

## MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE

The meeting was called to order by Chairman Gary Hayzlett at 1:30 P.M. on February 1, 2007 in Room 519-S of the Capitol.

All members were present except:

Representative Pat George- excused  
Representative Jene Vickrey- excused

Committee staff present:

Hank Avila, Kansas Legislative Research  
Bruce Kinzie, Revisor of Statutes Office  
Betty Boaz, Committee Assistant

Conferees appearing before the committee:

Doug Lawrence, representing Midwest Crane and Rigging  
Bill Miller, Owner, Midwest Crane and Rigging  
Representative Rob Olson  
Captain Dan Meyer, Kansas Highway Patrol  
Jason Gray, Kansas Corporation Commission  
Carmen Alldritt, Director, Motor Vehicle Div., Dept. Of Revenue

Others attending:

See attached list.

The Chairman opened the meeting by asking for bill introductions. Chairman Hayzlett recognized Brad Smoot, representing Explore Information Services, LLC. He asked the Committee to introduce a bill amending KSA 74-2012, which would allow employers to monitor certain driver records available through the division of motor vehicles. Representative Peck made a motion to accept this bill, seconded by Representative Swanson and the motion carried.

Chairman Hayzlett recognized Steve Kearney, representing The Kansas County Treasurer's Association. Mr. Kearney asked the Committee to introduce a bill pertaining to trailer weights. Representative Humerickhouse made a motion to accept this bill, seconded by Representative Henry and the motion carried.

Steve Kearney asked to introduce a second bill pertaining to technical language cleanup. The wording would change to "will collect" instead of the current language of "shall charge." Representative Humerickhouse made a motion to accept this bill, seconded by Representative Long and the motion carried.

The Chairman then recognized Whitney Damron representing the Kansas Automobile Dealers Association who came forward to introduce a bill relating to motor vehicle liens. He reminded the Committee of a similar bill introduced last week by KADA President Don McNeely. Due to concerns over the language of that bill they worked with the Kansas Bankers Association to draft a revised bill that would effectively limit the placement of a lien with the Department of Revenue on a motor vehicle to one lien. Representative Swanson made a motion to accept this bill, seconded by Representative Wetta and the motion carried.

The Chairman reminded the Committee about **HB 2042** (Expiration of drivers' licenses for people under 21 years of age) that he had asked both sides to get together and come back with a resolution. Since he had not heard back the Chairman appointed a sub-committee to come up with a solution. Chairman Hayzlett appointed Representative Humerickhouse as Chairman of the sub-committee to work with Representative Swanson and Representative Treaster.

The Chairman opened hearings on **HB 2164**.

**HB 2164 - Motor carriers, self-propelled cranes**

Chairman Hayzlett introduced Representative Rob Olson as the first proponent. Representative Olson spoke in support of **HB 2164** (Attachment #1) and urged the Committee to favorably pass it out.

CONTINUATION SHEET

MINUTES OF THE House Transportation Committee at 1:30 P.M. on February 1, 2007 in Room 519-S of the Capitol.

The next proponent was Doug Lawrence, representing Belger Cartage Inc. And Midwest Crane and Rigging. According to Mr. Lawrence (Attachment #2) **HB 2614** is a clarification of last year's **SB 374** which related to the exemption of self-propelled cranes from the motor vehicle registration and tag requirements. He said originally **SB 374** was introduced as legislation that would have required all wheeled vehicles with lifting booms to be registered for highway use. He reminded the Committee that the bill was amended to make it clear that certain vehicles with wheels and a boom would not be subject to the registration requirements because those vehicles did not meet the requirements of commercial motor vehicles because they are incapable of carrying property due to design or weight limitations. Mr. Lawrence said that rather than being a question of highway safety the new dispute is whether federal motor carrier requirements will be applied to construction equipment and operators when that equipment is sitting on a job site. He concluded that they believe that the vehicles defined as self-propelled cranes in Kansas Statutes are consistently excluded from the motor carrier requirements.

William Miller, president and owner of Midwest Crane and Rigging was introduced as the next proponent. Mr. Miller spoke in favor of **HB 2164** (Attachment #3) and said this bill serves to clarify the definition of a motor crane to continue to allow these off-road machines to be exempt from registration and licensing and to continue to use dyed fuel that is used only in exempt equipment. Mr. Miller said that this bill would clarify that motor cranes are not used to transport passengers or property and therefore should not be required to have Dept. of Transportation numbers and that the equipment operators should not be considered to be truck drivers under common carrier or private carrier regulations. Mr. Miller concluded by asking the Committee to once again clarify this statute to confirm that motor cranes are off-road construction equipment and not subject to motor carrier regulations.

The Chairman drew the Committee's attention to written testimony submitted by Art Griffin, Vice President, Belger Cartage Service, Wichita, Kansas. Mr. Griffin's testimony was in support of **HB 2164**.

There being no other proponents of this bill, the Chairman called for the opponents to **HB 2164**.

Chairman Hayzlett recognized Captain Dan Meyer as the first opponent to this bill. According to Captain Meyer (Attachment #4) the current definition of a motor carrier includes the self-propelled crane and support equipment. He said this issue was clearly defined in the Federal Motor Carrier Safety Regulations. Captain Meyer referenced a letter from Teri Graham, Division Administrator for the Federal Motor Carrier Safety Administration which said in part that adoption of language regarding the exclusion of self-propelled cranes or support equipment from the current definition of Motor Carrier will cause the State of Kansas to be incompatible with the FMCSRs and the incompatibility will place Kansas out of compliance and would jeopardize the Motor Carrier Safety Assistance Program funding and additional grants. Captain Meyer said this language, if extended to include CDL could place Federal Highway monies at risk through non-compliance of Commercial Driver's Licensing requirements and could result in an additional loss of funding. Captain Meyer concluded by saying that the passage of this language would directly result in the loss of the state's MCSAP program and potentially have an impact upon the safety of the citizens of Kansas.

The next opponent to **HB 2164** was Jason Gray, Assistant General Counsel for the Kansas Corporation Commission. According to Mr. Gray (Attachment #5) enacting **HB 2164** into law will negatively impact the safety and welfare of Kansas motorists and will make the state ineligible for millions of dollars of federal funding currently received from federal incentive programs. Mr. Gray said that on February 17, 2006, the Commission issued an Order to Show Cause, against Midwest Crane and Rigging based on a complaint from the Kansas Highway Patrol. The Order charged Midwest Crane with failing to submit to a compliance review. He said Midwest Crane objected to the Commission's assertion of jurisdiction in an administrative proceeding. Mr. Gray concluded by saying the primary reason for his opposition to **HB 2164** involves the safety risk to the public that would occur if these vehicles were exempt from safety regulations.

Chairman Hayzlett recognized the last opponent, Carmen Alldritt, Director of the Motor Vehicle Division. According to Director Alldritt (Attachment #6) if **HB 2164** were to pass, their federal grant funding of \$1,076,420 would be denied as well as their eligibility to apply for an additional \$2 million in grant funds. She concluded by urging the Committee to not pass this bill.

CONTINUATION SHEET

MINUTES OF THE House Transportation Committee at 1:30 P.M. on February 1, 2007 in Room 519-S of the Capitol.

The Chairman drew the Committee's attention to a letter of opposition from the Kansas Department of Transportation.

There being no other proponents or opponents to **HB 2164**, the Chairman closed the hearings.

Chairman Hayzlett appointed a sub-committee to review this bill and come back with recommendations to the Committee. He appointed Vice Chairman Virgil Peck to head the sub-committee and Representatives Margaret Long and Jeff King as members. The Chairman said he did not want to jeopardize the highway funds but would like for the interested parties to get together and provide input to the sub-committee so a resolution could be reached.

The Chairman asked the Committee to review the Minutes of the January 23, 2007 meeting. Representative Sloan made a motion to approve the Minutes, seconded by Representative Ballard and the motion carried.

Representative Huntington asked the Committee to introduce a bill regarding educational requirements for motorcycle licensure. Representative Treaster seconded the motion and the motion carried.

There being no further business before the Committee the Chairman adjourned the meeting. The next meeting will be on February 6, 2007 at 1:30 p.m. in Room 519-S.

# HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: 2-1-07

NAME	REPRESENTING
STEVE KEANEY	KS CO TREASURER
Diane Minear	KCC
Jason Gray	KCC
Patricia Platt	KDOR
Deann Williams	KDOR
CARMEN ALDRITT	KDOR
DAN MEYER	KHP
TERA GRAHAM	FMCSA
RANDY BEAVER	USDOT FMCSA
Dale Moore	KCC
Larry Dearden	KFB Scott Co

# HOUSE TRANSPORTATION COMMITTEE

DATE 2-1-07

NAME	REPRESENTING
Tom Burgess	Midwest Crane
Bill Miller	MIDWEST CRANE
Rep Robert De	Rep.
Whitney Daman	KS Automobile Dealers Assn
ERIC COLLINS	KADA
DOUG LAWRENCE	Midwest Crane
Will Lawrence	Capitol Consulting Group
Ken Gudenkauf	KDOT
GARY DAVENPORT	KMCA
Tom Whitaker	KS MOTOR CARRIERS ASSN
Wendy Smith	KIMHA
Wendy Smith	KAPA - KMCA
Janice	Janice Kasper
Emily Geier	Hein Law
Matt Bryant	Carter Group

STATE OF KANSAS

**Rob Olson**  
REPRESENTATIVE, 26TH DISTRICT  
19050 W. 161st St.  
Olathe, Kansas 66062  
State Capitol, 310-S  
Topeka, Kansas 66612  
785-296-7632  
email: olson@house.state.ks.us



HOUSE OF  
REPRESENTATIVES  
MAJORITY WHIP

**Committee Assignments:**  
Vice Chair: Energy and Utilities  
Member: Federal and State Affairs  
Economic Development and Tourism  
Jt. Committee on Legislative Post  
Audit

The Honorable Gary Hayzlett Chairperson  
House Committee on Transportation Committee  
State House Room 519-S  
Topeka, Kansas 66612

Subject: HB 2164

I am here today to speak in favor of HB 2164.

Kansas has a long history of treating self-propelled cranes as off highway construction equipment. The only thing that has changed in the last two years is an arbitrary decision by cities to apply requirements which haven't been applied before. This is a follow up Bill to SB 374 from last year.

I hope you will consider this bill and pass it favorably out of your Committee..

Thank you for the opportunity to testify before this Committee.

A handwritten signature in black ink, appearing to read 'Rob Olson'.

Representative Rob Olson  
26<sup>th</sup>. District

House Transportation  
Date: 2-1-07  
Attachment # 1

**Capitol Consulting Group  
902 Miami Street  
Burlington, KS 66839  
785-806-6639**

February 1, 2007

To: Chairman Hayzlett and members of the House Transportation Committee:  
From: Doug Lawrence on behalf of Belger Cartage Inc and Midwest Crane and Rigging  
Re: HB 2164

HB 2614 is a clarification of last year's SB 374 discussion, which related to the exemption of self-propelled cranes from the motor vehicle registration and tag requirements. Originally SB 374 was introduced as legislation that would have required all wheeled vehicles with lifting booms to be registered for highway use. You may recall, that after hearing testimony, the bill was amended to make clear that certain vehicles with wheels and a boom would not be subject to the registration requirements because those vehicles clearly do not meet the requirements of commercial motor vehicles because they are incapable of carrying property due to design or weight limitations.

HB 2614 is not an attempt to exempt self propelled cranes from highway safety regulations. It is an effort to state what we believe is – and has been – state law for a very long time. All motor vehicles must comply with traffic regulations. Including Self Propelled cranes being transported to a job site. That issue has never been in doubt. Rather than being a question of highway safety, the recent dispute is whether federal motor carrier requirements will be applied to construction equipment and operators when that equipment is sitting on a job site.

In particular, hours of service requirements associated with the operation of a commercial motor vehicle lead to situations in the case of the cranes we are discussing, could lead to the shut down of these vehicles on a job site even though the vehicle hasn't been on the highway in the past month, and isn't leaving the site for any purpose.

In the case of federal laws and regulations, we believe that the vehicles defined as self-propelled cranes in Kansas Statutes are consistently excluded from the motor carrier requirements in many jurisdictions as they have been in Kansas for many years.

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# MIDWEST CRANE AND RIGGING, INC.

15585 S. KEELER • P.O. BOX 970 • OLATHE, KANSAS 66051-0970  
(913) 747-5100 • FAX (913) 764-0102

Feb. 1<sup>st</sup>, 2007

To: The House Transportation Committee  
Re: HB 2164

Chairperson Hayzlett, Vice-Chairperson Peck, and Committee Members

My name is William Miller. I am president and owner of Midwest Crane and Rigging Inc. We are located in Olathe, Kansas and have an office in Topeka and in St. Joseph, Missouri.

I am here to speak in favor of HB 2164 as amended. This is a follow-up to SB 374 from last year that served to clarify the definition of a motor crane to continue to allow these off road machines to be exempt from registration and licensing and to continue to use dyed fuel that is used only in exempt equipment.

This Bill will further clarify that motor cranes are not used in the transportation of passengers or property and therefore are not required to have DOT Numbers and that the equipment operators are not considered to be truck drivers under common carrier or private carrier regulation.

The movement of these machines is incidental to their usage as off-road construction equipment and is from construction site to site or to repair or yard locations. The revenue generated by these machines is at the construction sites, and not on the road between.

Motor cranes are designed for one purpose and that is hoisting and swinging. The support equipment that is with the motor crane is used to carry the counterweights and rigging that is necessary for the operation of the crane that cannot be transported on the crane as it moves from site to site.

Regulation as a motor carrier would be extremely costly to us as a crane service and would not be a benefit to anyone. It will not increase safety but in many instances result in less than qualified operators operating cranes because the regular operator is "out of hours" and is not allowed to be on duty.

Crane operators are highly skilled men and women that have years of training. They are in short supply. They are required to be certified to operate each

Topeka Branch  
711 1/2 24 Hwy  
785-233-0400



St. Joseph Branch  
1804 S. 8th St.  
816-279-7878

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machine that they run and are subject to very strict rules governing the safe operation of the machine, including daily, weekly, monthly, and annual inspection of the crane.

The latest OSHA regulation governing the operation of cranes consists of 119 pages of which 14 pages are devoted to inspection that not only requires daily inspection, but each shift if the machine is doing shift work. There is no lack of safety inspection on motor cranes.

Motor cranes have never been used for the transportation of passengers or property and should not be considered as being used, as such, for the purpose of regulation. Crane operators have never been considered to be truck drivers and should not be regulated as such. We have been in business in Kansas for 30 years and have never before now been subjected to this type of attempted precedent-setting regulation.

I ask this Committee to once again clarify this statute to confirm that motor cranes are off- road construction equipment and not subject to motor carrier regulation.

There is no fiscal impact to Kansas and this does not conflict with any Federal law that could impact any Federal funding for any State programs.

Respectfully:



William Miller

President

Midwest Crane & Rigging



# K A N S A S

WILLIAM R. SECK, SUPERINTENDENT

KANSAS HIGHWAY PATROL

KATHLEEN SEBELIUS, GOVERNOR

## Testimony on House Bill 2164 House Transportation Committee

Presented by  
**CAPT Dan Meyer**  
Kansas Highway Patrol

February 1, 2007

Good afternoon, Mr. Chairman and members of the committee. My name is Captain Dan Meyer, and on behalf of Colonel William Seck, I respectfully submit the following testimony on House Bill 2164 regarding the exclusion of self-propelled cranes or the "support equipment used in the transporting or maintaining of such self-propelled crane" from the current definition of Motor Carrier.

The current definition of a Motor Carrier does include the self-propelled crane and support equipment. This issue is clearly defined in the Federal Motor Carrier Safety Regulations (FMCSRs) under the interpretations sections. 49 CFR 390.5 Definitions, Interpretation Question #9, clearly states, "the definition of CMV encompasses mobile cranes." Furthermore, 49 CFR 390.3 General Applicability, Interpretation Question #2, states that "the FMCSRs are applicable to drivers and CMV's in interstate commerce which transport property." The property in this situation is the motor vehicle, tools, equipment and supplies.

As evidenced by the attached letter submitted by Teri Graham, Division Administrator for the Federal Motor Carrier Safety Administration, adoption of language regarding the exclusion of self-propelled cranes or the "support equipment used in the transporting or maintaining of such self-propelled crane" from the current definition of Motor Carrier will cause the state of Kansas to be incompatible with the FMCSRs. This incompatibility will place Kansas out of compliance and would jeopardize Motor Carrier Safety Assistance Program (MCSAP) funding and additional grants that have been awarded. The loss of this funding would significantly impact the Kansas Highway Patrol's operational budget.

Additionally, this language, if extended to include CDL, could place Federal Highway monies at risk through non-compliance of Commercial Driver's Licensing requirements. This action could result in an additional loss of funding.

The loss of Kansas' MCSAP program reaches far beyond funding issues; the loss ultimately affects the safety of our citizens. Since its inception in 1983, the state MCSAP program has worked bring Commercial Motor Vehicles in compliance through enforcement of safety regulations. Enforcement

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includes the driver, in areas of licensing, drug and alcohol violations, and fatigue issues through hours of service. The vehicle component of the inspection process includes safety violations that directly contribute to CMV collisions. With the aid of the MCSAP program, authorized inspectors have the capability to place the CMV and/or the driver out of service for these most serious violations, until such time items are brought into safe operational status. The loss of the program would allow CMV operators to travel the state without concern for safety regulations.

The MCSAP program has experienced success in the encouragement of safe operation of motor carriers and is supported by the industry that is subject to the regulations. The passage of this language would directly result in the loss of the state's MCSAP program and potentially have an impact upon the safety of the citizens of Kansas.

I want to thank you for the opportunity to address you this afternoon regarding this very important issue. When appropriate, I would be happy to address any questions members of the committee may have.

###



U.S. Department  
of Transportation

**Federal Motor Carrier  
Safety Administration**

1303 S.W. First American Place, Suite 200  
Topeka, KS 66604-4040  
(785) 271-1260 fax (785) 228-9725

January 24, 2007

Mr. Mike Hoeme  
Kansas Corporation Commission  
1500 SW Arrowhead  
Topeka, Kansas 66604

Dear Mr. Hoeme:

This is in reference to our conversation, and Kansas House Bill No. 2164, concerning the exclusion of persons operating self-propelled cranes from the definition of a motor carrier. Failure to include the operation of self-propelled cranes as a motor carrier will constitute an incompatible intrastate variance.

49 CFR 350.335(a) states, "A State that currently has compatible CMV safety laws and regulations pertaining to interstate commerce and intrastate commerce, but enacts a law or regulation which results in an incompatible rule or regulation will not be eligible for Basic Program Funds nor Incentive Funds".

Further, 49 CFR 350.335(d) states, "Upon a finding by the FMCSA....., that your State law, regulation, or enforcement practice pertaining to CMV safety, in either interstate or intrastate commerce, is incompatible with the FMCSRs or HMRs, the FMCSA may initiate a proceeding under 350.215 for withdrawal of eligibility for all Basic Program and Incentive Funds".

If you have any questions, please contact SPM Randall Beaver or myself.

Sincerely,

Teri L. Graham  
Division Administrator



# KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR  
BRIAN J. MOLINE, CHAIR  
ROBERT E. KREHBIEL, COMMISSIONER  
MICHAEL C. MOFFET, COMMISSIONER

February 1, 2007

## **EXECUTIVE SUMMARY: HB 2164**

Enacting HB 2164 into law will negatively impact the safety and welfare of Kansas motorists. Furthermore, enacting HB 2164 into law will make the state ineligible for millions of dollars of federal funding currently received from federal incentive programs.

### HB 2164 HAS A NEGATIVE IMPACT ON THE SAFETY AND WELFARE OF MOTORISTS

- ◆ Under current law, operators of self-propelled cranes are considered motor carriers. As motor carriers, these operators are subject to registration, economic, and safety regulations. It is likely that many operators of self-propelled cranes will meet an exemption from both registration and economic regulations. However, these operators are still subject to safety regulations.
- ◆ Safety regulations are necessary to mitigate the inherent risks to the motoring public. These regulations include hours of services restrictions, drug testing, vehicle maintenance requirements, driver qualification standards, and accident reporting.
- ◆ Enacting HB 2164 into law will create unnecessary harm to Kansas motorists by allowing self-propelled cranes to operate with no regulatory oversight to ensure safe conditions.

### HB 2164 HAS A NEGATIVE FISCAL IMPACT ON THE STATE

- ◆ Enacting HB 2164 into law will cost the state of Kansas millions of dollars in federal funding through the Motor Carrier Safety Assistance Program. This is because Kansas law will be incompatible with federal motor carrier regulations. Essentially, incompatibility equals withdrawal from federal funding programs.
- ◆ Teri L. Graham, Division Administrator of the U.S. Department of Transportation – Federal Motor Carrier Safety Administration elaborates on this problem in a letter dated January 24, 2007. Regarding the possible enactment of HB 2164, Mr. Graham states, “the exclusion of persons operating self-propelled cranes from the definition of a motor carrier.....will constitute an incompatible intrastate variance.” Enactment of HB 2164 into law will make Kansas incompatible with federal motor carrier regulations. Accordingly, Kansas will be withdrawn from federal funding programs that provide millions of dollars to the state each year.

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# KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR  
BRIAN J. MOLINE, CHAIR  
ROBERT E. KREHBIEL, COMMISSIONER  
MICHAEL C. MOFFET, COMMISSIONER

February 1, 2007

## TESTIMONY BEFORE THE HOUSE TRANSPORTATION COMMITTEE

Chairperson Hayzlett and Distinguished Members of the Committee:

My name is Jason T. Gray. I am Assistant General Counsel of the Kansas Corporation Commission. I am appearing today on behalf of the Kansas Corporation Commission, specifically the Commission's Transportation Division.

My purpose in testifying before you today is to express the Commission's opposition to House Bill 2164, which seeks to exempt self-propelled cranes, and support vehicles used to erect and maintain these cranes, from safety regulations that govern motor carriers.

My testimony will explain the purpose of these safety regulations and the negative impact that the failure to regulate self-propelled cranes will have on the motoring public. I will also summarize ongoing litigation involving this issue. Finally, I will address the negative fiscal impact that enacting HB 2164 into law will have on the state.

### **I. Three Kinds of Regulations Governing Motor Carriers.**

Motor carriers, including operators of self-propelled cranes, have traditionally been subject to three distinct kinds of regulations. These include vehicle registration requirements under the authority of the Kansas Department of Revenue, economic regulations under the authority of the Kansas Corporation Commission, and safety regulations under the authority of the Kansas Corporation Commission and Kansas Highway Patrol. I will speak to each of these types of regulations and the nuances involving their impact on self-propelled cranes. It is important to note the self-propelled crane companies are exempt from two of the three types of regulations, registration and economic regulations.

#### **a. Vehicle Registration Requirements**

The first type of regulations that have traditionally applied to operators of self-propelled cranes are registration regulations. The Kansas Department of Revenue requires that motor vehicles be registered with the State of Kansas. Operators of self-propelled cranes are statutorily exempt from vehicle registration requirements.

## **b. Economic Regulations/Operating Authority**

The second type of regulations that apply to operators of self-propelled cranes are characterized as economic regulations. The purpose of this class of regulations is to ensure that motor carriers are properly insured. These regulations apply to all motor carriers doing or procuring business in Kansas. However, various statutory exemptions exist that specifically exempt certain motor carriers from this kind of regulation based on the nature of the motor carrier. It is likely that an operator of a self-propelled crane will be exempt from these regulations based on the statutory "tools-of-the-trade" exemption.

## **c. Safety Regulations**

The third type of regulations that apply to operators of self-propelled cranes, even if the carrier is subject to an exemption for registration requirements and economic authority; these regulations are characterized as safety regulations. Safety regulations are necessary to mitigate the inherent risks to the public safety and welfare created by the movement of commercial motor vehicles on Kansas highways and roads. These vehicles are often very large and the drivers operate these vehicles for extended periods of time. Therefore, all motor carriers, unless specifically exempted, are required to comply with safety regulations so that there is regulatory oversight over accident reporting, hours of service, drug testing, vehicle maintenance, and driver qualification.

It is possible to meet an exemption for registration and economic regulations but still be governed by safety regulations. This specific situation directly impacts operators of self-propelled cranes. However, due to the safety-related concerns involved in the transportation of these vehicles, it is necessary that self-propelled cranes be subject to all safety regulations. Some of these cranes can weigh approximately 120,000 pounds.

Enactment of HB 2164 will remove every opportunity to ensure that self-propelled cranes are road-worthy and that their operators are qualified. However, this bill goes beyond seeking an exemption for the cranes. The bill also proposes exempting any vehicle used to transport the support equipment necessary to hoist the cranes. Thus, the bill seeks an exemption from safety regulations for any vehicle transporting any property used in the operation of a self-propelled crane. This complete lack of regulatory oversight will create harm to the motoring public.

## **II. Summary of Current Litigation Involving this Specific Issue.**

On February 17, 2006, the Commission issued an Order to Show Cause, against Midwest Crane and Rigging, Inc. of Olathe, Kansas. The Order was based on a complaint from the Kansas Highway Patrol indicating that the carrier was not complying with motor carrier statutes and regulations. The Order charged Midwest Crane with failing to submit to a compliance review, a central duty of all motor carriers. These reviews are the primary tool used by the Commission to ensure compliance with safety regulations.

Midwest Crane objected to the Commission's assertion of jurisdiction in an administrative proceeding. Additionally, Midwest Crane filed in Johnson County District Court for a

declaratory judgment, injunctive relief, and an application for a temporary restraining order. Thus, there are two proceedings addressing these issues.

To date, every venue that has heard issues involving Midwest Crane and the Kansas Corporation Commission has found in favor of the Kansas Corporation Commission.

**a. Administrative Proceeding**

On June 17, 2006, the Commission upheld its finding that Midwest Crane is a motor carrier and as such, subject to the jurisdiction of the Commission. Midwest Crane has appealed the Commission's final order to Shawnee County District Court. This appeal is pending.

**b. Civil Proceeding**

On July 13, 2006, the Honorable Judge Gerald Elliot of Johnson County District Court found in favor of the Kansas Corporation Commission regarding Midwest Crane's filing for declaratory judgment, injunctive relief, and application for a temporary restraining order. Judge Elliot found that the "Court does not have subject matter jurisdiction over the issues raised in plaintiff Midwest Crane's Petition for Declaratory Judgment and Injunctive Relief and Application for Temporary Restraining Order." Thus, Judge Elliot granted the Kansas Corporation Commission's Motion to Dismiss. This decision was appealed to the Kansas Court of Appeals. This appeal is pending.

**III. HB 2164 will make Kansas Regulations Incompatible with Federal Regulations. Incompatibility equals the withdrawal of millions of dollars in federal funding.**

The primary reason for my opposition to HB 2164 involves the immense safety risk to the public that would occur if these vehicles were exempt from safety regulations. However, the Kansas Corporation Commission also opposes this bill because it will have a substantial negative impact on the state's ability to receive funding from the federal government.

Like many of the motor carrier regulations, the Kansas regulations that govern self-propelled cranes mirror the federal regulations. This is because of the importance for state and federal governments to work together in order to achieve safety compliance. Additionally, the federal rules are thorough and effective. Thus, Kansas has adopted and enforces these same rules and regulations.

By passing this bill into law, Kansas regulations will diverge from the federal regulations. Such divergence will have an immense impact on numerous state agencies, including the Kansas Highway Patrol, Kansas Department of Revenue and the Kansas Department of Transportation. This is because the federal government provides funding through the Motor Carrier Safety Assistance Program to states that have compatible safety regulations.

The federal funding incentives are provided through the Basic Program Funds and Incentive Funds program. These programs are based on a state achieving regulatory compatibility with federal safety laws and regulations. Currently, Kansas' safety laws and regulations are



compatible with their federal counterparts. However, if this bill were passed into law, Kansas will immediately become incompatible with federal safety laws and would no longer be eligible for this funding. Thus, this funding will be withdrawn.

In sum, the negative impact of passing this bill is substantial. HB 2164 places the motoring public in direct harm by not ensuring that operators of self-propelled cranes are operating pursuant to known safety standards, including drug-testing and fatigue control measures. Additionally, regulatory oversight ensures that the vehicles are maintained at regular intervals. Finally, passage of this bill will cost the state of Kansas millions of dollars in lost funding from the federal government.

Thank you for the opportunity to appear before you today. I am happy to entertain any questions that you may have.

**TO:** Chairman Gary Hayzlett  
Members of the House Transportation Committee

**FROM:** Carmen Alldritt, Director  
Division of Vehicles

**DATE:** February 1, 2007

**SUBJECT:** House Bill 2164-- Self Propelled Cranes

Mr. Chairman and members of the committee I am Carmen Alldritt and I serve as the Director of Vehicles. The Division of Vehicles is in opposition to HB 2164.

Motor Carrier Services Bureau and the Kansas Trucking Portal are viewed by other states as a model program. Kansas became the 34th state to implement PRISM for commercial vehicles. With the implementation of the PRISM program, federal funds were allocated to Kansas for the implementation process as well as additional CVISN funds to rewrite the antiquated IRP system. With the new IRP system, Kansas will be a premier model for national IRP registration systems. Through CVISN, Kansas is eligible to apply for additional federal funding to replace other motor carrier systems.....federal funding means no Kansas dollars are spent.

If HB 2164 were to pass, our federal grant funding of \$1,076,420 would be denied, as well as our eligibility to apply for an additional \$2 million in grant funds.

Our customers and business partners have come to expect a certain level of service. The business world today demands that service improve not regress.

PRISM = Performance registration Information Systems Management  
CVISN= Commercial Vehicle Information Systems Network (motor carrier vehicle systems)  
IRP = International Registration Plan  
Kansas Trucking Portal = truckingsks.org - where motor carriers license vehicles, authority, fuel, etc. info pages also.

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Date: 2-1-07  
Attachment # 6