

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE.

The meeting was called to order by Chairperson Gary Hayzlett at 1:30 p.m. on February 24, 2003 in Room 519-S of the Capitol.

All members were present except:

Representative Mary Kauffman, excused
Representative Waldenia Winn, excused

Committee staff present:

Bruce Kinzie, Revisor
Hank Avila, Legislative Research Dept.
Mary Galligan, Legislative Research Dept.
Betty Boaz, Committee Secretary

Conferees appearing before the committee:

Mike Hoeme, Director, Traffic Division, Kansas Corporation Commission
Tom Whitaker, Executive Director, KS Motor Carriers Association
Sandy Braden, representing the Alliance of Automobile Manufacturers
Don McNeely, Kansas Automobile Dealers Association
Steve Kearney, Executive Director, KS Automotive Recyclers Ass'n.

Others attending:

See attached list

HB 2160 - Motor carrier, fees

Chairman Hayzlett opened hearings on **HB 2160** by introducing Mike Hoeme, Director, Traffic Division, KCC. He testified as a proponent of **HB 2160** which revises the fee schedules found in KSA 66-1a01 for motor carrier applications and registrations. (Attachment 1) According to Mr. Hoeme the current fee structure for motor carrier applications and registrations has been in place since 1937. The KCC has decided, due to significant changes in the motor carrier industry and inflation, that these fees are insufficient to accomplish important goals, and therefore proposes certain fees be raised. The KCC proposes three sets of fees paid for particular types of applications and registrations. First, the fees for intrastate public motor carrier applications are revised from \$25 to \$250. Second, the application fees for private and exempt motor carrier registrations, and certain existing license and permit revisions, are increased from \$10 to \$100. Finally, the late fee for a motor carrier's failure to timely complete renewal applications has been altered to the cost of the new application for authority. He stood for questions from the Committee.

Tom Whitaker was the next proponent to speak. He said the KS Motor Carrier Association was in support of this bill. He said they do not feel these fees will be a burden and will help the KCC meet the statutory requirements that this legislature passed a couple years ago and continue efforts they are making to make it a lot safer on the roads when you share the roads with trucks.

There were no other proponents and no opponents so the Chairman closed the hearing on **HB 2160**.

HB 2190 - Air bags, unlawful installation

Chairman Hayzlett opened the hearings on **HB 2190** and introduced Sandy Braden, appearing on behalf of the Alliance of Automobile Manufacturers. (Attachment 2) Ms. Braden said the Alliance supports **HB 2190**, which would prohibit the installation or reinstallation of any object in lieu of an air bag that was designed in accordance with the federal safety regulations for the make, model and year of vehicle, as part of a vehicle inflatable restraint system. She stood for questions from the Committee.

The second proponent for **HB 2190** was Don McNeely, President of KS Automobile Dealers Ass'n. (Attachment 3) Mr. McNeely said he was appearing in support of this bill. He said federal law does not

CONTINUATION SHEET

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE at on February 24, 2003 in Room 519-S of the Capitol.

require that deployed air bags be replaced or regulate the manner in which such air bags are replaced. He concluded that while **HB 2190** does not address all of the problems associated with the installation, reinstallation or replacement of air bags, it is a good first step for the safety of our citizens.

There being no additional proponents, Chairman Hayzlett called for opponents.

The only opponent for **HB 2190** was Steve Kearney, Executive Director of the Kansas Automotive Recyclers Ass'n. (Attachment 4) Mr. Kearney said some of the Association's concerns are: the reference to "federal safety regulations" in this bill because they do not think such regulations exist. Also if the intent of this bill is to help prevent a perceived fraud problem then they believe there are already sufficient laws with both criminal and civil penalties currently on the Kansas books. Their last concern was not to have vague legislation with undefined terms.

There being no further questions and no other opponents the Chairman closed the hearing on **HB 2190**.

HB 2244 - Corporation commission, motor carriers, railroads

The Chairman introduced Mike Hoeme, Director of Traffic Division, KCC who testified as a proponent of **HB 2244**, which proposed changes to the motor carrier act. The changes proposed are clean-up changes with an eye toward increasing the effectiveness and efficiency of KCC regulations. The proposed changes are found in (Attachment 5). Mr. Hoeme stood for questions from the Committee.

The Chairman introduced Tom Whitaker as a proponent. He said his Association was in support of this bill which basically eliminates contract carriers. We do support the impoundment provision because those carriers have been given a show-cause due process and not complied with it.

There were no other proponents and no opponents so the Chairman closed the hearing on **HB 2244**.

The Chairman called for final action on **HB 2160**. Representative Beggs made a motion to move HB 2160 out favorable, the motion was seconded by Representative Ballard. After some discussion the motion carried.

The meeting adjourned at 2:40. The next meeting will be Tuesday, February 25, 2003.

**Testimony of Mike Hoeme
Director of Transportation
Kansas Corporation Commission
House Bill 2160
February 24, 2003**

Good afternoon Mr. Chairman and members of the committee. My name is Mike Hoeme, and I am the Director of the Transportation Division of the Kansas Corporation Commission ("Transportation Division" and "KCC," respectively). I am here to testify as a proponent of House Bill 2160, which revises the fee schedules found in K.S.A. 66-1a01 for motor carrier applications and registrations. For your information, the Transportation Division has met with the Kansas Motor Carrier's Association ("KMCA") regarding HB 2160, and received their support for the proposed increases in fees, discussed in more detail below.

BACKGROUND

The current fee structure for motor carrier applications and registrations has been in place since at least 1937. Significant changes in the motor carrier industry and inflation have brought into question for the KCC whether these fees are still appropriate. Ultimately, the KCC has decided that these fees are insufficient to accomplish important goals, and therefore proposes certain fees be raised.

The KCC specifically proposes three sets of fees paid for particular types of applications and registrations. First, the fees for intrastate public motor carrier applications (certificates of public service and certificates of convenience and necessity) are revised from \$25 to \$250. Second, the application fees for private and exempt motor carrier registrations, and certain existing license and permit revisions, are increased from \$10 to \$100. Finally, the late fee for a motor carrier's failure to timely complete renewal applications has been altered to the cost of the new application for authority.

This increase in fees is justified for numerous reasons.

ATTEMPT TO COVER COSTS

Primarily, the KCC feels that it is appropriate that application fees be set at a rate more comparable to the KCC's cost of completing those applications. To actually set the application fees at the KCC's costs would increase these fees to over \$400. In Attachment "A" to my testimony, you will see a breakdown of the costs actually incurred by the KCC in processing the different types of applications and registrations. While the KCC is not ruling out pursuing additional increases in the future to cover actual costs, we feel that, at this time, beginning with the revisions proposed above will help ease the motor carrier industry into the necessary increases.

Normal office processing costs include examining the applications for completeness and working with the motor carrier to correct any omissions, meeting publication requirements, and working with insurance companies. However, the more significant

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costs occur in ensuring the motor carrier's compliance with safety regulations rather than in examining the routine paperwork.

First, the Transportation Division tries to aid new motor carriers in staying off of SafeStat by conducting an aggressive safety-training program for all public and private motor carriers in Kansas. The Transportation Division's special investigators conduct educational safety seminars throughout Kansas four times a month. These seminars are designed to educate new, and existing, motor carriers about the KCC's safety rules and regulations. The KCC has also developed several specialized Power Point presentations to correct several trends it has noted in instances of non-compliance. The Transportation Division's special investigators will also conduct individual "refresher" safety programs when requested by a specific motor carrier.

Second, state law requires the KCC, within 12 months of a motor carrier being granted common carrier authority, to verify that the motor carrier is in compliance with the KCC's safety regulations. The Transportation Division has worked toward accomplishing this task by conducting comprehensive investigations and audits on existing and new motor carriers, and taking the appropriate action when unsafe conditions are found.

These two factors appreciably increase the costs of processing the application. However, protection of the public safety cannot allow these seminars and inspections to be sacrificed for the sake of cost. As noted above, the Transportation Division has discussed the increase in fees with KMCA, who stated that it would even have supported an increase to cover the full costs of the application.

FEDERAL ACTION

Impending federal action concerning the Unified Carrier Registration Agreement ("UCR") may also affect the fees the KCC can charge, and the KCC's access to those fees. If certain proposed revisions to the UCR are successful, state motor carrier programs will have to have increased access to funds for use in safety functions, or funding could be jeopardized.

CONCLUSION

The KCC realizes that the changes proposed still constitute a significant increase over current fees. However, as noted above, these fees have been in place since at least 1937, when the motor carrier industry was highly regulated, and the value of the dollar figure was significantly higher. Changes to these fees probably should have been ongoing through the last seventy years in order to more closely reflect the actual processing costs in different time periods reflecting different regulatory and financial times. However, simply because that has not been done in the past does not mean it should not be done now. Currently, we are nearly the cheapest state in which to obtain motor carrier authority. Raising the fees as proposed above will bring the KCC fee structure more in line with fees charged by the surrounding states.

Attachment "A"

Testimony of Mike Hoeme
Director of Transportation
Kansas Corporation Commission

Manpower spent on various functions and cost per hour of the manpower expended:

<u>Application/Training/Compliance</u>	<u>Process Hours/Mean</u>	<u>Salary Range/Mean</u>
Certificate of Public Service (COPS)	1-10 Hours (5)	\$10 - \$14 per Hour (\$12)
Certificate of Convenience & Necessity (COCAN)	1-10 Hours (5)	\$10 - \$14 per Hour (\$12)
Private carrier authority (P)	1-10 Hours (5)	\$10 - \$14 per Hour (\$12)
Interstate Exempt (ICC-E)	1-10 Hours (5)	\$10 - \$14 per Hour (\$12)
Safety Compliance Program (SCP)	4-9 Hours (4.5)	\$15 - \$19 per Hour (\$17)
Compliance Review Audit (CR)	8-24 Hours (16)	\$15 - \$19 per Hour (\$17)

Total Average Cost to Process Specific Applications:

<u>(COPS/COCAN)</u>	<u>Total</u>
• (5) Hours at \$12 per hour to process application	\$60.00
• (4.5) Hours at \$17 per hour for Safety Compliance Program	\$76.50
• (16) Hours at \$17 per hour for mandatory Compliance Review	<u>\$272.00</u>
	\$408.50
 <u>(P/ICC-E)</u>	
• (5) Hours at \$ 12 per hour to process application	\$60.00
• (4.5) Hours at \$17 per hour for Safety Compliance Program	<u>\$76.50</u>
	\$136.50



Gaches, Braden, Barbee & Associates

Governmental Affairs & Association Management

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Testimony of Sandy Braden

Gaches, Braden, Barbee & Associates
On behalf of the

Alliance of Automobile Manufacturers

In support of HB2190

Monday, February 24, 2003

House Transportation Committee

House Transportation
Date: 2-24-03
Attachment # 2

**Testimony of Sandy Braden
Gaches, Braden, Barbee & Associates
On behalf of the Alliance of Automobile Manufacturers
In support of HB2190
February 24, 2003**

Thank you, Chairman Hayzlett and members of the Transportation Committee, for the opportunity to address you on behalf of the Alliance of Automobile Manufacturers (Alliance), in support of HB2190.

The Alliance members are ten automobile manufacturers including the BMW Group, Volkswagen, Ford Motor Company, Mazda, Toyota, General Motors, Daimler-Chrysler, Nissan, Porsche, and Mitsubishi.

The Alliance supports HB2190, which would prohibit the installation or reinstallation of any object in lieu of an air bag that was designed in accordance with the federal safety regulations for the make, model and year of vehicle, as part of a vehicle inflatable restraint system.

Even though statistics on junk or fake airbags are not readily available, there are indications that the problem is increasing for vehicles that have been repaired after a crash.

Some disreputable auto repair shops are installing dummy or fake air bags to save money, sometimes at the request of customers who plan to resell the damaged vehicle.

Instead of finding an air bag behind the safety restraint cover, investigators and mechanics are finding rags, paper, sticks, tennis shoes and old clothing stuffed in the steering columns.

The National Highway Traffic Safety Administration (NHTSA) is concerned about fraud, but has no power to enforce air bag laws once a new car is sold. Once it leaves the dealership, it becomes an issue for the states and consumers. Until 2000, installing dummy air bags was not illegal in 49 states. Today sixteen states, including neighboring states of Colorado, Oklahoma and Iowa, have passed laws prohibiting of dummy or fake airbags.

HB2190 would assist in efforts to prevent fraudulent airbags being installed in vehicles, as well as raise the awareness of the problem, which helps the consumer to be on guard of such practices.

Thank you for your consideration of HB2190.



KANSAS AUTOMOBILE DEALERS ASSOCIATION

TO: The Honorable Gary Hayzlett, Chairman
and Members of the House Committee on Transportation

FROM: Mr. Don McNeely, President
Kansas Automobile Dealers Association

RE: HB 2190 – An Act Relating to Motor Vehicles; Concerning the
Installation of Air Bags.

DATE: February 24, 2003

Good afternoon, Chairman Hayzlett and Members of the House Committee on Transportation. My name is Don McNeely and I am the President of the Kansas Automobile Dealers Association, which represents the franchised new car and truck dealers in Kansas. On behalf of KADA, I am pleased to appear today in support of HB 2190.

What has complicated this matter is the fact federal law does not require that deployed airbags be replaced or regulate the manner in which such airbags are replaced. While HB 2190 may not address all of the problems associated with the installation, reinstallation or replacement of airbags, it is a good first step for the safety of our citizens.

On behalf of the Kansas Automobile Dealers Association, I thank you for your consideration of our comments in support of HB 2190.



**Kansas
Automotive
Recyclers
Association**

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Testimony
Presented to the House Transportation Committee
By
Steve Kearney, Executive Director
Kansas Automotive Recyclers Association
On HB 2190

Chairman Hayzlett and members of the House Transportation Committee thank you for the opportunity to provide comments regarding House Bill 2190. I am appearing on behalf of the Kansas Automotive Recyclers Association.

The concerns of the Auto Recyclers are as follows:

- The reference to "federal safety regulations" on line 18 of House bill 2190. To the best of our knowledge, no such regulations exist regarding being active in the business of selling airbags.
- If the intent of this bill is to help prevent a perceived fraud problem then we believe there are already sufficient laws with both criminal and civil penalties currently on the Kansas books.
- Vague legislation with undefined terms tend to result in unintended consequences. In New York State similar legislation has resulted in ongoing litigation over the installation and sale of used airbags.

House Transportation
Date: 2-24-03
Attachment # 4

Testimony of Mike Hoeme
Director of Transportation
Kansas Corporation Commission
House Bill 2244
February 24, 2003

Good afternoon Mr. Chairman and members of the committee. My name is Mike Hoeme. I am the Director of the Transportation Division of the Kansas Corporation Commission ("Transportation Division" and "KCC," respectively) I am here to testify as a proponent of House Bill 2244, which proposes changes to the motor carrier act.

Two years ago, the Legislature made numerous changes to the motor carrier statutes. Since that time, the Transportation Division has continued to examine and scrutinize the statutory and regulatory scheme established for its division, with an eye toward increasing the effectiveness and efficiency of KCC regulation. As a result, the KCC proposes numerous revisions to the motor carrier statutes. House Bill 2244 contains numerous revisions. A detailed explanation of each proposal is found below.

K.S.A. 66-1,105. *Service of orders and decisions; effective dates:* Currently, this statute requires that all orders and decisions regarding nearly all motor carriers be accomplished by using certified mail to serve certified copies of orders. The only exception provides for service of these orders by first class mail upon private carriers and certain other minimal license holders. Both the requirement for a certified copy and the requirement for certified mail are inconvenient, unnecessary, and costly.

With regard to service by certified mail, given the volume of orders the KCC currently serves on motor carriers, the certified mail service of these orders cost thousands of dollars a year. However, as a practical matter, certified mail is only necessary in KCC actions when there might be a question regarding receipt of service, such as in show cause proceedings and other actions which could potentially result in a negative impact upon a motor carrier's authority. The certified mail requirement should therefore be more appropriately limited to instances where the question of proper notice and due process could be at issue, specifically, orders and decisions that could potentially result in a negative impact on authority and initial orders issued in show cause proceedings.

Certified copies of orders are also unnecessary. Certified copies of orders were most relevant during the time in which cab cards were also issued for each vehicle operated by the motor carrier. Cab cards, however, are no longer required. Instead, motor carriers make copies of the orders and certificates issued by the KCC to retain in their vehicles for proof of registration. This mere act of copying alone negates the usefulness of the certified stamp on the order. Transportation believes that this requirement should be removed, and that certified copies of documents be issued upon request only and after payment of appropriate fees.

K.S.A. 66-1,108 and K.S.A. 66-1,109. *Regarding the Definition of Gross Vehicle Weight Rating.* The definition of "Gross Vehicle Weight Rating" is currently found in K.S.A. 66-1,109, in a discussion of regulated vehicle types. However, it would be more appropriate and easier for most people searching for the definition to re-locate the term to

the definition section. Additionally, the definition should be revised to more closely mirror the federal definition, found at 49 C.F.R. 390.5. This change would make only minor revisions to the current definition, including a clarification regarding how the gross combination weight rating can be determined in the absence of a manufacturer specification. By mirroring the federal definition, enforcement of the KCC's regulations by law enforcement officials who deal with both interstate and intrastate enforcement will be easier by limiting varying interpretations of both state and federal law.

K.S.A. 8-142, 8-2107, 32-1009, 44-503c, 60-305a, 65-1626, 65-4101, 65-7004, 66-1,108, 66-1,111, 66-1,112, 66-1,112a, 66-1,112b, 66-1,112c, 66-1,112d, 66-1,112e, 66-1,112f, 66-1,112h, 66-1,115, 66-1,115a, 66-1,116, 66-1,128, 66-1,129, 66-1,139, 66-1,140, 66-1313a, 79-6a01, 79-6a02, and 79-6a03. *Dealing with contract carriers.* The KCC proposes to eliminate the distinction in classification for the purposes of regulation between contract and public motor carriers for several reasons. First, there is currently no significant difference in the application process for and regulation of contract and public motor carriers. Second, and more importantly, the primary historical difference between a contract and public motor carrier is that a contract carrier may refuse to serve certain customers. However, in light of significant deregulation of the motor carrier industry and the abolishment of service territories over the last twenty-three years, through the Staggers Act of 1980 and the Interstate Commerce Commission ("ICC") Termination Act of 1995, many public carriers are now also free to turn down service. Third, almost all contract motor carriers in the state of Kansas also hold public motor carrier authority in order to serve a broader field of customers.

Considering all of these facts, categorizing a motor carrier as either a public or a contract motor carrier for regulatory purposes has lost all meaning. The federal government recognized this, and also removed this distinction in the ICC Termination Act of 1995. The KCC recognizes, as did the United States Congress, that civil liabilities between common and contract motor carriers are different. However, under the KCC's proposed revisions, as in the ICC Termination Act, all motor carriers would have a common motor carrier obligation, but would be free to contract for individual shipments. This means that any civil liabilities of a motor carrier should not change. The civil liabilities would, as always, depend on whether the motor carrier provided transportation service to the customer generally as a for hire carrier or subject to a specific contract.

New Section 1. *Dealing with contract motor carriers.* New Section 1 will ensure that existing contract motor carrier authority will be revised to public motor carrier authority without the motor carriers having to re-apply with the KCC. Those who renew their authority in 2004 will receive their renewals under the new public motor carrier authority.

K.S.A. 66-1,114b and 66-1,115: *Regarding Public motor carrier of property other than household goods and passengers.* Changes to both of these statutes are necessary in order to increase the efficiency of the authority application process for the affected motor carriers, and to reduce costs. These proposed changes include modifying the publication requirements, and creating an interim authority process to speed the issuance of authority for conscientious motor carrier applicants.

First, with regard to publication requirements, both statutes require that notice of public motor carrier applications be published in the Kansas Register. This costs the KCC

\$3,500 to \$6,000 per year, depending on the number of applications filed. However, these applications can be published just as easily on the KCC's website, saving thousands in yearly publication costs. More people generally know where they can obtain internet access than where they can obtain access to the Kansas Register, meaning that very likely, publication of the applications on the KCC's website could increase the public's access to these applications.

Second, the current application process for motor carriers of property other than household goods and passengers is time consuming and can prevent a fully-prepared motor carrier from beginning operations in an expedient manner. Often, a motor carrier applicant is able to present the KCC with a complete motor carrier application. However, pursuant to statute, that applicant still has to wait a prescribed amount of time for publication and notice before he or she can begin motor carrier operations. The proposed statutory revisions would create a procedure whereby, once a motor carrier submits a fully-completed application, that motor carrier will be issued interim authority. After the KCC issues interim authority, any protestant would have 30 days to object to the grant of that motor carrier's permanent authority. If no such protest is received, then the KCC will automatically issue permanent authority to that motor carrier. If a protest were received, the protest would be evaluated and, if necessary, the KCC will schedule a hearing on the application for permanent authority.

K.S.A. 66-1,119. Change; abandonment or discontinuance of service; consent of commission. Currently, there is no express provision allowing the KCC to consider a motor carrier's failure to renew authority as an application for abandonment of that authority. There are two primary reasons such a provision is necessary. Many carriers who go out of business simply let their renewals lapse. By allowing the KCC to grant abandonments of authority in this manner, the proposed revision will help keep clear records of which motor carriers are actually doing business in Kansas. Second, this revision would allow the KCC to take action against carriers who simply fail to renew their authority, even when they intend to continue operations. Currently, some motor carriers take several months and numerous Transportation Division contacts to get their renewals in order. The proposed revisions would allow the KCC a more specific means to enforce the renewal process.

K.S.A. 66-1,126. Violation of act relating to certificate, license, permit or report; penalty. This statute allows for the criminal misdemeanor prosecution of motor carriers who fail to apply for authority, make any return or report required by the KCC, or deny the KCC access to records. The proposed revision will also allow the criminal prosecution of a motor carrier's failure to comply with KCC orders requiring the payment of a penalty, cease and desist orders, or out-of-service orders. Many motor carriers directly disobey KCC orders in these regards, and stricter enforcement methods are necessary in order to aid in regulation. The need for further enforcement measures is discussed in more detail in the discussion of K.S.A. 66-1,129a.

K.S.A. 66-1,129. Motor carriers; safety rules and regulations adopted by the commission; exceptions. Transportation proposes a minor limitation to subsection (c)(9) of this statute, which currently exempts from the KCC's safety regulation the operation of vehicles used for servicing, repairing, and transporting implements of husbandry by a person actively engaged in the business of buying, selling, or exchanging implements of

husbandry within 100 miles of that person's business. The KCC maintains that this exemption should not apply if the implement of husbandry is transported on a commercial motor vehicle. The KCC understands that certain safety regulations, such as lighting and braking requirements, are difficult for implements of husbandry dealers to maintain because of the inherent build of the product sold. However, if that implement of husbandry is, for example, transported on a CMV, there is no reason why that CMV cannot comply with the KCC's safety regulations.

K.S.A. 66-1,129a. Motor carriers, suspension, revocation or amendment of certificate; notice; hearing. The current provisions for civil penalties and revocation of operating authority have proven insufficient for the enforcement of the motor carrier statutes, rules, and orders in several cases. In particular, there have been several instances of motor carriers being assessed a civil penalty for failure to obtain authority to operate, then simply not paying the fine. If a motor carrier is operating without authority, the KCC cannot confirm that the motor carrier has proper insurance, safety training, vehicle inspection records, drug testing requirements, and other regulatory requirements necessary for the safe operation of a motor vehicle. While collections is an available option, the KCC has been challenged in how to deal with these carriers in a more timely and effective manner, to prevent unsafe motor carrier operations.

The KCC may currently suspend or revoke any existing authority or increase fine amounts, but some motor carriers simply continue to disregard the KCC's statutes, rules, regulations, and orders. There is one case in particular of a carrier who has defaulted in two show cause proceedings thus far, including charges of failure to obtain authority, and continues to avoid payment of a nearly \$50,000 fine. Outside of collection efforts, which as of yet have been unsuccessful, but are continuing, there appears to be no means to bring this particular motor carrier into compliance. Even more frustrating is the fact that when such a motor carrier is stopped by the Kansas Highway Patrol ("KHP") on other matters, and the officer discovers a violation of KCC orders, there appears to be no means to bring the motor carrier into compliance. When we are contacted in such situations, the KCC has no ready means by which to work with KHP to keep the motor carrier from continuing down the highway.

After much thought into other enforcement options, the KCC maintains that if it had the power to impound vehicles, it may finally have an effective means to stop transportation operations by these offending motor carriers. The KCC only requests the authority to impound vehicles of motor carriers who have failed to comply with out-of-service orders or cease and desist orders that do not have KCC authority to operate, or have failed to pay an assessed fine or, have otherwise failed to comply with a KCC order. The KCC has discussed with KHP the option of working out a cooperative agreement to impound these vehicles using KHP resources and KHP impound lots. KHP has expressed to the KCC an interest in such a cooperative agreement.

The KCC would only impound vehicles used in violation of the specific instances noted above. A motor carrier would not be able to retrieve its vehicles until it demonstrated that it has come into compliance or has made all the arrangements necessary to come into compliance. The motor carrier would be able to request a hearing on the matter at any time.

K.S.A. 66-1,130. Violation of act; penalty. This statute provides that the inspectors of the KCC shall have the “lawful powers of peace officers” to enforce this act in any county or city of this state. This particular provision of the statute is unnecessary, and in some unanticipated ways, has even restricted the KCC.

For all practical purposes, KCC never utilizes the ability to enforce provisions of this act criminally. Given the number of the Transportation Division’s investigators and their current time spent handling just the KCC’s workload, criminal enforcement is, if nothing else, time prohibitive. Criminal enforcement of these laws has typically been left to local law enforcement and the KHP.

More importantly, removal of the peace officer designation will create a wider field of applicants for the KCC’s investigator positions. Currently, unless an applicant for an investigator position has received or is willing to undertake law enforcement training, that applicant cannot be considered for the position. Many people experienced in industry but with no law enforcement background are automatically excluded from these positions, unless they are willing to participate in law enforcement training. This requirement has been a deterrent to otherwise qualified applicants.

Instead, the KCC intends to require its special investigators to comply with and be subject to all the training requirements established by the Federal Motor Carrier Safety Administration necessary to complete a compliance review. This training will address the relevant daily requirements of the position of special investigator, without including much training and information that is beyond the scope of the investigator’s duties.

K.S.A. 66-1,140. Rules and regulations governing registration and fees for certain vehicles used temporarily; vehicles entering state on occasional trips; designation of superintendent of the highway patrol as issuing agent; acknowledgments. Currently, the Kansas Department of Revenue (“KDOR”) sells temporary permits to motor carriers. Arguably, this is allowed by K.S.A. 66-1319(c), which allows KDOR, the Kansas Highway Patrol (“KHP”), the Kansas Department of Transportation (“KDOT”), and the Livestock Commissioner to enter into cooperative agreements for the enforcement of the motor carrier laws. However, K.S.A. 66-1,140 is the specific statute that addresses contracts allowed between state agencies for the issuance of permits. K.S.A. 66-1,140 only addresses such contracts between the KCC and KHP. For clarification purposes, the KCC prefers that KDOR be added to this statute allowing the issuance of permits

Also, the KCC proposes to raise the fees for special and occasional trips into the state by interstate carriers not otherwise registered pursuant to K.S.A. 66-1,139, and for temporary permits and the trip fees. The fee for temporary permits has been set at \$2.50 per vehicle since at least 1957, and possibly since 1955. The \$5 per vehicle “trip fee” for occasional trips into the state has been set at that amount since 1977. Raising the temporary fee to \$10 per vehicle, and the “trip fee” to \$15 per vehicle will come closer to addressing the costs of processing these permits.

New Section 2. Railroad safety regulations. While not extensive, there are currently several KCC railroad safety regulations listed in the Kansas Administrative Regulations that would not be federally preempted, and could be used by the KCC in the furtherance of track and crossing safety. Additionally, there are several federal regulations that the

KCC could adopt to increase safety authority over railroad grade crossings and other matters of local concern. However, there is one major obstacle to using the existing regulations and adopting additional safety regulations: Our enabling and authorizing statutes for such regulations have been repealed. The proposed basic railroad safety statute proposed by the KCC can be used to authorize the existing statutes, adopt additional safety measures, and once again allow the KCC to effectively enforce appropriate railroad safety standards.

Balloon Amendments. After reviewing House Bill 2244, the Kansas Department of Transportation (“KDOT”) contacted the KCC’s Transportation Division to discuss two particular matters. As a result of those discussions, the KCC and KDOT mutually agreed that the KCC would submit two balloon amendments to House Bill 2244. First, the proposed basic railroad safety statute proposed by the KCC will be amended to provide consistency with regulation currently accomplished by the secretary of transportation. Second, the KCC and KDOT discussed the transportation of the elderly and the disabled persons, and agreed that certain non-profit organizations receiving special funds could be exempted from the KCC’s authority requirements. In particular, those non-profit public transportation carriers operating pursuant to 49 U.S.C. 5307, 5310 and 5311 should not be required to register with the commission. KDOT gave a scenario where city and county agencies providing the same service as the motor carriers mentioned above were not subject to the KCC regulations. The balloon amendments are attached to my testimony for your review.

HOUSE BILL No. 2244

By Committee on Transportation

2-7

5-7

9 AN ACT relating to the state corporation commission; concerning motor
 10 carriers and railroads; amending K.S.A. 8-142, 8-2107, 32-1009, 44-
 11 503c, 60-305a, 65-1626, 65-4101, 65-4116, 65-7004, 66-1,105, 66-
 12 1,108, 66-1,109, 66-1,111, 66-1,112, 66-1,112h, 66-1,114, 66-1,114b,
 13 66-1,115, 66-1,115a, 66-1,116, 66-1,119, 66-1,126, 66-1,128, 66-1,129,
 14 66-1,129a, 66-1,130, 66-1,139, 66-1,140, 66-1313a, 79-6a01, 79-6a02
 15 and 79-6a03 and K.S.A. 2002 Supp. 8-2,127 and repealing the existing
 16 sections; also repealing K.S.A. 66-1,112a, 66-1,112b, 66-1,112c, 66-
 17 1,112d, 66-1,112e and 66-1,112f.

18
19 *Be it enacted by the Legislature of the State of Kansas:*

20 New Section 1. Contract motor carriers transporting household
 21 goods or passengers holding permits issued by the commission under the
 22 former authority of K.S.A. 66-1,112a, 66-1,112b or 66-1,112c, and amend-
 23 ments thereto, shall now be considered as holding certificates of conven-
 24 ience and necessity to transport such household goods and passengers as
 25 originally granted to that motor carrier by the commission. Contract mo-
 26 tor carriers transporting property other than household goods or trans-
 27 porting passengers and holding permits issued by the commission under
 28 the former authority of K.S.A. 66-1,112a, 66-1,112b or 66-1,112c, and
 29 amendments thereto, shall now be considered as holding certificates of
 30 public service to transport such property other than household goods or
 31 transporting passengers as originally granted to that motor carrier by the
 32 commission. Contract motor carriers with rates and tariffs on file with the
 33 commission under the authority of K.S.A. 66-1,112 and 66-1,112f, and
 34 amendments thereto, shall be considered public motor carriers with the
 35 same rates and tariffs on file with the commission.

36 New Sec. 2. ~~The state corporation commission is hereby authorized~~
 37 ~~to adopt and enforce such rules and regulations as may be necessary for~~
 38 ~~the regulation of the safety of railroad transportation in the state of Kan-~~
 39 ~~sas, to the extent not preempted by federal law.~~

40 Sec. 3. K.S.A. 8-142 is hereby amended to read as follows: 8-142. It
 41 shall be unlawful for any person to commit any of the following acts and
 42 except as otherwise provided, violation is subject to penalties provided in
 43 K.S.A. 8-149, and amendments thereto:

The state corporation commission is hereby authorized,
 in cooperation with the secretary of transportation,
 to adopt and enforce such rules and regulations as
 may be necessary to regulate the safety of railroad
 grade crossings on Kansas city, county, township,
 and state roads.

1 vehicle does not pass a practicable delivery or receiving point of a com-
 2 mon carrier equipped to transport such load, or when used to transport
 3 property from the point of origin to point of destination thereof when
 4 the destination of such property is less distant from the point of origin
 5 thereof than the nearest practicable common-carrier receiving or loading
 6 point equipped to transport such load;

7 (e) (1) the transportation of children to and from school, or (2) to
 8 motor vehicles owned by schools, colleges, and universities, religious or
 9 charitable organizations and institutions, or governmental agencies; when
 10 used to convey students, inmates, employees, athletic teams, orchestras,
 11 bands or other similar activities;

12 (f) a new vehicle dealer as defined by K.S.A. 8-2401, and amend-
 13 ments thereto, when transporting property to or from the place of busi-
 14 ness of such dealer;

15 (g) motor vehicles carrying tools, property or material belonging to
 16 the owner of the vehicle and used in repair, building or construction work,
 17 not having been sold or being transported for the purpose of sale;

18 (h) persons operating motor vehicles which have an ad valorem tax
 19 situs in and are registered in the state of Kansas, and used only to trans-
 20 port grain from the producer to an elevator or other place for storage or
 21 sale for a distance of not to exceed 50 miles;

22 (i) the operation of hearses, funeral coaches, funeral cars or ambu-
 23 lances by motor carriers;

24 (j) motor vehicles owned and operated by the United States, the Dis-
 25 trict of Columbia, any state, any municipality or any other political sub-
 26 division of this state, including vehicles used exclusively for handling U.S.
 27 mail;

28 (k) any motor vehicle with a normal seating capacity of not more than
 29 the driver and 15 passengers while used for vanpooling or otherwise not
 30 for profit in transporting persons who, as a joint undertaking, bear or
 31 agree to bear all the costs of such operations, or motor vehicles with a
 32 normal seating capacity of not more than the driver and 15 passengers
 33 for not-for-profit transportation by one or more employers of employees
 34 to and from the factories, plants, offices, institutions, construction sites
 35 or other places of like nature where such persons are employed or ac-
 36 customed to work;

37 (l) motor vehicles used to transport water for domestic purposes or
 38 livestock consumption;

39 (m) transportation of sand, gravel, slag stone, limestone, crushed
 40 stone, cinders, calcium chloride; bituminous or concrete paving mixtures,
 41 blacktop, dirt or fill material to a construction site, highway maintenance
 42 or construction project or other storage facility and the operation of ready-
 43 mix concrete trucks in transportation of ready-mix concrete;

8-5

, and the operation of motor vehicles used exclusively
 by organizations operating public transportation
 systems pursuant to 49 U.S.C. Sections 5307, 5310,
 and 5311.