

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE

The meeting was called to order by Chairman Gary Hayzlett at 1:30 p.m. on March 4, 2009, in Room 783 of the Docking State Office Building.

All members were present except:

Representative Gene Rardin- excused

Committee staff present:

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

Conferees appearing before the Committee:

Representative Jeff King
Bill Wullenschneider, Independence, KS
Pat Hubbell, Representing KYLE Railroad
Todd Byornstad, General Mgr. KYLE Railroad
Ron Seeber, Vice President of Government Affairs for the KS Grain and Feed Ass'n.
Bob Alderson, Representing Mid-States Port Authority (MSPA)
Leslie Kaufman

Others attending:

See attached list.

The meeting was called to order by Chairman Hayzlett. He opened the hearing on **SB 5**.

SB 5 - Designating part of U.S. 160 as the 1011th Quartermaster Co. U.S. Army Reserve memorial highway.

Chairman recognized Representative Jeff King who introduced Bill Wullenschneider. (Attachment #1) According to Mr. Wullenschneider the primary reason for this bill is because the current and former members of the unit deserve it. He said the 1011th was activated and served in the Vietnam Conflict, Operation Desert Shield/Desert Storm and Operation Iraqi Freedom. He said the 1011th distinguished itself in all three deployments, supporting units of the Royal Thai Army, to Saudi Arabia and Operation Desert Storm where the unit supported Coalition Forces from several base camps.

There being no other proponents and no opponents, the Chairman closed the hearing on **SB 5**.

It was the Committee's desire to work **SB 5**. Representative King made a motion to pass favorably, seconded by Representative Proehl and the motion carried.

Chairman Hayzlett opened the hearing on **SB 46**.

SB 46 - Procedures for sale of certain property by port authorities.

The Chairman recognized the first proponent Pat Hubbell, representing KYLE Railroad. (Attachment #2) Mr. Hubbell had prepared a presentation and drew the Committee's attention to Page 2 showing a map of the 500 miles of tracks. He then gave a brief history of the KYLE Railroad from when the Rock Island Railroad went bankrupt to the Mid-States Port Authority being created, to 1984 when the KYLE Railroad was acquired and an agreement between the MSPA and KYLE Railroad Company was reached with the terms of 22 years, three months. At the end of the term when KYLE's rental payments had been paid, KYLE could purchase the property for \$1.00. Mr. Hubbell said KYLE has met all of its responsibilities. The agreement is set to expire in June 2009 at which time KYLE intends to exercise its purchase option. He said a 1987 change to KS Port Authorities Act limits a port authority's power to negotiate the sale of property. He said the 1987 amendment was never intended to apply to lease-purchase arrangements and option grants already negotiated and agreed to. **SB 46** clarifies that the 1987 law was not intended to apply to the 1984 lease-purchase

CONTINUATION SHEET

Minutes of the House Transportation Committee at 1:30 p.m. on March 4, 2009, in Room 783 of the Docking State Office Building.

agreement. If the lease-purchase agreement is dishonored by MSPA, based upon a misapplication of the 1987 law, KYLE could, theoretically, be found to pay for the line twice. Mr. Hubbell concluded by saying they were here for the long haul; that the 25-year partnership should go forward as the parties intended.

Mr. Hubbell introduced the next proponent who was Todd Byornstad, General Manager, KYLE Railroad. Mr. Byornstad gave some background information and then stood for questions. There were none.

Chairman Hayzlett recognized the next proponent who was Ron Seeber, Vice President of Government Affairs for the KS Grain and Feed Association. (Attachment #3) Mr. Seeber spoke in support of **SB 46**. He said this legislation facilitates the orderly transfer of railroad assets from Mid States Port Authority to Rail America as previously agreed to by both parties.

The next conferee was Bob Alderson, who was appearing on behalf of Mid-States Port Authority. (Attachment #4) Mr. Alderson gave some background on the Mid-States Port Authority. He said it was formed in 1980 pursuant to the Kansas port authority statutes by the Joint Cooperative Agreement of 14 Kansas counties in north central and northwest Kansas He said it was formed in the wake of the bankruptcy and proposed liquidation of the Chicago, Rock Island and Pacific Railroad Company which would leave these 14 KS counties without rail service. He said currently there are two issues that need to be resolved. First, there is some uncertainty as to the validity of KYLE's option to purchase MSPA's property and second, there has been some question of whether the leases which MSPA has entered into with shippers and other lessees will be assumed intact by KYLE upon the transfer of MSPA's property to KYLE. He concluded by urging the Committee to recommend **SB 46** favorable for passage, not only will it validate the Lease Agreement between MSPA and KYLE but will also give effect to the Agreement.

The Chairman drew the Committee's attention to written testimony by Leslie Kaufman in support of **SB 46**. (Attachment #5)

There were no other proponents and no opponents to **SB 46** so the Chairman closed the hearing.

It was the Committee's desire to work **SB 46**. Representative Burgess made a motion to pass SB 46 favorably out of committee and place it on the Consent Calendar, seconded by Representative Wetta and the motion carried.

There being no further business before the Committee, the Chairman adjourned the meeting at 2:15 p.m. The next meeting will be on March 5, 2009, at 1:30 p.m.

HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: March 4, 2009

NAME	REPRESENTING
Mary Ruth	KDOR
Kelly Bellato	KDOR
Vuki M. Boese	ABATE of Kansas
Ken D. Fan	ABATE of Kansas Dist #4
Terry Mitchell	KDOR
Terry Heidner	KDOT
Montana Falls	
Kilee Hutchison	
Jessie Morgan	
David Gilchrist	
Melissa Williams	
Coryn Galt	
Samantha Morgan	
Paul Roberts	
Michael Melin	KDOR
Ted Smith	KDOR
Leigh Keck	Melin Law firm
Jim Gratzner	AT&T
Bill Sneed	State Farm

Testimony in Support of Senate Bill 5
Presented to the House Transportation Committee
By Bill Wullenschneider

March 4, 2009

Mr. Chairman and members of the Senate Transportation Committee:

I'm Bill Wullenschneider and I want to thank you for allowing me to present my reasons for wanting a Memorial Highway named for the 1011th Quartermaster Company, United States Army Reserve.

The first reason is simply that the current and former members of the unit deserve it. The 1011th was activated and served in the Vietnam Conflict, Operation Desert Shield/Desert Storm and Operation Iraqi Freedom. The 1011th was one of just a few units to do so. The 1011th distinguished itself in all three deployments, supporting units of the Royal Thai Army from Camp Bearcat South Vietnam where the unit lost two members killed in action, to Saudi Arabia and Operation Desert Storm where the unit supported Coalition Forces from several base camps and Locations in Saudi Arabia, to Operation Iraqi Freedom where the unit supported Camp Anaconda/Balad Air Base with rations, purified water, fuel, and repair parts and where one member lost a leg.

The next reason is very personal. I'm very ashamed that I was shipped home and left around a hundred and twenty of the members of the 1011th in Iraq while I finished my tour at Fort Riley. I have been awarded three Army Commendation Medals and one Army Achievement Medal and several other lesser commendations and awards in my thirty-four year career, but my failure in Iraq is what dominates the memories of my career. There is a scene in the movie "Lawrence of Arabia" where Anthony Quinn's character is looking for "something honorable" to take back to his village. I'm hoping that this will be my "something honorable" and with my continued VA counseling I can put some "demons" to rest.

I call this request "feel good" legislation, the letters of support have been obtained and the funding responsibilities are known, this is one of the win-win scenarios we hear of. The Legislature is able to have a bill supporting veterans in a time of tight budgets and the veterans get a memorial.

I have been asking my elected representatives for a better Veterans Preference Bill for the past three years and there is always something more important than veterans. The first year it was the tax break for industrial machinery, then it was school finance, then it was disaster relief and now it is budget, always something more important than veterans.

The first outside agency to respond to the Southeast Kansas floods was the Kansas Army National Guard, some of them already veterans of Iraq, and they stayed in tents and ate MRE's, not motels and restaurants. This highway designation is just a little way of recognizing veterans' contributions to our great state and our great nation.

Again thank you for this opportunity to speak to you.

Bill Wullenschneider

Attached: Local letters of support.

House Transportation
Date: 3-4-09
Attachment # 1

THE CHAMBER



Telephone: (620) 331-1890
FAX: 331-1899
P. O. Box 386
322 North Penn
Independence, KS 67301

December 10, 2008

Independence City Commissioners
City of Independence
City Hall, 120 N. 6th
Independence, KS 67301

Dear City Commissioners:

The Independence Chamber of Commerce Board of Directors is in support of William H. Wullenschneider's request to have the portion of Highway 160 from the junction of 169 to the East City limits of Independence to be named after the 1011th Quartermaster Company. As Mr. Wullenschneider has stated in a letter to the Chamber Board the 1011th was activated and served in Viet Nam, Desert Storm and Operation Iraqi Freedom. The Chamber believes this a small way that we can let our hometown men and women that serve our country know that they are extremely respected.

We are asking the City Commission to consider supporting Mr. Wullenschneider's quest to rename the portion of the highway previously mentioned and to include the Chamber Board of Directors letter of support to the Kansas State Legislature including copies to Senator Derek Schmidt and Representative Jeff King.

Sincerely,

A handwritten signature in cursive script that reads "Joanne Cox".

Joanne Cox, Chair
Chamber Board of Directors

A handwritten signature in cursive script that reads "Gwen Wilburn".

Gwen Wilburn, President/CEO
Independence Chamber of Commerce

Office of the Mayor

City Hall - 120 North Sixth Street

Independence, Kansas 67301

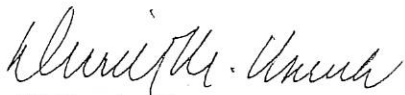
November 25, 2008

To Whom It May Concern:

This letter is in support of the efforts to name a portion of Highway 160 from the junction of Highway 169 to the east Independence City limits after the 1011th Quartermaster Company. The 1011th was activated and served in Vietnam, Desert Storm and Operation Iraqi Freedom.

The City of Independence appreciates the service of all veterans, especially those in our local Army Reserve Unit and supports naming this portion of Highway 160 in their honor.

Sincerely,



Derrill Unruh, Mayor
City of Independence, Kansas



COUNTY COMMISSIONERS

Montgomery County
217 East Myrtle
Independence, Kansas 67301

Phone (620) 330-1111 Fax (620) 330-1202

TONY FOWLER
District No. 1

BILLIE LEWARK-WOOD
District No. 2

GENE TUCKER
District No. 3

September 24, 2008

To Whom It May Concern:

The Board of County Commissioners, Montgomery County, State of Kansas, voted unanimously at the September 15th meeting, to support efforts to name that portion of US Highway 160 from the junction east of Independence to the Independence City limits after the Independence Army Reserve Unit.

Montgomery County is proud of each and every individual serving in the armed forces and want to commend them for their service to our country in every respect, from serving in time of local disasters to the call of duty to foreign soils.

The Board submits this letter in support for this honor to be bestowed on the Independence Army Reserve Unit.

Respectfully yours,

Billie L. Lewark-Wood

Billie L. Lewark-Wood, Chairman
Board of County Commissioners

Senator Derek Schmidt
State Capitol Room
390E Topeka. KS
66612

Honorable Derek Schmidt:

The American Legion Post 139 wishes to support the efforts to name a portion of highway 160 from the east city limits of Independence, KS to the junction of highway 169 in Honor of 1011th Quartermaster Company of Independence.

A presentation was given by William Wullenschneider on the project and a vote was unanimous to support the project.

Sincerely,

 , Commander

Executive Committee
American Legion Post 139
108 S. 25th St.
Independence, Kansas 67301

Heartland Vietnam Veterans
576 58 Rd
Independence, KS

December 17, 2008

Senator Derek Schmidt
State Capitol
Room 390E
Topeka, KS 66612

Honorable Derek Schmidt:

The Heartland Vietnam Veterans of Independence, Kansas unanimously voted at a regular meeting in December to support the efforts to name a section of highway 160 from the east city limits of Independence to the junction of highway 169 in honor of the Independence Army Reserve Unit.

The Heartland Vietnam Veterans are in agreement that said portion of highway be named in honor of the 1011th Quartermaster Company for their service in Vietnam, Desert Storm and Operation Iraqi Freedom.

Sincerely,



William H Wullenschneider Jr
President

**Veterans of Foreign Wars
Dewlen-Dix Post 1186
113 East Myrtle St.
P.O. Box 535
Independence, Kansas 67301**

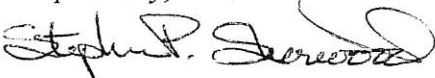
November 26, 2008

To Whom It May Concern:

The Veterans of Foreign Wars, Dewlen-Dix Post 1186, Independence, Kansas unanimously voted at a regular scheduled meeting on November 20, 2008 to support any and all efforts to name that portion of US Highway 160 from the junction of 169 to the city limits east of Independence after the Independence Army Reserve Unit.

The Officers and Members are in agreement that said portion of Highway be named to honor the 1011th Quartermaster Company for their distinguished service in Vietnam, Desert Storm, and Operation Iraqi Freedom.

Respectfully,



Stephen P. Sherwood

Adjutant

VFW Post 1186



KYLE Railroad Presentation to House Transportation Committee Topeka, Kansas

March 4, 2009



The Kyle Railroad is essential to the transportation system in Kansas



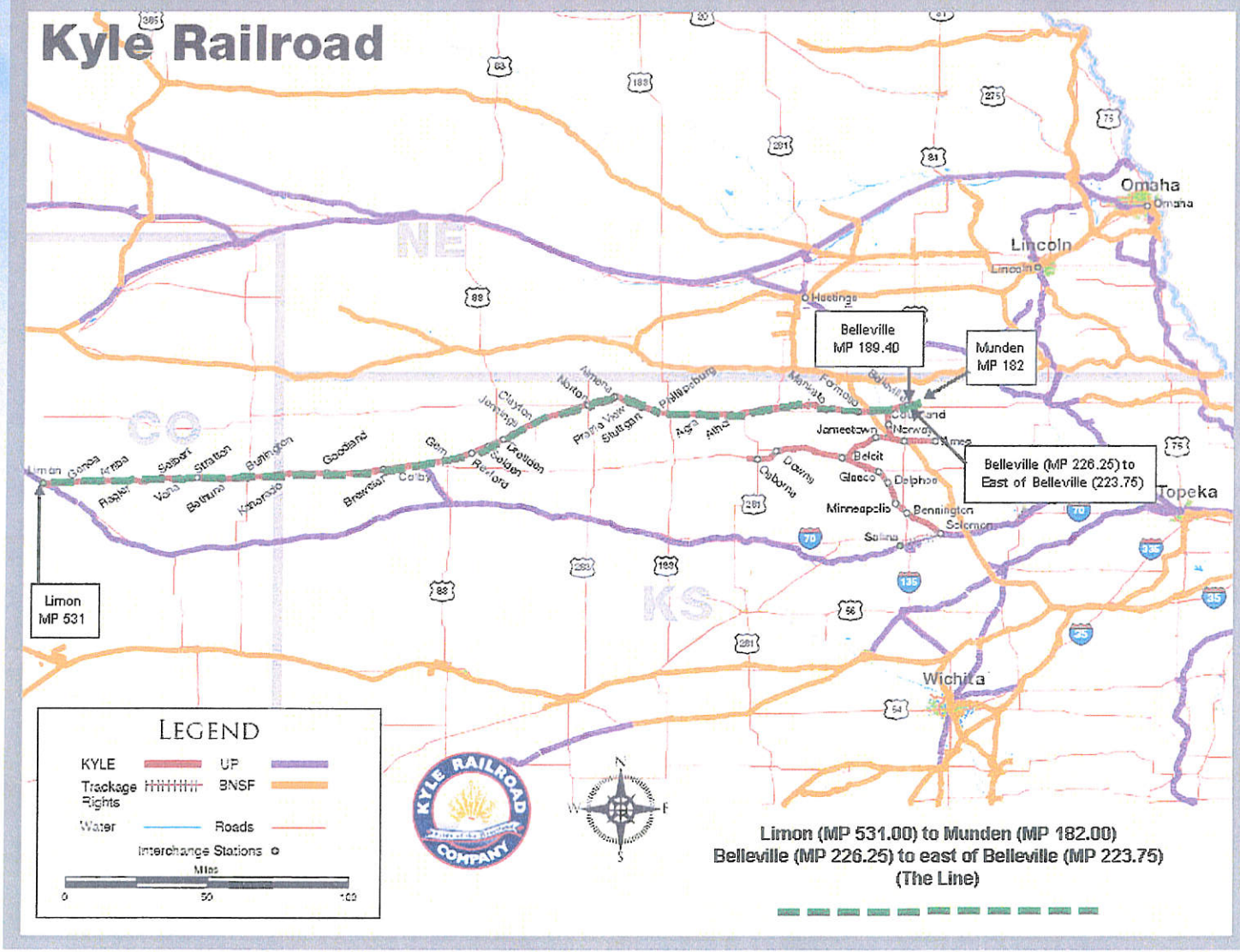
2-2

- A short-line railroad that runs from North Central Kansas into eastern Colorado with:
 - 500 miles of track
 - Interchanges to the Class I carriers, BNSF and UP
 - With these two interchanges the KYLE can serve customers all over North America in providing an integral corridor in the Midwest for customer's products

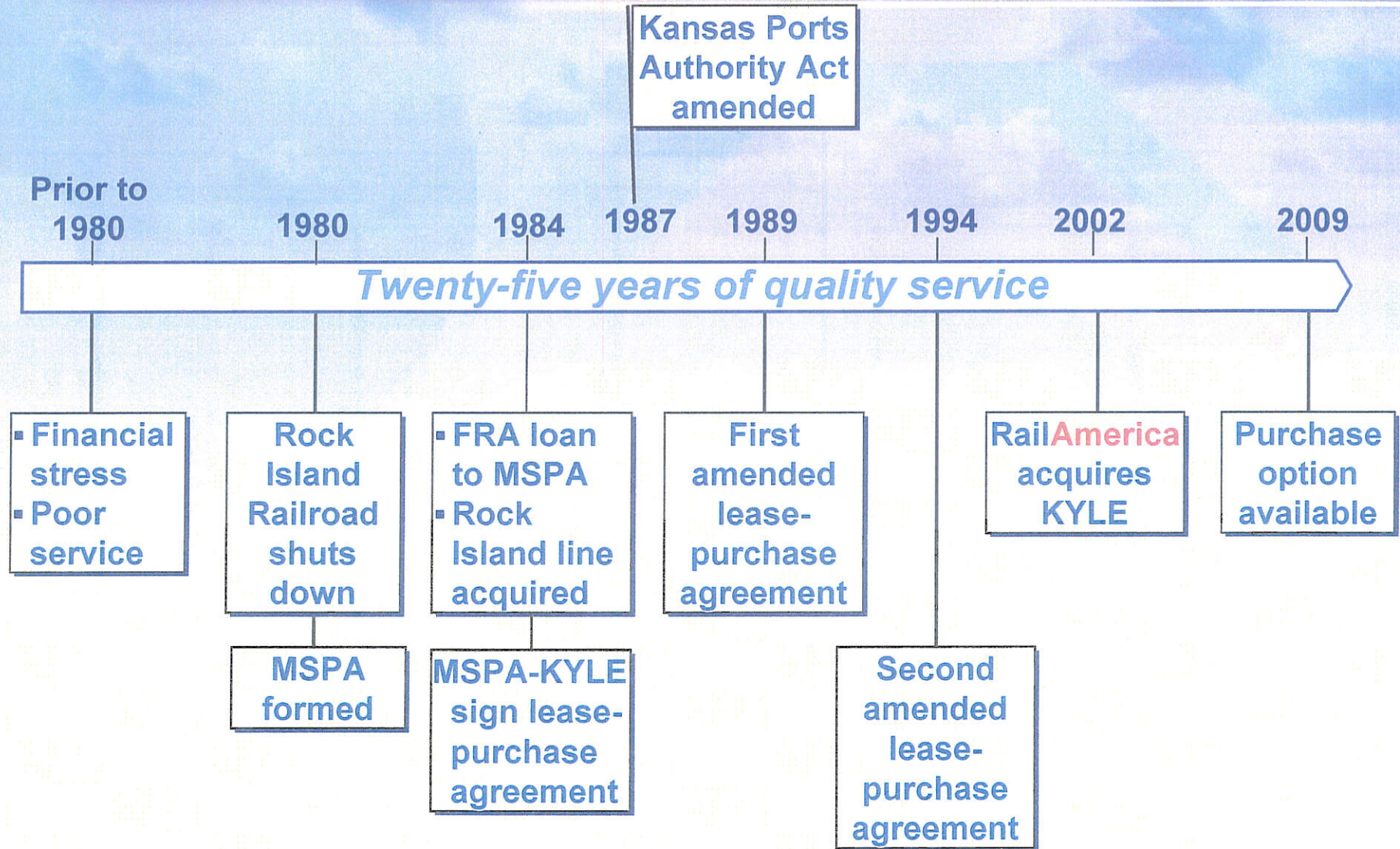
- KYLE facts include:
 - Major commodities like wheat, soybeans, milo maize, ethanol, siding asphalt and roofing granules
 - Moved over 20,000 cars in 2008
 - Operated INJURY FREE in 2008
 - Received the "JAKE" award in 2006, 2007 and 2008, which is awarded to only the top 7 of the more than 500 shortline and regional railroads
 - Providing customers with a dependable and safe transportation solution for the movement of their commodities
 - Recently signed new long-term labor agreement with UTU that allows employees to cross crafts to help with job stability.
 - Relationship with employees and Union leadership is strong and effective.



KYLE Railroad is based in Phillipsburg, KS and is a safety- and-service leader in the railroads owned by RailAmerica



KYLE's Kansas Roots



29-years ago Kansas lost a railroad and the KYLE stepped up to acquire and perform its operations



2-5

- March 1980: Bankrupt Rock Island Railroad shut down
- May 1980: Mid-States Port Authority (MSPA) was created
- During 1983 and 1984, MSPA worked with KYLE Railroad to bring rail service back to Kansas
- In May 1984, KYLE Railroad acquired and began operating the former Rock Island lines
- RailAmerica became KYLE's owner in 2002
 - RailAmerica saw good opportunity to build a strong and sustainable railroad that it could own
 - Year 1: RailAmerica invested \$2 million in capital-spending projects
 - Between 2002 and 2009, close to \$20 million has been invested in bridges, crossings, signals, track, equipment, and structures

Over the years, KYLE Railroad and its customers benefited



Lease-Purchase financing structure facilitated rail's return to Central Kansas



2-6

- Kansas legislature agreed in 1983 to guarantee part of a prospective \$18 million Federal Railroad Administration (FRA) loan to MSPA
- On April 30, 1984, FRA loaned MSPA \$18 million to acquire pieces of Rock Island Railroad
- Also on April 30, 1984 –
 - MSPA and KYLE Railroad Company signed a lease-purchase agreement
 - Term: 22 years, three months
 - Initial payment of \$51,250/mo rising to \$67,250/mo
 - Payment stream designed to amortize and extinguish MSPA's debt
 - At the end of the term, when KYLE's rental payments had extinguished the debt, KYLE could purchase the property for "\$1.00"
 - Each party to the agreement had the "right, power, legal capacity, and authority to enter into and perform its obligations"
 - KYLE has paid off MSDA's loan by making all of its payments over 25 years



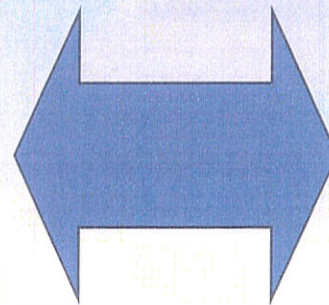
1984 lease-purchase agreement codified each party's role



2-7

MSPA's Responsibilities

- To preserve right-of-way for rail service to eastern Colorado and northern Kansas rail shippers/receivers
- Facilitate funding for right-of-way capital improvements
- Manage non-operating real estate



KYLE's Responsibilities

- Pay rents to MSPA
- Provide rail service along former Rock Island
- Maintain mainline, sidings, and industry tracks
- Manage operating assets and track leases with KYLE customers

KYLE has met all of its responsibilities and more by becoming a reliable rail provider and important member of the Kansas transportation community



The parties twice modified the original lease-purchase agreement

- First amended lease-purchase agreement signed April 21, 1989
 - Part of MSPA refinance of debt through Bank IV
 - Revised term to 15 years and increased rent to \$67,250 (to be adjusted annually, matched repayment schedule of debt)
 - KYLE purchase option remained intact. Option exercise date adjusted to match repayment of debt
- Second amended lease-purchase agreement signed May 26, 1994
 - Part of MSPA's issuance of revenue funding bonds to refinance Bank IV loan
 - Term and rental payments amended to coincide with MSPA's bond repayment obligations
 - KYLE purchase option remained intact. Option exercise date adjusted to match bond repayment
 - MSPA represents power and legal authority to perform amended lease-purchase agreements

Agreement set to expire in June 2009 at which time KYLE intends to exercise its purchase option

Some think changes to the Kansas Ports law appeared to “rewrite” the KYLE lease-purchase agreement

- A 1987 change to Kansas Port Authorities Act limits a port authority’s power to negotiate the sale of property
 - Requires competitive bidding in the event of a sale
 - Gives current lessee the first right to purchase the property
- 1987 amendment never intended to apply to lease-purchase arrangements and option grant already negotiated and agreed to
- KYLE continues to perform on its lease and to make all rental payments in good faith

Unlikely that legislators intended to cancel the KYLE-MSPA contract

- Supplemental legislation (SB 46) has now been drafted
- Clarifies that 1987 law not intended to apply to 1984 lease-purchase agreement, as subsequently amended
- Lease-purchase agreement should proceed as the parties intended and fully-performed
- If lease-purchase agreement is dishonored by MSPA, based upon a misapplication of the 1987 law, KYLE could, theoretically, be found to pay for the line twice and MSPA would receive a windfall that neither party intended

What is a fair result?

KYLE's Future - We plan to continue to serve shippers and customers in Kansas

- In anticipation of lease expense savings, KYLE plans for increased short and long range capital infrastructure investment to the benefit of customers
- KYLE recently relocated RailAmerica's Central Region customer service headquarters to Phillipsburg, KS; added some 20 employee positions and has future regional expansion plans
- When KYLE exercises its option and acquires the right-of-way, KYLE will become a property taxpayer
- MSPA extended 90% of Customer leases more than 3 years past June 2009 (more than 50% past June 2019)
- KYLE has prepared a list of all known MSPA lease extensions; KYLE will honor all of these lease extensions

Bottom line: We are here for the long haul; 25-year partnership should go forward as parties intended





Statement of the Kansas Grain and Feed Association in Support of Senate Bill 46

**Presented to the Senate Transportation Committee on March 4, 2009
Representative Gary Hayzlett, Chair**

Chairman Hayzlett and members of the House Transportation Committee, I am Ron Seeber and I am the Vice President of Government Affairs for the Kansas Grain and Feed Association.

KGFA is a 113 year old trade association which has as members those Kansas agribusinesses engaged in the business of receiving, storing and marketing of grain grown by Kansas farmers.

I appear before you today as a proponent of Senate Bill 46. As you are aware this legislation facilitates to orderly transfer of railroad assets from Mid States Port Authority (MSPA) to Rail America as previously agreed to by the aforementioned parties.

Thank you for this opportunity to testify on this important legislation.

House Transportation
Date: 3-4-09
Attachment # 3

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CONKLIN, BURGHART & CROW, L.L.C.**
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**LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

**TESTIMONY OF BOB ALDERSON
ON BEHALF OF MID-STATES PORT AUTHORITY
BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION**

March 4, 2009

Chairman Hayzlett and Members of the Committee:

My name is Bob Alderson, and I am appearing before the Committee on behalf of Mid-States Port Authority (MSPA) in support of Senate Bill No. 46 (SB 46). Initially, however, with the belief that many members of the Committee may not be familiar with MSPA, I want to provide the Committee with some background information regarding MSPA. To that end, I have attached a Memorandum which provides an overview of MSPA's formation, its purposes and objectives, its organization and operation, including the financing thereof, and its relationship with Kyle.

Suffice it to state here that MSPA is a joint port authority that was formed in 1980 pursuant to the Kansas port authority statutes, K.S.A. 12-3401 *et seq.*, by the Joint Cooperative Agreement of 14 Kansas counties in north central and northwest Kansas. It was formed in the wake of the bankruptcy and proposed liquidation of the Chicago, Rock Island and Pacific Railroad Company (Rock Island), which would leave these 14 Kansas counties without rail service. Thus, the purpose for creating MSPA was to serve the public purpose of restoring the rail service previously provided by Rock Island and insuring the continued availability of rail service in this region of the state into the future.

Accordingly, in May of 1984, MSPA acquired from the Rock Island's Trustee in Bankruptcy approximately 465 miles of Rock Island's main line track and right-of-way, plus approximately 40 miles of spur and siding track, 288 acres of real estate, depots, repair shops and bridges. The line acquired extended from Limon, Colorado in the west to Belleville, Kansas, with lines running from that point to Clay Center, Kansas and to Hallam, Nebraska, the eastern termination point at that time.

Today, MSPA has right-of-way in service only in the states of Kansas and Colorado, and the operating portion of that right-of-way is leased to Kyle Railroad Company (Kyle). The attached Memorandum explains the transactions which have occurred since 1984 that have brought us to this point.

House Transportation
Date: 3-4-09
Attachment # 4

From its inception and through two amendments and restatements, the lease agreement between MSPA and Kyle has provided Kyle with an option to acquire MSPA's right-of-way and other real property at the termination of the lease, which is June 1, 2009. The lease terminates on that date because it is the date when MSPA makes its last payment of principal and interest on its revenue refunding bonds which were issued in 1994.

Although this lease has served to circumscribe the legal relationship between MSPA and Kyle, it is fair to say that the relationship between MSPA and Kyle has been more like a partnership than a landlord-tenant relationship. It has been premised on mutual cooperation and respect in promoting MSPA's mission to preserve rail traffic in the MSPA counties. While MSPA was formed to ensure that the shippers in these counties have continued access to efficient, reliable rail service, the MSPA Board of Directors has viewed this objective as being met, in part, by its financial support of Kyle, designed to improve Kyle's rail operations. In that regard, MSPA has expended more than \$2,000,000 on infrastructure and other real property improvements benefiting Kyle since I became General Counsel in 1990.

Recently, however, two issues have arisen regarding the lease. First, there has been some uncertainty as to the validity of Kyle's option to purchase MSPA's property; and second, there has been an unresolved question of whether the leases which MSPA has entered into with shippers and other lessees will be assumed intact by Kyle upon the transfer of MSPA's property to Kyle. Both of these issues have the potential for litigation, if they cannot be resolved legislatively or by agreement.

The first of these issues is addressed by SB 46, and the second will be resolved by an agreement (Agreement) of the parties which is conditioned on the passage of SB 46. It is my understanding that members of the Committee have been provided copies of the Agreement. It is fair to say that MSPA and RailAmerica, Inc., Kyle's parent company, have had different views regarding whether MSPA's leases with shippers/lessees continue intact and uninterrupted upon transfer of MSPA's property to Kyle on June 1 of this year. In that regard, you will note that numbered paragraph 2 of the Agreement provides, in essences, that upon the transfer of MSPA's right-of-way and other real property to Kyle, all of MSPA's leases identified on Exhibit A to the Agreement will transfer intact and will be honored by Kyle.

This is an extremely important consideration for MSPA. Protection of the shippers/lessees along the rail line by preserving their current leases goes to the heart of MSPA's purpose of preserving rail traffic in north central and northwest Kansas. Many of these shippers made it possible for Kyle to operate as a rail common carrier in Kansas and Colorado, by providing the shipping commitments required by the Federal Railroad Administration as a condition to loaning MSPA the money necessary to purchase the Rock Island line out of bankruptcy.

Therefore, I would urge the Committee to recommend SB 46 favorable for passage. Not only will the passage of SB 46 validate the Lease Agreement between MSPA and Kyle, thereby enabling Kyle to exercise its purchase option, but it also will give effect to the Agreement.

Thank you for the opportunity to appear before the Committee. I will be pleased to answer questions at the appropriate time.

**ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.**
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*LL.M., TAXATION
**LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

MEMORANDUM

TO : House Committee on Transportation
FROM : Bob Alderson, General Counsel, Mid-States Port Authority
RE : Background Information on Mid-States Port Authority
DATE : March 4, 2009

The Mid-States Port Authority (MSPA) is the owner of railroad right-of-way in the States of Kansas and Colorado. The operating portion of the right-of-way is leased to Kyle Railroad Company (Kyle). Kyle is a Kansas corporation that is wholly owned by RailAmerica, Inc. and it operates as a Class III (short-line) railroad. The purpose of this Memorandum is to acquaint the members of the Committee with the MSPA, by providing a brief summary of MSPA's formation, its purposes and objectives and its organization and operation, including the financing thereof.

Formation

The MSPA is a public body corporate and politic, organized and existing under the authority of the Kansas port authority statutes, K.S.A. 12-3401 *et seq.* The MSPA was created by a Joint Cooperative Agreement entered into on May 29, 1980, by the following 14 Kansas counties: Clay, Cloud, Decatur, Jewell, Norton, Phillips, Republic, Riley, Sheridan, Sherman, Smith, Thomas, Wabaunsee and Washington. The formation of MSPA was approved by the Attorney General of Kansas in Attorney General Opinion 80-95, issued April 23, 1980.

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

In 1983, the Kansas Legislature agreed to guarantee a portion of a loan of \$18 million from the Federal Railroad Administration (FRA) to the MSPA, through the establishment of the Railroad

March 4, 2009

Page 2 of 5

Rehabilitation Loan Guarantee Fund (K.S.A. 75-5029) and by the authorization for payments from that fund to the FRA of not to exceed fifty percent (50%) of any loss resulting from default by the MSPA on any loan it obtained from FRA.

The rail line was acquired from the Rock Island's Trustee in Bankruptcy on May 15, 1984. The Trustee executed two Quitclaim Deeds which were identical, except for the descriptions of the property being conveyed. One of these deeds conveyed the Trustee's interest (with certain exceptions) in and to the rail line in Clay County, Kansas and the other conveyed the Trustee's interest (with certain exceptions) in and to the remainder of the line.

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

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

Organization and Operation

MSPA is governed by a Board of Directors comprised of one individual appointed by the board of county commissioners of each member county and eight individuals elected "at large" collectively by the boards of county commissioners of the member counties. Shortly after MSPA acquired its rail line from Rock Island's Trustee, Riley and Wabaunsee Counties withdrew from the MSPA, because none of that rail line was situated in those counties, as had originally been anticipated. Subsequently, as a result of abandonments of all of MSPA's rail line in Clay, Washington and Cloud Counties, those counties also withdrew. Thus, with 9 participating counties remaining, there currently are 17 members of MSPA's Board of Directors. A list of the current members of the Board of Directors is attached as Appendix B. The MSPA does not have any employees, but the MSPA's Rules and Regulations provide for the Board's appointment of two special officers, a Deputy Treasurer and a General Counsel.

The rail line acquired by MSPA from Rock Island's Trustee in Bankruptcy was operated initially pursuant to two, separate leases with rail carriers. As noted previously, MSPA has a lease with Kyle to provide rail service on the MSPA's line in Kansas and Colorado. The facilities initially leased to Kyle actually included the segment of the line from the Kansas-Nebraska line to Fairbury, Nebraska. However, there never was any traffic over this segment of the line from the time it was acquired by MSPA. Thus, in two, separate transactions this segment of MSPA's Nebraska line has been abandoned. The last of these transactions was completed in January, 2006, and it also effected the abandonment of the right-of-way segment from the Kansas-Nebraska line to Munden, Kansas.

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MSPA's other operating lease was with Union Pacific Railroad Company (Union Pacific), and it was for the line segment from Fairbury, Nebraska to Hallam, Nebraska. That lease continued for 20 years, until the Spring of 2004, when Union Pacific exercised the option contained in its lease to acquire this segment of MSPA's rail line.

Kyle is responsible under its lease agreement with MSPA for providing freight service along the leased rail line, and the interstate operating authority necessary to provide such service has been obtained by Kyle. MSPA does not have any authority to operate as a rail carrier itself, although MSPA is considered a railroad under various Kansas statutes, because of its ownership of railroad right-of-way.

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

1989 Refinancing

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

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

However, because MSPA is a unique entity, as far as public bodies are concerned, ordinary bank financing of the balance of the monies necessary to repurchase the Notes from FRA was not available without the continued guarantee of the State of Kansas. Accordingly, the 1989 Kansas Legislature made the statutory changes necessary to perpetuate the State's guarantee of MSPA's indebtedness. Section 1 of that act (now codified as K.S.A. 75-5031) authorized the Secretary of Transportation to guarantee the repayment of any amounts which may be in default on any loan obtained by MSPA for the refinancing of its obligations to FRA. Attorney General Opinion No. 89-45 clarified the Kansas Secretary of Transportation's authority under that law to guarantee the MSPA's obligation upon refinancing.

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

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Revenue Refunding Bonds

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

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

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

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

A second Supplemental Indenture of Trust was executed on September 1, 2003. Among other things, this transaction eliminated the right of redemption. Thus, these bonds will extend to June of 2009. The current balance (including principal and interest) is \$390,202.50.

When the last payment of principal and interest is made on these bonds on June 1, 2009, the lease agreement between MSPA and Kyle will terminate. Regardless of any transactions occurring

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thereafter, MSPA's Board of Directors believes MSPA has fulfilled its mission of preserving rail traffic in north and northwest Kansas, following the Rock Island's bankruptcy.

WRA:tri



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House Transportation Committee

March 4, 2009

Topeka, Kansas

SB 46 - Sale of certain property by a port authority.

Chairman Hayzlett and members of the House Transportation Committee, thank you for the opportunity to comment in support of SB 46. I am Leslie Kaufman and I serve the Kansas Cooperative Council as Executive Director.

The Kansas Cooperative Council represents all forms of cooperative businesses across the state -- agricultural, utility, credit, financial and consumer cooperatives. Approximately half of our members are grain elevator/farm supply cooperatives. Some of these members are shippers along rail lines within the territory of Mid-State Port Authority (MSPA) and thus, can be impacted by the passage 46.

As we understand it, SB 46 seeks to provide clarification regarding the treatment of existing leases and how they will be treated once certain MSPA interests are transferred to Rail America. Certainly, legislative action is one means of reaching clarity on the issues. From that perspective, we see benefit in the legislation. As such, we respectfully request that this committee advance SB 46 favorably.

If you have any questions regarding our testimony, please feel free to call me. Thank you.

Leslie Kaufman, Executive Director
Kansas Cooperative Council
785-220-4068

The Mission of the Kansas Cooperative Council is to promote, support and advance the interests and understanding of agricultural, utility, credit and consumer cooperatives and their members through legislation and regulatory efforts, education and public relations.

House Transportation
Date: 3-4-09
Attachment # 5