

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Robert Tyson at 8:34 a.m. on March 11, 2004 in Room 423-S of the Capitol.

Members present:

Senator Christine Downey  
Senator Derek Schmidt  
Senator Dwayne Umbarger  
Senator Janis Lee  
Senator Mark Taddiken  
Senator Phil Journey  
Senator Robert Tyson  
Senator Tim Huelskamp

Committee staff present:

Raney Gilliland, Legislative Research Department  
Lisa Montgomery, Office of Revisor of Statutes  
Linda Bradley, Committee Secretary

Conferees appearing before the committee:

Orville Cole, Attorney from Garnett  
Charles Herd, Attorney from Greensburg  
Harold Lutz, Landowner from Shawnee County  
Brad Harrelson, Kansas Farm Bureau  
Ed Pugh, Attorney, State Senator - 1<sup>st</sup> District  
John Love, Landowner from Shawnee County  
Todd Johnson, Kansas Livestock Association  
Scott Allen, President of Council Grove Chamber of Commerce  
Amy Thornton, Assistant Legal Counsel, Wildlife and Parks  
Cort Anderson, Board Member of Mountain Bike Association of Belle Plaine  
Kim Gulley, Director of Policy Development, League of Municipalities  
Charles Benjamin, Kansas Chapter Sierra Club  
Frank Meyer, Kanza Rails and Trails Conseravancy, Herrington  
Dale Crawford, Johnson County Bicycle Club

Others attending:

See Attached List.

Chairman Tyson called the meeting to order and greeted all conferees and guests.

**Hearing on House Bill 2583**

**HB 2583 is concerning certain recreational trails.**

Because of the number of conferees and the time limit of an hour for the hearing on **HB 2583**, Chairman Tyson bypassed Raney Gilliland, Staff, for a briefing of the bill and asked the first conferee to testify.

Orville Cole, an attorney from Garnett, a proponent, stated this bill results from the continuing fight between landowners, whose private property has been appropriated for public use under the Federal Rail-Trail Act, and those state agencies and rail-trail groups who believe that they can control private property in violation of the landowner's constitutional rights. (Attachment 1)

Charles Herd, an attorney from Greensburg, a proponent, stated of being 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. (Attachment 2)

## CONTINUATION SHEET

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE at 8:34 a.m. on March 11, 2004 in Room 423-S of the Capitol.

Harold Lutz, a landowner from Shawnee County, a proponent, stated 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. ([Attachment 3](#))

John Love, a landowner from Shawnee County, a proponent, stated he is an adjacent property owner along an abandoned railroad line in Shawnee County. He supported the original **HB 2583**. He continues to support a large portion of substitute **HB 2583**. Mr. Love said it has been his experience over the past 15 plus years, that the County Commission in our area has been reluctant to hold trails groups accountable for deadlines, responsibilities and obligations as outlined in state statutes. The creation of an Advisory Board would cause more bureaucracy and would not provide an improved remedy or accountability. ([Attachment 4](#))

Brad Harrelson, Associate State Director, Kansas Farm Bureau (KFB) Governmental Relations, a proponent, stated Kansas Farm Bureau's concern in this matter is not necessarily with trails that are currently operated in conformance with federal and state law. Our members, many who are adjacent landowners to "recreational trails," are frustrated with those trails, and trail groups that are not in compliance. While cities and counties may take action against non-compliant trail groups, this rarely, if ever, happens. Absent that, adjacent landowners have virtually no recourse. This failure in the current law must be corrected by providing some additional measure of remedy to landowners when cities or counties are unwilling to act. ([Attachment 5](#))

Senator Ed Pugh - 1<sup>st</sup> District of Kansas and an attorney, a proponent, stated he supports Substitute for **House Bill 2583** with reservations. The landowners, or anyone with a grievance, still have to go through the County Commissioners to try to get any justice. Many, many past experiences have proven that the County Commissioners will not or do not have the will to enforce the statutes that the rails-to-trails organizers are supposed to comply with by law. My obvious reaction to this is who is going to see to it that the County Commissioners enforce these statutes? ([Attachment 6](#))

Todd Johnson, Governmental Affairs Staff for the Kansas Livestock Association (KLA), a proponent, stated KLA members feel strongly that land granted as right-of-way to railroads should revert to adjacent landowners when a railroad discontinues use. When Congress established procedures for state/local governments and private groups to intervene in railroad abandonment and convert the right-of-way to a recreational trail (rail banking), this reversion met a roadblock. ([Attachment 7](#))

Chairman Tyson then introduced the first opponent to testify on **HB 2583**.

Scott Allen, President of Council Grove Chamber of Commerce, a opponent, stated Council Grove is a community that is constantly struggling to find ways to keep young people from leaving and simply stabilize the population. Unlike many rural communities Council Grove has managed to minimize the trend of declining population. The Flint Hills Nature Trail has the potential to be the greatest economic opportunity to come to the community since the federal reservoir opened in 1963, and it has the potential to breathe life into the dying communities it intersects. ([Attachment 8](#))

Amy Thornton, Legal Counsel, Kansas Department of Wildlife and Parks, a opponent, stated Substitute **HB 2583** amends the Kansas Recreational Trail Act by providing two new components: Additional requirements for responsible parties building recreational trails and the imposition of supervisory duties for county commissions to oversee trail development. ([Attachment 9](#))

Amelia McIntyre an attorney from Fairway, Kansas, an opponent, stated she has provided pro bono legal services to the Kanza Rail Trail Conservancy, Inc. that has the development rights for the Flint Hills Nature Trail. Ms. McIntyre would encourage you to not approve the bill as contrary to public policy of the State of Kansas. The bill would require a responsible party, which is not a governmental entity, to execute a quit claim deed conveying to the county the responsible party's interest in that portion of the

## CONTINUATION SHEET

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE at 8:34 a.m. on March 11, 2004 in Room 423-S of the Capitol.

recreational trail which is located within the county. (Attachment 10)

Cort Anderson, a member of the Kansas Singletrack Society, a Kansas mountain bicycle club, an opponent, stated recreational trails promote a healthier lifestyle. The state is losing recreational/tourism dollars from other states. Recreational trails are an investment in our children's future. (Attachment 11)

Kim Gulley, Director of Policy Development, League of Municipalities, an opponent, stated we believe that the processes 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. (Attachment 12)

Charles Benjamin, Kansas Chapter Sierra Club, an opponent, stated most of the activities of Sierra Club members consist of "outings" whereby people hike, bike or otherwise "get out in nature" to enjoy and then advocate for its protection. Kansas ranks last or next to last among the states in the amount of public lands available to hike and bike. Therefore, many Sierrans and others are enthusiastic about the creation of trails on railroad rights of way that are not currently being used for rail traffic. (Attachment 13)

Frank Meyer, Kanza Rails and Trails Conservancy in Herington, Kansas, an opponent, stated 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 Herington. We oppose this bill because at worst it will put an end to trail building in Kansas. At best, let us keep building, but we would spend an incredible amount of time in court. (Attachment 14)

Dale Crawford, Johnson County Bicycle Club, an opponent, stated many of our members would prefer the advantages of being able to use trails in Kansas. If they were readily available, our members would be closer to these trails and be able to visit them more often and, in turn, support the economies of the many rural communities such trails would pass through or near. Unfortunately, the lack of trails in Kansas forces our membership to travel outside of Kansas, to state such as Missouri, Iowa, Nebraska, Minnesota and South Dakota to pursue their favorite activity. (Attachment 15)

Shari Weber, resident of Herington, Kansas, an opponent, stated I believe the Rails-to-Trails project is a federal initiative as is the entire railroad transportation system. (Attachment 16)

The hearing on HB 2583 was not closed.

### **Adjournment**

The meeting adjourned at 9:31 a.m.

The next scheduled meeting will be Friday, March 12, 2004.

SENATE NATURAL RESOURCES COMMITTEE

GUEST LIST

DATE: Thursday, March 11, 2004

NAME	REPRESENTING
Ken RAHJES	GMD #3
Wern A. Hersh	Self
<del>Wern A. Hersh</del>	self
Frank Meyer	Kanza Rail Trail Conservancy
Dale Crawford	Johnson County Bicycle Club
ORVILLE COLE	SELF - LANDOWNER
John Love	Self - Landowner
Amelia McIntyre	self
Kerol BASKETT	Landowner
Harold Lutz	Self - Landowner
Linda J. Jorgensen	Self
Judith Jorgensen	Self
Carl Anderson	KSB / MTB Access / Self
Shari Weber	Hermiton, KS
BRAD HARRELSEN	KFB
Whitney Damm	City of Topeka
LAURA KELLY	KRPA
Pat Lehman	KRPA
Joan Baskett	Landowner / Sec. - Pugh
Ed Pugh	Senator, First District
JOHN C. BOTTENBERG	WESTAR ENERGY
Jodd Johnson	KLA

SENATE NATURAL RESOURCES COMMITTEE

GUEST LIST

DATE: Thursday, March 1, 2004

NAME	REPRESENTING
Scott Allen	Council Grove Chamber of Commerce
Chris Tymeson	KDWP
Dymis	KDWP
Amy Thornton	KDWP

**Orville J. Cole**  
**Attorney At Law**  
**1006 East Fourth Ave.**  
**Garnett, Ks. 66032**  
**March 11, 2004**

BEFORE THE SENATE COMMITTEE ON NATURAL RESOURCES

Testimony concerning Substitute for HB 2583

This bill results from the continuing fight between landowners, whose private property has been appropriated for public use under the Federal Rail-Trail Act, and those state agencies and rail-trail groups who believe that they can control private property in violation of the landowner's constitutional rights.

Kansas law (KSA 58-3212) places certain duties on trail operators that would protect adjacent landowners, but leaves the enforcement (58-3215) up to local cities and counties. Cities and counties are reluctant to get involved in enforcement of these rules for both political and economic reasons. This leaves the landowner, who is the real victim, without any way to protect his rights.

HB 2583 started off in the House by amending the present law to allow landowners, who were suffering damages, to bring an action to force trail groups to comply with the law. Unfortunately, this bill has been highjacked by taking out any right of the landowner to protect himself, which was the purpose of the amendment. In addition, this substitute creates a cumbersome and wholly unworkable process involving the county commissioners, the appointment of a citizen's advisory board in each county to hear complaints and make inspections, setting up a process where trail groups execute deeds to property they don't own to the county and generally creating a bureaucratic mess that settles nothing but keeps the landowner at bay.

One of the worst provisions of this substitute bill is contained in Sec. 3 (d) which criminalizes the conduct of any adjacent landowner who the trail group (referred to as "responsible party") complains is interfering with the

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*Attachment 1*

development, maintenance or use of the trail. The trail operator can violate all of the rules set forth in the present law (KSA 58-3212) and all the landowner can do is complain to the citizen's advisory board, but let the landowner interfere in anyway, and the county attorney and sheriff enter the picture.

This substitute bill makes an already bad situation worse. Basic constitutional rights are in issue here. Under the 5<sup>th</sup> amendment to the U. S. constitution, private property cannot be taken for public use without paying for it. These right-of-way strips are privately owned by the adjacent owner. His land has been appropriated for public use without consulting him or compensating him. This proposed bill, if passed, would deprive him of even the right to effectively complain.

Each landowner involved should have the right to go to court to enforce his rights under the state law. The wording contained in the original HB 2583 should be restored giving the landowner the right to sue. All other changes in the bill should be eliminated.

Respectfully,

  
Orville J. Cole

Charles Herd  
102 East Wisconsin  
Greensburg, KS 67054  
Phone 620-723-3336  
Fax 620-723-3337

March 11, 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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Testimony on House Bill 2583

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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.

My name is Harold Lutz

I wish to thank Chairperson Tyson and the Senate Natural Resources Committee for allowing me to testify today on behalf of Substitute for 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 identified 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.

Although my wife and I support House Bill #2583 in its original form, certain attachments to the original bill are very alarming to us.

First, it is troublesome that enforcement of the bill is directed to the County Commissioners. Landowners adjacent to the abandoned R.O.W. in my area found it necessary to hire their own attorney to force the County Commission to exercise any control over the abandoned R.O.W. Then they were only willing to enforce safety issues which could result in lawsuits against the County.

Most of the issues in this substitute for House Bill #2583 are in the original rail banking legislation but are not being enforced.

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*Attachment 3*

Secondly, most abandoned R.O.W. extend beyond the county line, thus all parties involved are dealing with more than one County Commission. It is certainly safe to say not all County Commissions are created equal. One county might enforce (or not enforce) the issues in this bill in one way while the adjoining county might take an entirely different approach, result more confusion.

Third, it is totally unacceptable to hold the adjacent landowners responsible for an alleged interference with the trail. This is America, you are innocent until proven guilty, there is no mention of proof of guilt in this bill. It only states, upon determination of the County Commission or an advisory board. Several landowners along the R.O.W. which passes through our property are in their 80's and don't even live close to the R.O.W. How can they be held responsible for what occurs on this R.O.W.?

The entire issue here is a bill that will require those who claim responsibility and ownership of these abandoned R.O.W.'s to be responsible and follow the direction of the Rail to Trails act by which they claim ownership.

When testimony was being taken regarding the original H.B.2583 before the House Environmental Committee, one of the members ask several of the trails persons testifying what was a reasonable time to expect completion of a trail. Not one person gave an answer. They don't want to be held responsible.

Thank each of you for your attention and your time.

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

Senator Tyson and Committee Members:

I want to thank you for allowing me to appear before you this morning. My name is John Love and I am an adjacent property owner along an abandoned railroad line here in Shawnee County. I supported the original HB 2583. I continue to support a large portion of substitute HB 2583.

It has been my experience over the past 15 plus years, that the County Commission in our area has been reluctant to hold trails groups accountable for deadlines, responsibilities and obligations as outlined in state statutes. The creation of an Advisory Board would cause more bureaucracy and would not provide an improved remedy or accountability.

The original bill 2583 was intended to provide local authorities and/or adjacent landowners a vehicle or a means to enforce the state statutes regarding responsibilities of trail developers. Instead, parts of this substitute bill have placed landowners in an even more vulnerable position by opening the door for frivolous complaints by trail developers intending to harass and subdue adjacent landowners for situations beyond their control. Adjacent landowners cannot control or supervise the actions of others on the trail. The way this bill is now written, when the inevitable trespassing or littering occurs, the finger of accusation will first be pointed at the landowner simply because they are there. This creates an undue burden on landowners, having to constantly defend themselves. Rather than leveling the playing field, the changes to HB 2583 make the situation even more imbalanced.

I would ask that this substitute bill be amended to honor the intent of the original bill.

Respectfully,

John Love  
8750 SE Tecumseh Rd  
Berryton, KS 66409

*Senate Natural Resources Committee*  
Date: 3-11-04 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**

### **Senate Committee on Natural Resources**

**RE: Sub. For HB 2583 – an act concerning certain recreational trails**

**March 11, 2004  
Topeka, Kansas**

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

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Chairman Tyson and members of the committee, thank you for the opportunity to appear and offer testimony on Sub. for 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.

Kansas Farm Bureau's concern in this matter is not necessarily with trails that are currently operated in conformance with federal and state law. Our members, many who are adjacent landowners to "recreational trails," are frustrated with those trails, and trail groups that are not in compliance. While cities and counties may take action against non-compliant trail groups, this rarely, if ever, happens. Absent that, adjacent landowners have virtually no recourse. This failure in the current law must be corrected by providing some additional measure of remedy to landowners when cities or counties are unwilling to act.

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. But, 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

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*Attachment 5*

unsafe trail conditions are not unique. Since there is no direct enforcement provision in the Act, landowners have virtually no recourse.

We disagree with those who would say this bill stops further rail trail development. Indeed, the opposite is true. We believe this bill would stimulate further development of trails that are currently unused, undeveloped, impassable, unsightly, or unsafe, thereby creating more, not less, opportunities for trail users.

The proposed amendment to the Kansas Recreational Trails Act contained in the original version of 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.

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, are cluttered with unsightly trash or even worse, are impassable and unsafe 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.

We supported the original version of HB 2583 and we feel it is the better approach. Frankly, we are unsure about the ability to implement a number of the provisions in the substitute bill. There are other provisions we feel are entirely unnecessary. That said, we stand ready to work with the committee in the most appropriate manner to provide much needed recourse for affected landowners. We are grateful for the opportunity to appear before you today and urge your support for a bill that would add a responsible enforcement mechanism to the law. Thank you.

**Testimony on Substitute for House Bill No. 2583**  
**Senate Natural Resources Committee**  
**by Edward W. Pugh**  
**State Senator - 1<sup>st</sup> District**  
**March 11, 2004**

I would like to thank Chairman Tyson and the Senate Natural Resources Committee for allowing me to testify today on Substitute for House Bill No. 2583.

I support Substitute for House Bill No. 2583 with **RESERVATIONS**. The landowners, or anyone with a grievance, still have to go through the County Commissioners to try to get any justice. Many, many past experiences have proven that the County Commissioners will not or do not have the will to enforce the statutes that the rails-to-trails organizers are supposed to comply with by law. My obvious reaction to this is who is going to see to it that the County Commissioners enforce these statutes?

My next main concern with Substitute for House Bill No. 2583 is the part that states adjacent property owners will be held responsible for any interference in the development, maintenance or use of the trail. Adjacent property owners are not the only people who do not want these trails. Many people who see the injustice of taking private property for public use without compensation are also angry and upset at this injustice. I'm sure you can understand our concerns. Hypothetically, anyone could interfere, do damage, dump trash, etc. and if that incident just happens to occur on the trail adjacent to one's property, then that landowner is going to be responsible for that?

The rails-to-trails organizers seem to have unlimited pro bono legal representation, a privilege that the landowners do not enjoy. I would like to see House Bill No. 2583 in its original form passed. Then the landowners would finally have a realistic way to defend their rights.

Thank you for your time and consideration.

*Senate Natural Resources Committee*

*Date: 3-11-04*

*Attachment 6*

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

I would like to thank Chairperson Freeborn and the House Environment Committee for allowing me to testify today on H.B. 2583.

We all know the railbanking legislation passed around 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 are totally ignored, which is a key concern of the landowners. 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. 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 this bill 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.



# 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.

#### **53-3213. 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.

**53-3214. 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.

**53-3215. 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.

**53-3216. 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" <klings@kanza.net>

**To:** "Randy Good" <rlgood@fidalgo.net>, "Baskett, Joan" <joanbaskett@juno.com>, "Cathy McClay" <cmccclay@grapevine.net>, "Dan Rickards-Canada RT" <lyndadan@kingston.net>, "Doering, SB" <sbdoering@terraworld.net>, "Gilliland, Delton" <mj\_coffman@hotmail.com>, "Iola Register" <elynnjr@yahoo.com>, "John Altevogt" <altevogt@toto.net>, "John D'Aloia" <sawsee@oct.net>, <jsharp@ottawaherald.com>, "KDWP" <feedback@wp.state.ks.us>, "KLINE-ERIC HAAR" <ERIC@KLINEFORAG.COM>, "Lomax, Ed & Sara" <EHLomax@aol.com>, "Mark Cole" <thunderline@fament.com>, "Parsons Sun" <editor@parsonssun.com>, "Peter Schumann" <jondear@myvine.com>, "Rep. Edmonds, John" <jtedmonds@aol.com>, "Rep. Faber, John" <jfaber@ink.org>, "Rep. Donald Dahl" <dahl@house.state.ks.us>, "Rep. Shari Weber" <weber@house.state.ks.us>, "Richard Larson" <rlarson@onemain.com>, "Sarah Kessinger" <harris@cjnetworks.com>, "Sen. Derek Schmidt" <schmidt@senate.state.ks.us>, "Sen. Ed Pugh" <ranch@kansas.net>, "Sen. Jay Emler" <emler@senate.state.ks.us>, "Sen. Robert Tyson" <rtyson@ink.org>, "Sen. Stan Clark-Oakley" <clark@senate.state.ks.us>, "Sen. Tim Huelskamp" <huelskamp@senate.state.ks.us>, "SHMIDL, Jim" <schmidl@terraworld.net>, "skoot er" <digitalwave99@yahoo.com>, "Swisher Family" <swisherfamily@alltel.net>, "Tammy Lickteig" <heartcrossremuda@yahoo.com>, "Toland. John R." <jrtoland@aceks.com>

**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]

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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

6-6

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



Since 1894

TESTIMONY

To: Senate Natural Resources Committee  
Senator Robert Tyson, Chairman

From: Todd Johnson, Governmental Affairs Staff

Subject: **Recreational Trails**

Date: March 11, 2004

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seedstock, cow-calf and stocker production, cattle feeding, grazing land management and diversified farming operations.*

I am Todd Johnson, governmental affairs staff for the Kansas Livestock Association. Thank you for allowing me to address your committee this morning regarding the topic of landowner rights and recreational trails.

KLA members feel strongly that land granted as right-of-way to railroads should revert to adjacent landowners when a railroad discontinues use. When Congress established procedures for state/local governments and private groups to intervene in railroad abandonment and convert the right-of-way to a recreational trail (rail banking), this reversion met a roadblock.

Our understanding of the rail banking process is that if the responsible party ceases to use the right-of-way for the purpose the government intended (recreational trail) the land reverts to the adjoining landowners. In the case of an inactive trail, would it be appropriate for the government to deem the responsible party has not followed their statutory obligations and therefore lose the right-of-way?

We prefer to see land abandoned by railroads revert to the appropriate landowner; however, we are here today to address ways to help landowners achieve practical enforcement tools to the Recreational Trail Act. To this end, KLA testified in support of HB 2583 when it was heard in the House. We saw this bill as a way to provide landowners recourse when they suffer damages to their land if a trail group fails to control weeds, fences, litter, or other trail maintenance requirements in the act.

*Senate Natural Resources Committee*  
*Date: 3-11-04*

The original bill listed specific remedial measures such as monetary penalties and fees to compel compliance with the recreational trail requirements. We did offer one suggestion to the original bill, and that was to strike section (c) on lines 29 and 30, which dealt with imposing personal liability for noncompliance on the members, stockholders and directors of the responsible party. We felt imposing these penalties was too harsh as incorporation is designed to insulate the individuals from personal liability and we prefer individuals not be automatically personally liable in the way this bill provided.

Substitute HB 2583 also attempts to address adjacent landowner concerns. This bill uses quit claim deeds to convey to the county the responsible party's interest in that portion of the trail that runs through the county. In the event of non-action, the county may seek to have the quit claim deed released to the county for conveyance to another responsible party, retention by the county or to institute abandonment procedures. As stated earlier, if statutory requirements are not met, we feel the right-of-way should automatically revert to the landowner and abandonment should occur on its own. We are concerned the quit claim procedure creates an unnecessary step if abandonment should or has occurred. We would ask that this portion of the bill be deleted or clarified so a court does not later interpret the county's escrow as some alternative procedure when the facts support abandonment.

We appreciate any changes the legislature can make that provide an expedient, effective and inexpensive way to address landowner concerns. We simply ask whatever actions are taken, not lessen landowner rights.

Thank you. I will stand for questions at the appropriate time.



My name is Scott Allen. I am the current president of the Council Grove Chamber of Commerce. I am also a member of the Greater Morris County Economic Development Corporation Board of Directors. Through my work with the Council Grove chamber I was introduced to the reorganized Kansas Horseman Foundation, now the Kanza Rail-Trails, Conservancy, Inc. (KRTC). I am currently a member of their board of directors. I am speaking to you today on behalf of the Council Grove Chamber of Commerce.

Council Grove is a community that is constantly struggling to find ways to keep young people from leaving and simply stabilize the population. Unlike many rural communities Council Grove has managed to minimize the trend of declining population. This has been achieved by constantly searching for and implementing ideas and projects that will enhance the community and add to the quality of life. The Flint Hills Nature Trail has the potential to be the greatest economic opportunity to come to the community since the federal reservoir opened in 1963, and it has the potential to breathe life into the dying communities it intersects.

The Tallgrass Prairie and the Flint Hills are two of the most attractive natural resources this state has to offer. There are people from all over country and the rest of the world that are willing to spend money to enjoy the recreational opportunities the Flint Hills provides. Currently, there are few avenues for people to actually experience the beauty and solitude of the Flint Hills. The Flint Hills Nature trail passes through one of the most beautiful sections of the Hills. This trail would allow the average citizen the opportunity to partake in what the region has to offer. These visitors would translate into money and jobs for the communities along its corridors.

I was not completely convinced of the potential of the Flint Hills Nature Trail until I visited a town called Rocheport, Missouri on the Katy Trail. Rocheport is a town with a population of 208. The trail is the sole attraction of the community. It has seven antique shops, two bookstores, three bed and breakfasts and eight restaurants. A quick glance through the guestbook at the trailside bike shop/restaurant listed people from all over the country. The restaurant was packed and there were at least 60 cars in the parking lot. I asked my waitress if it was so busy because of a special event and she told me that it was actually a slow day! The icing on the cake came as I was walking to my car and noticed that of the five cars parked next to me, three of them were from Johnson County and one was from Shawnee County!

On May 1<sup>st</sup> and 2<sup>nd</sup>, the Overland Park Parks and Recreation department is offering a "Weekend Getaway: Katy Trail Bike Trip" on the Katy Trail. This is a Kansas community ferrying people and tourism dollars out of our state. What's really sad is that the trip was given an award by the Kansas Recreation and Parks Association as the most innovative program in 2002. Not only are we sending people out of state, we are rewarding them for doing it! One would assume that were a similar trail in Kansas that Overland Park Parks and Recreation would keep the tour in state.

In his opening remarks at the Kansas Prosperity Summit held in Emporia last September Lieutenant Governor Moore said that we needed to find ways to consolidate rural

*Senate Natural Resources Committee*  
*Date 3-11-04*                      *Attachment 8*

communities and present them as a package for economic development. We currently have that opportunity in the Flint Hills and Landon Nature Trails, but only if thoughtful legislation is designed that will encourage responsible trail development while adequately dealing with irresponsible parties. SubHB2583 is designed to sabotage tourism and economic development in Kansas by wasting the resources of responsible parties, adjacent landowners and county governments. The bill would require that the quitclaim deed for the trail be placed in escrow with the county commissioners in each county for that portion of the trail that passes through their county. It allows the Commissioners to revoke the deed if they feel the responsible party is in violation of The Kansas Recreational Trails Act (Kansas State Statute 2513-12). If the trail were severed, opponents, whose main agenda is not compliance with KSS 2513-12 rather elimination of the trail and abandonment of the corridor, would be able to appeal to the Surface Transportation Board and have the entire trail stopped. In essence, this bill places the economic opportunity of the residents of Council Grove and Morris County at the mercy of the commissioners of the other counties.

If your goal is to do the right thing and honestly and fairly deal with issues of irresponsibility then this dysfunctional bill should be stopped and the entire Kansas Recreational Trails Act should be referred to an interim committee so that all sides can sit down and have meaningful input into legislation that will create a win-win solution for all Kansas residents.

# KANSAS

DEPARTMENT OF WILDLIFE & PARKS

KATHLEEN SEBELIUS, GOVERNOR

## Testimony on sub HB 2583 Relating to Kansas Recreational Trails Act to Senate Committee on Natural Resources

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

11 March 2004

Sub HB 2583 amends the Kansas Recreational Trail Act by providing two new components: Additional requirements for responsible parties building recreational trails (defined by (d) 16 U.S.C. 1247 as rails to trails); and the imposition of supervisory duties for county commissions to oversee trail development.

As initially introduced in the House Environment Committee, HB 2583 allowed adjoining landowners to take legal action against a responsible party of a recreational trail that was not being properly maintained. After testimony was heard, the House Environment Committee appointed a subcommittee that eliminated the personal liability penalty language and added the new requirements for responsible parties and the county commission advisory board provisions.

Sub HB 2583 proscribes two additional requirements for responsible parties that must be met to develop a recreational trail. Responsible parties must execute a Quit Claim Deed, deeding their interest in the trail to the county where the recreational trail is located. This Quit Claim Deed would be held in escrow by an independent third party under this new provision. If the trail was not properly maintained, the county could then seek to release the Quit Claim Deed and either develop the trail themselves, convey the trail to another entity for development or seek abandonment of the trail. The second new requirement is that the full amount of money put forth in the escrow (pursuant to K.S.A. 58-3212 (b)) must be maintained at all times. Thus if an adjoining landowner submitted a bill for work they themselves had done on the trail, the county would allocate those escrow funds

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*Senate Natural Resources Committee*  
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*Attachment 9*

to be used for their labor and services. The escrow amount would then need to be replenished but this provision is silent on how that would be done. While these provisions specifically exclude trails owned by governmental entities, they would have a significant impact on privately owned recreational trails and stymie trail development in the state of Kansas.

The second provision that sub HB 2583 makes, which is applicable to government owned trails, is to allow county commissions to oversee recreational trail development or to appoint an advisory board to do so. The county commission or advisory board is required to annually inspect the trail, prepare inspection reports regarding the status of the trail, set up a quasi judicial forum to hear grievances regarding the trail, permit escrow funds to be used for bills submitted by adjoining landowners and make determinations on whether grievances should be forwarded to the Sheriff or District Attorney's Office. The Department's primary concern with this provision rests with its legality. With no guidelines on the logistics of the board (who would be appointed, the number of appointees, the term length of appointments) or the funding source, the county commissions would have to use their discretion to set these guidelines. If challenged legally, this discretion could be viewed as "arbitrary and capricious". The provisions in regards to the county commission are silent as to the applicability to governmental entities. Without such language, the State or a local government entity could be brought in front of the county commission or the advisory board despite the fact that procedures may already exist within these entities to handle these issues appropriately.

In summation, the Department opposes sub HB 2583 because it will inhibit trail development and because of the concerns regarding the legality of the county commission advisory boards. The Department recommends that sub HB 2583 not be worked.

**Testimony on Substitute House Bill No. 2583**  
**Before Senate Natural Resources Committee**

March 11, 2004

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

I have provided pro bono legal services to the Kanza Rail Trail Conservancy, Inc. ("KRTC") 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, in Shawnee and Osage Counties, which joins with the Flint Hills Nature Trail. Since 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 Substitute 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 Substitute House Bill No. 2583, and would encourage you to not approve the Bill as contrary to public policy of the State of Kansas. The Bill would require a responsible party, which is not a governmental entity, to execute a quit claim deed conveying to the county the responsible party's interest in that portion of the recreational trail which is located within the county. The deed would be placed with a third party escrow agent. The county commission, or the advisory board appointed by the county, may conduct a hearing to determine whether the responsible party has performed required maintenance or not completed development, and then the county may seek to record the deed. Under the Bill, the composition of the advisory boards, or the qualification of the advisory board members, are not specified, nor their impartiality assured, yet their actions could cause a forfeiture of a responsible party's interest in a trail. The evidentiary rules to be applied at such hearing are not specified. The advisory board is a hollow shell substitute for the Kansas district courts that already have jurisdiction over nuisance matters, which most maintenance issues could be distilled to. There are existing remedies under state law, through the Kansas district courts, for nuisance claims by adjoining property owners if the trail is not being maintained. The proposed Bill creates disparate treatment between the remedies available to the adjoining property owners and the trail developer. The County could cause a forfeiture of the responsible party's interest in the trail based on assertions by the adjoining property owner. In sharp contrast, if the trail developer, as the responsible party, succeeds at the same type of hearing and evidences that their rights to develop the trail are being interfered by an adjoining property owner, then the trail developer's remedy is to wait redress in the district courts (the county *may* make a referral to the sheriff or the county or district attorney [see page 6, lines 24-28]). This is no different remedy for the trail developer than what is already been proved to be ineffective. Our volunteers have faced physical intimidation and threats while trying to maintain the trail in Shawnee County, and neither the Sheriff's Office nor the District Attorney has been willing to take action on the matter. We are hiring private counsel to commence an action against property owners that are intentionally blockading portions of the trail and who are physically intimidating and threatening physical violence to volunteers that are trying to clear the trail. Why do adjoining property owners not similarly hire private counsel if their maintenance allegations arise to a causable nuisance claim?

Further, assuming an appeal from a County decision, the Bill appears to be endeavoring to limit the range of remedies that a district court would be inclined to effectuate, and expressly does not address the district court's ability to set aside, or enjoin a County from proceeding to record the quit claim deed. [See page 6, lines 31-43, and continued on the following page, lines 1-3]

Focusing on a county level, for remedial action, and specifically the filing of a quit claim deed only for that county would sever the trail, and break it up into chunks, which is contrary to the federal law upon which it is based which is premised on preserving a corridor for a reactivated railroad at some point in the future. This Bill in effect would allow one disgruntled county, like Osage, to destroy to overall plan and viability of the trail to link metropolitan areas and rural communities.

**Please note that the Substitute House Bill No. 2583 goes even further and prohibits the responsible party from conveying the responsible party's interest in the recreational trail to anyone other than the county.** [See page 2, line 43 through page 3, lines 1 and 2] This is clearly a restraint of alienation, contrary to public policy, and further is without a rationale basis, and may constitute a taking by eminent domain, without compensation. From another

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*Date: 3-11-04*      *Attachment 10*

legal perspective, this prohibition of a transfer to a third party, other than the county, does not have a substantial relation to the public health, safety or general welfare, and is arbitrary and capricious giving rise to a substantive due process claim.

**Further, this Substitute House Bill No. 2583 purports to be retroactive, by requiring even a responsible party that already has an interest in a trail to deliver a quit claim deed within forty-five days after the effective date of such Bill, if it were to become law.** [See page 3, lines 2-4] This provision of the Bill is problematic for several reasons. **First, this provision may interfere with contractual rights of third parties.** By way of example, with most railbanked corridors with which I am familiar, the railroad, with which the trail organization has contracted, reserves a right to reacquire the corridor under certain circumstances. In addition, if the railbanked corridor passed through the hands of a national trail advocacy organization, they typically have reserved the right to require a transfer of the railbanked corridor back into it, if the local trail organization is going to transfer it to a third party, or abandon it. In essence the national trail advocacy organization has a right of first refusal to make sure that the trail remains available for recreational use and is held by a credible organization. Another example of how this provision could interfere with contractual rights would relate to that portion of the Landon Trail that is within the city limits of Topeka, and is leased by the City from the KRTC. The already existing lease with the City requires us to offer that portion back to the City if we chose to abandon it, or even transfer it to a third party, other than the national organization that has right of first refusal rights. *This provision constitutes a taking without compensation of property rights, in the form of these already existing contractual rights, that could subject the counties to monetary damages, and because the taking arises through state law, in the form of passage of this Substitute House Bill, the state could also be subjected to a claim for a taking by causing a forfeiture of these already existing contractual rights. The fiscal note prepared for this bill fails to take this into account.* **Second, this provision requiring a quit claim deed to be tendered by holders of trail development rights is a form of taking of their rights as well, which could give rise to separate claims.**

What is missing from this Bill is an understanding of the federal law under which railbanked corridors exist. The abandonment of railroad lines is governed by federal law. No railroad can be abandoned without the Surface Transportation Board approval. *49 U.S.C. § 10903(a). Chicago & N.W. Transportation Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 313, 101 S.Ct. 1124, 1128, 67 L.Ed.2d 258 (1981).* The national trails system act (National Trails Act), *16 U.S.C. § 1247(d)*, was enacted to preserve established railroad rights-of-way for future reactivation of rail service, and authorized initially the ICC, and then the Surface Transportation Board, to permit such rights-of-way to be used on an interim basis as recreational trails. The concept is known as "railbanking," whereby the use of a railroad right of way as a recreational trail on an interim basis is not considered an abandonment of rail use for purposes of any state law, so long as the right of way is subject to restoration for rail service. *16 U.S.C. § 1247(d)*. During a proposed abandonment or discontinuance, groups who seek to establish a trail on a railroad right-of-way may file an interim trail use statement with the Surface Transportation Board within the 30-day protest and comment period. *49 C.F.R. 1152.29(b)(1)*. If an agreement is reached between the railroad and the trail use group, the railroad right-of-way becomes railbanked. The National Trails Act preempts any state law that deals with disposition or transfer of abandoned railroad property. *Glosemeyer v. Missouri-Kansas-Texas Railroad Co., 685 F. Supp. 1108, 1114 (E.D. Mo. 1988)*.

It is only in the absence of a trail use agreement and the issuance of a certificate of abandonment by the Surface Transportation Board that state law is applicable. The agreements are voluntary. In other words, the abandonment of railroad property is governed and approved by the Surface Transportation Board, and subject to the National Trails Act. The disposition of abandoned railroad rights-of-way is governed by state law when no voluntary agreement is reached. *Hayfield Northern Railroad Co. v. Chicago and North Western Transportation Co., 467 U.S. 622, 81 L.Ed.2d 527 (1984)*. These are the very voluntary agreements between the railroads and the trail developers that the implementation of Substitute House Bill 2583 would interfere with, if it were to become law.

**The tone of Substitute House Bill No. 2583 can only lead me to conclude that it is designed to thwart, rather than encourage development of railbanked corridors into recreational tools for economic development tools for Kansas.**

**As legislators, please consider alternatives:**

**1. You should direct the Kansas Department of Commerce and Housing, the Kansas Department of Transportation, the Kansas Department of Wildlife and Parks, 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 Osawatomie 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.**

**2. 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. Access by residents of metropolitan areas to rural Kansas would elevate awareness of 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.

**3. As members 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 transportation funds would enable significant progress in addressing many of the development concerns asserted by trail opponents. *Instead of imposing penalties for not accomplishing development, why not give trail groups access to funds that will help them accomplish development?* 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.

**4. 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.

### Testimony on Substitute House Bill No. 2583

My name is Cort Anderson, I am a member of the Kansas Singletrack Society, a Kansas mountain bicycle club, a board member of MTBAccess an international mountain bicycle advocacy group and a Kansas small business owner.

Some facts about recreational trails:

- Recreational trails promote a healthier lifestyle.
- The state is losing recreational/tourism dollars from other states.
- Kansas trail users are spending their recreational/tourism dollars in other states.
- Recreational trails are an investment in our children's future.
- Kansas is near the bottom in percent of public land in the state.
- Recreational trails are assets to individuals, communities and the state and a good tool for economic development.
- Substitute House Bill No. 2583 makes it almost impossible to develop recreational trails in Kansas which contributes to an unhealthy lifestyle, means a loss of tourism dollars and denies individuals and communities an asset that is a source of economic development.

Kansas recreational trail users, your constituents, urge you to help create a healthier lifestyle, keep recreational dollars in Kansas and build a better future for our children. Please refer this bill to an interim committee so that legislation can be crafted to meet the needs of everyone involved.

Thank you.

*Senate Natural Resources Committee*

*Date: 3-11-04*

*Attachment 11*





League of Kansas Municipalities

To: Senate Natural Resources Committee  
From: Kim Gulley, Director of Policy Development  
Date: March 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). We appear today in opposition to HB 2583 and 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.
- **City Jurisdictional Authority.** As amended in the House, HB 2583 would give county commissions jurisdiction over rails to trails projects that are operated by city governing bodies. Sections 1 and 2 of the bill apply only "if the responsible party is not a governmental entity." However, section 3 of the bill applies to all rails to trails projects, even those that lie fully within the corporate limits of a city and are operated exclusively by a governmental entity. It is quite unusual to grant county commissions the authority to supersede the decisions of elected city officials. Applying this portion of the bill to city owned and operated trails sets up a jurisdictional conflict between cities and counties which would pit one elected body against another elected body. For this reason, we respectfully request that rails to trails projects operated by cities be exempted from this portion of the bill. I offer the following language for your consideration:

Amendment to Section 3:

"This section shall not apply to recreational trails that are owned or operated by incorporated cities."

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. HB 2583, as it is currently written, takes city governing bodies completely out of the equation and even sets them up to do battle with the county commission over city owned trails.

For these reasons, we must oppose HB 2583 in its current form. I would be happy to stand for questions at the appropriate time.

*Senate Natural Resources Committee*  
*Date: 3-11-04*

Charles M. Benjamin, Ph.D., J.D.  
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Testimony in Opposition to Substitute for HB 2583  
An Act concerning certain recreational trails

Presented on behalf of the Kansas Chapter of the Sierra Club  
at a  
Hearing of Senate Natural Resource Committee  
March 11, 2004

Mr. Chairman, members of the Committee, thank you for the opportunity to testify in opposition to Substitute for HB 2583.

The Sierra Club is the largest grass roots environmental organization in the world with over 700,000 members, 4000 of which are in Kansas. Most of the activities of Sierra Club members consist of "outings" whereby people hike, bike or otherwise "get out in nature" to enjoy and then advocate for its protection. Kansas ranks last or next to last among the states in the amount of public lands available to hike and bike. Therefore, many Sierrans and others are enthusiastic about the creation of trails on railroad rights of way that are not currently being used for rail traffic.

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. Congress and the Reagan administration realized that in a time of national emergency there would not be enough time to undertake condemnation proceedings and arrive at "just compensation" to landowners as required under the 5<sup>th</sup> Amendment to the U.S. Constitution. It was better to simply preserve the existing rights of way with "interim" trail use.

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. Lawyers knowledgeable about the intent of Congress when they passed the national rail-trails act have urged Kansans interested in developing rail-trails to litigate to determine the constitutionality of this state law and whether it is an

*Senate Natural Resource Committee*

*Date: 3-11-04*

*Attachment 13*

interference with the intent of Congress that sought to encourage the creation of rail trails.

The original version of HB 2583 would have created "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.

I have represented several rail-trail groups. One of the biggest problems "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 under pressure from adjacent landowners who 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 then is responsible for the failure of the responsible party for "non-compliance" with existing state law?

Substitute for HB 2583 is an improvement over the original bill. It rejects the idea of lawsuits against trail developers by adjacent landowners. Instead, it provides a grievance procedure for various parties - the county, landowners adjacent to the trail, and the trail developers – to work out their differences with regard to the implementation of existing law. However, the legislation doesn't really get at the real problem - which is finding a way to meet the recreational needs of an increasingly urban Kansas while respecting the legitimate concerns of rural landowners. I would urge this committee to hold off on passage of any further legislation on this matter. Instead, ask the leadership or the Governor to form an interim committee to allow all interested parties to figure out a way to make Kansas a model for rail trail development. Maybe something similar to the "Wind and Prairie Task Force", that is considering the potential impacts of large-scale wind turbine development in the Flint Hills, would be appropriate. Let's figure out a way to provide recreational opportunities to Kansans who will become advocates for the preservation of rural and small town Kansas. That way the intent of Congress will be carried out and the rights and responsibilities of all Kansans will be respected. Members of the Sierra Club in Kansas will enthusiastically join others in that process.

Thanks for your time and attention.

February 10, 2004

House Bill 2583

Chairman Tyson, 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, and appointed spokesperson for the Sunflower Recreational Trails, a coalition of Trail Builders across the State.

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. **But we are not and there is not one mile of state or county highway in Kansas that would meet the standard of the Kansas Trail Law.** If this law passes we could be subject to charges of non-compliance and spend all of our resources fighting in court rather than building trail.
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.

*Senate Natural Resources Committee*  
*Date: 3-11-04* *Attachments 14*

With our active and growing membership, we will continue to develop trail at this or a faster rate in the future. In the last two weeks we have improved 7 miles of trail and have 1,100 feet of handrail ready to install.

We oppose House Bill 2583 because at worst it will put an end to trail building in Kansas. At best let us keep building but we would spend an incredible amount of time in court.

We propose you appoint an interim committee to study trail development in Kansas.

Do have any Questions?

Thank you for your time and interest.



PO Box 2203  
Shawnee Mission, KS 66201-1203  
[www.jcbikeclub.org](http://www.jcbikeclub.org)

March 11, 2004

Senate Natural Resources Committee  
Room 423-S  
State Capitol  
Topeka, KS

RE: HB 2583 pertaining to the Kansas Recreation Trails Act

Dear Senators:

The Johnson County Bicycle Club (JCBC) fully supports the efforts of the State of Kansas, of various local governments and numerous not-for-profit organizations throughout Kansas involved in the development of public trails for bicycle and pedestrian use, whether they be private organizations or public entities. Many of our members would prefer the advantages of being able to use trails in Kansas. If they were readily available, our members would be closer to these trails and be able to visit them more often and, in turn, support the economies of the many rural communities such trails would pass through or near. Unfortunately, the lack of trails in Kansas forces our membership to travel outside of Kansas, to states such as Missouri, Iowa, Nebraska, Minnesota and South Dakota to pursue their favorite activity.

The majority of our members are longtime Kansas residents who would much rather support Kansas communities and do support our Kansas recreation trail organizations. As we understand the impacts of Substitute House Bill 2583, it would place the most stringent restrictions on non-governmental recreation trail providers in the country. We oppose these efforts as it is our experience such Kansas trail providers are already the most regulated in the country. This likely explains the lack of trails in Kansas, why other state's trail systems have flourished and why our members must travel to other states to enjoy their trails, all the while taking their hard-earned tourism dollars out-of-state. The Johnson County Bicycle Club has generously supported the not-for-profit recreation trail organizations in Kansas through its philanthropic gifting to assist in the development of the trails we use. HB 2583 jeopardizes the viability of the very organizations JCBC actively supports.

The enclosed tour information illustrates the tourism potential and further justifies JCBC's wholehearted support of publicly accessible trails in Kansas. Please note the promoted tour organized by the City of Overland Park, KS, was recognized by the Kansas Recreation & Parks Association as the "2002 Most Innovative Program" even though it takes tourism dollars out of Kansas as there is no opportunity for such a tour in Kansas at this time. These tours do exist to serve not only Kansans, but elsewhere similar tours could serve out-of-state residents who would come to Kansas, enjoy Kansas trails if they existed and leave their tourism dollars in Kansas. Substitute HB 2583 will only assure that programs such as these will continue to send tourism dollars out of Kansas and miss future tourism opportunities.

Thank you for your valuable time and support of Kansas tourism. We respectfully ask your opposition to Substitute HB 2583.

Sincerely,

Dale V. Crawford  
Johnson County Bicycle Club  
Advocacy Chair  
PO Box 2203  
Shawnee Mission, KS 66201-1203  
[advocacy@jcbikeclub.org](mailto:advocacy@jcbikeclub.org)

Home Address:  
512 N. Curtis  
Olathe, KS 66061  
(913)829-6588  
[dcraw7076@aol.com](mailto:dcraw7076@aol.com)

Attachment: City of Overland Park 2004 KATY Trail Bicycle Tour

CC: Johnson County Senatorial delegation  
Kansas Recreation & Parks Association  
Kansas League of Municipalities  
City of Overland Park, KS

*Senate Natural Resources Committee*  
*Attachment 15*  
*Date: 3-11-04*

## City of Overland Park

www.opkansas.org • 913/895-6000 • city@opkansas.org

### WEEKEND GETAWAY: KATY TRAIL BIKE TRIP



#### Explore the Great Outdoors on your Bike 2-Day Bike Ride along the Katy Trail State Park

*Awarded by the Kansas Recreation and Parks Association as 2002 Most Innovative Program*

Grab your bicycle and partner to join us for a ride through the scenic Katy Trail in Missouri. A group of 25 to 30 riders will ride from Boonville to Hermann, Mo., on May 1 and 2. Along the 2-day ride, enjoy the small towns and the beauty of the Katy Trail. You can ride at your own pace on this level and constant trail designed for the leisure rider. For riders wanting to enjoy the more "fun" aspect of this trip, you have the option to ride a shorter route each day.

On the first day, you have the choice of riding 26, 35 or 48 miles. On Saturday night, you will be staying at a hotel in Jefferson City. On the second day, your options are 24, 31 or 42-mile routes from Jefferson City to historic Hermann. After you finish the ride on Sunday, you have the choice of coming back right away or spending the afternoon in Hermann and returning home on the train (additional \$25 fee).

This package includes:

- Pre-ride bike inspection by Turner's Cycling and Fitness, 8909 Santa Fe Drive
- All transportation is provided each day
- Saturday morning breakfast courtesy of Turner's Cycling and Fitness
- Saturday evening lodging in Jefferson City
- Saturday evening meal
- Sunday breakfast at your place of lodging
- Sunday meal after your ride is finished
- Optional train ride home for \$25 fee
- Sunday afternoon transportation into Hermann (optional with train ride)
- Assistance by experienced cyclists during the ride
- Snacks and support during the ride

**Age:** 14 years or older

**Date:** May 1 and 2

**Fee:** \$125 per individual rider, \$240 per couple, optional \$25 per person for train ride home. A \$50 non-refundable deposit is due when each person registers. The remainder of the balance is due by April 1. Register by calling 913/895-6390.

**Where:** Boonville to Hermann, MO

For more information, call Carl Cromer at 895-6360.

The Katy Trail State Park bike ride is cosponsored by Overland Park Parks and Recreation Department

# THE KANSAS HOUSE

REPRESENTATIVE, 68TH DISTRICT  
CENTRAL & SE DICKINSON, MORRIS &  
NORTHERN LYON COUNTIES

OFFICE: STATE CAPITOL—426-S  
TOPEKA, KANSAS 66612  
(913) 296-7639

HOME ADDRESS: 934 UNION ROAD  
HERINGTON, KANSAS 67449  
(913) 258-3526



COMMITTEE ASSIGNMENTS  
BUSINESS, COMMERCE AND LABOR  
EDUCATION  
LOCAL GOVERNMENT  
JOINT COMMITTEE ON CHILDREN AND  
FAMILIES  
DURING SESSION  
LEGISLATIVE HOTLINE  
1-800-432-3924  
INTERNET E-MAIL sweber@ink.org

## Representative Shari Weber

February 18, 1999

Thank you Madame Chairman and members of the committee for the opportunity to appear before the Committee today. My name is Shari Weber. I represent the area in the Kansas House that stretches across three counties (Dickinson, Morris and Lyon) from the City of Abilene to the City of Americus which is right outside of Emporia. I am anxious to share with you some grave reservations that I have about the components of HB#2490.

I first became aware of the concept of railbanking about 5 years ago when I was employed as the Director of a downtown development program called Herington Main Street. It is a downtown revitalization program for Kansas implemented by the Kansas Department of Commerce and Housing. It is a government program that takes some taxpayer dollars and matches them with time, money, and expertise in communities. It has a strong historic emphasis. Our Herington community dialogued with the community of Council Grove about the possibility of accessing the vacant railroad corridor from Council Grove to Herington for an excursion train.

In April 1995, I was asked to be part of a discussion with Governor Graves and former Governor Hayden about the railbanked corridor that stretches from Osawatomie to Herington. I contacted Chambers of Commerce, Economic Development Groups, Local Government officials and Adjacent Landowners informing them of a public information meeting held in Council Grove in May 1995. Over 600 pieces of mail were sent as well as a newspaper press release about the railroad corridor vacancy from Osawatomie to Herington instigated by the Missouri Pacific Railroad.

This total line stretches over 100 miles of a historic rail corridor which has been part of the area's history for over 100 years. The town of Herington itself was founded in the 1880's because M.D. Herington negotiated for two railroads to cross in Herington. The area developed because of these railroads. Although I was not around 100 years ago, I know that the vision of those pioneers has had an impact on us today. If we share that same vision that has enhanced our quality of life and prospered us well into the next century, I believe these corridors can serve us well over the next 100 years. It is with that positive attitude that I approach this challenge of transitioning vacant railroad corridor usage.

I believe the Rails-to-Trails project is a federal initiative as is the entire railroad transportation system. Therefore, the state statute stipulations we placed into law two years ago, maybe in question anyway. Add to that a mix of land encroachments on the corridors that I have personally viewed, and the current level of frustration over the development is understandable.

*Senate Natural Resources Committee*  
*Date: 3-11-04 Attachment 76*



In HB 2490 (Page 1, Line 36) "(the responsible party) provide for law enforcement or professional security personnel and security equipment along the recreation trail;" This clause infers that the responsible party must provide security patrols through the trails. It also suggests the responsible party must provide security devices such as video cameras and telephones to the trails. Trails across the United States have a relatively low instance of crime. Professional security personnel are normally reserved for high crime or high-risk areas of which trails are neither.

(Page 2, Line 23) "The bond or escrow account shall be conditioned on the responsible party's performance, and shall be in an amount that the county commission determines reasonable." For trails that run from county to county, bonds or escrow accounts maybe determined at different amounts, according to the discretion of the individual county commissions. This can defeat the continuity of a trail from county to county. In my dealings over the past few years with county commissioner personalities, continuity in policy has not been present.

(Page 3, Line 5) Same problem as above - "proof of liability insurance in an amount that the county commission determines reasonable and sufficient".

(Page 3, Line 20) There are problems with fencing. The verbiage in this section indicates to me a hugh fiscal note to Kansas Parks and Wildlife over existing trails.

(Page 4, Line 33-39) The whole public hearing "thing", from notices to recommendations, requires so much paperwork and time that it damages the project.

(Page 5, Line 18) "...notification of any change shall be made in writing to the county commission..." The use of "any" is unclear - who determines what a substantial change is? If a period is changed to a comma in the plan, it may cause dissent.

(Page 5, Line 43) The whole "New Sec 4" is too harsh of a penalty for the responsible party. If the party attempts to uphold all the provisions in the act and unintentionally violates a part of the act, the responsible party is charged with a misdemeanor and if convicted, fined \$100/day up to \$1,500 per count! This section may end up in an over abundance of litigation, which is time, energy and dollars spent on negativity. Perhaps a better solution would be to repeal the entire KSA section which refers to rails-trails. It apparently is cumbersome and nonfunctional to all parties involved.

I ask you to reject all provisions of HB #2490.

Respectfully submitted,



Shari Weber  
Representative, 68<sup>th</sup> District

- Examples:
- 1.) Flint Hills Nature Trail
  - 2.) Herington Heritage Trail
  - 3.) Abilene & Smoky Valley Railroad



417 S. Buckeye P.O. Box 744

Abilene, KS 67410

Office: 785-263-1077 or 1-888-426-6687

Depot: 785-263-0118 or 1-888-426-6689

Feb. 24, 1999

Rep. Shari Weber  
Capitol Bldg Room 303 N.  
Topeka KS 66612

Dear Rep. Weber:

Per request from your office here is some information regarding economic impact of the Abilene & Smoky Valley Railroad. I've based these estimates on information supplied to me by the Abilene Area Chamber of Commerce and the Abilene Convention & Visitors Bureau.

For the four full years ('95 through '98) of operation, we have carried over 63,500 passengers for an average of 15,875 annually. Our average passenger count over the past two years has been 17,850 per year. I expect growth over the next five years to be at least 5-7 % annually which would put us at around 25,000 passengers per year within 5 years. I believe we can be carrying 40,000 passengers or more within 10 years. I believe these numbers will hold up as long as we do not have a major down turn in the national economy which would affect the vacation and travel spending of the American public. Over the past two years about 10% of our riders have come from outside Kansas, but I expect that percentage to grow with our increased out of state marketing. A good example of that would be the results of our 1998 AAA ad campaign which resulted in over 2000 inquires from outside Kansas. That campaign was partially funded by the Kansas Tourism Marketing Grant.

In terms of revenues and corresponding spending I believe that this operation is already having an economic impact of over \$1,000,000.00 per year on the Kansas economy. Even though we are a 501 (c) (3) not-for-profit corporation we have most of the same type of operating expenses as any other short-line railroad. Our local hardware, lumber, electrical and mechanical supply stores all benefit because of this railroad's existence. Our motels, bed and breakfast inns and restaurants can all testify as to the increased traffic this railroad has generated. Although our direct payroll is small, ( one full time year round and one or two part-time in the summer) I expect it to grow in the future. In addition to our direct expenditures and ancillary effects, we also pay Kansas sales tax on all of our income except our school tours. These dollars are not just transferred from somewhere else, but are truly a new business effect. Non of this would have been possible without the "rail banking" law.

Thank you very much.

Yours truly,

Dave Winter, General Manager  
Abilene & Smoky Valley Railroad

*Herington Narrative - Continued*

**FIVE YEAR PLAN**

This project specifically ties in with the Kansas Wildlife and Park goals and strategies and the Herington comprehensive plan up to the year 2000. The City of Herington will construct and maintain this trail. The City's comprehensive plan indicates a need for linear activities that allow for group and individual activities. This project would fulfill that need. In addition to the comprehensive plan, the five year plan of this trail project includes expansion further into the City for possible connection to the South Park and the Historical Museum and Railroad Annex of the museum to further the pursuit of spreading information of our rich railroad heritage. Also included in this plan is the connection to the Flint Hills Nature Trail and the American Discovery Trail.

**GRANT ADMINISTRATION HISTORY**

The City of Herington has demonstrated dedication and efficiency in fulfilling other grant projects and the administration thereof. Some recently completed projects include: CDBG water clarifier system, 1992; a number of economic development grants for local business and industry and currently in progress a comprehensive grant and a geometric improvement grant.

**SUMMARY**

Upon a favorable selection outcome of this grant, the City of Herington, the Chamber tourism program and the populace at large will immediately benefit from an improved quality of life by having a safe place to exercise, recreate and enjoy the benefits of small town living while reaping economic benefits from attracting visitors and destination tourists.

# *Heritage Trail*

## Herington, Kansas

### NARRATIVE

The project area is a one-mile abandoned rail corridor that is in the control of the Kansas Horse Foundation. The President, Bud Newell has indicated complete support and cooperation of the City of Herington constructing this one mile path that is located on the Flint-Hills Nature Trail within the city limits of Herington, Dickinson County, Kansas. This project will have no negative impact on the environment, as it is being constructed in an existing rail-banked corridor. The purpose of this grant request is to construct this path into a diversified (non-motorized) recreational trail.

*Our goal is to develop and maintain this trail for recreation, cultural railroad heritage and tourism.*

#### RECREATION

This multi-use trail will be available to non-motorized activities such as; walking, bicycling, in-line skating, cross country skiing, horseback riding and jogging. The community will realize better mental and physical health through their usage of the trail, thereby resulting in an improved personal life and more efficient employees for the area business and industry. Activity programs may be implemented through the Herington Recreation commission to utilize this path and improve the quality of life in Herington.

#### CULTURAL RAILROAD HERITAGE

The founder of our community, M.D. Herington built this town on railroad development. Herington prospered by getting in on the ground floor of the rail transportation. By preserving this rail corridor, we will be preserving a piece of our heritage. The focus of this heritage may be emphasized through presentations and organized activities by the schools, civic groups and the local historical society in connection with the trail.

#### TOURISM

This project trail will be highly visible from Highway 77 going both North and South directions, thereby being a draw for travelers to pull off the highway and spend time in Herington. This will directly effect the economy by boosting extra dollars into the revenues. Eventually, this will be the last mile of the Flint Hills Nature Trail. When this trail is completed from Herington to Oswatomie, we will expect to enjoy many more revenues and growth in support retail and service businesses. Couple this with the fact that this trail will also be linked to the nation-wide American Discovery Trail, we are repeating history and getting in on a revolutionary transportation corridor, incomparable to any other.

**BACKGROUND**

On October 27, 1994 the Union Pacific Railroad Company began abandonment proceedings on 130 miles of rail line between Osawatomie and Herington, and a spur line from Lomax to Overbrook. On October 31, 1994 a notice of interim trail use was served, establishing a 180 day negotiation period for anyone interested in preserving the corridor for future rail use. The Rails-to-Trails Conservancy, a national non-profit organization established to assist local organizations in railbanking, began negotiation with Union Pacific. Negotiations were completed in January, 1996 and the property was transferred to the Kansas Horseman Foundation.

The trail was named for the beautiful grasslands it traverses. This trail offers many hiking, bicycling, and horseback riding opportunities. There will be limited access to the trail, with no motorized vehicles allowed.

**TRAIL ACCESS**

**Osawatomie** — From Kansas City, take Hwy. 169 south to Osawatomie. For more information, contact the Osawatomie Chamber of Commerce at (785) 755-4114.

**Rantoul** ★ — No parking.

**Ottawa** — From Lawrence, take Hwy. 59 south. The trail can be accessed at any point along First Street. For more information, contact the Ottawa Chamber of Commerce at (785) 242-1000.

**Lomax** — No parking.

**Vassar** — No parking.

**Osage City** ★ — The trail enters the eastern edge of the city, and then detours north along Ninth St., west along Withrow St., and south along Sixth St. back to trail. For more information, contact the Osage City Chamber of Commerce at (785) 528-4090.

**Admire** — From Wichita, take the Kansas Turnpike north to Admire exit, Hwy. 56 west four miles to Hwy. 57, south one-half mile. The trail runs along the northern edge of town.

**Allen** — No parking.

**Bushong** — No parking.

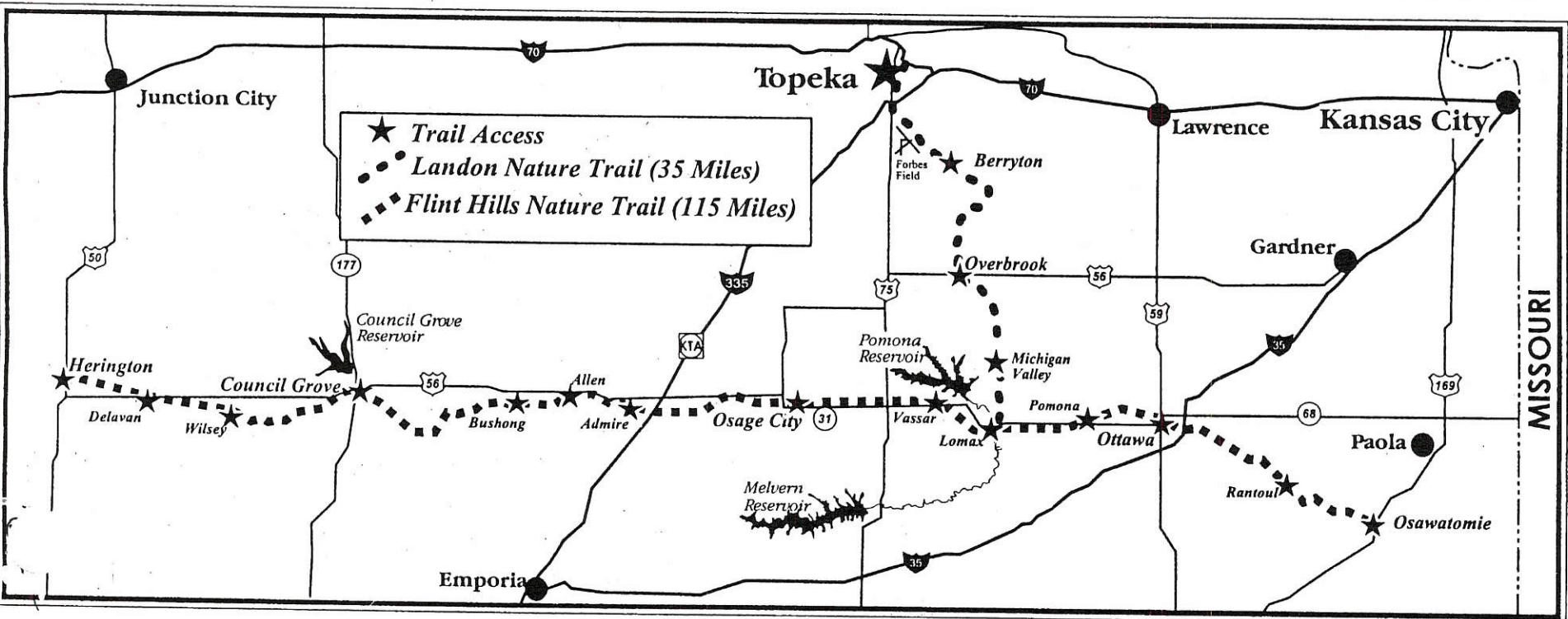
**Council Grove** — From I-70, take Hwy. 177 south approximately 27 miles until you reach Council Grove. For more information, contact the Council Grove Chamber of Commerce at (316) 767-5413.

**Wilsey** — No parking.

**Delavan** — No parking.

**Herington** — From I-70 take Hwy. 77 south to Hwy. 56 and then west to E-Street, then north five blocks. For more information, contact the Herington Chamber of Commerce at (785) 258-2115.

★ Designates private parking and camping areas available. Contact the KHF office for more information.



SUMMARY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	COMPLETED
<b>PROJECT</b>													
Brush Disposal													
Telephone Wire													
Telephone Poles out													
Bollards placed													
Bridges													
Signage													
Pick up spikes, plates, anchors													
Trash Disposal													
Facility Improvements													
Parking													
Restrooms													
Fencing													
Attractions / Signage													
Old Railroad Crossing													
Slag Pile													
Former Depot site													
Pomona Lake													
Vassar													
ATSF Crossing agreement													
Brochure													
Advertising													
Grand Opening													

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