

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on February 10, 2004 in Room 231-N of the Capitol.

All members were present except:

Representative Bill Light- excused

Committee staff present:

Raney Gilliland Legislative Research Department

Mary Torrence, Revisor of Statutes

Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Chriss Krass, 8901 SE Ratner Road, Berryton, KS 66409; Senator Robert Tyson, District 12; John Love, 8750 SE Tecumseh Road, Berryton, KS 66409; Harold Lutz, 8349 SE Matney Road, Berryton, KS 66409; Brad Harrelson, Kansas Farm Bureau, 2627 KFB Plaza, Manhattan, KS 66503-8155; Todd Johnson, KS Livestock Association, 6031 SW 37<sup>th</sup> Street, Topeka, KS 66614-5129; Senator Edward Pugh, District 1; Jay Barnes, KS Natural Resource Council, PO Box 21346, Wichita, KS 67208; Frank Meyer, Kanza Rail-Trail Conservancy; Cort Anderson MTB Access, KS Single Track Society, 1187 North Oliver Road, Belle Plaine, KS 67013; Michael Goodwin, President, KS Trails Council, 3819 SE 31<sup>st</sup> Street, Topeka, KS 66605; Ann White, Board Member KS Horse Council, PO Box 1612, Manhattan, KS 66505; Ken Miner, Int. Mountain Bicycling Assoc. & Earth Riders Trails Assoc., 9940 Century Lane, Lenexa, KS 66215; Chad Lamer, Mountain Bike Club, PO Box 1963, Lawrence, KS 66044; Charles Benjamin, KS Chapter Sierra Club, PO Box 1642, Lawrence, KS 66044-8642; Dan Ward, Exec. Director, KS Wildlife Federation, 214 SW 6<sup>th</sup>, Ste. 205, Topeka, KS 66603; Ron Klastaske, Executive Director, Audubon of Kansas, 210 S. Wind Place, Manhattan, KS 66502; Amy Thornton, Legal Council, Department KS Wildlife & Parks, 1020 S. Kansas, Room 200, Topeka, KS 66612-1327

Others attending:

See Attached List.

Chairperson Joann Freeborn called the meeting to order. She reviewed the committee agenda for Thursday, February 12, a review on the Federal Watershed Program by Jeff Gross, Assistant State Conservationist, Natural Resources Conservation Services and a hearing on **HB2674** - Loan program to pay certain costs of rehabilitation of watershed dams.

The Chairperson called the committee's attention to a Fiscal Note on **HB2583**, that had been distributed for members to review. She opened **HB2583** for public hearing.

**HB2583: Recreational trails; noncompliance by responsible party; remedies.**

Raney Gilliland, Legislative Research Department, gave a review of the bill.

The Chairperson announced that due to the large number of conferees on the bill today she was planning to limit the proponents time to speak to five minutes and the opponents to three minutes, since there are more opponents than proponents. She welcomed the first proponent to the committee.

Chris Krass, Landowner, Berryton, Kansas, testified in support of the bill. As a life long resident of Shawnee County, he watched the last trains roll past his land in 1987. Since that time several private groups have tried to develop the abandoned rail corridor into a recreational trail. He supports this bill because he wants adjacent property owners like himself and units of local government to have the right to force groups like the Kanza Rails to Trails Conservancy to maintain their property. (See attachment 1)

Senator Robert Tyson, Twelfth District, was welcomed. He spoke in support of the bill. Rail Trail groups have taken control of hundreds of miles of former railroad right of ways in Kansas. Under Kansas law, these right of ways should have reverted to the adjacent landowner and placed back into their farms when they were no longer used for railroad purposes. (Harvest Queen Mill & Elevator v. Sanders, 189 Kan. 536,

## CONTINUATION SHEET

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE at 3:30 p.m. on February 10, 2004 in Room 231-N of the Capitol.

and KSA 66-525) The issues of personal liability are state issues and not federal issues. He strongly urges the passage of this bill. (See attachment 2)

John Love, Landowner, Berryton, Kansas, presented testimony in support of the bill. Since the 1980's he has watched in total frustration and helplessness as various trail development groups fail to comply with federal and state statutes of the rail banking act. He believes while most landowners do not have the time or resources to fight for their property rights and privacy (year after year), it is within the power of the legislature to put some teeth into the laws that are already in force. (See attachment 3)

Harold Lutz, Landowner, Berryton, Kansas, testified in support of the bill. When Congress passed the 1983 rail banking legislation, it clearly stated that organizations who acquired these right of ways assume full responsibility and liability for these Right Of Way/Trails. Unfortunately, Congress did not clearly define responsibility. He believes the passage of this bill will allow landowners adjacent to these right of ways and others who wish to protect the environment to make those who claim ownership of these right of ways be responsible. (See attachment 4)

Brad Harrelson, Associate State Director, Kansas Farm Bureau Governmental Relations, was welcomed and testified in support of the bill. Kansas Farm Bureau members stand united in support of the bill. Although current law requires specific maintenance, up keep and safety efforts by the responsible party, there is no specific enforcement mechanism in the law. As such, the law is being ignored. The provisions in the Kansas Recreational Trails Act are good provisions. They protect trail users and landowners alike, however, it does little good to have the requirements in the statute book if they can't be enforced. (See attachment 5)

Todd Johnson, Kansas Livestock Association, presented testimony on behalf of Derenda J. Mitchell, Assistant Counsel, KLA, in support of the bill. KLA supports this bill because it adds practical enforcement tools to the Recreational Trail Act. Landowners would have recourse under this bill when they suffer damages to their land if a trail group fails to control weeds, fences, litter, signage, or any other trail maintenance requirements. They do, however, have one suggestion and that is that line (c) be deleted from the bill. (See attachment 6)

Senator Edward Pugh, 1<sup>st</sup> District, was welcomed to the committee. He testified in support of the bill. The rail banking legislation passed in 1983 which led to establishing recreational trails on abandoned railroad right of ways. He believes this is a major private property rights issue and a serious oversight on the part of Congress. This was an unjust law and has left landowners in limbo for many, many years and has been a continual fight with rails to trails organizations year after year. This bill would force those organizations who take on the responsibility of developing a recreational trail to be held accountable in following the federal and state statutes of the rail banking act. (See attachment 7)

Written only testimony was submitted by Charles Herd, Greensburg, Kansas, in support of the bill. (See attachment 8) Committee questions and discussion followed.

Jay Barnes, Executive Director, Kansas Natural Resource Council, presented testimony in opposition to the bill and believes this measure is in direct conflict with recent recommendations of the Governor's Natural Resource Legacy Alliance. In providing a comprehensive strategic plan for managing the state's natural resources, the Alliance report took note of the growing demands for outdoor recreation that come from expanding urban communities and recommended a proactive role for state government in promoting access to recreational opportunities for both economic development and quality of life purposes. (See attachment 9)

Frank Meyer, President, Kanza Rail Trails Conservancy, testified in opposition to the bill. The Kanza Rail Trail Conservancy is responsible for the development and operation of the Landon Nature Trail from Topeka to Lomax, and the Flint Hills Nature Trail from Osawatomie to Herrington. He believes the Kansas Trail Law is regarded as being the most anti-trail law in the country and that this bill will leave future generations asking why. (See attachment 10)

## CONTINUATION SHEET

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Cort Anderson, a small business owner from Belle Plaine. He presented testimony in opposition to the bill and believes this bill will have a large negative impact on the economies of small businesses and communities along and near existing and future recreational trails. Some Kansas communities understand the benefits of recreational trails and are exploring them as a way of bringing in tourism dollars. If the economic benefits were fully understood by more communities and small businesses in the state you would see the opposite of this bill, legislation making it easier, not harder, to develop recreational trails. (See [attachment 11](#))

Michael Goodwin, President of the Board of Directors of the Kansas Trails Council, Inc., testified in opposition to the bill. Kansas Trails Council believe that this bill will severely damage their ability to develop new trails and maintain existing trails in the State. By creating the potential for personal legal liability for each member of the volunteer trail organizations, this bill will spell the end of these organizations and cause the effective abandonment of many miles of their growing trail network. (See [attachment 12](#))

Joe Taylor, The Kansas Horse Council, presented testimony on behalf of Ann White, in opposition to the bill. She believes this bill puts any volunteer person or organization that are involved in maintaining a trail (single track, rail trail or paved) at a serious liability risk based on the whim of the landowner whose property borders any public land. With funds running low at the Kansas Department of Wildlife and Parks, volunteerism is a must to help create and maintain the trail system in our state. (See [attachment 13](#))

Ken Miner, International Mountain Bicycling Association, and Earth Riders Trails Association, testified in opposition to the bill. He believes this bill will add a legal burden to the State with the likelihood of increased litigation by private land owners against State sanctioned volunteers. This bill will eliminate a source of free labor for the State and will ensure that Kansas is only a place to drive through on the way to Colorado or Missouri. Large, out of state energy companies with gas stations that dot the interstates will benefit from this bill, but our local communities and towns will not. (See [attachment 14](#))

Chad Lamer, Lawrence Mountain Bike Club (LMBC), testified in opposition to the bill. The LMBC's mission is to promote cycling by organizing mountain bike races, social rides, social events and to support local trail advocacy efforts in and around Lawrence, Kansas. LMBC urges the committee not to pass this bill out of the committee for consideration by the Chamber. LMBC believes that current Kansas law provides adequate remedies for a responsible party's noncompliance with KSA 58-3212. (See [attachment 15](#))

Charles Benjamin, Kansas Chapter of the Sierra Club, presented testimony in opposition to the bill. He believes this bill would create "citizen suit" provisions to allow landowners adjacent to the recreational trails to go into state district court and sue "responsible parties" for their alleged failure to carry out state law. To his knowledge this type of citizen suit provision is found nowhere else in state law. If the legislature decides to pass this type of legislation with regards to rail trails perhaps the legislature should also consider passing other laws giving adjacent landowners similar rights in other situations. (See [attachment 16](#))

Dan Ward, Executive Director, Kansas Wildlife Federation, testified in opposition to the bill. He asks what the benefit of this course of action might be. How far forward would we go, what kind of progress would we enjoy as a state, from enacting legislation like this bill. One of the most common complaints he has heard from friends, relatives, and enemies alike is that we live in an overly litigious society. This bill does nothing to encourage the responsible use of an overburdened court system. (See [attachment 17](#))

Amelia McIntyre, Fairway, KS, testified in opposition to the bill. She believes this bill attempts to impose personal liability upon the members, stockholders, directors and officers of a responsible party for failure to comply with the Kansas Recreational Trails Act. Under KSA 58-3211, a responsible party is any person, for profit entity, not for profit entity or governmental entity that is responsible for developing, operating or maintaining a recreational trail. The bill, if it becomes law, will have a chilling effect on the development of existing rail banked corridors, and will deter future organizations or governmental entities from undertaking the development of additional recreational trails within Kansas, to the detriment of all

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Kansans. (See attachment 18)

Ron Klastaske, Executive Director, Audubon of Kansas, presented testimony in opposition to the bill. There is a perception among travelers across the country that Kansas doesn't offer much in terms of opportunities for outdoor recreation, and many residents think first of going to some other state for these activities. We even have some organizations within the state who are hostile to the development of trails and public land ownership. The overlook the fact that recreational opportunities close to home add to the quality of life of residents and to the economy of the state in ways that may help to provide jobs in both rural and metropolitan areas. (See attachment 19)

Amy Thorton, Legal Counsel, Kansas Department of Wildlife and Parks, testified in opposition to the bill. The Department is strongly opposed to the enactment of this bill. A legal cause of action already exists if the trails fall into noncompliance under the federal National Trails Act. This bill would merely encourage opponents to the development of trail systems to engage in frivolous lawsuits and make it impossible for trails to develop in the State of Kansas. (See attachment 20) Committee questions and discussion followed.

Written testimony in opposition to the bill was submitted by: Laura Calwell, Kansas Riverkeeper, Friends of the Kaw (See attachment 21); Stephen Rhoades, MetroGreen Planner, MetroGreen Technical Advisory Group (See attachment 22); Laura Kelly, Executive Director, Kansas Recreation and Park Association (See attachment 23); and Kim Gulley, Director of Policy Development, League of Kansas Municipalities (See attachment 24).

Chairperson Freeborn thanked conferees for their participation and committee members for their attention. She closed the hearing on **HB2583**.

The meeting adjourned at 5:55 p.m. The next meeting is scheduled for Thursday, February 12, 2004



**Testimony in Support of H. B. 2583**  
Committee on the Environment  
Chris Krass, Shawnee County landowner  
2/10/04

Chairwoman Freeborn and members of the committee. I support the legislation proposed in H. B. 2583. As a life-long resident of Shawnee County, I watched the last trains roll past our land in 1987. Since that time several private groups have tried to develop the abandoned rail corridor into a recreational trail.

The maintenance and development of the trail out in southeastern Shawnee County, where I live, has been neglected for fourteen years. Today the part of the trail that runs along our property is overgrown. A no trespassing sign nailed to a wooden blockade limits access.

I stand before you as a frustrated landowner. Over the years I have cleared the portion of the trail that runs along our property twice. My efforts have been in vain because the various trail organizations that held title to the corridor have done little to develop or maintain the proposed trail.

Last year, in testimony before the Shawnee County Commission, a representative for the Kanza Rails to Trails Conservancy went on record as saying "the conservancy would welcome the opportunity to turn the ownership of the rail line over." Clearly, none of the four or five non-profit organizations that have had a stake in the development and maintenance of the trail for the last fourteen years are prepared to actually develop and maintain the trail.

As a frustrated landowner who does have a direct stake in what happens with the trail, I worry about health and safety issues. Here is an abandoned, overgrown stretch of land that runs a good quarter of mile along my land. No one seems to have the strength and commitment required to mow the corridor, collect the trash and properly fence the land.

I support H. B. 2583 because I want adjacent property owners like myself and units of local government to have the right to force groups like the Kanza Rails to Trails Conservancy to maintain their property.

Thank you.

Chris Krass  
8901 S. E. Ratner Road  
Berryton, KS. 66409

*House Environment  
2-10-04  
Attachment 1*

ROBERT TYSON  
SENATOR, TWELFTH DISTRICT  
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TOPEKA

SENATE CHAMBER

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MEMBER: AGRICULTURE  
UTILITIES  
JOINT COMMITTEE ON  
SPECIAL CLAIMS AGAINST  
THE STATE  
<http://skyways.lib.ks.us/kansas/government/tyson/>  
email: rtyson@ink.org

## BEFORE THE HOUSE ENVIRONMENT COMMITTEE

### Testimony in Support of HB 2583

Rail-Trail groups have taken control of hundreds of miles of former railroad right-of-ways in Kansas. Under Kansas law, these right-of-ways should have reverted to the adjacent landowner and placed back into their farms when they were no longer used for railroad purposes. (Harvest Queen Mill & Elevator v. Sanders, 189 Kan. 536, and K.S.A. 66-525)

In 1984, Congress passed the Rail-Trail Act, which allowed groups of trail supporters (herein called “responsible party”) to assume control over these right-of-way strips to develop public trails. The adjacent landowners of these strips, usually 100 feet wide, were never consulted or compensated. They feel that their property was simply taken.

The trail groups, the “responsible party” is required by Kansas Law (K.S.A. 58-3212) to provide for the safety, signage, litter control, fire hazard control, law enforcement, fencing, weed control, and to maintain all bridges, culverts and roadway intersections on the trail. And to show they are responsible and prudent they must provide insurance and a bond or escrow account assuring the responsible party’s performance. Not to mention paying property taxes and developing the trail in a definite time period.

Now, hundreds of miles of these right-of-way strips across the state are lying idle. They have not been developed; taxes are not being paid; bonds required have not been posted; weeds and brush have taken over; fences have fallen down and not repaired; private farms are subjected to littering and vandalism; bridges, drainage and culverts are destroyed or deteriorating. All of this neglect is prohibited under Kansas law as set forth in K.S.A. 2003 Supp. 58-3212. No one is enforcing the law against the “responsible party.”

*House Environment  
2-10-04  
Attachment 2*

Under the present law, only a city or county can bring an action to the U.S. Surface Transportation Board to enforce the provisions of K.S.A. 2003 Supp 58-3212 and they are not interested in State law. Landowners, who are the victims of this neglect, are not included in the inadequate enforcement provisions. County and city governments are reluctant to involve themselves in litigation against these trail groups, so the landowner is left to suffer without any remedy.

Some Rail Trail groups with very little assets have been awarded many miles of railroad right-of-ways which they cannot maintain as required by law. Trail groups know that they can keep the trail indefinitely with no maintenance and that their neighbors have no recourse for recovering damages.

House Bill No. 2583 amends K.S.A. 2003 Supp. 58-3215 by adding, that in addition to cities and counties, any landowner, adjacent to the trail, may bring an action, to enforce the provisions of K.S.A. 2003 Supp. 58-3212. The amendment further provides for certain penalties and sanctions that a court can levy against the "responsible party," its officers, members and directors for failure to comply with the law.

Opponents to this bill will point out that generally corporation officers and members are not held responsible for the corporate actions, however I know of no other groups that incorporate to show contempt for state law. They seem to feel that they can thumb their nose at state laws by misclaiming federally sanctioned trail rights.

Trail groups should not be allowed to claim control over private property and then violate the law by failing to pay taxes, post required bonds, provide maintenance and security, prevent vandalism and littering, all to the detriment of private landowners along these trails. Trail groups should not be allowed to operate with impunity and in violation of the law. Landowners, who are the victims of this neglect, should be entitled to their day in court.

The issues of personal liability are state issues and not federal issues. I strongly urge you to pass HB 2583.



Chairperson Freeborn  
House Environment Committee

Thank you for the opportunity to testify concerning H.B. 2538. I am John Love, resident of Shawnee County and an adjacent landowner to an abandoned railroad right-of-way. Since the 1980's, we have watched in total frustration and helplessness as various trail development groups fail to comply with federal and state statutes of the railbanking act. Justice and fairness do not prevail as deadlines are allowed to be ignored for years, without penalty or consequence. For many years now, my wife and I have lived with the frustration of having no voice in enforcing the laws that are on the books. While most landowners do not have the time or resources to fight for their property rights and privacy (year after year), it is within your power to put some teeth to the laws that are already in force. We appeal to your sense of fair play. Please support the passing of H.B. 2583.

**"Nor shall private property be taken for public use without just compensation"**

Fifth Amendment, U.S. Constitution

John & Jalayn Love  
8750 SE Tecumseh Rd.  
Berryton, KS 66409  
(785) 836-3215

*House Environment  
2-10-04  
Attachment 3*

My name is Harold Lutz

I wish to thank Chairperson Freeborn and the House Environment Committee for allowing me to testify today on behalf of House Bill #2583.

When Congress passed the 1983 rail banking legislation, it clearly stated that organizations who acquired these right of ways assume full responsibility and liability for these Right Of Way/Trails. Unfortunately, Congress did not clearly define responsibility.

Thirteen years later in 1996 after it was apparent different organizations have different interpretations of responsibility, the State of Kansas passed House Bill #2711 which clearly indentified responsibility. Unfortunately that bill did not clearly address what actions can be taken if organizations who claim these Rails to Trails corridors do not comply with those responsibilities.

To give you an example of how this has played out to date:

The Interstate Commerce Commission issued a decision on the abandonment of the Missouri Pacific Right of Way from Topeka, KS to M.P. 382.93 near Overbrook, KS. On May 24, 1989 and issued a notice of interim trail use over 14 years ago.

Originally this R.O.W. was quick claim deeded by the Missouri Pacific R.R. to Pioneer Legacy Foundation, who did nothing with it until January 22, 1990 when they quick claim deeded it to The Rails to Trails Coalition of Kansas.

Rails to Trails Coalition obtained a liability insurance policy and did nothing further until Sept. 4, 1996 when they quick claimed to Serenata Farms School of Equestrian Arts. From that date forward, they also obtained a liability insurance policy and did nothing further.

This deed is now held by the Kansas Horseman's Association, who also have a liability insurance policy. They have also paid some, perhaps by now all of the back taxes primarily because foreclosure sale for back taxes was being considered.

Hopefully you can understand the frustration of landowners adjacent to this R.O.W. who while expiration dates have come and gone, have put up with nearly 15 years of fallen trees in their fields, downed fences, noxious weeds, deteriorating creosote ties, and fire hazards, to name a few failed responsibilities.

In some cases, ours being one, those abandoned R.O.W's. runs thru our front yards.

Passage of House Bill #2583 will allow landowners adjacent to these R.O.W.'s and others who wish to protect our environment to make those who claim ownership of these R.O.W.'s be responsible. Ownership and responsibility should go hand in hand.

Thank each of you for your attention and your time.

Harold and Dixie Lutz  
8349 SE Matney Rd.  
Berryton, KS

*House Environment  
2-10-04  
Attachment 4*



## **Kansas Farm Bureau**

2627 KFB Plaza, Manhattan, Kansas 66503-8155 • 785.587.6000 • Fax 785.587.6914 • www.kfb.org  
800 SW Jackson St., Ste. #1008, Topeka, Kansas 66612 • 785.234.4535 • 785.234.0278

### **PUBLIC POLICY STATEMENT**

#### **House Committee on Environment**

**RE: HB 2583 – an act concerning recreational trails; relating to remedies for failure to comply with the law**

**February 10, 2004  
Topeka, Kansas**

**Presented by:  
Brad Harrelson, Associate State Director  
KFB Governmental Relations**

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Chairperson Freeborn and members of the committee, thank you for the opportunity to appear before you in support of House Bill 2583. I am Brad Harrelson, Associate State Director of Governmental Relations for the Kansas Farm Bureau (KFB). KFB is the state's largest general farm organization and represents more than forty thousand agricultural producer families through the 105 county Farm Bureau Associations across Kansas.

Our members stand united in support of House Bill 2583. Although current law requires specific maintenance, up-keep and safety efforts by the responsible party, there is no specific enforcement mechanism in the law. As such, the law is being ignored. The provisions in the Kansas Recreational Trails Act are good provisions. They protect trail users and landowners alike, however, it does little good to have the requirements in the statute book if we can't enforce them.

Countless examples exist across the state where trails are not maintained as prescribed in law. Issues of fencing, maintenance, littering, trash dumping and unsafe trail conditions are not unique. Since there is no direct enforcement provision in the Act, landowners have virtually no recourse.

The proposed amendment to the Kansas Recreational Trails Act contained in HB 2583 clarifies existing language, and provides a specific enforcement mechanism landowners and local government can turn to when a trail sponsor is not fulfilling the requirements of the Kansas Recreational Trails Act.

*House Environment  
2-10-04  
Attachment 5*

You will likely hear from opponents of the bill that this legislation will place unnecessary hardship on trail sponsors and discourage trail development. We believe quite the opposite to be true. In fact, we feel this is a "win-win" for trail supporters and landowners alike. Trails that are not maintained, are overgrown in weeds, cluttered with unsightly trash or even worse, impassable and unsafe and are of no use or value to anyone. This bill will provide a useful tool in assuring that trails are maintained as required by law for the benefit and enjoyment of all Kansans. We would encourage all those contesting the bill to consider the bill on its merits and the spirit in which it was introduced.

Ladies and gentlemen, we are grateful for the opportunity to appear before you today in support of House Bill 2583, and would request your favorable action on this proposal.

Thank you for the opportunity to appear before you today.

*Kansas Farm Bureau represents grassroots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.*



*Since 1894*

## Testimony

To: House Commerce Committee  
From: Derenda J. Mitchell, Assistant Counsel, Kansas Livestock Association  
Subject: HB 2583  
Date: February 10, 2004

My name is Derenda J. Mitchell. I am Assistant Counsel for the Kansas Livestock Association (KLA). KLA is a trade organization that represents all segments of the livestock industry and has about 6,000 members.

I appear today in support of House Bill 2583. KLA supports House Bill 2583 because it adds practical enforcement tools to the Recreational Trail Act found in K.S.A. 58-3211 et seq. Landowners would have recourse under this bill when they suffer damages to their land if a trail group fails to control weeds, fences, litter, signage, or any other trail maintenance requirements.

The bill lists specific remedial measures such as monetary penalties and fees, costs and court orders to compel compliance with the recreational trail requirements. This list of tools will help landowners to tailor the remedy to fit the particular circumstances. Courts can address each situation to best achieve compliance.

We do have one suggestion and that is that line (c) be deleted from this bill. Imposing personal liability on the members, stockholders, and directors and officers of what are predominantly non-profit corporations is too harsh in our estimation. Incorporation is designed to insulate the individuals from personal liability. Legal methods that enable an injured party to do what is called "pierce the corporate veil" are already available in law if the situation warrants such drastic measures. We prefer that individuals not be automatically personally liable in the way this bill provides.

Thank you for the opportunity to comment in support of this bill.

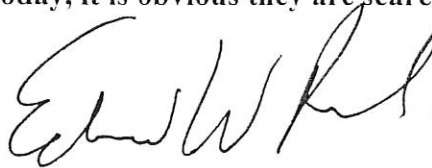
Testimony on House Bill 2583  
House Environment Committee  
by Edward W. Pugh  
State Senator - 1<sup>st</sup> District  
February 10, 2004

Thank you for this opportunity to present testimony in support of House Bill 2583.

We all know the railbanking legislation passed in 1983 which led to establishing recreational trails on abandoned railroad right-of-ways. I believe this is a major private property rights issue and a serious oversight on the part of Congress. This was an unjust law but, nevertheless, it happened. This legislation has left landowners in limbo for many, many years and has been a continual fight with rails-to-trails organizations year after year after year. H.B. 2583 would force those organizations who take on the responsibility of developing a recreational trail to be held accountable in following the federal and state statutes of the railbanking act. As it stands now, it is a do as they please, when they please, for as long as they please operation. The statute requiring time limits for completing a trail is just one of the many statutes that is totally ignored, which is a key concern of the landowners. If the Kansas Statutes had been followed, the time limit for the completion of the Landon Trail would have expired 3 years ago. On 8-29-01, a Federal Court in Kansas (Cheryl SWISHER, et al., Plaintiffs, v. UNITED STATES of America, Defendant) ruled the Rails-To-Trails Act is a taking and the plaintiffs are entitled to just compensation under the Fifth Amendment's taking provision. However, the average landowner cannot afford to take these organizations to court; therefore, they do as they please. Thousands of dollars have been spent by the landowners fighting this injustice as they object to this taking of their land and their privacy, not to mention the devaluation of their property. No one wants to buy land with public access through it. These rails-to-trails organizations have unlimited pro bono lawyers, a privilege the landowners do not have.

Again, as it stands, no government entity is holding these organizations accountable to the federal and state railbanking statutes. The passing of H.B. 2583 is crucial so the landowners will have at least a level playing field to protest the taking, without compensation, of their land.

Judging by the number of opponents here today, it is obvious they are scared of this legislation that will finally force some accountability.

  
House Environment  
2-10-04  
Attachment 7

# Kansas Recreational Trails Act

Kansas Statutes Annotated (1996 Supp.) 58-3211 through 58-3216

## RECREATIONAL TRAILS

### **58-3211.** Definitions. As used in this act:

(a) "Adjacent property owner" means a person or entity, other than a responsible party, who owns property or facilities on or adjacent to a recreational trail.

(b) "Recreational trail" means a trail created pursuant to subsection (d) of 16 U.S.C. 1247 (1983).

(c) "Responsible party" means any person, for-profit entity, not-for-profit entity or governmental entity that is responsible for developing, operating or maintaining a recreational trail.

History: L. 1996, ch. 223, § 1; July 1.

### **58-3212.** Duties of responsible party. (a)

The responsible party, at all times after transfer of the deed to the responsible party, shall:

(1) Perform the duties imposed by K.S.A. 2-1314 and amendments thereto along the recreational trail;

(2) provide for the safety, use and accessibility of existing easements, utility facilities and access licenses along the recreational trail;

(3) provide for trail-user education and signs regarding trespassing laws and safety along the recreational trail;

(4) provide for litter control and the enforcement of laws prohibiting littering along the recreational trail, including but not limited to trail-user education and signs about laws prohibiting littering and the provision of trash receptacles and the cleanup of trash and litter;

(5) develop and maintain the recreational trail in a condition that does not create a fire hazard;

(6) designate the recreational trail for non-motorized vehicle use with exceptions only for motorized wheelchairs and maintenance, law enforcement and emergency vehicles;

(7) prohibit hunting or trapping on or from the recreational trail;

(8) provide for law enforcement along the recreational trail;

(9) grant easements to adjacent property owners to permit such owners to cross the recreational trail in a reasonable manner consistent with the use of the adjacent property and with K.S.A. 66-301 through 66-303, and amendments thereto;

(10) (A) maintain any existing fencing between the trail and adjacent property; (B) maintain any future fencing installed between the trail and adjacent property; (C) install between the trail and adjacent property fencing corresponding in class to that maintained on the remaining sides

of such adjacent property; and (D) on request of an adjacent property owner, pay one-half the cost of installing fencing between the trail and such property owner's adjacent property with a fence of the class requested by such property owner, if not all remaining sides of such property are fenced; and

(11) (A) maintain the trail; (B) maintain all bridges, culverts, roadway intersections and crossings on the trail, essential to the reasonable and prudent operation of the trail or needed for drainage, flood control or the use of easements for crossing the trail between adjacent properties, or cause maintenance thereof by other parties that have assumed contractual responsibility therefor; and (C) install and maintain any warranted traffic signs on the trail.

(b) If the responsible party is not a governmental entity, the responsible party shall file with the county clerk of each county where a portion of the recreational trail is or will be located a bond or proof of an escrow account in a Kansas financial institution, as defined by K.S.A. 16-117 and amendments thereto, payable to the county. The bond or proof of an escrow account shall be filed at the time of transfer of the deed to the responsible party and annually thereafter. The bond or escrow account shall be conditioned on the responsible party's performance, and shall be in an amount agreed upon between the responsible party and the county commission as sufficient to fully cover the annual costs, of:

(1) Weed control along the trail, as required by subsection (a)(1);

(2) litter control along the trail, as required by subsection (a)(4);

(3) maintenance of the trail in a condition that does not create a fire hazard, as required by subsection (a)(5);

(4) installation and maintenance of fencing between the trail and adjacent property within the county, as required by subsection (a)(10); and

(5) installation and maintenance of signs along the trail, as required by subsections (a)(3), (a)(4) and (a)(11)(C).

If separate bonds are submitted to or escrow accounts established for the various counties through which the trail transverses, the annual costs listed above shall be only for that portion of the trail located within the particular county that is the holder of the bond or beneficiary of the escrow. A responsible party may submit a single bond or escrow account with multiple counties respectively as coobligees or cobeneficiaries, but in

that event the annual costs used in computation of the bond amount shall be for the entire trail length.

(c) If the responsible party is not a governmental entity, the responsible party shall file with the county clerk of each county where a portion of the recreational trail is or will be located, proof of liability insurance in an amount agreed upon between the responsible party and the county commission as sufficient. Such proof shall be filed at the time of transfer of the deed to the responsible party and annually thereafter.

(d) The provisions of this section shall apply to all recreational trails, regardless of when approval to enter into negotiations for interim trail use is or was received from the appropriate federal agency.

(e) The provisions of this section may be modified or supplemented by any city governing body for recreational trails within the corporate limits of such city in the manner provided by K.S.A. 12-137 *et seq.* and amendments thereto. If a city governing body adopts requirements in addition to those provided by this section, the city shall pay all costs of compliance with such additional requirements.

History: L. 1996, ch. 223, § 2; July 1.

### **58-3213. Procedures for development.**

(a) Upon receipt of permission from the appropriate federal agency to enter into negotiations for interim trail use, the responsible party shall give written notice to each adjacent property owner that the responsible party intends to build a recreational trail adjacent to the property owner's property. The responsible party may utilize the addresses to which real estate tax statements are sent, as maintained by county officials, for such notices. Such notice shall be given by first-class mail unless the notice is returned undelivered, in which case a further notice shall be given by certified mail. Further notice shall be published once each week for three consecutive weeks in the official newspaper of the county in which such trail is proposed to be located.

(b) Before commencing development or operation of a recreational trail, the responsible party shall:

(1) Prepare a project plan that includes: (A) The name and address of the responsible party, (B) an itemized estimate of the costs of the project and sources of funding for the project, and (C) maps of the recreational trail;

(2) submit by certified mail, not later than 180 days after receiving approval of interim trail use from the appropriate federal agency, the initial project plan to the county commission of each county where a portion of the trail is to be located outside of city limits and to the governing body of each city where a portion of the trail is to be located inside the city limits;

(3) submit the final project plan to the county commission of each county where a portion of the trail is to be located outside of city limits and make subsequent reports to such county commission as to the status of trail development or operation, or both, at intervals determined by the commission and consider all recommendations the commission has regarding the trail; and

(4) submit the final project plan to the governing body of each city where a portion of the trail is to be located inside the city limits and make subsequent reports to such city governing body as to the status of trail development or operation, or both, at intervals determined by the governing body and consider all recommendations the governing body has regarding the trail.

(c) The responsible party shall complete development of a recreational trail within a period of time equal to two years times the number of counties in which the recreational trail is located. Such period of time shall begin only when the appeal period pursuant to subsection (d) of 16 U.S.C. 1247 (1983) has expired. Any time during which there is pending any court action challenging the development or use of the trail shall not be computed as part of the time limitation imposed by this subsection.

(d) The provisions of this section shall apply to only recreational trails for which approval to enter into negotiations for interim trail use is received from the appropriate federal agency on or after the effective date of this act.

History: L. 1996, ch. 223, § 3; L. 1996, ch. 252, § 1; July 1.

**58-3214. Adjacent property owner's duty of care.** An adjacent property owner has no duty of care to any person using a recreational trail except that this section shall not relieve an adjacent property owner from liability for injury to another that is a direct result of such property owner's gross negligence or willful or wanton misconduct.

History: L. 1996, ch. 223, § 4; July 1.

**58-3215. Remedies for violations.** A city or county may institute procedures for recourse against the responsible party pursuant to 16 U.S.C. 1247 (1983) and 49 C.F.R. 1152.29 (1986) upon the failure of the responsible party to comply with the provisions of this act.

History: L. 1996, ch. 223, § 5; July 1.

**58-3216. Severability.** If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or application. To this end the provisions of this act are severable.

History: L. 1996, ch. 223, § 6; July 1.



**From:** "Orville J. Cole" <klng@kanza.net>  
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**Date:** Mon, 26 Aug 2002 18:55:22 -0500  
**Subject:** Fw: Kansas Federal District Court Decision

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The Kansas Dept. of wildlife and parks may find out that private property rights do matter.

— Original Message —

**From:** daleanderson@ECKSOR.net  
**To:** starj@starj.com  
**Sent:** Monday, August 26, 2002 4:44 PM  
**Subject:** Kansas Federal District Court Decision

[All outgoing mail checked by Norton AntiVirus]

Dale E. Anderson  
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## Swisher Wins Federal District Court Case in Kansas!

Cheryl Swisher of McPherson wins big in constitutional "takings" case!

*Everyone who is dealing with anti-property-rights outfits should read this case.*

***It's time for someone to pay.***

Subject: Rails-trails case

176 F.Supp.2d 1100  
(Cite as: 176 F.Supp.2d 1100) United States District Court, D. Kansas.

Cheryl SWISHER, et al., Plaintiffs, v. UNITED STATES of America, Defendant.

No. 98-1352-CM.

Aug. 29, 2001.

**MEMORANDUM AND ORDER**

**MURGUIA, District Judge.**

Plaintiffs filed this cause of action alleging that they own interest in land constituting part of a railroad corridor now operated for trail use pursuant to the National Trails System Act ("Trails Act"), 16 U.S.C. <section> 1247 et seq. Plaintiffs allege that defendant has worked a taking of their property and seek just compensation under the Fifth Amendment in the amount of \$10,000 or less. This matter is before the court on plaintiffs' motion for partial summary judgment (Doc. 98) and defendant's motion for declaration that plaintiffs must convey whatever interest is adjudged or agreed taken (Doc. 132).

**\*1101 I. Summary Judgment**

Plaintiffs filed their motion for partial summary judgment in June 2000, to which defendant filed no response. Since the filing of plaintiffs' motion, the parties have engaged in discussions, and defendant has agreed to compensate plaintiffs. As discussed more fully herein, the court agrees that plaintiffs' property has been taken by defendant and, therefore, plaintiffs are entitled to just compensation. Thus, to the extent that plaintiffs move for an order finding that they are entitled to just compensation under the Fifth Amendment's taking provision, the court grants plaintiff's motion for partial summary judgment.

**II. Defendant's Motion to Convey**

One unresolved issue remaining is whether plaintiffs must execute a legal instrument transferring a property interest to defendant in return for payment of just compensation. Defendant's motion seeks such a conveyance, while plaintiffs maintain that they are not required to execute any legal document evidencing acquisition by defendant of any interest in the disputed land.

**A. Background Facts**

Plaintiffs own fee simple in the disputed land. Plaintiffs obtained ownership of the property subject to an easement for railroad use which was at the time owned by Union Pacific Railroad Company ("Union Pacific"). In 1997, Union Pacific conveyed its interest in the railroad right-of-way corridor to the Central Kansas Conservancy (CKC) pursuant to the Trails Act. The purpose of the conveyance was to establish

interim trail use and railbanking.

**B. The Trails Act**

Under the current version of the Trails Act, railroad corridors otherwise ripe for abandonment can be preserved for possible future railroad use (railbanking) and may be converted to trails for recreational use. 16 U.S.C. <section> 1247(d). The Trails Act authorizes the Interstate Commerce Commission (ICC) to take such actions. Section 8(d) of the Trails Act provides that a railroad wishing to cease operations along a particular route may negotiate with a state, municipality, or private group that is prepared to assume financial and managerial responsibility for the right-of-way. Specifically, when a railroad wishes to cease operations, it must file a notice of intent with the Surface Transportation Board ("STB"). 49 C.F.R. <section> 1152.20(a) (1). The railroad then files an application for abandonment after the notice of intent is filed. Id. <section> 1152.20(b), 1152.24(a). If a state or local government or private entity is interested in converting the railroad corridor to a trail, it must submit a trail proposal that includes a statement of willingness to manage the corridor, assume liability, and pay taxes. Id. <section> 1152.29(a). The railroad may then negotiate and, if an agreement is reached, the right-of-way becomes a trail and abandonment by the railroad is not authorized. 16 U.S.C. <section> 1247(d). If the parties cannot agree, the railroad may abandon the right-of-way.

[1] Under most states' laws, including Kansas, when an easement is abandoned, the property reverts back to the landowner. However, pursuant to the language under the Trails Act, interim trail use "shall not be treated, for any purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes." Id. This is the provision which gives rise to a takings question in the typical "rails-to-trails" case. *Preseault v. Interstate Commerce Comm'n*, 494 U.S. 1, 8, 110 S.Ct. 914, 108 L.Ed.2d 1 (1990).

[2] Under the Trails Act, the conversion from railroad use to trail use blocks the abandonment of the right-of-way even \*1102 though the conditions for abandonment under state law may otherwise be met. "But for the negotiation of a trail use agreement, state property law would be revived and, possibly, trigger extinguishment of rights-of-way and the vesting reversionary interest." *Nat'l Assoc. of Reversionary Property Owners v. Surface Transp. Bd.*, 158 F.3d 135, 139 (D.C.Cir.1998). In such circumstances, when a reversionary interest is blocked, the interim trail is deemed a taking. *Preseault v. United States*, 100 F.3d 1525, 1550, 1552 (Fed.Cir.1996); *Glosemeyer v. United States*, 45 Fed.Cl. 771, 781 (2000). Accordingly, the holder of a reversionary interest that does not vest because of a trail use (such as the plaintiffs in this case) is entitled to compensation.

**C. Necessity of a Conveyance**

[3] Conceding that plaintiffs are entitled to compensation, defendant argues that plaintiffs must execute a conveyance. Specifically, defendant asserts that plaintiffs must convey by quitclaim deed any interest in the disputed land that has been "taken" in return for just compensation. The court disagrees.

Before the Union Pacific conveyed its interest in the railroad right-of-way corridor to the CKC, plaintiffs' property was subject to an easement for railroad purposes. Now, pursuant to the Trails Act, plaintiffs' property is subject to an easement for interim trail use. At no time did plaintiffs exercise any rights or control over the easement at issue. But for the Trails Act, plaintiffs' property rights would have reverted back to plaintiffs upon Union Pacific's abandonment of the easement.

Indeed, "[i]t is the thwarted termination of the railroads' rights-of-way- prevented and preempted by operation of the Rails-to-Trails Act-that gives rise to the potential takings claim." Glosemeyer, 45 Fed.Cl. at 776 (citing Nat'l Assoc. of Reversionary Property Owners, 158 F.3d at 139). As such, the court sees no reason why plaintiffs must convey by deed whatever interest is deemed "taken." The interest "taken" was plaintiffs' right--at the time Union Pacific conveyed its interest to CKC--to assume control over their property. Plaintiffs were deprived of this right by an act of Congress, which authorized the ICC to preserve for possible future railroad use rights-of-ways not currently in service, to allow for interim use of such land as recreational trails, and further directed that the ICC "shall not permit abandonment or discontinuance inconsistent or disruptive of such use." 16 U.S.C. <section> 1247(d). The federal government's exercise of its power to extinguish plaintiffs' reversionary rights is the interest that was taken. Glosemeyer, 45 Fed.Cl. at 782 ("Through the agreements consummated between the railroads and trail providers, trail easements have been imposed, essentially in perpetuity, contrary to state law and simply by federal fiat."). Accordingly, the court holds that no deed is necessary to convey such an interest. Defendant's motion is denied.

CGIT IS THEREFORE ORDERED CG that plaintiffs' motion for partial summary judgment

(Doc. 98) is granted to the extent that plaintiffs move for an order finding that they are entitled to just compensation under the Fifth Amendment's taking provision, and defendant's motion for declaration that plaintiffs must convey whatever interest is adjudged or agreed taken (Doc. 132) is denied.

176 F.Supp.2d 1100

END OF DOCUMENT

**Charles Herd**  
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**Phone 620-723-3336**  
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February 9, 2004

Testimony in support of House Bill 2583.

I am a lawyer representing landowners in Comanche County who have been sued by a trail organization, Shortgrass Prairie Trail, Inc. The suit involves a line of railroad right of way in Comanche County, Kansas, one (1) mile west of Protection to the Clark County line.

One of the issues in the lawsuit is application of the Kansas Trails Act. The Act imposes many requirements, but contains no remedies for violation.

Depositions, interrogatories and documents obtained in the lawsuit clearly show that the trail organization has not complied with the Kansas Trails Act, and in fact has made little effort to comply. No taxes have been paid, no development plan submitted to the Comanche County Commissioners, no maintenance, no identification of safety issues, etc. The trail has not been completed and the 2 year period provided in the statute has expired. Notwithstanding, the trail organization attempted to open the trail in May 2002. The landowners resisted and suit was filed.

Discovery obtained from the trail organization shows total funds of less than \$200.00. From its inception, the organization has had very little money. The organization did not have a regular meeting for over a year and is comprised of one family and is a very small group. The organization has little money and dim prospects for getting any money.

The sole remedy under the Trails Act is complaint by a City or County to the Surface Transportation Board (STB). The STB has no interest in enforcing state trail laws.

Individuals organize trail groups as a corporation or LLC to avoid accountability. The organization itself is often poorly funded. They continue to operate in violation of the state trail act realizing that there is no consequence for violation. This is bad for a number of policy reasons. There is no accountability; there is no responsibility for safety or damages; there is no financially responsible party and thus no relief for parties injured or damaged by the trail organization. Further, flaunting statutory requirements breeds contempt for the law. It would be better to have no trail act than to have one which was routinely flaunted because of no effective enforcement mechanism.

House Bill 2583 effectively deals with these concerns. It will require trail organizations to organize, obtain adequate funding and act responsibly in compliance with the Trails Act. Those contemplating a trail organization will have to do their homework, be efficient and raise the

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Page Two

necessary funds so that the organization will be a benefit, not a burden on the community. Opposition to this bill will come from those who do not want to be accountable and do not want to comply with the Trails Act. Trail organizations seem to have contempt for the state trail laws, which they view as impediments to their federally sanctioned trail rights. The potential personal liability for members, officers and directors is of critical importance. This is also true of the provision authorizing the termination of the corporate charter or LLC status. Without these provisions, trail organizers can continue to escape responsibility hiding behind the "corporate veil". Trail organizers should be force to think, plan, organize and raise sufficient funds before they embark on a trail project.

I sense very little support for recreational trail projects in Comanche County, which is cattle country. The railroad right of way involved in the lawsuit is a very desolate area, inhabited by large red ants and rattle snakes. There are no trees, water, etc. There are plum thickets and some prime bird hunting areas in the right of way, which brings up another point. Farmers and ranchers in recent years have been able to supplement their income through hunting leases and other arrangements. The recreational trail deprives landowners of the right to lease these prime areas for hunting purposes. This is probably beyond the scope of House Bill 2583, but is a valid point which should be made on behalf of the landowners.

I will be glad to furnish additional statements or share information obtained through the lawsuit to the extent that such information is not privileged or protected.

Thank you for letting me present this to your committee.

**Kansas Natural Resource Council**

**Testimony Before  
House Environmental Committee  
February 10, 2004**

**Re: HB 2583** An act concerning certain recreational trails; relating to remedies for failure to comply with law.

Madam Chair, Members of the Committee,

I am Jay Barnes, Executive Director of Kansas Natural Resource Council, and I am here to speak in behalf of the Council in opposition to House Bill 2583.

The Council is in agreement with others who will testify today about the extreme adverse impact this bill will have on the operation of recreational trails in Kansas. I will not repeat those points here but I commend them to your careful attention.

There are two additional points of opposition I will address...

First, that this measure is in direct conflict with recent recommendations of the Governor's Natural Resource Legacy Alliance. In providing a comprehensive strategic plan for managing the state's natural resources, the Alliance report took note of the growing demands for outdoor recreation that come from our expanding urban communities and recommended a proactive role for state government in promoting access to recreational opportunities for both economic development and quality of life purposes. This bill's antagonism toward trails and trail operators is obvious and it flies directly in the face of the Alliance recommendations that call for partnerships between local government, nonprofits, and private citizens to pursue its recommendations.

As one of the first bills to be considered since the alliance report went to the Governor, this bill is poor precedent to fostering those partnerships.

The second point of opposition is the conflict with its provisions and the Kansas statutes that prescribe liability limitations for nonprofit organization "volunteers" – a term that specifically includes the directors in the law ( see KSA 60-3601). This bill would permit imposing personal liability on members, directors and officers of nonprofits under certain conditions. The cited statutes though provide protection from personal liability, absent "willful or wanton misconduct or intentionally tortuous conduct". I cannot be sure of course, but it hardly seems reasonable to assume the original framers of those statutes intended that the kinds of trail maintenance issues referenced in this bill would come under the label of "willful or wanton misconduct".

The latter point is of great concern to KNRC beyond the damage this bill would do to existing and future recreational trails in Kansas. It is frankly difficult for nonprofits, in

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February 10, 2004

House Bill 2583

Chairperson Freeborn, members of the committee: Thank you for the opportunity to come before you today in opposition to House Bill 2583.

I am Frank Meyer, President of The Kanza Rail-Trails Conservancy, Chairman – CEO of Custom Metal Fabricators, a Kansas Company that has manufactured and shipped machinery and Equipment to 39 countries around the world and a past Chairman of the Kansas Chamber.

The Kanza Rail-Trail Conservancy is responsible for the development and operation of the Landon Nature Trail from Topeka To Lomax, and the Flint Hills Nature Trail from Osawatomic to Herington.

We Assumed responsibility for 150 miles of trail in September of 2001 because:

1. Tens of thousands of Kansans now live in large cities with no opportunity to enjoy the beauty of nature in open country.
2. Never again in History will we be presented with the opportunity to develop a system of trails providing the people of Kansas with a park system touching many communities, large and small.
3. The Flint Hills Nature Trail will become a key section of the American Discovery Trail, which runs from Coast to coast.
4. If we don't do it who will?

In two and one half years have:

1. Paid off over \$50,000 in back property taxes and have kept tax payments current.
2. Developed and implemented a businesses plan.
3. Established local committees in several communities along the trail which are developing trail in their areas
4. Improved and installed handrail on over 400 feet of bridges.
5. Removed ballast and improved the surface making over 25 miles of trail usable for hikers, joggers, mountain bickers, cross county skiers, bird watchers and all the other legal users of the trail.
6. Started a program to control noxious weeds in cooperation with County Weed departments.
7. Surveyed fences and prioritizing our fencing plan and have repaired or replaced several miles of fence.
8. Worked with adjacent landowners and are addressing their concerns.
9. A membership that is growing every day.
10. Met with County Attorneys and County Commissioners who have stated we are complying with State Law.
11. Done all of this without one dime of public funding or tax money.
12. Best of all we have provided an experience in the open country for uncounted Kansans young and old. That is why we are here.

With our active and growing membership, we will continue to develop trail at this or a faster rate in the future.

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# Opposition to House Bill 2583

Cort Anderson  
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## Introduction

My name is Cort Anderson and I am a small business owner from Belle Plaine. I represent three groups, two formally and one informally.

### Formally

MTBAccess, [www.mtbaccess.com](http://www.mtbaccess.com), an international organization whose mission is to protect and ensure fair and reasonable trail access for mountain bicyclists.

Kansas Singletrack Society, a south central Kansas organization whose mission is to build and maintain recreational trails for mountain bicyclists.

### Informally

Small business owners across Kansas.

## Economic Impact

This bill will have a large negative impact on the economies of small businesses and communities along and near existing and future recreational trails.

In today's economic climate small business and communities are struggling to survive. Many communities are looking at various means of economic development, one that is being promoted by state government is tourism. Recreation trails are tourism, people often travel long distances to hike, bicycle and ride horses on trails.

Studies have shown that recreational trails have a large positive economic impact on small businesses and communities along and near trails. They bring in dollars from outside the community and increase property values.

- In Oracle and San Manuel Arizona, a single, one-day mountain bike event in it's second year brought in more than \$250,000 to the community.
- Not only has Seattle's Burke-Gilman Trail been used as a selling point for nearby properties, but it has also been proven to increase the value of those properties.

- Hartsburg, Missouri had only one business – a tavern when the KATY Trail was built. Today, due primarily to its prime location on the Katy Trail and the entrepreneurial spirit that thrives among its residents, Hartsburg boasts two restaurants, a winery, a tavern, a bike shop, the Globe Hotel and at least three antique shops.

- The KATY Trail has a conservative estimate of 300,000 visitors annually. Trail counters do not reflect the fact that visitors from all 50 states and more than 20 countries have signed guest books in places like Rocheport's Trailside Café.

- Maryland's Northern Central Rail-Trail attracts 457,000 visitors every year and has had an enormous economic impact on nearby businesses, leading to the creation and support of 262 jobs. The trail's cost to the public in 1993 was \$191,893, it generated State tax revenue of \$303,750 the same year. This revenue was a direct result of a growing economy's sales, property, and income taxes.

These examples come from are three studies showing the economic impact of recreational trails on communities:

1 - The Economic Benefits Of Mountain Biking At One Of Its Meccas:  
An Application of the Travel Cost Method to Mountain Biking in Moab, Utah

2 - The Economic and Social Benefits of Off-Road Bicycle and Pedestrian Facilities

3 - Katy Trail State Park An Economic Impact Assessment

Some Kansas communities understand the benefits of recreational trails and are exploring them as a way of bringing in tourism dollars. If the economic benefits were fully understood by more communities and small businesses in the state you would see the opposite of House Bill 2583, legislation making it easier not harder to develop recreational trails.

# **The Economic Benefits Of Mountain Biking At One Of Its Meccas: An Application of the Travel Cost Method to Mountain Biking in Moab, Utah**

**Peter Fix And John Loomis**  
Colorado State University

## **Economic Benefits of Mountain Biking**

The authors are: research associate, Department of Agricultural and Resource Economics, Colorado State University, Fort Collins, Colorado 80523; Professor, Department of Agricultural and Resource Economics, Colorado State University; respectively. Partial support provided by W-133 Agricultural Experiment Station Regional Research project.

Please address correspondence to John Loomis at the above address. Fax: (970)491-2067; Phone: (970)491-2485.

Acknowledgments: Jerry Vaske and Richard Walsh, both of CSU assisted in survey design. In addition Dirk Draper, formerly of the National Biological Services, and Russ Von Koch, of the BLM, Moab, Utah, provided helpful input to the questions included in the survey.

## **Abstract**

This paper estimates the value of a relatively new form of recreation: mountain biking. Its popularity has resulted in many documented conflicts, and its value must be estimated so an informed decision regarding trail allocation can be made. A travel cost model (TCM) is used to estimate the economic benefits, measured by consumer surplus, to the users of mountain bike trails near Moab, Utah. The TCM estimated accounts for several issues including substitutes and endogenous stratification. An individual per-trip value and an annual value of a trail were estimated, with the estimates ranging from \$197 to \$205 and \$8,422,800 to \$8,770,300, respectively, depending on the model specification.

KEYWORDS: Mountain Biking, Willingness to Pay, Travel Cost Model.

## **Statement of Problem**

Mountain biking is a relatively new form of recreation compared to activities such as hiking, fishing, and snow-skiing. While these other activities have been studied and their economic benefits to the users estimated (Walsh, Johnson, & McKean, 1992), the authors are not aware of any published studies which have estimated the economic benefits of mountain biking.

It is essential to estimate the economic benefits of mountain biking for several reasons. First, mountain biking has the potential to conflict with other forms of recreation such as hiking and horseback riding, as these activities often use the same trails and these conflicts may increase due to mountain biking's popularity. Mountain biking can also impose special costs on a park such as repairing damaged trails and marking trails. It is essential to estimate the economic benefits of mountain biking to assist in trail allocation and for use in benefit cost analysis of mountain biking specific projects.

This paper uses an individual travel cost model (TCM) to estimate the economic benefits of mountain biking on the trails near Moab, Utah. There are two approaches to the travel cost method: the zonal and individual. The zonal TCM dates back to Clawson and Knetsch (1966). The zonal can be performed without extensive surveying of the visitors, all that is required is origin of visitors and annual number of trips taken. The individual TCM acknowledges that each visitor will have different trip costs, travel time, demographics, etc. and gathers information on each visitor in the sample via a survey. The individual TCM was first proposed by Brown and Nawas (1973).

The TCM is a revealed preference model, meaning it uses actual expenditures by the visitors to estimate a demand curve from which to estimate the benefits. The dollar value which is estimated is not paid by the visitor, but rather it is a dollar value which is retained by the visitor. The economic benefits will be measured in terms of consumer surplus, which can be defined as user willingness-to-pay over and above the actual travel expenditures (Siderelis & Moore, 1995, p.345).

### **Research Methods**

The basis of the TCM is that visitors will choose the annual number of trips to a recreation site based on the cost, both monetary and time, of traveling to the site. The number of trips will be inversely related to the travel cost (Loomis and Walsh, 1997). This idea is of great importance because with careful surveying of the travel costs and number of trips taken a demand curve can be estimated. Once the demand curve is estimated, calculating the net willingness to pay or consumer surplus simply entails adding up the areas below the demand curve and above the price for the various users of the site (Rosenthal, Loomis, & Peterson, 1984).

Several assumptions must hold for travel costs to be a proxy for price in the TCM (Freeman, 1993). The first of these is that the visitor is on a single-destination trip, meaning the travel costs were incurred to reach only the site in question. Mendelsohn, Hof, Peterson, and Johnson (1992) have proposed a method for including multiple destination trips in the TCM, however it was for a zonal, linear application. For this paper, this assumption will be addressed

through the survey design. Another assumption is that there is no net utility derived from the travel time. By adding a variable on travel time, this can be tested. If the coefficient on travel time is not positive, this assumption appears satisfied. While it is possible that the last part of travel, which was in the Moab area, does provide utility, overall it is felt this assumption will hold due to the long distance traveled (average was 525 miles for the entire sample). Another assumption that is sometimes alleged for the TCM requires consumers to respond to fees in a manner equivalent to travel costs; Bowes and Loomis (1980, p.467) demonstrate this is not necessarily required.

### Survey Design

For this study, a visitor survey was designed and a pretest was conducted with people who were known to have visited the Moab area to mountain bike in the recent past. The pretest resulted in refinements to survey questions in order to make the wording more clear, but no questions were added or deleted. In order to meet the assumptions of the TCM several questions were included in the survey to allow screening of the sample to those visitors on single-destination, single-purpose trips. The first relevant question for this purpose asked the respondent the nature of their trip destination and a second asked the purpose of the trip.

The question which solicited information for the independent variable asked the respondent to recall the number of trips made to Moab in the past twelve months. There may be some concern over how accurately the respondent can recall information, however, in this study it is not believed to be a problem. First, the average number of trips is not that great, 2.58 for the full sample, second the respondent is not likely to forget a trip to Moab. In addition, Champ and Bishop (1996) found recall of expenditures to be accurate. If respondents can accurately recall expenditures, they should also be able to recall annual trips.

Of course, questions regarding travel costs and travel time were asked to measure the price variables. Only the variable costs required to make the trip were included. The costs were divided into two categories: costs incurred traveling to Moab and costs incurred while in Moab. The costs incurred "traveling to Moab" section included: gas, lodging, airfare, car rental, and miscellaneous. The costs incurred "while staying in Moab" section included: lodging, camp fees, entrance fees, bike rental, guide fees, and miscellaneous. Categories for food were purposely left out, along with specific instructions not to report it in the miscellaneous category, as it was felt that food is not a variable expense of the trip. Likewise, there were specific instructions not to report expenditures on items such as bike repairs in the miscellaneous category as this item would be depreciated over a longer period of time than the stay in Moab.

## **Study Site and Data Gathering**

Moab, Utah was chosen as the area for which to estimate the economic benefits of mountain biking. Moab has over twenty trails in which to ride, offering spectacular views of unique rock formations and the snow-capped La-Sal mountains, and has become one of the best known areas to ride in the country. This area was picked because it was felt that there would be many single-destination, single-purpose trips, which is a necessary assumption of the TCM (Freeman, 1993). It was also felt that due to Moab's popularity throughout the country there would be sufficient variation in travel distance, time, and trip cost. The reader should be cautioned that due to the notoriety of Moab, these results should not be generalized to other mountain biking areas.

An on-site sample was conducted the week of March 9th to the 16th, 1996. The sampling station was set up at the Slickrock trailhead, one of the more popular trails in the Moab area, and every fifth visitor completing their ride was asked to fill out a survey. During this week 345 people were asked to fill out a survey, of which 35 refused leaving a sample size of 310 resulting in a response rate of 90%.

To meet the assumptions of the TCM, it was necessary to screen the sample to include only those who were on single-destination, single-purpose trips. This was done by using the previously mentioned questions which were included in the survey. Of the 310 responses, 8 did not fill out the relevant question and 64 stated they were on a multi-destination trip, leaving a single-destination sample of 238. The next step was to screen the single-destination sample for multi-purpose visits. Those on multi-purpose trips (e.g. multiple activities such as hiking and biking) would also lead to a problem of allocation of travel cost between activities. Of the single-destination sample, 26 stated they were on a multi-purpose trip leaving a single-destination, single-purpose sample of 212. Outliers, based on gas cost (those reporting gas costs so high as to imply less than 8 miles per gallon), were eliminated resulting in a final sample size of 194.

General descriptive statistics of the respondents are listed in Table 1.

## **Model Specification**

The first issue addressed is specification of the price variable. As is well known (Cesario, 1976; McConnell & Strand, 1981), travel time as well as travel cost must be included in a TCM. Since individual data was used there was sufficient independent variation to include travel time as its own variable in the model. This eliminates the concern over what dollar value (as a percentage of the respondents wage rate) should be used as the opportunity cost of time.

The second issue addressed through model specification is that of substitute sites. Prices of substitutes were taken into account, as their exclusion may

overstate the estimates of consumer surplus (Rosenthal, 1987). The substitute prices which were taken into account are the prices, measured in miles, of traveling to alternative sites to mountain bike. Two measures of substitute prices were created, one using sites with weather conditions similar to Moab and the other using sites with desert conditions similar to Moab.

The weather substitute site is appropriate because many of the respondents could not bike near their home at this time of year, due to weather conditions (e.g. snow), and must travel to another site, Moab or elsewhere, to bike. In addition, Moab is located in the desert country of southeastern Utah and many people travel to Moab to experience riding in these conditions. The desert substitute price represents the cost of obtaining a riding experience similar to that of Moab.

These substitutes are only one of several possible for the Moab site. However, the survey did not ask the respondent about the other sites they might have visited at this time of year if mountain biking was not an option or too expensive.

Since the surveying was done on-site and the dependent variable in the TCM is the number of trips a respondent has taken in the past twelve months, statistical efficiency is improved by using a count data estimator since the number of trips taken is a non-negative integer, rather than a continuous variable as assumed in the normal distribution. Count data estimators restrict positive probability assignment to possible events, while continuous distribution estimators give positive probability to fractional and possibly negative values of the dependent variable (Creel & Loomis, 1990). The Poisson distribution is far more consistent with a data generating process producing only a few trips per visitor. Hellerstein (1992) shows that when the average number of trips is small (such as this data set, where the average is 2.58) the Poisson is a much closer approximation than regression techniques based on the normal distribution. The count data model estimated has a Poisson distribution with the general specification being:

$$Y_i = \exp(\text{PRICES}_i, \text{SUBSTITUTES}_i, \text{DEMOGRAPHICS}_i, \text{error term})$$

The model estimated also corrects for endogenous stratification, which occurs with on-site sampling. With on-site sampling, the likelihood of a person being sampled is related to the frequency of their visits. When using the Poisson model, subtracting one from the reported number of trips corrects for this problem associated with on-site samples (Englin & Shonkwiler, 1995). Subtracting one from the number of trips adjusts the annual number of trips downward to reflect the fact that those who take a higher number of annual trips are more likely to be sampled. For example, someone who takes 4 trips per year has a greater chance of being sampled on any given day than someone who takes 2 trips. This will lead to an upward bias in the dependent variable. In the Poisson specification, subtracting one will adjust the dependent variable down to more accurately reflect the entire population. See Englin and

# Katy Trail State Park

## An Economic Impact Assessment

By Wallace Keck

### OVERVIEW

1. Katy Trail State Park, currently stretching 225 miles east and west between Clinton and St. Charles, is the nation's longest developed rail-trail.
2. The trail follows the rail-banked corridor of the former Missouri-Kansas-Texas Railroad, which filed for discontinuation in 1986.
3. The Missouri Department of Natural Resources, under the direction of then Governor Ashcroft, filed for an interim trail use of the corridor in October 1986. The Interstate Commerce Commission (since 1995 called the Surface Transportation Board) granted the interim trail use on April 27, 1987.
4. Despite legal challenges, the U.S. Supreme Court upheld the constitutionality of the National Trails System Act on February 21, 1990, and two pilot sections of trail were constructed.
5. Missouri philanthropist and businessman, Edward D. "Ted" Jones, contributed \$2.2 million toward the acquisition and development of the trail prior to his death in 1990.
6. The Union Pacific Railroad donated an additional 33 miles of rail corridor (Sedalia to Clinton) for trail development in 1991.
7. Prior to the Great Flood of 1993, a significant number of businesses catering to trail users began to appear in towns such as Rocheport, Hartsburg, Marthasville, Augusta and Defiance.
8. Businesses regrouped and rebuilt after the flood to provide the services demanded by the estimated 300,000 annual trail visitors; however a flood in 1995 created yet another setback.
9. The department forged ahead with construction and celebrated the completion of 185 miles (St. Charles to Griessen Road near Sedalia) on September 29, 1996.
10. An additional 35 miles (the Missouri State Fair equestrian trail head in Sedalia to Clinton) were completed and dedicated on September 12, 1999, bringing the total trail miles to 220. This effectively brings the trail within an hours drive of 2.5 million residents of the state.
11. The department restored the historic Boonville and Sedalia train depots along



Katy Trail in 1998 and 2001 respectively.

## **STUDIES CONDUCTED**

12. A tourism assessment and marketing recommendations for Katy Trail State Park following the flood of 1993, was published by the National Trust for Historic Preservation.

13. Among the recommendations put forth by the plan was the need for communities such as Rocheport, Hartsburg, Marthasville, Augusta and Defiance to work together to develop five visions utilizing Katy Trail. These visions include (1) Heritage Corridor, (2) Missouri as a National Bicycle Destination, (3) Midwest Wine Country, (4) Missouri Get-away Destination, and (5) Natural Scenic Park.

14. In order to fulfill this vision, communities needed to provide services that Katy Trail visitors would need and desire, such as lodging, restaurants, bicycle rentals, museums and shopping opportunities to name a few.

15. The study confirmed that nearly all visitors frequented cafés, restaurants and convenience stores. Half had visited wineries and 1 in 10 had stayed at a local bed and breakfast. A third of those surveyed wanted to see more historic and cultural attractions.

16. The University of Missouri conducted a visitor survey on Katy Trail and found that the average or typical visitor was a white, 43 year old Missourian with one or more college degrees and a household income of \$75,000 or more. The visitor was just as likely to be biking as walking, and male as female. Most were repeat visitors.

17. A series of public meetings in trail communities were held in 1998 by the department to determine needs and desires for the trail. Most agreed that the department should provide basic services such as restrooms, water, interpretive signs and parking, but that local entrepreneurs should develop campgrounds, lodging, restaurants, cafés, and bike rental facilities.

18. A substantial number of Missourians argued for the development of equestrian access and facilities to accommodate these users. A section of trail between the Missouri State Fair in Sedalia to Calhoun has now been opened for equestrian use.

19. The department has also completed a comprehensive interpretive plan that outlines the major natural and cultural themes to be developed. These are broadly defined as (1) MKT Railroad, (2) Missouri River history and culture including Lewis & Clark, (3) Natural history, and (4) agriculture.

20. The department continues to develop plans for managing the natural and cultural resources within its jurisdiction, and annually manages according to an approved operations plan.

21. Katy Trail is managed by teams in three geographic subdivisions: (1) east section stationed at Graham Cave State Park, (2) mid section stationed at Rock Bridge Memorial State Park, and (3) west section stationed at Knob Noster State Park.

22. Oversight of these operations is provided at the Missouri River District Office in Boonville, located within the historic Katy depot.

### **ECONOMIC ASSESSMENT**

23. Trail counters help managers to see trends in visitation. Evidence suggests that trail usage will continue to increase. An estimated 300,000 visitors annually is thought to be conservative. Trail counters do not reflect the fact that visitors from all 50 states and more than 20 countries have signed guest books in places like Rocheport's Trailside Café.

24. Trail related businesses now number nearly 300, most of which have developed since 1991. A number of new businesses appear each year, and are added to the department's Katy Trail State Park website services page.

25. More services are needed, especially campgrounds in places like Clinton, Pilot Grove, North Jefferson, Mokane, Marthasville, Matson and St. Charles.

26. Restaurants, Cafés and/or grocery supplies are needed in communities such as Clifton City, McBaine, Tebbetts, Portland, Treloar and eventually in towns like Black Walnut and Machens when the trail is completed to those locations.

26. The department must continue to build permanent restrooms and drinking water facilities at trail heads where possible, and to work with local entrepreneurs to develop camping and other services through partnerships and land leases.

27. More must be done to develop a coordinated vision among the businesses. In the Spring of 2001, Pebble Publishing, Missouri Rivers Community Network and the department sponsored a Katy Merchants Conference. This was the third attempt to create a coordinated marketing vision since the trail's inception.

28. The Bicentennial Commemoration of the Lewis and Clark Corps of Discovery in 2004 provides the ideal opportunity to present a joint marketing strategy. Tourism officials believe this event will draw literally millions of people along the Lewis and Clark Trail over a three-year period, 2003-2006.

29. Katy Trail is poised as the centerpiece of Missouri's tourism during that time. This means that the department must be ready with essential services and signing; and businesses should prepare to accommodate the increase in visitors.

30. Finally, local and state government, along with tourism bureaus and chambers of commerce must coordinate resources and create an economic advantage from one of Missouri's greatest resources, Katy Trail State Park.

### **A LOCAL SUCCESS STORY**

31. To see how far we have come and where other communities may yet become, one need only look at the trail community of Hartsburg.

32. Hartsburg was established in 1893 as a rail stop along the Missouri-Kansas-Texas Railroad, though the Harts family and others had settled the area much earlier.

33. After WWII, Hartsburg, like many rural communities off the beaten path began to decline. The MKT ceased passenger service in 1958 and the last freight train passed through in 1988.

34. In the years between, Hartsburg had only one business – a tavern. Today, due primarily to its prime location on Katy Trail and the entrepreneurial spirit that thrives among its residents, Hartsburg boasts two restaurants, a winery, a tavern, a bike shop, the Globe Hotel and at least three antique shops.

35. The town's annual pumpkin festival draws in approximately 45,000 people, and in any given year the guest books in local businesses record visitors from 44 states and 15 countries.

36. The potential for Hartsburg is greater still. Other trail communities that were nearly boarded up (such as Calhoun, Huntsdale, Easley, Wilton, Treloar and McKittrick show signs of waking from a decades-long commercial slumber.

37. Now is the time to coordinate the efforts of chambers of commerce, local governments, entrepreneurs and visitor centers. The state of Missouri has the resources to lead this effort.

38. It is time to make the connection into the heart of Kansas City and St. Louis so that the greatest population centers have access to these opportunities, and so other communities like Pleasant Hill in Cass County and West Alton in St. Charles County can benefit.

39. We must join this development with a full economic assessment and strategy. It is time to view Katy Trail State Park as more than a great recreational resource across the state's mid-section. In these unsure economic times, we must view these resources as opportunities to secure the financial stability of Missouri for years to

come.

Shonkwiler (1995) for a formal proof.

The Models are specified as follows:

$$\ln \text{TRIPSONE} = B_0 - B_1 \cdot \text{TRTCOST} - B_2 \cdot \text{TRVTIME} + B_3 \cdot \text{AGE} + B_4 \cdot \text{DESERTD}$$

$$\ln \text{TRIPSONE} = B_0 - B_1 \cdot \text{TRTCOST} - B_2 \cdot \text{TRVTIME} + B_3 \cdot \text{AGE} + B_4 \cdot \text{WEATHD}$$

Where TRIPSONE is the reported number of trips minus one, to correct for endogenous stratification; TRTCOST is the reported costs incurred traveling to Moab multiplied by two, in order to make the one way costs round trip costs, plus costs reported while staying in Moab; TRVTIME is the reported time, in hours, spent traveling to Moab; and AGE is the respondents age. WEATHD and DESERTD are the prices, measured in miles, from the respondents home to the weather and desert substitute sites, respectively, as was explained earlier. Two models were specified because of multicollinearity between the two substitute variables.

## Results

The results of the Poisson equation are listed in Table 2. The price variables, TRTCOST and TRVTIME, have negative signs on the coefficients and are significant at the .01 percent level. The respective substitute price variables' coefficients have positive signs (as expected by theory) and are also significant at the .01 percent level. Thus, even a fairly unique mountain biking site like Moab is considered to have substitutes by users. It is also shown that older mountain bikers tend to take fewer trips. Income and skill were tested as demand shifters, but were insignificant and, therefore, not included in the final model. The explanatory power of the regression is reasonably good given the individual cross-section data. The estimated demand curve is shown in Figure 1.

### Figure 1. Individual Demand Curve For Mountain Biking at Moab, Utah

Figure 2 shows the sensitivity of annual visits to the Slickrock trail, one of the more popular trails in the Moab area, to an increase in fees. The current fee is \$3 per vehicle and the annual use for 1995 was 158,681 for 1995 (Bigler, 1996). Annual visitor rates are not very sensitive to fees; a three fold increase in the fee (from \$3 to \$10) will decrease annual trips by less than 5000. This is attributable to the fact that entrance fees at Moab are a small percentage of total trip costs.

### Figure 2. Sensitivity of Visits to the Slickrock Trail to an Increase in Fees

When using the Poisson model, per trip consumer surplus can be calculated by  $-1/B_1 \text{TRTCOST}$  (Creel & Loomis, 1990; Englin & Shonkwiler, 1995). Although travel time is part of the sacrifice of making a trip, it is not part of the monetary price of a trip. The consumer surplus is defined as the area under the demand curve, which is in the price, quantity space and, therefore, only the

coefficient for monetary trip cost is used for its calculation. Consumer surplus was calculated with the above technique then divided by 3.76, which is the average group size of this sample, in order to estimate individual per-trip consumer surplus. Per-trip refers to the economic benefits received per person from an average trip. This assumes that each member of the group receives equal benefits. The estimates of consumer surplus are listed in Table 3. The value per-trip are quite similar for the two specifications of substitutes: \$197 with the desert substitute and \$205 with the weather substitute.

The above estimates are individual per-trip values, however, it may also be useful to estimate a measure of annual use value for an area within the study site, the Slickrock trail. The first step was to divide per-trip consumer surplus by the average days spent in Moab, in order to have a measure of the consumer surplus attributable to one day at the Slickrock trail. This value was then multiplied by the annual visitor days at Slickrock, which is 158,681 for 1995 (Bigler, 1996). The estimate of annual consumer surplus experienced by the visitors of the Slickrock trail is listed in Table 3. As can be seen, this value is quite large: \$8,422,800 and \$8,770,300 for the two different specifications.

### **Conclusion**

It can be concluded that the bike trails in the Moab area produce a high value of consumer surplus to the users, \$197 and \$205 per trip, depending on the model specification and the corresponding annual values for the Slickrock trail are also large, \$8,422,800 and \$8,770,300. Although these estimates of consumer surplus may not easily transfer to other areas, due to the uniqueness of Moab, it is still useful for land managers to note that there are large benefits resulting from land being used for mountain biking.

It should be noted that mountain biking is only one activity which can be done at Moab and, therefore, mountain biking is only part of the total economic value associated with Moab. Moab's total economic value will consist of all use values such as hiking, rafting, and sightseeing as well as existence, option, and bequest values. It should also be noted that mountain biking will have different values at different sites depending on the characteristics of the site and visitors.

This study also demonstrates the applicability of the travel cost method to estimating the economic value of mountain biking. As further studies are done at less nationally well-known sites it will be interesting to compare values. Nonetheless, it appears that devotees of mountain biking receive substantial benefit per-trip and it may be an economically competitive use of public recreation areas.

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Footnotes

1 There may be some limitations to using the week of March 9th as a sample for the entire year, however, if there is bias it is expected to be downward. Concern was raised (by the head of recreation, BLM, Moab) that by sampling at this time of year the higher income people who generally visit in the fall would not be sampled. If this is the case, the estimates would likely under-estimate the annual economic benefits associated with mountain biking at Moab.

**TABLE 1 Individual Trip Statistics**

<i>TABLE 1 Individual Trip</i>	<b>Length of Trip</b>	<b>Days Spent in Moab</b>	<b>Miles Traveled</b>	<b>Group Size</b>	<b>Age</b>
Average	5	4	525	3.74	27
Minimum	1	1	70	1	15
Maximum	30	22	3200	24	66



**TABLE 2 Estimated Poisson Count Data TCM Demand Equation**

	Independent Variable	Coef.	T-Stat	R2	X2	N
WithDesertd:	Constant					
		1.359	4.879	.293	99	181
	TRTCOST	-.00135	-3.133			
	TRVTIME	-.11116	-5.740			
	AGE	-.01470	-1.812			
DESERTD	.00085	2.935				
WithWeathd:	Constant	1.3428	5.436	.3464	114	181
	TRTCOST	-.00129	2.985			
	TRVTIME	-.09929	-5.922			
	AGE	-.01171	-1.478			
	WEATHD	.00082	4.80			

**TABLE 3 Consumer Surplus For Mountain Biking at Moab**

	Individual Per-Trip Consumer Surplus	Per-Day Consumer Surplus	Annual Consumer Surplus Slickrock Trail
Desertd:	\$197	\$53.08	\$8,422,800
Weathd:	\$205	\$55.27	\$8,770,300

# The Economic and Social Benefits of Off-Road Bicycle and Pedestrian Facilities

NBPC Technical Brief  
National Bicycle and Pedestrian Clearinghouse  
<http://www.bikewalk.org/>  
Technical Assistance Series, Number 2  
September 1995

## Economic Benefits

All across the country, bicycle and pedestrian facilities are proving to be a wise economic investment for the communities through which they pass. Studies have shown that they stimulate local economies by attracting bicyclists, hikers, cross-country skiers and other tourists to an area.

This, in turn, attracts and revitalizes businesses, creates jobs, and increases public revenue. Trails and pathways also have a positive effect on nearby properties as homebuyers and business owners realize the value that such facilities bring to a community.

## If You Build It, They Will Come

Many Americans prefer to visit places such as greenways and trails which offer safe, scenic recreation and transportation for the whole family. The U.S. Department of Transportation, in its National Bicycling and Walking Study (NBWS) final report estimates that 131 million Americans regularly bicycle, walk, skate or jog for exercise, sport or recreation.

According to research conducted by Rails-to-Trails Conservancy, 85 million people used rail-trails in 1994 alone. Given these numbers, it is easy to understand how communities can profit by responding to trail users' needs.

There are a variety of businesses that attribute their success to nearby trail: restaurants, convenience stores, bicycle shops, campgrounds and bed- and-breakfast establishments. Examples from around the country further illustrate the positive economic impacts of trails:

- The downtown area of Dunedin, Florida was suffering a 35 percent storefront vacancy rate in the early 1990s until the Pinellas Trail came into town. Now, storefront occupancy is 100 percent and business is booming.
- Peak-season hotel rooms along Wisconsin's Elroy-Sparta State Park Trail are booked up to a year in advance. A study of the trail revealed that the average visitor travels 367 kilometers (228 miles) to experience it.
- After biking the Youghiogheny River Trail in southwestern Pennsylvania, Robert Bennis and his wife purchased a rundown trailside building and converted it into the River's Edge Cafe which now serves over 1,000 meals a day.

## **Trail-Related Tourist & Visitor Expenditures in Local Communities**

Recent studies have shown exactly how much the average trail user is bringing into communities which have multi-use paths.

- A study of the Oil Creek Bike Trail (Pennsylvania State University, 1992) in Pennsylvania revealed the average visitor spending \$25.85 per day. This was broken down into \$9.09 for food, \$6.27 for transportation, \$2.56 for lodging (many visitors camp) and \$7.94 for equipment and other activities.
- According to a 1992 National Park Service study, approximately 170,000 individuals visit the Tallahassee-St. Marks Trail in Florida every year, where the average user spends more than \$11 per day.
- The 135,000 visitors of the Heritage Trail, which winds through eastern Iowa's farmland, spend \$9.21 each, and suburban California's Lafayette-Moraga Trail receives \$3.97 from each of its 400,000 users. In each case, total annual revenue exceeded \$1.2 million (The Impacts of Rail-Trails).

Suburban and rural trails that encourage "vacation-style" trips tend to generate more revenue per user than urban and suburban trails used primarily by nearby residents. However, a substantial amount of revenue can still be generated from the large number of users that a residential trail typically attracts.

## **Trailside Property is at a Premium**

Homebuyers have begun to recognize the benefits of bicycle and pedestrian facilities and are showing a preference for properties close to those facilities.

- "Walking and biking paths" ranked third among 39 features identified by homebuyers as crucial factors in their home-purchasing decisions, according to a 1994 study by American Lives, a research firm serving the real estate industry. "Community designs that deliver low traffic and quiet streets" were ranked first, and "lots of natural, open space" was second.
- The increased salability of listings is considered to be the greatest value that the Northern Central Rail-Trail has brought to trailside properties in Baltimore County, Maryland. According to a 1994 study conducted for the Maryland Department of Natural Resources, "if two identical properties are for sale and one is near the trail and the other is not, the trail is used as a selling point and helps many nearby owners sell their property faster." (Analysis of Economic Impacts of the Northern Central Rail-Trail).
- In addition, 63 percent of survey respondents, comprised of trail users, nearby landowners and local businesses, felt the trail added value to nearby properties.
- Not only has Seattle's Burke-Gilman Trail been used as a selling point for nearby properties, but it has also been proven to increase the value of those properties. According to a study conducted by the Seattle Engineering Department (1987), "property near but not immediately adjacent to the trail is significantly easier to sell and, according to real estate agents, sells for an average of 6 percent more as a result of its proximity to the trail. Property immediately adjacent to the trail, however, is only slightly easier to sell..."

## **Business is Booming**

The 376 kilometer (235-mile) Katy Trail traverses nine counties and adjoins 35 towns in Missouri, ranging in population from 60 to 60,000. These communities, many in economic decline since the railroad's demise, were initially opposed to the trail. But when the first sections opened, sentiments changed. Visitors flocking to the new rail-trail proved to be responsible, likable guests who needed goods and services available in the towns.

Within weeks of the trail dedication, new and old businesses were vying for tourist dollars. Restaurants, bed-and-breakfasts, bicycle rental shops, antique dealers, and campgrounds all opened to meet the needs of hundreds of thousands of visitors. A 1993 user survey on the trail's western half showed that it generated an estimated \$3 million in local revenue.

The Northern Central Rail-Trail attracts 457,000 visitors every year and has had an enormous economic impact on nearby businesses, leading to the creation and support of 262 jobs. These positions range from trail construction and maintenance work, to jobs in local restaurants and hotels serving trail users, to added positions in regional sporting goods companies and supermarket chains due to increased business.

Bicycle and pedestrian trails also attract high-quality businesses by providing commuting options for employees, scenic places for stress-free strolls at lunchtime, and safe, convenient sites for family recreation.

Choosing a location that will help attract and retain key personnel was cited as the number one factor in selecting office locations (by a June 8, 1989 San Francisco Chronicle article), and corporate real estate executives now say employee "quality of life" issues are as important as cost when deciding where to locate a new factory or office.

## **Trails Save Taxpayer Dollars**

Locally and nationally, bicycle and pedestrian facilities have proven to be a cost-effective use of public funds. The above mentioned study of Maryland's Northern Central Rail-Trail found that while the trail's cost to the public in 1993 was \$191,893, it generated State tax revenue of \$303,750 the same year. This revenue was a direct result of a growing economy's sales, property, and income taxes.

The construction of multi-use trails allows more Americans to replace automobile trips with non-motorized trips. According to the NBWS final report, the American public saves from 3 to 14 cents for every automobile kilometer (5 - 22 cents per mile) displaced by walking and bicycling due to reduced pollution, oil import costs, and costs due to congestion, such as lost wages and lost time on the job.

## **Social Benefits**

Bicycle and pedestrian facilities enhance the quality-of-life for many individuals. Multi-use trails are great places for outdoor recreation such as hiking, cycling or cross-country skiing. Along with on-road facilities and sidewalks, trails encourage the use of non-polluting transportation alternatives to the automobile for those short trips to work, school, or the local store.

The increase in the level of walking and bicycling due to the creation of these facilities leads to a cleaner environment and a healthier population. Rail-trails and other pathways are also an expression of community pride and character, and in many cases a means of preserving the natural and historical resources of a region.

## **Close to Home Recreation**

The recent explosion in the number of people participating in outdoor recreation has led to an increased demand for bicycle and pedestrian facilities. Participation rates for trail uses, such as hiking, walking, mountain biking, and in-line skating have experienced phenomenal growth in recent years.

The number of bicyclists alone in this country grew from 72 million to 99 million in the decade leading up to 1993 (Bicycle Safety-Related Research Synthesis FHWA, 1995). Multi-use trails provide convenient access to the outdoors for enjoyment and relaxation while promoting health and fitness activities.

These trails are becoming especially popular among people living in cities and suburban areas, where close to home recreation opportunities are scarce.

## **Convenient Transportation**

The most common forms of non-motorized transportation are bicycling and walking, and facilities for bicyclists and pedestrians play a major role in the success of local transportation systems.

Nearly half of all trips people make within their communities can be made easily on foot or bicycle. The NBWS final report revealed that nearly 50 percent of all personal travel trips are less than 4.8 kilometers (3 miles) long, and personal business trips, like doctor visits, household errands, and visits to friends, account for 41.5 percent of all trips. Such personal, short distance trips are well-suited to travel by walking or bicycling.

Public rail-trails, multi-use pathways, and on-road bicycle facilities offer communities a means of safe and convenient transportation and keep the essential links within a community open to all. They can connect neighborhoods to schools, workplaces, commercial and cultural centers, historic sights, and transit stations.

## **Health and Fitness**

The health benefits of exercise derived from recreational activities such as bicycling and walking lessen health-related problems and reduce health care costs. A recent U.S. Center for Disease Control Handbook, Promoting Physical Activity Among Adults, states that "...the most effective activity regimens may be those that are moderate in intensity, individualized, and incorporated into daily activity."

Rail-trails, spacious sidewalks, and greenway trails offer adults and children alike the opportunity to integrate moderate, individualized exercise with their daily trips to work, school, the library, or shopping (NBWS final report).

Such regular, moderate exercise has been proven to reduce the risk of developing coronary heart disease, stroke, colon cancer, hypertension, diabetes, osteoporosis, obesity, and depression. This kind of exercise is also known to protect against injury and disability because it builds muscular strength and flexibility, which helps to maintain functional independence in later years of life.

Dr. Harold E. Varmus, the Director of the National Institutes of Health, and a regular bicycle commuter states, "It's nice to get an extra return on the time that I have to spend commuting to work each day--and that's the physical conditioning that contributes to a healthier heart and lungs. With trails accessible to a growing number of cyclists like me, another source of real satisfaction is becoming a more important part of everyday life."

Bicycling and walking offer many health benefits not only by improving physical health and quality of life but also by reducing health care costs. According to a National Park Service study, Economic Impacts of Protecting Rivers, Trails, and Greenways Corridors, people who exercise regularly have 14 percent lower claims against their medical insurance and spend 30 percent fewer days in the hospital.

## **Environmental Benefits**

Our society is "driving itself to death" because of its love affair with the automobile. Cars, trucks and buses are major sources of noise, water and air pollution. This is especially true in urban areas, where carbon monoxide emissions from mobile sources can be as high as 90 percent of all emissions. Bicycling and walking are non-polluting alternatives to the automobile.

It has been estimated that, in 1991 alone, bicycling and walking trips in the U.S. replaced nearly 28.8 billion motor vehicle kilometers (18 billion miles). These non-motorized trips saved about 3.2 billion liters (850 million gallons) of gasoline which would have added 10.4 million metric tons of exhaust emission air pollution into the atmosphere (NBWS Final Report).

Greenways and other off-road trails also provide environmental benefits by linking existing parks, open spaces, and undeveloped lands while allowing for the

preservation of the natural landscape. Such facilities are havens for flora and fauna, whether they are endangered, threatened, rare, or abundant.

- The endangered black-crowned night heron have found homes along the Fox River Trail in Illinois. Trail Manager John Carlson stated, "The habitat for wildlife such as these rare birds has been dramatically improved by the rail-trail. The wildlife along the rail-trail is abundant compared to other sections of the river where there are private homes and manicured lawns abutting the river's edge."

### **Historic Preservation**

Railroads played an important role in the development of our young nation. They crossed rivers and penetrated mountain ranges, facilitating increased trade and westward expansion. Preserving abandoned rail corridors and canal towpaths as public trails offers future generations the chance to experience and learn about the history of America.

- The 3.7 kilometer (2.3-mile) Snoqualmie Pass Tunnel along the Iron Horse rail-trail in Washington State was an engineering marvel of the early 20th century. Construction began in 1912 with 2500 men blasting nearly 3,660 meters (12,000) feet of solid rock from both ends. Today, the tunnel allows trail users to traverse the east and west sides of the Cascade Mountain range.
- The 18 kilometer (11-mile) Minuteman Bikeway runs through the historic towns of Lexington, Arlington and Bedford, Massachusetts, following part of the route marched by British soldiers in 1776. However, this rail-trail is most famous for being the route Paul Revere chose for his historic midnight ride.

### **Enhancing Our Communities**

Each bicycle and pedestrian facility contains elements of local character and regional influence, and reflects the hard work, enthusiasm, and commitment of individuals, organizations, elected officials, and agencies. All are able to take pride in having worked together to successfully complete a bicycle, pedestrian, or trail project.

This sense of community pride is illustrated by the many group events that take place on the Northern Central Rail-Trail in Maryland. Local charities including St. Jude's Children's Hospital, the Maryland Air National Guard, and the National Kidney Foundation raise money and support by using the trail for walk-a-thons, bike-a-thons, and other activities.

Multi-use pathways also provide opportunities for communities to get to know each other. They offer a chance for people to get out of their homes and cars and come in contact with each other on a regular basis.

Trails contribute to personal interaction, neighborhood socialization, and community unity. One popular example is the B & A Hike and Bike Trail in Maryland, which is commonly referred to as "Anne Arundel County's backyard" because so many people use it to meet, talk, and generally catch up on local affairs.

# Kansas Trails Council, Inc.

February 10, 2004

House Committee on Environment  
Chairperson Freeborn and Committee Members:

Re: House Bill 2583

I am President of the Board of Directors of the Kansas Trails Council. Established in 1978, the KTC is a non-profit organization which is devoted to developing and maintaining multi-use trails in Kansas. Our 90 members contribute thousands of volunteer hours each year working on trails used by hikers, runners, bikers and equestrians throughout the state. I am also the trail coordinator for the 21-mile Clinton Lake North Shore Trails. I am a member of the Lawrence Mountain Bike Club and the International Mountain Bicycling Association (IMBA).

As a result of the dedication of hundreds of volunteers from various organizations like the KTC, Kansas currently enjoys an inventory of more than 300 trails, stretching over 1,000 miles across the State. These trails provide Kansans and tourists with access to the State's most beautiful and unique outdoor settings. Our trails are used by educators and students, scouting organizations, nature organizations, fishermen, hunters, campers, photographers and amateur and competitive athletes from all walks of life. Our trails improve the quality of life in Kansas and contribute significantly to the State's economy by providing a venue for eco-tourism.

We believe that House Bill 2583 will severely damage our ability to develop new trails and maintain existing trails in the State. By creating the potential for personal legal liability for each member of the volunteer trail organizations, HB 2583 will spell the end of these organizations and cause the effective abandonment of many miles of our growing trail network. Volunteers who have contributed the equivalent of millions of dollars in time and expertise working on our State's trails simply will not be willing to risk the personal legal exposure created by this Bill. As a result, one of Kansas' most valuable assets would soon disappear.

Although the KTC is not presently developing any trails directly affected by this Bill, we are concerned that the Bill will effectively eliminate Rails-To-Trails organizations which now exist and will cause organizations like the KTC to avoid such trail projects in the future. Because some of our members are also members of organizations affected directly by this Bill, we are concerned that our own membership will decline in the future. We believe that the practical result of this Bill is that Kansans will have fewer trails and fewer trail volunteers. Considering the State's current economic situation, can we afford to diminish the potential for eco-tourism?

The trails affected directly by this Bill play a significant role in the State's potential future trail system. Most of our current trails are stand alone trail systems unconnected to other trails. Many of us in the trail development arena imagine a day when we could travel

*House Environment  
2-10-04  
Attachment 12*



between the various stand alone trail systems using linear trails, like Rails-To-Trails, as connectors. Future trail users could travel hundreds of miles, visiting various stand-alone trail systems and small communities along the way. This concept offers significant opportunities to attract greater numbers of regional trail users for multiple day trips and events. If the Missouri or the Moab, Utah trails provide any insights, the resulting economic benefits to Kansas would be significant.

For these reasons, we respectfully ask for you to oppose House Bill 2583.

Sincerely,



Michael W. Goodwin  
3819 SE 31<sup>st</sup> Street  
Topeka, Kansas 66605  
785-266-6218  
Email: goodwinmw@cox.net

February 8, 2004

RE: House Bill 2583

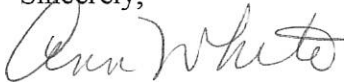
To All Involved In Review and Decision Making:

On behalf of the Kansas Horse Council I am here to state our opposition to HB2583. This bill puts any volunteer person or organization that are involved in maintaining a trail (single-track, rail trail or paved) at a serious liability risk based on the whim of the landowner whose property borders any public land. With funds running low at the Kansas Department of Wildlife and Parks, volunteerism is a must to help create and maintain the trail system in our state. These trails are used by equestrians, hikers and bikers alike. With so little recreation in Kansas we cannot possibly entertain the idea of a law that would literally stifle the ability of the parks department to carry on or create new recreation for our citizens. With so little tourism within our state it would be devastating to our economy to take the one thing people are passionate about and destroy it by allowing a disgruntled land owner the freedom to file such a suit against a volunteer person or group. Recreation users of these trails spend money in the towns that border them boosting economy. We are in rival with surrounding states that capitalize on tourism and their expansive trail system.

Take a minute and think about the impact a volunteer has on the many things they get accomplished throughout every facet of our life. Take that away by making them fearful of a lawsuit and see progress come to a halt.

We at the Kansas Horse Council are standing to oppose HB2583 and hope you will look seriously at the ramifications of this bill.

Sincerely,



The Kansas Horse Council

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2-10-04  
Attachment 13*

International Mountain Bicycling Association  
Earth Riders Trails Association

*Ken Miner*

February 10, 2004

Kansas House Committee on Environment

Re: House Bill 2583

Chairperson Freeborn and Committee Members:

I am representing the International Mountain Bicycling Association, or what we call IMBA, a not for profit organization established to create, enhance and preserve mountain biking opportunities worldwide. IMBA members and affiliate clubs have performed close to 1,000,000 volunteer trail work hours annually and created more than 5,000 miles of singletrack trails in the United States alone.

A little closer to home, I am also representing Earth Riders Trails Association or ERTA. ERTA was incorporated in 2002 in order to work with land managers to develop multiuse trail opportunities throughout the Midwestern United States.

Through IMBA and ERTA, I've worked in partnership with Missouri Division of State Parks, Jackson County, MO, Clay County, MO, Kansas City, MO, Kansas Division of Wildlife and Parks, the Army Corp. of Engineers, Johnson County, KS, Comanche County, KS, the cities of DeSoto and Lawrence KS to develop trails that benefit the citizens and communities of the respective regions in which the trail systems are located.

As a former business owner, and the current Director of Sales for an International Corporation, I appreciate the State of Kansas' current cashflow shortages. I also understand and appreciate the value of mentoring and modeling from a successful template to achieve a desired goal. After all, the costs and time associated with reinventing a wheel are expensive and inefficient compared to simply using an existing design that meets or exceeds your expectations.

The State of Kansas has an opportunity to create a system of trails that will ensure that Kansas is a travel destination and not just a place to drive through to get to Colorado. The State of Kansas has an opportunity, by utilizing volunteer labor resources, to develop an eco-tourism base that will help drive the economy with little or no impact on current budgets.

The beauty of this opportunity is that we have no further to look than our neighbors to the East for our model. Our template. Our mentor. The State of Missouri has embraced their Rails to Trails system. By working with volunteer organizations to gain funding and labor resources, the Missouri Division of State Parks has created a trail system that has revitalized dead or dying towns by bringing in tourist dollars to areas that were either sleepy railroad towns or once thriving, but now dwindling; agriculture based towns. Missouri embraces volunteer trail work and trails partnerships to maximize its tourism potential.

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Attachment 14*

In these difficult economic times, when state budgets are being cut to the bone, eliminating volunteer labor as a revenue source would add yet another hurdle for land managers at every level within the state to overcome in order for them to tend to the public lands with which they are charged with protecting and preserving.

Trail volunteers are a source of revenue for land managers. The cost per linear foot to add a primitive, singletrack trail is \$2-3, or \$10,560 to \$15,840 per mile. In other words, an 18-mile hiking and biking trail system like the one located at Perry Lake State Park is worth \$190,080 to the State. In addition, based on a scale of \$.75 per linear foot, volunteers on this one trail system contribute over \$75,000.00 annually to perform routine trail maintenance. This trail was built and is currently maintained with volunteer labor at no cost to the state.

Every time I open the newspaper, I read about the hard economic times that have befallen the State. Will increasing the amount of arbitrary litigation that 2583 brings help ease the State's budget woes? Will allowing private landowners to sue state volunteers and volunteer organizations promote Kansas as a travel destination and increase the State's revenue through tourism dollars? We need look no further than to Missouri to find a successful and profitable model of a Rail to Trail system that is thriving, yet we're considering eliminating even the possibility of realizing a similar trail in Kansas with the introduction of 2583.

House Bill 2583 will add a legal burden to the State with the likelihood of increased litigation by private land-owners against State sanctioned volunteers. House Bill 2583 will eliminate a source of free labor for the State. 2583 will ensure that Kansas is only a place to drive through on our way to Colorado or Missouri. Large, out of state energy companies with gas stations that dot the interstates will benefit from House Bill 2583, but our local communities and towns will not.

For these reasons, we respectfully request that you oppose House Bill 2583.

## Bicycle Facts

- 1983 ownership - 200,000 mountain bikes
- 2000 ownership - 30 million (BIA)
- 32% of total bicycle market is mountain biking (not including rentals, repairs, accessories and tourism)
- 6,000 bike shops
- 46 million people participated in mountain biking in 2001 according to the Outdoor Industry Association (OIA)
- 7.5 million people consider themselves to be enthusiasts (avid mountain bikers consider it their primary sport) making mountain biking the second most popular trail user group in the nation, behind hikers.

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"Walking and biking trails" ranked third among 39 features identified by homebuyers as crucial factors in their home-purchasing decisions. (American Lives 1995)

A Seattle study found that homes near trails sold for 6% more than the average home in the same area. (Seattle Engineering 1987)

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Moab, Utah (1994 Study)

\$197-205 per trip  
Slickrock Trail value \$8.4 to \$8.7 million  
Avg. length of stay = 4 days

## Rail Trail Success Stories

**Source: St. Joseph, MO, News-Press, <http://www.stjoenews-press.com/Main.asp?SectionID=81&SubSectionID=274&ArticleID=42424>**

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Although the creation of this trail along the defunct Missouri-Kansas-Texas railroad line was a political hot potato and vehemently protested by many landowners, most now believe the creation of the Katy Trail was a good thing.

Certainly, Mark Hooibrink of Claysville thinks so. After his two young daughters started making spending money by selling Kool-Aid to joggers, hikers and bikers along the trail, Hooibrink was able to resurrect an old business in the village that had been dormant since 1940. The Claysville Store and Cafe is about all there is to the town, but it's enough to pay Hooibrink's bills.

He is one of a number of entrepreneurs who are able to make a living, thanks to trail business, despite being in towns so sleepy that they barely register on a road map.

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**Source: Elkhart (IN) Truth,**

<http://www.elkharttruth.com/news/story/200237/index.html>

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Tom Ridge understood the economic value of trails, once completed. The 15-year-old Yough River Trail in Pennsylvania, for instance, draws around two million visitors a year. While most individuals and families bring their own bikes, others paid for 178,000 bike rentals, on this one trail alone.

Eric Martin, a resident of the village of Ohiopyle, Pa., said, "The trail has infused new economic life into communities all along its path. Not only bicycle shops, but also restaurants and retail outlets now cater to the thousands of bicyclists on the trail."

The officials of the neighboring cities of Cumberland and Frostburg, Maryland, are excited about the Trail-alongside-a-Railroad between them." We really believe we have a gold mine here," said the director of their Greenways Program. "This trail has proven to have an enormous positive impact on our communities."

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#### **Economic improvement in rural communities due to Katy Trail:**

**Source: Southern Illinoisan,**

<http://www.southernillinoisan.com/rednews/2003/07/11/build/outdoors/OUT001.htm>

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The diversity of users has created an economic boon along the [Katy] trail -- literal and figurative cottage industries. Bed and breakfasts, catering to riders, are flourishing along the trail.

"I can't give you a dollar figure," Holst said. "Anyone that was in this area before the trail was developed, it's a very stunning change."

"A lot of towns along the trail were railroad towns. When the railroad left, a lot of them were in poor shape. A lot of businesses have developed for Katy Trail users, bed and breakfasts, wineries and bicycle shops. Many of these towns have kind of redeveloped because of the trail."

There are restrooms and shelters located along the trail, but most amenities are offered privately.

"That is one of the things the Department of Natural Resources has stressed," Holst said. "We encourage private businesses to provide services to the users."

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**Source: AgriNews, <http://webstar.postbulletin.com/agrinews/288627956072621.bsp>**

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A study by Iowa State University says Iowa's rural economy could get a boost by exploring new types of agriculture and by increasing recreational amenities such as bicycle trails and lakes.

The yearlong study, "Improving Economic Vitality in Rural Iowa," looked at what fuels growth and what puts the break on progress in rural areas of the state. . . .

Largely agricultural counties, especially those heavily reliant on federal farm payments, fared the poorest.

Gross said commodity agriculture -- or raising low-priced corn and soybeans that are used to make livestock feed and food products -- alone cannot sustain rural areas.

"Those counties with the greatest dependency on farm-program payments are the slowest or the most negatively growing counties in the Midwest," he said. "Rural Iowa has got to deal with this."

The study also focused on how outdoor recreational areas -- such as bike trails and lakes -- similar to those in southern Missouri and northern Minnesota can contribute to growth rural areas.

The study's findings, Gross said, can help communities target future growth.

## **Removing Barriers to Bicycle and Pedestrian Transportation Will Improve Missourians' Quality of Life**

*MoDOT, Transportation Planning, May 20, 2003*

*Missouri legislators are often asked to create or rewrite legislation to remove specific barriers to safe bicycle and pedestrian transportation. Conversely, legislators frequently are challenged by opponents of such efforts, who express their concern about using highway funds to help people who do not pay the taxes that support the fund, i.e. "Why should bicyclists be allowed to use the roads for free?" The following information was compiled to assist the legislators in determining appropriate courses of action.*

Public roads were paved under the Good Roads Movement in the 1890s specifically to provide good transportation facilities for bicyclists. When motorized vehicles were later developed, the two modes of transportation shared these paved roads. As cars became more affordable and faster, and as road quality improved, bicyclists were slowly displaced from many paved roads due to safety concerns. In Missouri, bicyclists are permitted by law in all vehicle lanes except interstates, although this right is not universally understood.

Bicyclists and pedestrians represent a wide cross-section of people. Some *must* use these methods of transportation and some *choose* to use these methods of transportation. Some are occasional users while some rely completely on these methods. In fact, according to the 2000 Census, approximately 10 percent of Missouri households do not have an automobile. In some urban areas, this climbs to as high as 25 percent.

While roadway systems improve mobility for motorists, they can create barriers to non-motorized travel. Children, the poor, the elderly and the handicapped most often suffer the consequences of a focus on vehicular traffic as transportation. While the benefits to communities can be great, many critics claim that providing facilities for bicycling and walking uses scarce funds that are generated by road-user fees. This argument says these facilities are nice amenities, but in tough economic times, unnecessary. Tough economic times, however, are exactly when community transportation options are tested and often found lacking. As people lose jobs or wages decrease, they look for ways to save money. The family vehicle will usually rank lower than food and shelter, forcing people into the other transportation options – mass transit, bicycling or walking.

Who pays for roads and how they pay depends whether the road in question is locally owned or state-owned. The city or county general revenue primarily supports locally owned facilities. General revenue funds are raised through property tax and sales tax, which every person pays, including bicyclists and pedestrians. Additional funds for transportation facilities are available through the local portion of the state gasoline tax. Local transportation facilities move people and goods efficiently throughout the city or county. These trips can be accomplished by car, transit, bicycle or walking, depending on availability and safety of the facilities. Transportation options improve a community's neighborhoods and help business districts thrive. In addition, as bicycling and walking become safer and easier to access, demands upon school transportation can be less and health benefits to children may increase as more choose to walk or ride to school.

State-owned facilities are supported through federal and state gas tax revenue, vehicle registration fees and vehicle licensing fees. In general, the system users finance these roads. These facilities move people and goods efficiently throughout the state, focusing heavily on the movement between regions of the state. These trips are relatively long in duration and are accomplished by car, rail, air or expert bicyclists.

Providing for non-expert bicyclists and pedestrians between regions would only benefit a small number of users. Since the expert cyclists are comfortable and safe on roadways designed according to current standards, additional costs to accommodate them are minimal. For example, the incremental cost of providing accommodations such as bike-friendly grates within existing roadway improvement projects is relatively inexpensive – less than \$200 for each grate. Since bicyclists are legally entitled to ride in the roadways, simple accommodations that provide safer shoulders or bike lanes are safety and congestion relief issues.

The larger issue is on state-owned facilities within the boundaries of municipalities or other densely populated areas. These facilities perform the same function as locally owned roads – moving people and goods efficiently for



short trips through the city. The state roads tend to carry a high volume of traffic and are often considered to be unsafe for pedestrians and for most bicyclists to share with motorists. Pedestrians and non-expert bicyclists generally will choose to walk or ride on the roads only if no other facility is provided. Non-expert bicyclists prefer to use a separate multi-use path that also accommodates pedestrians because the speed differential between these users is so low. However, expert bicyclists generally prefer to ride on the road, usually integrating well with low to moderate speed motorized traffic on well-designed roadways, and utilizing shoulders or bike lanes as the traffic flow increases.

Though state roads within urbanized areas function as city streets, bicyclists or pedestrians may not contribute directly to fund these state facilities. They may contribute indirectly, however, since most adult pedestrians and bicyclists also are highway users and pay user taxes. Developing a safe system for alternative transportation users in these situations often includes removal of barriers, which in many instances is the state's primary contribution. Removing barriers include the construction of crosswalks, sidewalks, bridges and shoulders. The sidewalk constructed in Portageville along State Route 162 is an example of the use of federal earmarked enhancement funds (\$75,000) to remove a barrier to safe pedestrian transportation. In Jefferson City, Enhancement funds have been used to build sidewalks on Eastland Drive by Lewis and Clark Middle School and a multi-use path in Jefferson City called the Greenway that stretches through much of Jefferson City. In Columbia, Enhancement money has been used to build three pedestrian bridges (on Route B over Business Loop 70, over Providence by the stadium and along Providence over I-70) and various multi-use paths such as Bear Creek Trail.

The costs to provide bicycle accommodations vary widely depending on the type of facility provided. A separate multi-use path averages \$272,000 per mile; a bicycle lane averages \$142,000 per mile; a shoulder on a rural road costs about \$108,000 per mile; a sidewalk costs about \$20,000 per mile; and a pedestrian crosswalk is less than \$1,000. These costs seem minimal when compared to the average cost of highways. The cost of one mile of rural highway ranges from \$1.6 million to \$4 million and urban highway costs for one mile is often double these amounts.

The balance between purpose and funding is less clear for state-owned facilities than it is for city or county roads. In 1991, the U.S. Congress stepped into the debate by designating a portion of federal transportation funds as Transportation Enhancement (TE) Funds. Use of these funds is limited to purposes that include bicycle and pedestrian facilities. Their use on roads and bridges for motorized vehicle traffic is specifically excluded. Missouri uses a small portion of its TE funds on state facilities, primarily to provide bicycle and pedestrian facilities. The remaining TE funds are distributed through a competitive project process to the local entities, which use them primarily for bicycle and pedestrian accommodations.

Providing safe and accessible bicycle and pedestrian facilities improves Missourians' quality of life and health and helps communities to thrive. The remaining issue that must be resolved is not **should** we provide these facilities, but can we afford **not** to provide them.

#### Sources:

- The US DOT *Selecting Roadway Design Treatments to Accommodate Bicycles* FHWA-RD-92-073, January 1994
- AASHTO *Guide for the Development of Bicycle Facilities* (1999), [http://www.wsdot.wa.gov/TA/PAandI/Bike-Ped/R\\_R.htm](http://www.wsdot.wa.gov/TA/PAandI/Bike-Ped/R_R.htm)
- MoDOT Long-Range Transportation Direction (May 2001)
- *US DOT's Design Guidance Manual*, <http://www.fhwa.dot.gov/environment/bikeped/design.htm>
- FHWA data in *Price Trends for Federal-Aid Highway*, <http://www.fhwa.dot.gov/policy/hcas/final/three.htm>
- FHWA Highway Costs, <http://www.vtpi.org/tm66.htm>

The quality of life in every community is important to maintain the health, fitness and happiness of the citizens. Many components are necessary to create this ideal community, but the biggest need is an efficient system of safe transportation. We must create facilities to allow our citizens to go where they want to go, using the mode of travel of their choice.

Everyone has recognized the importance of exercise in the achievement of quality of life. We read constantly about how our nation is experiencing a health crisis. *Shape Up America!* claims that half of American adults are overweight and 20% of American children weigh too much. Dr. Dennis Savaiano, Chair of the Food and Nutrition Science Alliance states that obesity makes people more vulnerable to heart disease, cancer, arthritis, asthma, sleep apnea, cancer, high blood pressure and diabetes.

Peeters in *Obesity in Adulthood and Its Consequences for Life Expectancy* and Fontaine in the *Journal of the American Medical Association* found that obese people cut eight to 20 years off their lives.

Flegal in the *Journal of the American Medical Association* reported in 2002 that the percentage of overweight people in the US had climbed to a staggering 64.9% and that the obesity rate is now at 31%.

Drs. Jeffrey Koplan and William Dietz state in the *Journal of the American Medical Association* that obesity and the sedentary lifestyle are serious health issues and will only worsen without intervention. They continue by saying that the only way to correct this problem is through preventive approaches to control weight and to promote physical activity.

The California Department of Health cites a 1999 study by the Urban Land Institute that homebuyers were willing to spend an additional \$20,000 for a home in a pedestrian-friendly neighborhood. Reducing traffic speeds by 5-10 mph resulted in a rise of residential property value of 20%.

We need to provide an infrastructure of transportation that is safe, economical, available to all and that has connectivity to allow people of all ages to use their choice of transportation mode to travel within our community to work, home, school and recreational areas freely.

These facilities must make it easy for people to integrate exercise into their lifestyles. Wider curb lanes and shoulders would allow bicyclists more comfort in sharing the roads with motorists, thus encouraging people to take a bike instead of a car on short errands or to work. Bike lanes and bike paths facilitate youngsters' ability to ride to school and novice bicyclists to ride to work.

Sidewalks that are wide, well-maintained and appropriately placed would encourage pedestrians to walk, run or skate to pick up a gallon of milk instead of driving.

## Testimony in Opposition to H.B. 2583

**Chad Lamer**

**Lawrence Mountain Bike Club ("LMBC")**

**PO Box 1963**

**Lawrence, Kansas 66044**

### LMBC History

- Lawrence Mountain Bike Club is a registered non-profit organization based in Lawrence, Kansas.
- LMBC was originally formed in 1996 and obtained non-profit status in the year 2000.
- LMBC had over 50 members located throughout the state of Kansas in the year 2003.

### LMBC Mission Statement

- Promote cycling by organizing mountain bike races, social rides, social events and to support local trail advocacy efforts in and around Lawrence, Kansas.

### LMBC's Reasons for Opposition to H.B. 2583

- The personal liability provisions outlined in H.B. 2583, Section 1(b)-(e) are too broad and will discourage or inhibit members of LMBC from performing maintenance on any "recreational trails" as they are defined in K.S.A. 58-3211(b).
- LMBC believes the civil penalty provisions in H.B. 2583, Section 1(b) are excessive and that those penalties will not remedy any problems an "aggrieved party" may suffer due to noncompliance with K.S.A. 58-3212. Currently, under Kansas law a "responsible party" must establish "a bond or escrow account" which is "sufficient to fully cover the annual costs" of weed control, litter control, trail maintenance for fire prevention, and the installation and maintenance of signs and fencing along "recreational trails." Any fines imposed on the "responsible party" under Section 1(b) of H.B. 2583 are not required to be used to remedy the trail conditions that resulted in noncompliance with K.S.A. 58-3212. LMBC believes that the civil penalties of H.B. 2583, Section 1(b) should not be imposed or in the alternative if they are imposed those penalties should be applied to bring the "recreational trail" in compliance with requirements of K.S.A. 58-3212. As the bill currently reads, those penalties would go into the pocket of the aggrieved party and would not remedy the adverse trail conditions.
- H.B. 2583, Section 1(c) allows a judge to issue an order "imposing *personal liability* for the noncompliance on the members, stockholders and directors and officers of the responsible party." LMBC is opposed to this language. LMBC believes this language could unfairly

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penalize individuals that have never conducted any maintenance or trail building activities on a "recreational trail" merely because they are members of an organization that is the "responsible party." This language will discourage or inhibit individuals from joining organizations such LMBC.

- Example: Many LMBC members of have joined the club to participate in activities other than trail building. One of those activities is LMBC's Bigs on Bikes program, which works with Big Brothers Big Sisters of Douglas County to pair up "Littles" with LMBC members. Under the LMBC Bigs on Bikes program, "Littles" are provided with mountain bikes and are taken for rides with LMBC members on local trails. H.B. 2583, Section 1(c) will likely discourage individuals from joining LMBC and participating in the Bigs on Bikes program because of the personal liability provisions of the bill.
- H.B. 2583, Section 1(d) states a judge may issue "an order requiring the responsible party to pay reasonable attorney fees and costs of the aggrieved party." LMBC believes this language does not represent good public policy because it will likely increase litigation between the "responsible party" and the "aggrieved party." LMBC believes disputes of this sort are best settled in an open dialogue between the aggrieved party and the responsible party.

## **Economic Reasons for LMBC Opposition to H.B. 2583**

LMBC is further opposed to this bill because we believe it would effectively kill the development of rail-to-trail corridors in Kansas. Many LMBC members have journeyed to our neighboring state of Missouri to enjoy the KATY trail. LMBC members and the organization would prefer to spend their tourism dollars locally. LMBC believes that all of Kansas benefits from the development of rail-to-trail corridors.

The economic benefits of the KATY trail are documented in a 2001 Conversion Study sponsored by the Columbia Convention and Visitors Bureau. The study found that the average expenditure of those visiting the KATY trail was \$268 dollars for a single day trip. (Katy Central Cooperative Marketing Program, Conversion Study, October 2001). The study also found that those visiting the KATY trail had an average annual income of over \$73,000. LMBC believes that these numbers represent potential revenue for rural communities provided Kansas is able to develop eco-tourism along rail-to-trail corridors.

## **Conclusion**

LMBC urges the Committee not to pass H.B. 2583 out of the Committee for consideration by the Chamber. LMBC believes that current Kansas law provides adequate remedies for a responsible party's noncompliance with K.S.A. 58-3212. Additionally, LMBC believes H.B. 2583 will effectively eliminate the further development and maintenance of rail-to-trail corridors in Kansas.

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Testimony in Opposition to HB 2583  
An Act concerning certain recreational trails

Presented on behalf of the Kansas Chapter of the Sierra Club  
at a  
Hearing of the Kansas House Committee on the Environment  
February 10, 2004

Madam Chair, members of the Committee, thank you for the opportunity to testify in opposition to HB 2583.

On its face the existing provisions of K.S.A. 58-3211 to 58-3215 are discriminatory since they place burdens on so-called "responsible parties" seeking to create recreational trails that are authorized under federal legislation found at 16 U.S.C. 1247 passed by Congress and signed by President Reagan in 1983. No other recreational trails are covered by existing legislation. Maybe it is time to litigate this existing state law about rail-trails in federal court and determine if the Kansas legislature interfered with Congressional intent to place abandoned rail lines into interim use as recreational trails.

The Rail-Trail Act was passed for national security reasons in 1983. The Congress and President Reagan were concerned that the rights-of-way of unused rail lines were disappearing at an alarming rate. President Reagan's National Security Advisor urged Congress to pass federal legislation to preserve these rights of way as "interim" trails available to the President and Congress to use as they saw fit in a national emergency such as war. According to President Bush, in the interview he gave with Tim Russert on Meet the Press this past Sunday, we are currently in a state of war and he is a "war President." I hope the Kansas legislature does not do anything further to put the nation at risk as they did in 1996 when they passed legislation creating K.S.A. 58-3211 et seq that puts onerous burdens on rail-trail developers and that has prevented many miles of unused rail line right of ways in Kansas from being preserved for use by our President and Congress for national emergencies.

HB 2583 would create "citizen suit" provisions to allow landowners adjacent to the recreational trails (as defined above) to go into state district court and sue "responsible parties" for their alleged failure to carry out state law. To my knowledge this type of citizen suit provision is found nowhere else in state law. If the legislature decides to pass this type of legislation with regards to rail trails perhaps the legislature should also consider passing other laws giving adjacent landowners similar rights in other situations.

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For example, perhaps the legislature should allow landowners living next to hog confinement facilities to sue the owners and operators of those facilities for failure to comply with the state law passed by the legislature in 1998. Those adjacent landowners should be allowed to sue for damages, attorney fees, and seek to revoke the corporate charter of the hog corporation while seeking an order from the court holding the members, stockholders and directors and officers of the hog corporation responsible for damages as a result of failure to carry out state law.

Similarly the legislature should consider passing legislation that would allow landowners adjacent to fields that are being sprayed with chemicals to sue the owners of those fields and the company applying the chemicals if any of the chemicals migrates to the land of adjacent landowners. Those adjacent landowners should be able to seek an order from a state district court imposing personal liability on the members, stockholders, directors and officers of the party responsible for causing chemicals to drift onto the adjacent landowner's property. Further, the adjacent landowner should be given the opportunity to seek an order from a state district court judge vacating, annulling and suspending the corporate charter of those responsible for causing chemicals to drift onto the adjacent property owners land. After all, what's good for the goose is good for gander.

I have represented several rail-trail groups. One of the biggest problems these "responsible parties" have with developing rail-trails is getting the county commissions to negotiate in good faith over the requirements placed on the responsible parties in current state law – issues like fencing, bond requirements, litter control, weed control and signage. If the county commissioners are opposed to rail-trails they will simply sandbag the "responsible party" and make it impossible to develop the trail. So the interesting question becomes: Who is responsible for the failure of the responsible party for "non-compliance"? If this legislation passes and I was the lawyer representing a responsible party that is being sued by an adjacent landowner I would advise that responsible party to "interplead" to bring the county commission in on the lawsuit and then let a judge or jury determine who is really responsible the alleged non-compliance of the responsible party.

There is an old saying: "Watch what you ask for because you may get it." The proponents of this legislation are opening Pandora's box with this legislation. I have to admit that I hope the legislature passes this legislation. However, I suggest renaming it "The Kansas lawyer's full employment act". If this legislation passes there will certainly be plenty of lawsuits to keep many lawyers busy for many years.

Thanks for your time and attention.

# KANSAS WILDLIFE FEDERATION



*The voice of outdoor Kansas*

## **Testimony Prepared for the House Environment Committee In Opposition to HB 2583**

**February 10, 2004**

My name is Dan Ward, and I'm the Executive Director of the Kansas Wildlife Federation. KWF is a 53-year old organization dedicated to the wise use, conservation, appreciation, and the restoration of our state's wildlife and natural environment. We approach this mission primarily from the perspective of hunting and fishing, which are important traditions in Kansas. Over 500,000 hunters and anglers spend close to one billion dollars in the state each year.

While the issue of recreational trails is not strictly a hunting or fishing issue, KWF has taken a stand against this bill, and we urge you to do the same.

Recreational trails are a valuable part of civic life. It's hard to imagine San Antonio without its Mission Trail, and impossible to imagine a visit to Washington DC without a walk along the Potomac. The Appalachian Trail, linking Maine to Georgia, gives hundreds of thousands of people the chance to see one of America's great scenic landscapes. Texas has a trans-Pecos trail, which gives bicyclists and hikers a chance to enjoy the Chihuahua Desert. This list of great trails goes on and on.

In an urban America, trails are how many people discover and interact with wildlife. Lawrence's river trail gave me my first sighting of a bald eagle. Austin's Hike and Bike Trails let people see herons, kingfishers, gulls, mallards, and other migratory birds.

This is serious business. One of the areas where the Kansas Natural Resource Legacy Alliance, the outdoor industry, Kansas tourism promoters, professional educators, and the Kansas Wildlife Federation all agree is that this state needs better environmental education, and more ways to show people what nature holds for here. Trails are one of the absolute best ways to do this, by giving people first hand experiences they would not have otherwise. It would be sad to live in a place where I could read about wild turkeys but never see them first hand.

As the state urbanizes, more landowners are making the decision to close off visitors to their property. This makes perfect sense, as they can make money and have less bother

by leasing their lands to hunting outfitters. But without providing some counterbalance, some other way to access the outdoor world, the state would injure itself gravely.

Quality of life is not just an environmental issue, it is one that affects the state's prosperity. People will not want to move businesses to, or start enterprises in, places that are not enjoyable to live.

So trails are important in terms of their contribution to the state's culture and quality of life. This legislation seeks to destroy trails by making the costs of holding and maintaining them unsupportable.

I must ask you what the benefit of this course of action might be. How far forward would we go, what kind of progress would we enjoy as a state, from enacting legislation like 2583? One of the most common complaints I hear from friends, relatives, and enemies alike is that we live in an overly litigious society. This bill does nothing to encourage the responsible use of an overburdened court system.

Non-profits are operating in the most challenging environment since the recession of 1992. Additionally, this body knows how much pressure city governments and colleges are under. What would be the benefit in discouraging volunteerism, forcing Baker University to close the Baker Wetlands to public access, forcing the City of Lawrence to close off its River Trail, forcing the City of Wichita to close off its trail, forcing the Kansas Trail Riders to stop their trail building?

I know some of the rhetoric about recreational trails, about government intrusion or increased crime. I also know that none of the communities I've mentioned would willingly give up their trails.

It's true that a few people might be gratified by this bill's passage, because they would see fewer strangers each day. Is that benefit worth the cost of more attorney fees, more lawsuits, fewer non-profits, less community involvement, and a lowered quality of life?

One of the ways this committee can work to protect the environment of Kansas is by getting people to care about what our state holds. Trails are one of the best ways to do that. The Kansas Wildlife Federation urges you to reject this bill.



**Testimony against H.B 2583  
Tuesday, February 10, 2003  
House Environment Committee**

**Submitted by Amelia McIntyre  
3812 West 57<sup>th</sup> Terrace  
Fairway, KS 66205**

House Bill No. 2583 attempts to impose personal liability upon the members, stockholders, directors and officers of a responsible party for failure to comply with the Kansas Recreational Trails Act. Under KSA 58-3211, a responsible party is any person, for-profit entity, not-for-profit entity or governmental entity that is responsible for developing, operating or maintaining a recreational trail. Under that same definitional section, a recreational trail means a trail created pursuant to Section 16 U.S.C 1247 (d), which is the rail-banking provision. House Bill No. 2583, if it becomes law, will have a chilling effect on the development of existing rail-banked corridors, and will deter future organizations or governmental entities from undertaking the development of additional recreational trails within Kansas, to the detriment of all Kansans.

The punitive nature of House Bill No. 2583 targeted only against recreational trails, which are rail-banked corridors, is contrary to the philosophy and public policy of KSA 60-3601, that applies to all Kansas nonprofit organizations. Generally, KSA 60-3601 ( c) provides that if a nonprofit organization carries general liability insurance coverage, a volunteer of such organization shall not be liable for damages in a civil action for acts or omissions of any of the officers, directors, trustees, employees or other volunteers of the nonprofit organization unless (1) the volunteer authorizes, approves, ratifies or otherwise actively participates in the action or omission and that action or omission *constitutes willful or wanton misconduct or intentionally tortuous conduct*, or (2) such volunteer is required to be insured by law or is otherwise insured against such acts or omissions but, in such case, *liability shall be only to the extent of the insurance coverage*. Under KSA 60-3601 (a) (3) a volunteer means an officer, director, trustee or other person who performs services for a nonprofit organization, but does not receive compensation. The clear effect of House Bill No. 2583 is to impose personal liability on the members, stockholders, directors and officers on only recreational trails, which are rail-banked corridors, inconsistent with the statutory treatment of other nonprofit organizations in the conduct of their activities. The philosophy and public purpose of KSA 60-3601 is to encourage individuals to take on efforts from which the public will benefit. Development of recreational trails is such a public benefit, and if House Bill No. 2583 becomes law volunteer participation will be discouraged that currently is achieving progress in the development of recreational trails.

I have provided pro bono legal services to the Kanza Rail Trail Conservancy, Inc., that has the development rights for the Flint Hills Nature Trail, an east to west corridor from Osawatomie, Miami County, to Herrington, Dickinson County, running through six counties, and the Landon Nature Trail, a north to south corridor from Topeka to near Lomax, which joins with the Flint Hills Nature Trail in Shawnee County. Since

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September 2001 significant progress has been made by *member volunteers* on targeted segments of that trail, and hopefully those efforts can continue, unhampered by the onerous provisions of House Bill No. 2583. All of these *volunteers* have not received compensation and are motivated solely by trying to provide recreational and economic development benefits through the rural Flint Hills for future generations of Kansans.

I am against House Bill No. 2583, and would encourage you to not approve the bill as contrary to public policy of the State of Kansas. Further, I am going to provide some background specifically rail-banked corridors and what they could do for Kansas, if allowed, encouraged, and supported, rather than thwarted by the Kansas Legislature.

### Overview

**Development of a comprehensive plan for preservation of railroad corridors is needed due to the alarming rate at which they are being abandoned in Kansas. Once railroad corridors are lost through abandonments approved by the Federal Surface Transportation Board, there are reduced transportation options for the movement of Kansas products. The remaining options create a dependence on motor carriers that are vulnerable to increased costs of operation, particularly from oil price increases.**

Section 801 et seq. of Title 45 of the United States Code, upon which subsection (d) of Section 1247 of Title 16 is predicated, creates a legal presumption, based upon declared legislative intent to promote the maintenance and revitalization of the railway system of the United States, that rail line abandonments should be postponed and interim trail use encouraged to foster revitalization. The principal beneficiaries of Section 801 were intended to be the shipping public, who could have renewed access to rail service should their future needs so dictate. Such shipping public may well be the Kansas elevators, and the Kansas farmers dependent upon them to sell and move their grain. We urge careful consideration by you of the practical effect of various legislative initiatives being sought. These statutory initiatives will create a practical impediment to interim trail use. Such impediments will discourage the interim trail use and frustrate the federal legislative intent for interim trail use as a means of access for communities to future revitalized rail service. The primary interest in preserving the potential for revitalized rail service should be a basis for communities allying themselves with the "trail users".

Based on *The Kansas Heritage Trails Plan* prepared in 1993 by the Kansas Heritage Trails Committee representing the Kansas Department of Wildlife and Parks, the Kansas Department of Transportation, Kansas Historical Society, and the Kansas Department of Commerce and Housing pursuant to Kansas Senate Resolution 1843 and Kansas House Resolution 6027, both adopted in the Kansas Legislature in 1991, it was projected that Kansas would experience a major loss of railroad mileage. See page 43. Again, based on *The Kansas Heritage Trails Plan*, of the 6,491 railroad miles that existed in 1991, 3,000 miles, or nearly one-half, carried less than one million gross ton-miles per mile annually, making them "light density" rail lines with a high probability of being abandoned. Again, as noted in *The Kansas Heritage Trails Plan*, the risk of

abandonment was “highest for the lines that are unprofitable, because of deferred maintenance, the high cost of rail line rehabilitation and the railroads increased competition from highway motor carriers.” Those projections made in 1993 have proven correct. In areas where the rail lines have already been abandoned, the increased costs now being faced by highway motor carriers through increases in the costs of petroleum leaves the Kansas shipping public, including the Kansas farmers, with reduced options. The hostility toward the interim use of rail lines for recreational purposes has significantly reduced Kansas options to address future transportation issues. If corridors are left intact, then they remain available for use in the circumstances of national emergencies, an energy crisis or renewed need and profitability of rail transportation. The United States Supreme Court has upheld the constitutionality of 16 U.S.C. 1247, allowing railbanking, [Presault v. ICC, 494 U.S. 1 (1990)], and recognized that railbanking is a reasonable and legitimate exercise of government power for these reasons.

The posture of certain members of the Kansas Legislature have been to thwart railbanking as an interim use, including actions to limit the use of federal funds available for the development of railbanked trails. I would encourage you to take steps to change the course that has been followed, and give rail-banked corridors an opportunity to succeed, rather than channeling your efforts to defeat them.

*Action Steps within the scope of authority of the Legislature*

1. **You should direct the Kansas Department of Transportation to be the lead state agency to aggressively gather information to develop a plan to preserve railroad corridors for potential reactivation.** *First*, certain state agencies, primarily the Department of Transportation, which should have the lead role, along with the Kansas Corporation Commission, the Department of Commerce and Housing, and the Department of Wildlife and Parks, should identify: (1) railbanked corridors that are already held by private or public entities, (2) corridors for which notice of intent to abandonment have been given to the Surface Transportation Board, and (3) those corridors that are likely to be abandoned due to their status as “light density”. *Second*, subsequent to that identification process, the Department of Transportation should determine if there are interconnections that can be made so as to warrant pursuing those corridors under federal railbanking provisions when they become available or providing funding to those already railbanked so they remain viable. State departmental oversight of the scope and extent of the abandonment of the state’s railroad corridors is fragmented among various state agencies. The Bureau of Rail Affairs within the Kansas Department of Transportation has historically issued reports of railroad abandonment status. The Kansas Corporation Commission has access to information about which railroad are likely to file for abandonment due to the oversight they have of operating railroads. The end result of the fragmentation is that there is a lack of coordination to prevent the trend of abandonment from continuing. Kansas’ future to develop transportation options is being squandered by lack of coordination. The Kansas Department of Transportation has a narrow view of Kansas’ future transportation options. The department culture perpetuates a view that interim trail use of corridors, and expenditures of federal dollars

available for such development, are in direct competition with the way they have been doing business . . . building highways . . . even when in the future the cost of operating on those highways may place Kansas business in a competitive disadvantage. **These key state agencies need a clear directive from you that interim trail use is key to Kansas' future transportation needs.**

2. **You should direct these same state agencies, along with the Kansas Historical Society, to prioritize for an interim trail use plan those railroad corridors most likely to generate economic benefits to the local communities through which they run.** Once interconnected corridors have been identified, then the Kansas Department of Commerce and Housing should take the lead, with the assistance of the Kansas Historical Society and the Kansas Department of Wildlife and Parks, to prioritize those corridors have the potential for enhancing tourism to the communities located along the corridor. In particular, the historical significance of the area and even the corridor itself (some rail corridors follow historic trails), should be considered. Historically rich areas of Council Grove and Herington are along the Flint Hills Nature Trail and the existing historical landmarks and businesses could benefit from the trail being developed. Proximity to metropolitan areas should be considered. Linkage between recreational areas and the potential for increased visitation and camping at the many recreational lakes or other areas in the vicinity of trails should be considered. By way of example, a completed Flint Hills Nature Trail could benefit revenues at Pomona Reservoir and the Council Grove Reservoir. As further illustration, if the Kansas Department of Wildlife and Parks was to take the lead in developing that portion of the Flint Hills Nature Trail from Osawatimie to Ottawa, which latter community is presently the most northerly terminus of the Prairie Spirit Trail, then potentially bike paths paralleling an improved Highway 169 would link the Johnson County metropolitan area with the Prairie Spirit Trail and increase the economic benefits to the local communities along the trail. In addition, the Kansas citizens of Franklin, Allen and Anderson counties would have access to Hillsdale Lake and the recreational opportunities that it provides. The City of Topeka executed a lease for a portion of the Landon Nature Trail. The further trail development of the railbanked corridor beyond the city boundaries into Shawnee and Osage Counties is also linking to the Flint Hills Nature Trail. **Your breadth of vision is needed to blend economic and recreational interests.**

3. **Access by residents of metropolitan areas to rural Kansas would elevate awareness of agricultural issues. As members of the Legislature, you should direct the Kansas Department of Agriculture to promote the educational aspects of interim trail use to heighten awareness for agricultural issues.** Changing demographics dictates that sensitivity to agricultural issues will diminish unless people from the metropolitan areas have opportunities to understand the concerns of the agricultural community. After the next census, shifts and reapportionment of the state representative and senate districts will most likely continue to occur. The present political strength of the agricultural areas will correspondingly diminish. If an education process heightening awareness does not begin now, the opportunity to have tolerance and understanding encouraged may be squandered. Further, value added product opportunities are available to the expanded market of trail users.

4. **As a member of the Legislature, you should give clear direction that internal state agency restrictions on federal funds available for the purpose of interim trail use should be removed and further state available funds should be prioritized toward preserving railroad corridors through interim trail use.** You need to remove limitations upon state agency heads imposed as a part of the budgetary process that deters the development of a strategic plan to assure the success of the interconnected corridors, including applying for available federal funds for interim trail use and allocating existing federal funds already available for those interconnected corridors. Specifically, state appropriations for a match of the federal TEA-21 Enhancement Program would enable significant progress in addressing many of the development concerns asserted by trail opponents. This action step will also require that the Legislature and state agency heads take a leadership role in the legislative process to lift any state legislative restrictions on how federal funds and certain discretionary state funds are used.

5. **As members of the Legislature, you need to encourage state agencies to explore and implement interlocal agreements to implement the strategic plan to preserve railroad corridors.** State agencies need to be directed to negotiate toward and play an advisory role in the development of, and ultimately be participants in, an interlocal agreement with the Kansas Flint Hills Nature Trail, and cities and counties along that corridor as a prototype for private-public partnerships tailored to the economic interest of local areas, yet also serving state-wide interests toward maximum transportation options.

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**Statement of Ron Klataske  
Executive Director, Audubon of Kansas  
to the Kansas House of Representatives  
Committee on Environment  
Regarding House Bill 2583**

Madman Chairwoman and members of the Committee. On behalf of the 7,000 members of Audubon of Kansas and eleven local Audubon Societies in Kansas, I greatly appreciate the opportunity to use this occasion to express support for the diversity of recreational trails that are provided by nonprofit, governmental and private landowners throughout Kansas.

In my previous capacity as a regional vice president for the National Audubon Society I worked in an eight state region and traveled throughout the country. I often heard comments from people who said that they had "**never been to Kansas**", then qualifying that statement with a suggestion that they had been "**through**" Kansas on their way to some other state. States like Colorado and Missouri have national forests and parks with trails and campgrounds. Why would folks want to stop in Kansas if they can bicycle or hike across Missouri on the Katy Trail, ride horseback across Nebraska on the Cowboy Trail, or canoe rivers with access like the Niobrara River in Nebraska or the Illinois River in Oklahoma?

There is a perception among travelers across the country that Kansas doesn't offer much in terms of opportunities for outdoor recreation, and many residents think first of going to some other state for these activities. We even have some organizations within the state who are hostile to the development of trails and public land ownership. They overlook the fact that recreational opportunities close to home add to the quality of life of residents, and to the economy of the state in ways that may help to provide jobs in both rural and metropolitan areas.

I draw you attention to the January 2004 edition of Tourism Topics and Hospitality News, a publication of the Manhattan Convention & Visitors Bureau. "According to CVB Director Becky Blake, the economic impact of tourism on the area is approximately \$70,000,000 annually."

This CVB is continuing efforts to encourage the development of a Tallgrass Prairie Interpretive and Visitors Center. "The purpose of the center is to attract and educate visitors and resident of the Flint Hills region in regards to the ecological, geographic, economic and historical significance of the tallgrass prairie, and to provide travelers with information to enhance their stay in the Flint Hills region."

Audubon of Kansas is working with local CVBs and other entities all across the state to build interest in all of the sites available for public nature appreciation and recreational activities, including birding, wildlife watching and photography, and sightseeing. Highlighting native prairies and wildflowers, and our diverse natural and cultural heritage, is a project that we approach with enthusiasm. Trails provide the best way to give people access to our state's natural heritage.

I am attaching a flyer on the **Kansas Birding and Natural Heritage Trails** program that we have launched to establish a system of four routes that will cross Kansas and interconnect attractions like a string of pearls. If you know of attractions in your area that should not be overlooked, please contact us and nominate the sites.

With all of the positive possibilities, it is quite natural that we have serious concerns about House Bill 2583. Because it is so badly flawed, we ask that you vote to simply reject it in committee.

Thank you.

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# Tourism Topics

Volume 3, Issue 1

## New Year Brings New Initiatives for Tourism Development

As 2004 begins, the Manhattan Convention & Visitors Bureau (CVB) looks forward to another year of promoting The Little Apple® as a convention and meeting location as well as a tourism destination. The CVB's mission is to expand the local area economy through increased visitor spending. According to CVB Director, **Becky Blake**, the economic impact of tourism on the area is approximately \$70,000,000 annually.

events in Manhattan. **Karen Hibbard**, Convention Sales Manager, will continue to work closely with the Meet Kansas coalition by participating in cooperative marketing efforts to bring national associations to the state.

The CVB will continue its efforts to encourage the development of a Tallgrass Prairie Interpretive and Visitors Center and restoration of the Union Pacific Depot, a focus for the Downtown Redevelopment Plan. The purpose of the center is to attract and educate visitors and residents of the Flint Hills region in regards to the ecological, geographic, economic and historical significance of the tallgrass prairie, and to provide

travelers with information to enhance their stay in the Flint Hills region.

In the area of tourism, niche marketing will once again be spotlighted. The CVB has determined that Nature Based, Hunting/Fishing, Cultural, Golf and Heritage are the appropriate markets for Manhattan. Because of the Kansas Sesquicentennial in 2004 and the Manhattan/Riley County Sesquicentennial in 2005, a specific area of concentration this year will be in the area of Heritage marketing. The CVB will lend a hand in supporting the Sesquicentennial for both state and local events. **Diann Bayes**, Tourism Sales Manager, will con-

tinue to represent Manhattan at the numerous alliance meetings throughout the state including the Nature Based Alliance of Kansas, Tourism Arts Alliance of Kansas, Fishing and Hunting Alliance of Kansas, and Bleeding Kansas Heritage Alliance.

Because of the various venues available to sports organizations, CVB staff plans to continue its focus on attracting visitors through the development and promotion of sporting and special events. With the assistance of the Manhattan Area Sports Council (MASC), a continued effort will be placed on marketing the area to amateur sporting events in key segments.

With the importance of technology to tourism marketing, the CVB will strive to continually enhance the website, [www.manhattancvb.org](http://www.manhattancvb.org), in order to educate the visitor on the many tourism opportunities that Manhattan has to offer. Starting in January, a CVB coupon book comprised of special offers from retailers will be distributed to 20,000 visitors to Manhattan, giving visitors the opportunity to take advantage of the many restaurants and shopping venues in the city.

Finally, the CVB is developing a Hospitality Training Program and other educational seminars for the tourism industry which they hope to implement in 2004.

## CMA and ACM Winners to Highlight 2004 Country Stampede

Affiliated Foods Midwest Coun-

Tickets and campsites are now

More than 1600 campsites will be available to festival fans who

VIP tickets include reserved seating in the first 35 rows. VIP

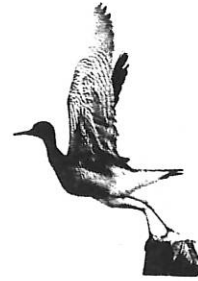
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CMA & ACM Winners to Highlight

# Kansas Birding & Prairie Flora Trails will:



Utilize Existing Highways and Scenic Byways

Connect Attractions Like a "String of Pearls"

Build Pride in Kansas Prairies, Wildlife and Scenic Landscapes

Bring Economic Benefits to Rural Communities



The Kansas Birding and Prairie Flora Trails system is intended to connect existing and potential birding, wildlife viewing and prairie/forest plant community sites into a series of exciting nature-based visitation trail routes extending across Kansas. The trails will serve residents and visitors by greatly enhancing travel and wildlife viewing opportunities. Birders and other wildlife watchers are already visiting many of the sites along the proposed trails or in associated counties. However, most of these sites function independently and many other potential sites or byways are only known to a few people. Sharing your insight on good birding spots and places to see "natural Kansas at its best" will help to build appreciation for birds and birding, for the diversity of wildlife including amphibians, for Kansas prairies and other important habitats, and for wildflowers and scenic landscapes.

Audubon of Kansas is striving to make the Kansas Birding and Prairie Flora Trails system a success, and unique to trail systems of this nature. Success depends on your enthusiasm and the assistance of a wide network of people throughout the state with various perspectives and insight. Our greatest need is for folks to nominate sites that should be considered for inclusion in a field guide and web site devoted specifically to the trail system.

Please become a partner in this extraordinary opportunity to build pride in our natural environment and support for good stewardship. Please help us by nominating any sites within or near your community that have potential for wildlife watching, birding, nature photography or as a place to view native prairie (or woodland) wildflowers. A potential site can be a small area of a few acres, or a larger place that may be overlooked without your nomination. A country road that has scenic vistas or offers a good route to view birds and other wildlife or wildflowers will also be considered for inclusion as part of a spur or loop. If you enjoy these areas, chances are others will also.

We are in the process of planning a series of four promising birding and prairie flora trails to extend north-south across the state in different physiographic provinces. The primary trail routes will follow designated highways, and each will be complemented with additional loops and spurs to areas or sites of special interest. We want to explore opportunities in every county in Kansas. Thus, if you know of sites in other counties or parts of the state that you enjoy and may contribute to a nature-based experience, please include those as well.

All areas of the state will benefit from strategic placement of the four distinct birding trails envisioned.

A "**Tallgrass Prairie Birding & Flora Trail**" will extend through the Flint Hills and Chautauqua Hills and include flagship preserves such as the Tallgrass Prairie National Preserve and Konza Prairie.

A "**Central Flyway Wetlands Birding and Prairie Flora Trail**" will extend through central Kansas from the Red Hills to the Kirwin National Wildlife Refuge--with Cheyenne Bottoms and Quivria National Wildlife Refuge as signature attractions along the way.

A "**Forest-Grassland Ecotone Birding and Flora Trail**" will parallel the eastern edge of Kansas from the Missouri River breaks and adjacent riverbottom forests and wetlands to the Ozark Plateau in extreme southeastern Kansas. Baker Wetlands and the Marais des Cynes state/national wildlife areas will be included.

A "**Sandsage and Shortgrass Prairie Birding and Flora Trail**" in western Kansas will guide Kansas residents and visitors from the Cimarron National Grassland to "The Arikaree Breaks" north of St. Francis.

*However, we need your involvement to identify less prominent sites in all parts of the state.*



Most sites will be publicly owned land operated by an agency, municipality, county, university, utility, conservation organization or nature center. However, some private landowners are receptive to sharing their land in various ways with visitors who want to see native prairie wildflowers and grasses, and/or observe birds like Greater and Lesser Prairie Chickens.

You can also provide local outreach and leadership. Folks who are interested in any aspect of natural history or are involved in promotion of travel and tourism to the community may welcome opportunities to be involved. Please extend an invitation to anyone who is interested. Several leaders near Pittsburg have formed a planning committee to systematically describe sites in the vicinity. It would be wonderful if this could be duplicated for every county.

Collectively, we will develop descriptive materials and highlight the bird species that are most likely to be found at various times of the year, and the periods when featured wildflowers are most likely to be in bloom. Opportunities to see rare or special sought-after bird species will be listed for locations where most appropriate.

We will also include "night sounds" of nature for some areas that are open at night. Many families with kids and other visitors would be delighted to hear Coyotes, Barred Owls, Poorwills, Chuck-will's-widows or Whip-poor-wills. The courtship calls made by twenty-two different species of frogs and toads in the state are equally intriguing.

Inclusion of information on wildflowers, geology, night sounds and amphibians are among several features that will make Kansas' "Birding Trails" unique. The web site will also underscore the excellent stewardship of many of the sites featured, and include information on other cultural or historical subjects of interest in the area.

The pursuit of birds, wildflowers and prairie vistas opens up diverse other opportunities, especially when travelers and residents take time along the way to enjoy other natural and cultural attractions. Additional information and a much longer nomination form, for folks who want to provide additional detail, can be found on the Audubon of Kansas website: <[www.audubonofkansas.org](http://www.audubonofkansas.org)>. We greatly appreciate your assistance.

## NOMINATION "SHORT" FORM

Site Name: \_\_\_\_\_

Potential Attributes of the Site: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

County: \_\_\_\_\_ General Location: \_\_\_\_\_

Your Name: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Please send completed forms and other information to Audubon of Kansas, 210 Southwind Place, Manhattan, KS 66503; e-mail: <[aok@audubonofkansas.org](mailto:aok@audubonofkansas.org)>, call (785) 537-4385 or fax (785) 537-4395. Thanks. --Ron Klataske & Ferdouz Vuilliomenet



STATE OF KANSAS  
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary  
1020 S Kansas Ave., Room 200  
Topeka, KS 66612-1327  
Phone: (785) 296-2281 FAX: (785) 296-6953



Testimony on HB 2533 Relating to Kansas Recreational Trails Act to House Committee on  
Environment

By Amy Thornton, Legal Counsel  
Kansas Department of Wildlife and Parks

10 February 2004

HB 2583 amends K.S.A. Supp. 2003 58-3215 to allow an adjacent landowner to sue a party responsible for a recreational trail defined by (d) of 16 USC 1247 (a rails to trail) if the trail is not properly maintained pursuant to the Kansas Recreational Trail Act (KRTA). HB 2583 sets stringent penalties against these parties if the trail is found to be not maintained or in non-compliance of the KRTA. These penalties that include personal liability to members of the responsible party for the trail are draconian and would force trail development in the State of Kansas to a standstill.

Currently, K.S.A. 58-3215 permits a city or county to bring suit under federal causes of action specified in the National Trails Act against a responsible party if the trail is not maintained. Two 1998 Attorney General Opinions state that this is the proper remedy and that based on the legislative history, this was to be an exclusive remedy.

The Kansas Department of Wildlife and Parks strongly opposes this bill for several reasons. The first goes to the question of what is considered non-compliance when an adjoining landowner threatens suit. The KRTA specifies that for a trail to be in compliance, it must meet the statutory guidelines of K.S.A. 58-3212. These guidelines are a list of duties that a group responsible for a trail must satisfy to keep the trail in full compliance of the KRTA. Examples of these duties include, among others, providing safe access, litter and weed control, providing law enforcement for the trail, and maintenance of fences and signs. While the Department supports fully maintained trails, there is no litmus test to what is defined as proper maintenance, leaving the issue subject to interpretation. Under HB 2583, a plausible scenario could have an adjacent landowner suing if they believed the trail was not being mowed enough. This bill will open the door to frivolous lawsuits by adjacent landowners and keep the groups who maintain these trails in court and not out maintaining the trail.

Second, those involved in recreational trail development do find protection from civil liability under the Kansas recreational liability statutes. These statutes protect an owner of land who allows part of their land to be opened to the public for recreational purposes. The limited liability bestowed upon these individuals is no doubt, an attempt to provide incentives for landowners to open up their land in a state where 97% of the land is privately held. Enactment of HB 2583 not only goes against the very grain of these limited liability statutes but also would conflict with these statutes, thus requiring further legislation or a judicial determination to remedy the conflicting levels of liability.

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Third, the Kansas Department of Wildlife and Parks opposes this bill because of the severe penalties that could be charged against a responsible party of a trail. In such a case, the Judge would be forced to assign any one or more of the penalties prescribed. These penalties are the following:

- 1) A court order forcing compliance,
- 2) A fine of \$100 a day for each day the trail is not in compliance,
- 3) The imposition of personal liability against the individual members, stockholders, directors, and officers of the responsible party for the trail,
- 4) An order requiring the parties responsible for the trail to pay the landowner's attorney fees for bringing the suit, and
- 5) An order vacating, annulling or suspending the responsible party's corporate charter or certificate of doing business in the state of Kansas.

The severity of these penalties are the harshest of their kind in recreational law. As a result, a not for profit organization would have an impossible time getting their volunteer members to help build and maintain trails if they could be held personally liable in a court of law for the trail not properly being maintained. In addition, by prescribing a list of predetermined penalties, it prevents the Judge from utilizing judicial discretion in assigning what might be a far more appropriate and fair result for that specific trail.

Lastly, House Bill 2583 sets a dangerous precedent for all recreational trails throughout the State of Kansas. As drafted, this bill is only applicable to the rails to trails programs. However, the slippery slope of broadening this to effect all trails in the state of Kansas would be the next step. If this bill is enacted, it will go against the intent of this legislature and the State of Kansas to encourage new trails in the state of Kansas.

In summary, the Department is strongly opposed to the enactment HB 2583. A legal cause of action already exists if the trails fall into noncompliance under the federal National Trails Act. This bill would merely encourage opponents to the development of trail systems to engage in frivolous lawsuits and make it impossible for trails to develop in the state of Kansas.

# Friends of the Kaw

To protect and preserve the Kansas River



February 10, 2004

TO: Representative Joann Freeborn, Chairperson Environment Committee  
Representative Tom Sloan, Member Environment Committee

Friends of the Kaw is a 501(c)3 organization with members throughout the state of Kansas – working to protect the Kansas River from in-stream river dredging, creating more public access in order to increase compatible recreational opportunities, and educating the public about the benefits of preserving this state-wide natural resource.

There are at least two reasons why HB2583 is bad for the citizens of Kansas. First, the bill jeopardizes a multi-million dollar investment in the recreational trails of Kansas, by creating personal liability for volunteers who assist with the building and maintenance of trails in Kansas. Organizations like the Kansas Trails Council and the Rails-to-Trails organizations, and Mountain Biking organizations, have successfully enlisted hundreds of volunteers to donate thousands of man-hours in the building and maintenance of recreational trails. This investment by volunteers in the recreational assets of the State of Kansas is worth millions of dollars. HB2583 threatens that multi-million dollar investment!

Second, HB2583 jeopardizes the growing eco-tourism industry in Kansas. The Friends of the Kaw supports the growth of public access to outdoor recreational opportunities in Kansas, such as access to river float trips and access to recreational hiking and biking trails. The future economic vitality of many Kansas communities is tied to the stimulation and growth of eco-tourism. Thousands of in-state and out-of-state hiking and biking enthusiasts currently use the recreational trails in Kansas. HB2583 will undermine this growing eco-tourism asset.

The defeat of HB2583 is critical for the future of outdoor recreation in the state of Kansas.

Sincerely,

*Laura Calwell*

Laura Calwell, Kansas Riverkeeper  
Friends of the Kaw

*Kansas Riverkeeper*

P.O. Box 1612, Lawrence, KS 66044 913-963-3460 or 785-312-7200  
Riverkeeper@KansasRiver.com



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February 10, 2004

Rep. Joann Freeborn  
Chairperson, Committee on Environment  
Kansas House of Representatives  
300 SW 10<sup>th</sup> Avenue, Room 281W  
Topeka, Kansas 66614

**RE: House Bill No. 2583 - Amending the Recreational Trails Act**

Rep. Freeborn-

On behalf of our MetroGreen Technical Advisory Group which represents local cities and counties in the metropolitan Kansas City area we would like to share our concerns regarding House Bill No. 2583 amending the Recreational Trails Act.

Over the past few years there has been overwhelming public support and volunteer efforts to build our regional trail and greenway plan called MetroGreen. Our plan was first created in 1991 by students and faculty in the Landscape Architecture Department at Kansas State University and we have recently updated the plan into our 2002 MetroGreen Plan of Action. Throughout the development of this latest plan and many local plans, citizen support has been strong as residents recognize the multi-dimensional benefits to our communities such as:

- An alternative transportation mode for people to get from home to work or other community destinations;
- Opportunities for citizens to practice more healthy lifestyles by exercising on a regular basis;
- Allowing our storm water to be managed naturally within and along our greenway and stream corridors while providing a public recreation amenity;
- Quality of life benefits that will attract a highly educated work force to our region allowing us to compete with other metropolitan areas such as St. Louis, Denver, Minneapolis and Omaha.

In our experience as trail systems are designed and constructed careful consideration is given to ensure that they are well maintained and operated by local sponsors. We believe that this proposed bill would limit the abilities for the counties, cities, land developers and not-for-profit organizations in our metropolitan area to construct and manage segments of the regional system.

For further information on our plan please feel free to view it on our website at [www.marc.org/metrogreen](http://www.marc.org/metrogreen) or contact me at 816-474-4240.

Sincerely,

Stephen Rhoades  
MetroGreen Planner

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2-10-04  
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# KRPA

KANSAS RECREATION AND PARK ASSOCIATION

House Committee on Environment  
February 10, 2004

Testimony Opposing HB 2583  
Laura Kelly, Executive Director  
Kansas Recreation and Park Association

Madame Chair and members of the committee:

HB 2583 would have a chilling effect on the development of new trails and the sustainability of those already in place. There are any number of reasons why this is a bad idea and many of those will have been shared with you in other testimony.

I would like to focus attention on the crisis of obesity facing our nation right now. More than 50% of the adult population and 15% of our children are substantially overweight.

Many factors contribute to this critical problem including the design of communities that discourages people-powered movement. Outside of major urban cities, we no longer have the neighborhood schools, neighborhood markets, or neighborhood community centers that promote walking.

Few of us work in jobs that require much motion or muscle. Our buildings feature their elevators, not grand staircases (the Capitol excepted).

In our schools, the hours devoted to physical education and recess have been cut significantly to allow more time for academics. Our kids are sitting more at school, then being driven home, where, often, they sit again in front of the television or computer monitor.

Our state and our country must find ways to turn the tide of obesity. If we don't, we will be overwhelmed with the costs of caring for an increasingly younger chronically ill population. No one approach to the crisis of obesity will fix it. However, we do know that physical activity must be a component of any healthy lifestyle.

It is in the best interest of our state and our communities to explore ways of becoming more walking-friendly. Trail development in any setting (urban, suburban, or rural) is arguably the best way for communities to provide affordable and safe access to physical activity that can be pursued by just about any segment of the population: young or old, rich or poor, athletic or not.

We encourage this committee to vote against HB 2583 and, further, to look for ways to stimulate the development of more trails to get Kansans moving.

700 SW JACKSON ST . STE 805  
785.235.6533 PH



TOPEKA . KANSAS . 66603-3737  
785.235.6655 FX

WWW.KRPA.ORG

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League of Kansas Municipalities

To: House Environment Committee  
From: Kim Gulley, Director of Policy Development  
Date: February 10, 2004  
Re: Opposition to HB 2583

Thank you for the opportunity to offer comments concerning HB 2583 on behalf of the 556 member cities of the League of Kansas Municipalities (LKM). Our organization has long been a supporter of public recreation, including rails to trails projects. The *2004 Statement of Municipal Policy*, as adopted by our Convention of Voting Delegates last October, reads as follows:

"We support the development of recreational trails, including rails to trails projects, and oppose state and federal legislation that would make such development more burdensome or costly."

HB 2583 would indeed make the development of rails to trails projects more burdensome and more costly. We offer the following specific concerns:

- **Supersedes Prior Agreement.** A number of years ago, LKM sat down with interested parties and worked out the existing state law regarding rails to trails projects. We agreed to the existing language as part of a good faith compromise and we believe that the existing law represents an appropriate balance among the various interests. HB 2583 is a significant departure from the prior agreement and tilts the law against the development of recreational trails.
- **Increased Litigation and Cost.** As written, HB 2583 opens the door for a flurry of litigation. Such litigation would be costly to defend, and in most cases, could effectively end the development of trails in Kansas. In many cases, such trails are operated in part or in whole by local governments. Therefore, the taxpayers of Kansas would bear the financial burden of defending the lawsuits resulting from this legislation.

In summary, we believe that the processes outlined in K.S.A. 58-3213 offer sufficient protections regarding the development of recreational trails. Locally elected officials are a part of the process from start to finish. Any person with a concern about an existing trail, or the development of future trails, may work with the county commissioners or city governing bodies in their district to resolve any issues that may arise.

For these reasons, we respectfully request that the Committee not report HB 2583 favorably for passage. As we have in past years, LKM would be more than willing to sit down with the interested parties to see if there is an opportunity to work out language which is acceptable to all sides of this issue.