increasing the costs to perform repair operations skews the answer to that equation away from Kansas and towards competing locations in other states.

- **Oppose HB 2098**: Based upon the above, I respectfully request that you vote in opposition to HB 2098. Imposing additional costs on a vital economic service during these trying times cannot be the best way to address a budget deficit.

hub@cjnetworks.com

House Taxation
Attachment 1
Date 3-6-03

Railroad Rolling Stock Exemptions
In States Close to Kansas
February 3, 2003

ARKANSAS

Law § 6-52-426 -- Railroad rolling stock manufactured for use in interstate commerce.

(a) The gross receipts or gross proceeds derived from the sale or lease of railroad rolling stock manufactured for use in transporting persons or property in interstate commerce is exempt from the Arkansas Gross Receipts Tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(b)

(1) For the purpose of this section, "railroad rolling stock" means completed railroad locomotives and completed railroad cars designed to haul either passengers or freight.

(2)

(A) "Railroad rolling stock" shall not include repair parts or materials used to repair locomotives or railroad cars, components of railroad cars or locomotives, trailers, or any property not used directly in the transportation of passengers or freight.

(b) "Railroad rolling stock" shall also not include machinery used to repair or maintain railroad cars, locomotives, track, railroad ties or railroad roadway.

(§ 26-52-426 enacted by L. 1994 (2nd Ex.Sess.), Act 25, § 1.)

Law § 26-53-137 -- Exemption for railroad rolling stock manufactured for use in interstate commerce.

Railroad rolling stock manufactured for use in transporting persons or property in interstate commerce are exempt from the taxes levied in this subchapter.
(§ 26-53-137 enacted by L. 1994 (2nd Ex.Sess.) Act 25, § 2.)

COLORADO

Law § 39-26-114 -- Exemptions – disputes – credits or refunds – repeal.

(1)

(a) There shall be exempt from taxation under the provisions of this part 1 the following:

(XXIV) The sale of tangible personal property that is to be affixed or attached as a component part of a locomotive, a freight car, railroad work equipment, or other railroad rolling stock. Any taxpayer benefiting from the tax exemption offered by this subparagraph (XXIV) shall, within one hundred twenty days of the end of such taxpayer's fiscal year, give to the legislative audit committee a report stating the number of new jobs created during the fiscal year, the number of jobs retained during the fiscal year, and salary level of such new and retained jobs.

House Taxation
Attachment 2
Date 3-6-03

(XXV) All sales of locomotives, freight cars, railroad work equipment, and other railroad rolling stock used or purchased for use in interstate commerce by a railroad company. Any taxpayer benefiting from the tax exemption offered by this subparagraph (XXV) shall, within one hundred twenty days of the end of such taxpayer's fiscal year, give to the legislative audit committee a report stating the number of new jobs created during the fiscal year, the number of jobs retained during the fiscal year, and salary levels of such new and retained jobs.

IOWA

Law § 422.45 -- Exemptions.

There are hereby specifically exempted from the provisions of this division and from the computation of the amount of tax imposed by it (sales tax), the following:

10. The gross receipts from sales of tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

Law § 423.4 -- Exemptions.

The use in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this chapter (use tax):

6. Tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

Reg. § 701--17.13. Railroad rolling stock.

Railroad rolling stock is that portion of railroad property which is incapable of being affixed or annexed on any one place but is wholly intended for movement on rails to transport persons or property whether for hire or not for hire and includes materials and parts used therefor. Locomotives, railroad cars, and materials and parts used therefor shall be exempt from tax. This exemption includes maintenance-of-way equipment which is used to transport persons or property. Also, fuel and lubricants used in railroad rolling stock are materials used in railroad rolling stock and their sales are exempt from tax. Enumerated services are not railroad rolling stock and are not exempt from tax.

This rule is intended to implement Iowa Code section 422.45(10).

MISSOURI

Law § 144.030 -- Exemptions from state and local sales and use taxes

2. There are also specifically exempted from the provisions of the local sales tax law as defined in section 32.085,RSMo, section 238.235,RSMo, and sections 144.010 to 144.525 and 144.600 to 144.745 and from the computation of the tax levied, assessed or payable pursuant to the local sales tax law as defined in section 32.085,RSMo, section 238.235,RSMo, and sections 144.010 to 144.525 and 144.600 to 144.745:

(3) Materials, replacement parts and equipment purchased for use directly upon, and for the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common carriers of persons or property;

(11) Railroad rolling stock for use in transporting persons or property in interstate commerce and motor vehicles licensed for a gross weight of twenty-four thousand pounds or more or trailers used by common carriers, as defined in section 390.020, RSMo, solely in the transportation of persons or property in interstate commerce;

Reg. § 10-3.356. Railroad rolling stock.

(1) Railroad rolling stock is exempt provided that it is used in transporting persons or property in interstate commerce. Railroad rolling stock for use in intrastate commerce is not exempt.
(2)
Example 1: A person selling a manufacturer boxcars for the purpose of transporting properties to its warehousing facility outside Missouri, would not be subject to the sales tax on the receipts from these sales.
(3)
Example 2: A person selling a switch engine to be used to move railroad cars around the yard, and thus is used solely in the state, is subject to the sales tax on the receipts from the sale.
(Revised eff. 1-1-81.)

NEBRASKA

Law § 77-2702.13 -- Retail sale or sale at retail, defined.

2) Retail sale or sale at retail shall not mean:

(g) The sale of railroad rolling stock whether purchased by a railroad or by any other person;

Law § 77-2704.27 -- Railroad rolling stock – exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of railroad rolling stock whether owned by a railroad or by any other person.

(§ 77-2704.27 enacted by L. 1980, LB 795; amended by L. 1985, LB 715; L. 1992, LB 871, § 51.)

Reg. § 1-068. Railroads.

.01 The sale of rolling stock to any railroad or any other person, whether a common or contract carrier or otherwise, is exempt. In addition, the sale of repair parts or replacement materials for use on such rolling stock is not taxable.
.02 See Reg-1-015, Common and Contract Carriers (Multistate Operations)-Tax Deferral for the taxation of items that may be used in another state.
.03 Sales of other types of property to and by railroads are taxable in the same manner as are sales to and by other firms, persons, or corporations.
.04 Examples of such taxable purchases by railroads for use in this state include but are not limited to the following:

- **A** Water, sewer, and telephone service at depots;
- **B** Ties, rails, rock, and the like for track maintenance;
- **C** Office furniture and supplies; and
- **D** Motor vehicles not utilized as common carriers.

.05 Sales of special fuel, as defined in Chapter 66, article 6, used to provide motive power for railroad rolling stock, are exempt from the sales and use tax.

(Reg. 1-068 adopted eff. 1-24-93 (Section 77-2706(6), R.R.S. 1943, and sections 77-2702.13, 77-2704.05, 77-2704.11, 77-2704.27, and 77-2704.30, R.S.Supp., 1992.).)

OKLAHOMA

Law § 1404 -- Exemptions.

The provisions of Section 1401 et seq. of this title shall not apply:

6. In respect to the use of any article of tangible personal property used or to be used by commercial airlines or railroads;

Reg. § 710:65-21-20. Use tax exemptions.

The following are specifically exempt from use tax: [See: 68 O.S. § 1404]

(5) Tangible personal property used in or by commercial airlines and railroads.

Reg. § 710:65-19-291. Commercial railroads and railroad spikes.

(a) Vendors who sell within Oklahoma, equipment, supplies or other tangible personal property to railroads are required to collect, report and remit sales tax on their gross receipts from such sales unless such sales are specifically exempt.

(b) Tangible personal property purchased by commercial railroads outside Oklahoma and brought into Oklahoma is specifically exempt from use tax.

(c) Railroad spikes, if manufactured in Oklahoma, and sold in this State for use on railroad tracks, turnouts, switches and sidings, are exempt from sales tax regardless of to whom the spikes are sold. Vendors should document that the purchaser will use the spikes for construction or repair.

(Revised at 11 Ok Reg. 3521, eff. 6-26-94.)

TEXAS

Law § 151.331 -- Rolling stock; train fuel and supplies.

(a) Rolling stock, locomotives, and fuel and supplies essential to the operation of locomotives and trains are exempted from the taxes imposed by this chapter (sales and use tax).
(b) Electricity, natural gas, and other fuels used or consumed predominately in the repair, maintenance, or restoration of rolling stock are exempt from the taxes imposed by this chapter.

(§ 151.331 enacted by L. 1981, c. 389, § 1; amended by L. 1995, c. 1025, § 1.)

*

L. 1995, c. 1025, §2(b), further states: The change in law made by this Act [c. 1025] does not affect tax liability accruing before the effective date [10-1-95] of this Act. That liability continues in effect as if this

Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

GREATER TOPEKA CHAMBER

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Testimony on HB 2098
House Taxation Committee
February 6, 2003
By Christy Caldwell
Greater Topeka Chamber of Commerce

Mr. Chairman and members of the Committee, I am Christy Caldwell, Vice President Government Relations for the Greater Topeka Chamber of Commerce. I am here to oppose HB 2098, removal of the sales tax exemption for railroads and interstate motor carriers.

As you may be aware, Topeka is the home of the Burlington Northern Santa Fe Shops. They have been here since 1863. The 300 employees at the BNSF shops repair and maintain locomotives. The average wage is $19-$20/hour with $30+ per hour in benefits. Topeka currently is involved in an intense competition with Burlington, Iowa to keep these shops; Burlington has a similar locomotive repair facility in their community. The Burlington shops have a workforce of 120, having recently laid off 280 employees. Iowa has the same sales tax exemption for railroad equipment repair as we are discussing today.

Topeka, with the assistance of the Kansas Dept. of Commerce & Housing, has developed a package of local and state incentives to assist BNSF in keeping the shops here, and hopefully growing their employment in Topeka. Removal of the railroad sales tax exemption was not figured into that equation. If this legislation is enacted, we believe it will severely handicap our efforts to convince BNSF officials that Kansas is serious about wanting to keep the repair shops here. Mr. Chairman and Committee, Topeka, like your hometown, wants to retain and help grow businesses. The BNSF is important to our community; the jobs they provide employ Topeka and Kansas citizens. All of whom pay various taxes to the state and local governments for public services. We respectfully ask that you help in our efforts to keep the BNSF shops. We ask that you not approve HB 2098 and by doing so, not increase the cost of doing business in Kansas.

House Taxation
Attachment 3
Date 3-6-03

Delores:\Christy '.

Sebelius offers support for BNSF assistance

The Capital-Journal

Gov.-elect Kathleen Sebelius said despite the state's budget woes, she would support offering state assistance to Burlington Northern Santa Fe.

Topeka's shops, where 330 employees maintain and repair the railroad's fleet of locomotives, are replicated by shops in Burlington, Iowa, where 380 people are employed. BNSF is conducting a study that could lead to the consolidation of the two shops in either city.

During a break from a four-hour meeting with company, city and state officials at the Capital Plaza Hotel, 1717 S.W. Topeka Blvd., Sebelius said she would support providing financial assistance to keep the high-paying jobs in Topeka. Shop employees earn about $19 an hour.

"I think we're eager to make a pitch to Burlington Northern that this is the location they should be in for the 21st Century, and I thought the agenda and the comments were very well received," Sebelius said.

Audio
Doug Kinsinger, president and CEO of the Greater Topeka Chamber of Commerce
- Status of the consolidation study
- Significant impact of the shops
- Learning how to work together

Sen. Anthony Hensley, D-Topeka

In the past 15 months, BNSF has cut, moved or furloughed 250 employees from its Topeka shops, representing about $9.8 million in payroll.

Sebelius said the city's diverse and educated

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House Taxation
Attachment 4
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Strong representation in the Legislature

Working with a tough budget

Gov.-elect Kathleen Sebelius

Eager to make a pitch

Hazardous material is always hazardous

Keeping good jobs in the community

Putting together Goodyear incentives

Tim Cowden, Kansas City Area Development Council

Benefits of the metropolitan area

What the area has to offer

Web In-Depth

• Burlington Northern Santa Fe

Video

QuickTime: [5.3 MB]
RealMedia: [T1,cable] • [56k]
Windows Media: [T1,cable] • [56k]

Virtual-reality images

Topeka's BNSF shops - View 1.

• Other VR images

Related link

• Burlington Northern Santa Fe

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workforce, along with its larger population, will be attractive to BNSF officials. She said the railroad industry also has been an important part of Topeka's history.

"The railroad culture is such an important part of Kansas and such an important part of Topeka that that really shouldn't be overlooked," she said. "This isn't just one more project, it isn't just one more set of jobs. It really is so intimately tied to what made Topeka a city, what brought a diverse population to this town, and I think the legislators will give it importance based on that issue.

Sebelius said she also has met with BNSF chief executive officer Matt Rose.

Senate Minority Leader Anthony Hensley, D-Topeka, said legislators shouldn't let the current budget deficit ‹ recently projected at more than $300 million ‹ get in the way of securing good jobs in Kansas.

"It was hard last year," he said. "There's a great challenge here. It's never easy, when you go to a legislative session, to try to propose incentives like we had with Goodyear. But I feel optimistic that if we stay together and work together and reach out and talk to legislators from outside our community, I feel optimistic that we'll be able to accomplish something that in the long-term will be very beneficial to the Topeka community."

No results from BNSF's study will be released to local officials today, Forsberg said. The study, however, may be complete by the end of the year, with its results available to Topeka and Burlington officials by early 2003.

On Thursday, city and state officials toured BNSF's Topeka shops

Cons...

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Breaking News

FROM THE CAPITAL-JOURNAL

Updated @ 10:32 a.m.

» **Head-on collision kills Topek**

» **Police identify victim of fatal shooting**

» **MORE BREAKING NEWS**

4-2

to evaluate the facility and discuss possible incentive packages that could help lure the shop consolidation to the capital city. That tour came just more than a week after BNSF officials toured the Burlington shops, where they were courted by Iowa Gov. Tom Vilsack and Rep. Jim Leach, R-Iowa.

Last Modified: 2:35 p.m. - 12/11/2002

Print E-mail Reply

4-3

Jobs on the line

Publication Date: Saturday, November 23, 2002
Category: Commentary **By:** Bill Mertens

The race to protect 380 local jobs at the Burlington Nor-thern Santa Fe shops could produce a new community attitude about incentives.

It surely will provide an early but significant test of Gov. Tom Vilsack's pledge to make economic development a priority as he readies for a second term in office.

Few threats have galvanized Burlington-West Burlington residents as quickly as the potential loss of the railroad shops, where workers refurbish locomotives.

This is a matter of local pride as well as a critical work force issue.

The merger last decade between the nation's two largest railroads left the new company with dual operations in Kansas and Iowa. (Although known as the West Burlington shops, the local plant lies within Burlington's boundaries.)

Both plants operate at 55 percent capacity. BNSF is studying whether to consolidate operations in one location. A recommendation could be made by early December.

The railroad has promised to listen to both communities before making a decision. BNSF will be more interested in incentives than emotions. Topeka has been working on a response longer than Burlington, but the local activity has been furious and consequential.

Burlington has lost jobs and entire plants over recent years. The losses have fed a pessimism that too often grows into a self-fulfilling prophecy.

But residents have rallied to the BNSF cause. They have exhorted economic development officials and city leaders to keep the jobs here, seemingly at all costs.

Chances are, in fact, that it will cost local taxpayers if BNSF stays. The railroad is considering consolidation to save money, but expects to hear from Topeka and Burlington about incentives.

House Taxation
Attachment 5
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Attitudes have evolved locally about incentives. Blue Bird's recent decision to close its bus factory in Mount Pleasant in favor of Georgia opened eyes all the way to the top levels of state government, in fact.

Iowa offered a $3 million incentive package. Blue Bird got $22.6 million from Georgia.

Vilsack was embarrassed by accusations that he didn't do enough to keep Blue Bird in Iowa and the community he calls home. He's been leading the effort to convince BNSF that Burlington is the better place to rebuild locomotives.

In the wake of his re-election, the governor has pledged to do more to preserve and create jobs in Iowa. The BNSF consolidation here would do both. Jobs would be added at one plant, although probably not as many as would be eliminated at the other plant.

Burlington can make a strong case because the employees here have done quality work over the years. The plant also lies on a main railroad line, unlike the shops in Topeka.

Yet the recruitment exercise will force local and state officials to rethink existing strategies.

Burlington's direct incentives for new jobs are linked mainly to the business park. Those incentives have helped attract employers, most notably a pair of Italian firms involved in outsourced manufacturing.

The community may have to be more generous and more creative to keep BNSF. Taxpayers, who in the past have groused about so-called giveaways, now are urging city leaders to make the railroad's decision an easy one in favor of Burlington.

This now very public challenge may have come sooner than Vilsack hoped for. Although he has promised to make economic development a priority, he has not articulated a plan of attack. Major changes at the Iowa Department of Economic Development should be a key element.

Iowans are hungry for success stories. They want to see the governor on the front line touting the strength of Iowa's work force to new employers but also reminding existing businesses that they couldn't do better anywhere else.

BNSF merits just such a sales pitch. But words alone probably won't suffice.

the Kansas Chamber of Commerce and Industry
The Unified Voice of Business

LEGISLATIVE TESTIMONY

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HB 2098

February 6, 2003

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony before the House Taxation Committee
By Marlee Carpenter, Director of Taxation and Small Business

Chairman Edmonds and members of the Committee:

I am Marlee Carpenter with the Kansas Chamber of Commerce and Industry testifying in opposition to HB 2098. We believe that in order to keep Kansas competitive, the cost of doing business in the state cannot be increased. KCCI opposes the blanket repeal of sales tax exemptions. Each exemption was justified at the time of enactment and voted on by legislators like you. Sales tax exemptions should be looked at as a whole, within the context of the entire tax structure. Sales tax exemptions make Kansas competitive with other states and/or avoid the double taxation of goods and services.

It is vitally important to business to move their goods from one location to another. This would be a direct increase in the cost for the movement of goods. HB 2098 affects all commercial modes of transportation, both rail and inter-state for-hire trucking. The 6%-7% increase in the cost, in some cases, cannot be passed on to the consumer but is absorbed by businesses that compete within the region or nation. All of the surrounding states have this exemption and Kansas would be at a competitive disadvantage. The removal of the tax exemptions in HB 2098 could result in lower profit margins, fewer employees and ultimately less money for the state.

KCCI opposes the repeal of the sales tax exemption in HB 2098. Passage of this bill increase the cost of transportation services and make Kansas companies absorb the costs or make them non-competitive within the region or nation as a whole. KCCI believes that in order to keep Kansas competitive, the cost of doing business in the state cannot be increased. Thank you for your time and I will be happy to answer any questions.

About the Kansas Chamber of Commerce and Industry
The Kansas Chamber of Commerce and Industry (KCCI) is the leading broad-based business organization in Kansas. KCCI is dedicated to the promotion of economic growth and job creation and to the protection and support of the private competitive enterprise system.

KCCI is comprised of nearly 2,000 businesses, which includes 200 local and regional chambers of commerce and trade organizations that represent more than 161,000 business men and women. The organization represents both large and small employers in Kansas. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

House Taxation
Attachment 6
Date 3-6-03

KANSAS MOTOR CARRIERS ASSOCIATION

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Telephone: (785) 267-1641 ■ FAX: (785) 266-6551 ■ www.kmca.org

Trucking Solutions Since 1936

Legislative Testimony
Presented by the Kansas Motor Carriers Association
Before the House Taxation Committee
Representative John Edmonds, Chairman
Thursday, March 6, 2003

In Opposition to House Bill No. 2098

MR. CHAIRMAN AND MEMBERS OF THE HOUSE TAXATION COMMITTEE:

I am Tom Whitaker, executive director of the Kansas Motor Carriers Association. I appear here this morning representing our 1,250 member firms in opposition to House Bill No. 2098. Specifically, lines 19 through 21 on page 4 of the bill.

The sales tax exemption reads, "(f) tangible personal property purchased by a railroad or public utility for consumption or movement directly and immediately in interstate commerce."

This exemption applies to railroads and to "public motor carriers of property or passengers" who are declared to be common carriers within the meaning of the public utility laws of this state. In other words, this exemption applies to the rolling stock of both railroads and interstate "for-hire" public common carriers. The earliest we can find this exemption in the Kansas Statutes is in the Session Laws of 1947.

The surrounding states of Missouri, Iowa, Nebraska and Colorado exempt such interstate equipment sales. Oklahoma has a $10 cap on vehicles with a combined laden weight of 54,000 lbs. or more.

Fuel taxes, registration fees and property taxes are all apportioned based on miles traveled in Kansas and all other jurisdictions. This creates a level playing field in the interstate motor carrier industry. Repeal of this sales tax exemption puts Kansas-based carriers at a competitive disadvantage compared to motor carriers based in surrounding states who have this exemption. Unlike the railroads, motor carriers do pay sales tax on labor services in the repairing, servicing, altering, maintaining or modifying of motor carrier rolling stock.

Also disadvantaged by repeal of the sales tax exemption would be: truck dealers, engine companies, parts and accessory stores, truck stops with service facilities and many other Kansas companies who depend on the purchasing power of our industry to stay in business. Repeal of KSA 79-3606(f) would severely damage these businesses and move those purchases subject to the exemption to surrounding states.

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In 2000, according to the US Department of Labor, the Kansas trucking industry provided 91,915 jobs, or one out of 14 of all jobs in the state. The total trucking industry wages paid in Kansas exceeded $2.8 billion, with an average trucking salary of $31,343. These jobs represent substantial tax contributions to Kansas in communities large and small. In many instances, a trucking company may be the major employer of a Kansas community. We need to encourage the retention and expansion of business in Kansas.

The Kansas Motor Carriers Association strongly urges the committee to retain the sales tax exemption in 79-3606(f). We respectfully request that the members of this committee vote no on HB 2098.

Thank you for the opportunity to appear before you. I would be pleased to stand for any questions you may have.

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TESTIMONY OF BOB ALDERSON, GENERAL COUNSEL OF MID-STATES PORT AUTHORITY, BEFORE THE HOUSE COMMITTEE ON TAXATION
March 6, 2003

My name is Bob Alderson, and I am appearing today in my capacity as General Counsel of Mid-States Port Authority (MSPA) in opposition to House Bill No. 2098. Initially, I should note that I have attached to this testimony a Memorandum providing background information on MSPA's formation, its purposes and objectives and its organization and operation, including the financing of its operations. Should the Committee need further information regarding MSPA, I trust you will not hesitate to contact me.

HB 2098 proposes to delete several subsections of K.S.A. 2002 Supp. 79-3606, the statute which establishes exemptions from the imposition of the state sales tax. My testimony will address to some extent all of the exemptions marked for deletion in this bill, but I will focus primarily on subsection (z), which currently exempts "all sales of tangible personal property and services purchased directly by a port authority or by a contractor" for a port authority, as provided by K.S.A. 12-3418.

The statute referenced in subsection (z) (K.S.A. 12-3418) is a section of the act which authorizes the formation of port authorities. It exempts port authorities formed under this act from the imposition of various taxes, including the sales tax. With respect to the sales tax, the last paragraph of 12-3418 states as follows:

> "All sales of: (1) Tangible personal property and services purchased directly by any port authority for use exclusively by such authority; (2) tangible personal property or services purchased by a port authority for constructing, maintaining, equipping, reconstructing, repairing, enlarging, remodeling or furnishing port facilities other than an industrial-use facility; and (3) tangible personal property or services purchased with funds of a political subdivision by a contractor for constructing, reconstructing, repairing, enlarging or remodeling a port or industrial-use facility for any port authority shall be exempt from the Kansas retailers' sales tax imposed by K.S.A. 79-3603, and amendments thereto."

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Thus, it can be seen that 79-3606(z) is a somewhat summary restatement of the above-quoted provisions of 12-3418. The combined effect of these statutes clearly evidences a legislative intent that port authorities are to be exempt from the imposition of the sales tax. Underlying this intent is the fact that a port authority is a "public body corporate and politic" (K.S.A. 12-3402), and its activities and operations "constitute the performance of essential governmental functions" (K.S.A. 12-3418). The powers statutorily granted to port authorities are declared to be "in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions." (K.S.A. 12-3418) I respectfully submit that these factors more than justify exemption of property and services purchased by port authorities from the imposition of the sales tax.

How has MSPA satisfied the statutory parameters for port authorities referenced above? MSPA was formed in 1984 by the joint cooperative agreement of 14 counties in northwest and north central Kansas. It was formed in response to the bankruptcy of the Chicago, Rock Island and Pacific Railroad Company (Rock Island), and it was created to serve the public purposes of restoring rail service to the affected counties and insuring the continued availability of rail service in the future. To that end, MSPA acquired 465 miles of Rock Island's right-of-way in Kansas, Colorado and Nebraska. The operating right-of-way in Nebraska was leased to Union Pacific Railroad Company, and the operating right-of-way in Kansas and Colorado was leased to Kyle Railroad Company (Kyle), a Kansas corporation.

From that time forward, MSPA has provided financial assistance to Kyle within the constraints of MSPA's financial resources and to the extent that such assistance is consistent with MSPA's public purposes. Among the ways MSPA has assisted Kyle financially is through the purchase of goods and services for which no sales tax has been imposed. The benefit of purchasing goods and services without the imposition of sales tax can be rather extensive. For example, in its formative years, when there was need to do substantial rehabilitation on the old Rock Island line, MSPA purchased over $1 millon in rails, ties, ballast and other track materials. That scenario has been repeated to a somewhat lesser extent in subsequent years. Also, in 1999, MSPA spent over $400,000 to expand Kyle's locomotive repair shop and to install a drop pit in the expanded facility. In 2001, MSPA purchased six, used locomotives at a cost of $190,000. The expanded repair shop and the locomotives have been leased to Kyle on a rent deferred basis. The savings realized as a result of the sales tax exemption on these and other projects of similar magnitude has enabled MSPA to be of greater assistance to Kyle within the constraints of MSPA's limited financial resources.

Kyle is a Class III (short-line) railroad. 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

As a short-line railroad, Kyle has a comparatively low operating margin. Unusual events, such as the drought experienced in northwest and north central Kansas in 2002, which caused Kyle to have the fewest car loadings since 1990, can adversely impact Kyle's operating margin to a substantial degree. Thus, the financial assistance afforded Kyle by MSPA through the years has contributed to Kyle remaining a financially viable rail carrier. The sales tax exemption enjoyed by MSPA as a port authority has enabled MSPA to maximize available resources in affording such assistance to Kyle. Although Kyle, as a rail carrier, in general, and as a short-line railroad, in particular, also has additional sales tax exemptions addressed by HB 2098, those exemptions are not as broad as the exemption afforded port authorities.

Not only is it important to MSPA that Kyle remain financially healthy, it is equally important, in the larger transportation scheme, to the state as a whole. As recently as 1998, three, independent governmental study groups reached similar conclusions as to the importance of railroads, in general, and short-line railroads, in particular, to the state's transportation system. One such group was the Grain Transportation and Storage Task Force convened by Governor Graves to discuss short-term and long-term solutions to the various grain storage and transportation issues. The task force made numerous recommendations to address the state's grain storage and transportation problems. A number of tax incentives were included in these recommendations, including a sales tax exemption for labor and materials to repair, maintain or construct grain storage and railroad infrastructure.

The Special Committee on Rail Transportation also met during that summer and fall, to review issues with respect to rail transportation of agricultural products, including short-line railroad access in rural Kansas, and the impact of the loss of rail lines on highway transportation. That Committee 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 short-lines, to remain as a vital part of the state's transportation infrastructure."

Toward that end, the Special Committee recommended that the legislature consider various proposals for providing financial assistance to short-lines, including the enactment of three tax incentives. One of those incentives was a sales tax exemption for labor, materials and equipment used in the construction, maintenance, repair or rehabilitation of railroad infrastructure. Subsection (eee) of 79-3606 (slated for deletion by HB 2098) was a result of that recommendation.

Also meeting during that summer was the Transportation 2000 Study Group convened by Governor Graves to assess the transportation needs of the state. That group conducted its study pursuant to a series of 12 Town Hall meetings held in the various geographic regions of the state. In its 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, the report of that Study Group concluded:

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

Collectively, these bodies recognized the importance of short-line railroads to the state, and they further recognized the importance of providing tax incentives, including sales tax exemptions, to short-line railroads in order to provide financial assistance to these carriers.

The *Kansas Rail Plan 2001-2002*, the most recent rail update prepared by the Kansas Department of Transportation, reports that the state's line-haul railroad mileage in October 2002 totalled 4,917 miles. Of that mileage, short-line railroads operate 2,135 rail miles, or 44% of the rail lines in the state. Kyle operates 479 miles of track in Kansas and 87 miles of track in Colorado. These figures reflect that, while Kyle is but one of the 17 short-line railroads operating in Kansas, Kyle operates more than 22% of the track mileage operated by short-lines. This translates into nearly 10% of the total rail mileage in Kansas. Thus, these figures highlight the importance of Kyle to the state's transportation system.

As to the importance of the sales tax exemptions afforded Kyle and the other short-line railroads operating in Kansas, I would ask the Committee to consider the following, generalized statement regarding the situation now confronting Kansas short-lines:

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

For these reasons, the sales tax exemptions afforded Kyle and other short-line railroads play an important part in the economic viability of these rail carriers and, as a consequence, in the stability of the state's transportation system. Accordingly, the deletion of the sales tax exemptions for railroads, short-line railroads and port authorities proposed by HB 2098 would have an obvious, adverse impact on the state's transportation system. I would respectfully urge the Committee to report HB 2098 adversely.

MSPA is not the only port authority which has been formed to own railroad right-of-way that is leased to short-line railroads, and I trust that representatives of these other port authorities will provide similar information and recommendations to this Committee.

Thank you for your attention to my remarks. I will be happy to answer any questions members of the Committee may have.

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KANSAS AND MISSOURI

MEMORANDUM

TO: House Committee on Taxation

FROM: W. Robert Alderson, General Counsel, Mid-States Port Authority

RE: Background Information on Mid-States Port Authority

DATE: March 6, 2003

The purpose of this Memorandum is to acquaint the members of the House Committee on Taxation with the Mid-States Port Authority (MSPA), by providing a brief summary of MSPA's formation, its purposes and objectives and its organization and operation, including the financing thereof.

Formation

The MSPA is a public body corporate and politic, organized and existing under the authority of K.S.A. 12-3401 et seq. In a series of two abbreviated opinions and one formal opinion, the Kansas Supreme Court approved the validity of these statutes in State, ex rel. Tomasic v. Kansas City, Kansas Port Authority, 229 Kan. 538, 626 P.2d 209 (1981); 230 Kan. 19, 630 P.2d 692 (1981); 230 Kan. 404, 636 P.2d 760 (1981). Further challenges to these statutes and the operation of the Kansas City, Kansas, Wyandotte County Joint Port Authority were rejected in State, ex rel. Tomasic v. City of Kansas City, 237 Kan. 164, 696 P.2d 382 (1985); 237 Kan. 572, 701 P.2d 1314 (1985).

The MSPA was created by the Joint Cooperative Agreement entered into on May 29, 1980, by the following, 14 Kansas counties: Clay, Cloud, Decatur, Jewell, Norton, Phillips, Republic, Riley, Sheridan, Sherman, Smith, Thomas, Wabaunsee and Washington. The formation of MSPA was approved by the Attorney General of Kansas in Attorney General Opinion 80-95, issued April 23, 1980. Subsequent to MSPA's formation, Riley, Wabaunsee and Clay Counties withdrew from MSPA, relinquishing any right, title or interest they may have had in any MSPA property.

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Purposes and Objectives

The exercise of MSPA's statutorily-conferred powers "will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions." K.S.A. 12-3418. Moreover, MSPA's activities and operations "constitute the performance of essential governmental functions." K.S.A. 12-3418.

The MSPA was created by counties in northwest and north central Kansas adversely affected by the loss of rail service in these counties, by reason of the bankruptcy and proposed liquidation of the Chicago, Rock Island and Pacific Railroad Company (Rock Island). The board of county commissioners of each of the counties affected determined there was a need for a joint port authority to function in the counties and region affected, in order to restore rail service and to insure the continued availability of rail service in the future. Therefore, consistent with the statutory requirement that the powers exercised by a port authority be for the benefit of the people of the state, the MSPA was created to serve the public purpose of restoring rail service to the affected counties.

In 1983, the Kansas Legislature agreed to guarantee a portion of a loan of $18 million from the Federal Railroad Administration (FRA) to the MSPA, through the establishment of the Railroad Rehabilitation Loan Guarantee Fund (K.S.A. 75-5029) and by the authorization for payments from that fund to the FRA of not to exceed fifty percent (50%) of any loss resulting from default by the MSPA on any loan it obtained from FRA.

The rail line was acquired from the Rock Island's Trustee in bankruptcy on May 15, 1984, pursuant to an Amended Contract for Sale of Railroad Line (Limon-Hallam) dated April 11, 1984. Upon closing of the contract, the Trustee in bankruptcy executed two Quitclaim Deeds which were identical, except for the descriptions of the property being conveyed. One of these deeds conveyed the Trustee's interest (with certain exceptions) in and to the rail line in Clay, County, Kansas and the other conveyed the Trustee's interest (with certain exceptions) in and to the remainder of the line.

By virtue of these transactions, MSPA acquired a portion of Rock Island's right-of-way and track which runs from Limon, Colorado in the West to Belleville, Kansas, with lines running from that point to Clay Center, Kansas and to Hallam, Nebraska, being the eastern termination of MSPA's rail line. A map of the rail line owned by MSPA is included herewith as Appendix I. Also acquired were various depots, switching and communication equipment, tools and other items useful to the provision of rail service.

The property acquired included approximately 465 miles of mainline track and right-of-way, approximately 40 miles of spur and siding track, 288 acres of real estate, depots, repair shops and bridges.

Organization and Operation

MSPA is governed by a Board of Directors comprised of one individual appointed by the board of county commissioners of each member county and eight individuals elected "at large" collectively by the boards of county commissioners of the member counties. A list of the current members of the Board of Directors and their residence addresses is being submitted as Appendix II.

Pursuant to its duly adopted Rules and Regulations, the MSPA has created an Executive Committee, consisting of MSPA's Chairman, Vice Chairman, Secretary and Treasurer. Creation of the Executive Committee pursuant to rules and regulations is authorized by K.S.A. 12-3403(c). The rules and regulations authorize the Executive Committee to transact routine business and also to act upon such other matters as may be delegated to it by the Board of Directors.

The MSPA does not have any employees, but the Rules and Regulations provide for the Board's appointment of two special officers, a Deputy Treasurer and a General Counsel. Compensation for the services of these special officers is fixed by the Board of Directors.

The rail line acquired by MSPA from Rock Island's Trustee in bankruptcy is operated pursuant to two separate leases with rail carriers. It has a lease with Kyle Railroad Company (Kyle) to provide rail service along the MSPA's track in Kansas and Colorado. The other operating lease is with Union Pacific Railroad Company (Union Pacific), which provides rail service on the segment of the line from Fairbury to Hallam, Nebraska. The facilities leased to Kyle actually include the segment of the line from the Kansas-Nebraska State line to Fairbury, Nebraska. However, there has been no traffic over this segment of the line since it was acquired by MSPA.

Under these lease agreements, Kyle and Union Pacific are responsible for providing freight service along their respective leased rail lines, and the interstate operating authority necessary to provide such service has been obtained by these carriers. MSPA does not have any authority to operate as a rail carrier itself, although MSPA is considered a railroad under various Kansas statutes, because of its ownership of railroad right-of-way.

Pursuant to both of these lease agreements, MSPA has retained control over the right-of-way and other property along the rail line that is not directly required for railroad operations, and a substantial portion of this "ancillary property" has been leased by MSPA to various lessees.

1989 Refinancing

Pursuant to Public Law 100-457 (the Federal Government's Deficit Reduction Program), the FRA was instructed to dispose of $99 million of its assets. Among the assets FRA identified for disposal were the Notes issued by MSPA and guaranteed by the State of Kansas. As part of the effort to sell its assets, the FRA agreed to sell the MSPA's Notes back to MSPA for $11 million. At that time, the face amount of the Notes plus accrued interest had a value of approximately $20 million.

During the first five years of its operations, MSPA was able to accumulate nearly $5,000,000.00 in cash. Thus, in 1989, after providing for reserves and closing costs, MSPA was able to apply a sizable portion of the cash on hand to the repurchase of its Notes from FRA, thereby reducing its need for refinancing to less than $7 million.

However, because MSPA is a unique entity, as far as public bodies are concerned, ordinary bank financing of the balance of the monies necessary to repurchase the Notes from FRA was not available without the continued guarantee of the State of Kansas. Accordingly, the 1989 Kansas

Legislature made the statutory changes necessary to perpetuate the State guarantee of MSPA's indebtedness. Section 1 of that act (now codified as K.S.A. 75-5031) authorized the Secretary of Transportation to guarantee the repayment of any amounts which may be in default on any loan obtained by MSPA for the refinancing of its obligations to FRA. Attorney General Opinion No. 89-45 clarified the Secretary of Transportation's authority under that law to guarantee the MSPA's obligation upon refinancing.

With the enactment of this legislation, the requisite financing was then provided by BANK IV Kansas, N.A. The financing arrangements with BANK IV included the bank's loan of $6,575,000 to MSPA for the purpose of repurchasing its Notes from FRA. The loan was made pursuant to a Term Loan Agreement among MSPA, BANK IV and the Secretary of Transportation and various other "loan documents," including a Mortgage, Security Agreement, and Assignment of Leases between MSPA and BANK IV.

State Guarantee

The 1989 refinancing perpetuated the guarantee of MSPA's indebtedness by the State of Kansas, acting by and through the Kansas Secretary of Transportation. Under the Term Loan Agreement with BANK IV, the Secretary of Transportation, as Guarantor, was required to "include an appropriate amount in [KDOT's] budget request made each year to the Kansas Legislature to fund its remaining obligations" under the guarantee. The failure of the Kansas Legislature to make the required appropriation by May 15 in any year was deemed to be an "event of default." It is to be noted, however, that the Kansas Legislature has never failed to make the required appropriation to fund the State's guarantee, either as to the original financing with the FRA, the 1989 refinancing with BANK IV or the Revenue Refunding Bond Issue, as discussed subsequently.

Revenue Refunding Bonds

In 1993, MSPA's Board of Directors began exploring the possibility of re-financing its obligation to BANK IV. A re-financing proposal was submitted to BANK IV, and at the suggestion of then Secretary of Transportation Mike Johnston, the Board of Directors also considered the issuance of bonds pursuant to K.S.A. 12-3420, which authorizes a port authority to issue revenue bonds for the purpose of refunding any bonds or "other obligations" of the port authority. On the basis of the comparative funding analysis prepared by KDOT personnel and a comparison of the respective terms, provisions and conditions attending the BANK IV's re-financing proposal and the issuance of revenue refunding bonds pursuant to K.S.A. 12-3420, the MSPA Board of Directors concluded that it was advisable and in the best interests of the MSPA to proceed with the issuance of said bonds.

In compliance with statutory requirements, each of the original 14 counties which formed the MSPA adopted a resolution authorizing MSPA's Board of Directors to proceed with the revenue refunding bond issue. Pursuant to such authorization, MSPA's Board of Directors issued Federally Taxable Revenue Refunding Bonds, Series 1994, dated May 1, 1994. On May 26, 1994, a single bond in the face amount of $4,975,000 was issued to the Kansas Pooled Money Investment Board on behalf of the Kansas Department of Transportation. The bond proceeds were used to satisfy MSPA's obligations to BANK IV.

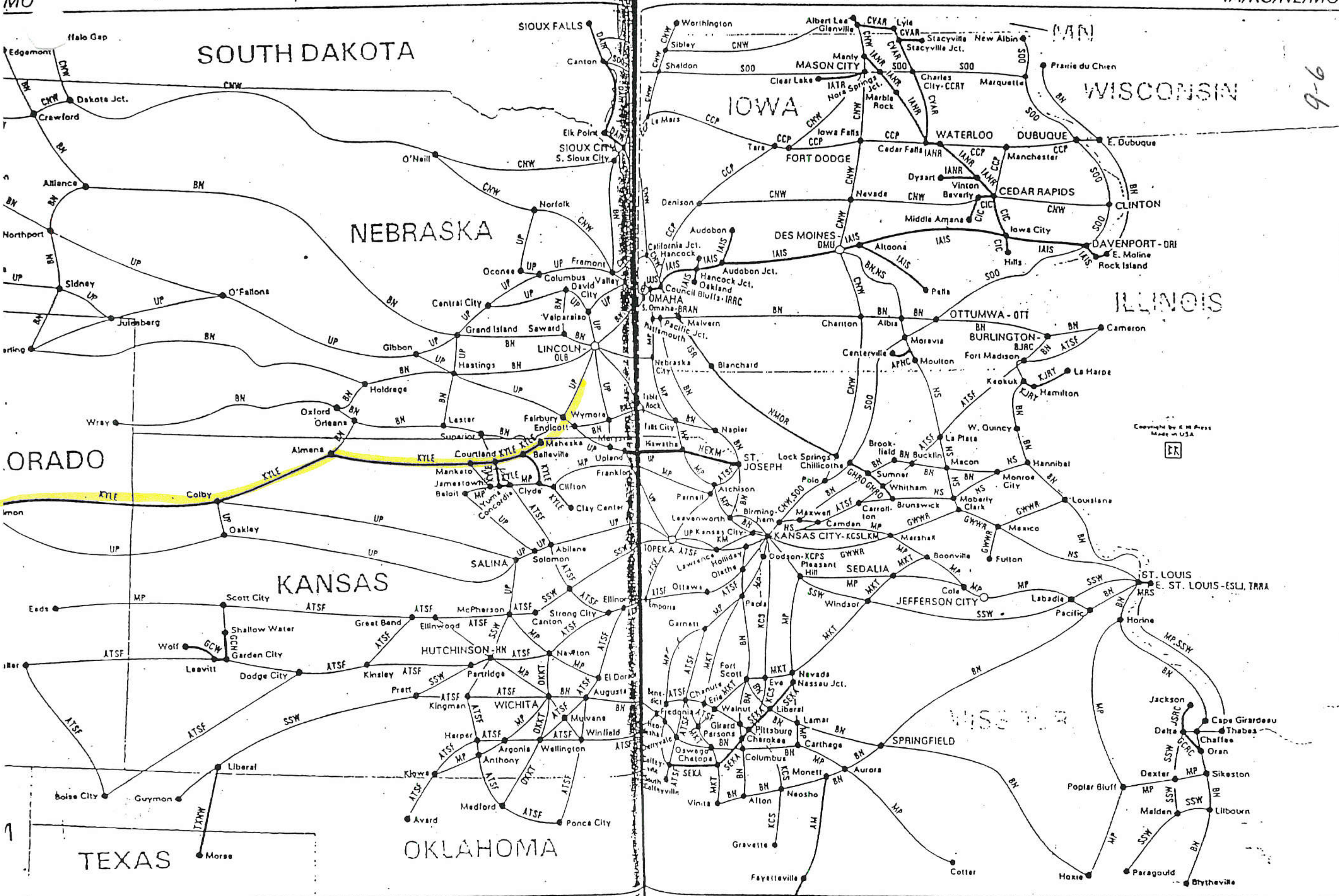
In connection with the revenue refunding bond issue, the Secretary of Transportation has continued to provide an Unconditional Guarantee of Payment, and in consideration thereof, MSPA executed a Mortgage, Security Agreement and Conditional Assignment of Leases in favor of the Secretary of Transportation. The terms and conditions of the revenue refunding bond issue are governed by an Indenture of Trust by and between the MSPA and the First National Bank and Trust, Phillipsburg, Kansas, as Trustee. Clarification of the "Reserve Requirement" under the Indenture was accomplished by the First Supplemental Indenture of Trust executed by the parties as of February 1, 1996.

On December 1, 1995, a partial redemption of the revenue refunding bonds was accomplished in connection with MSPA's abandonment of its rail lines between Belleville and Clay Center, Kansas, and between Fairbury and Thompson, Nebraska. The rail, ties, ballast and other track materials were salvaged on these segments of MSPA's rail line, and the net salvage proceeds of approximately $1,400,000 were paid over to the bond holder (KDOT) pursuant to the Indenture's redemption provisions.

In addition to the partial redemption, throughout the term of the revenue refunding bonds, MSPA has made timely payments to the Trustee, as required by the Indenture, and the Trustee has made the required semi-annual interest payments and the annual principal payments to the bond holder. As a result, the outstanding principal balance on the bonds has been reduced to approximately $2,120,000.00.

Conclusion

It is hoped that this Memorandum has provided members of the House Committee on Taxation with a better understanding of the MSPA and its role as a governmental entity. If any additional information or documents are needed to clarify or supplement this Memorandum, they will be provided on request.


SOUTH DAKOTA
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Valparaiso
LINCOLN-OLB
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El Dorado
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Winfield
Harper
Argonia
Anthony
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Guymon
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Audubon Jct.
Hancock Jct.
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Council Bluffs-IRRC
OMAHA
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Pella
Hills
DAVENPORT-DRI
E. Moline
Rock Island
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Pacific Jct.
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Chariton
Albia
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Moravia
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Fort Madison
Nebraska City
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Keokuk
La Harpe
Hamilton
Napier
W. Quincy
La Plata
ST. JOSEPH
Lock Springs
Chillicothe
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Bucklin
Macon
Hannibal
Falls City
Hiawatha
Upland
Franklin
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Clark
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Brunswick
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E. ST. LOUIS-ESLI, TRRA
Garnett
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Nevada
Nassau Jct.
Eve
Chanute
Erie
Walnut
Liberal
Lamar
Fredonia
Girard
Parsons
Pittsburg
Cherokee
Carthage
SPRINGFIELD
Oswego
Chetopa
Columbus
Monett
Aurora
Neosho
Vinita
Afton
Gravette
Fayetteville
Cotter
Hoxie
Poplar Bluff
Jackson
Delta
Cape Girardeau
Thebes
Chaffee
Oran
Dexter
Sikeston
Malden
Lilbourn
Paragould
Blytheville
Horine

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