

SESSION OF 2004

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR HOUSE BILL NO. 2583**

As Amended by Senate Committee on
Natural Resources

Brief*

Sub. for HB 2583 would make amendments to the statutes dealing with rails-to-trails. Specifically, the bill would require the bond or escrow account to be maintained at all times in the full amount set by the county commission sufficient to fully cover the annual costs of such things as weed control, litter control, maintenance of the trail in a condition that it does not create a fire hazard, adequate fencing, and adequate signs. This provision only applies to responsible parties which are not governmental entities. The amount of liability insurance also would be set by the county commission.

Also, the bill would require a responsible party which is not a governmental entity to file with the clerk of each county where any portion of a recreational trail exists or will be located the name and address of the person to whom any notice required by the bill is to be sent. Notice sent to the person by certified mail would be deemed sufficient.

With regard to the project plan for a trail, the bill would require the county commission or governing body of a city to make recommendations regarding the trail within 60 days after submission of the plan. Authority would be given to the county commission to extend the required time for completion of the trail by not more than two one-year extensions.

The bill would provide that if the responsible party fails to comply with the provisions of law dealing with rails-to-trails, then any adjacent property owner, city, or county aggrieved by noncompliance could bring an action in the district court. Upon a finding that the responsible party has failed to comply, the court could enter any one or more of the

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

following orders:

- ! an order requiring the responsible party to comply; or
- ! an order requiring the responsible party to pay a civil penalty to the aggrieved party in an amount not exceeding \$100 for each day of noncompliance.

If the time has expired for an action required to be performed under these provisions of law, then the party required to perform the action would have 90 days after the bill's effective date to comply.

Background

Proponents of the original bill included three landowners from the Berryton area, Senators Tyson and Pugh, and representatives of the Kansas Farm Bureau and the Kansas Livestock Association. Written testimony in support of the bill was received from an individual from Greensburg. Opponents to the original bill included representatives of the Kansas Natural Resource Council; the Kanza Rail Trails Conservancy; MTB Access, Ks. Single Track Society; Kansas Trails Council; Kansas Horse Council; International Mountain Bicycling Association and Earth Riders Trails Association; Mountain Bike Club; Sierra Club; the League of Kansas Municipalities; the Kansas Wildlife Federation; Audubon of Kansas; and the Kansas Department of Wildlife and Parks. Written testimony in opposition to the original bill was received from Friends of the Kaw, MetroGreen Technical Advisory Group, and the Kansas Recreation Park Association.

The Chairperson of the House Committee on Environment assigned the bill to a subcommittee. The substitute bill encompasses most of the recommendations of the subcommittee.

The Senate Committee on Natural Resources amended the bill by:

- ! requiring the county commission to set both the bond or escrow account amount and the amount of liability insurance when the responsible party is a non-governmental entity;

- ! deleting the provision which would have required the responsible party to execute a quit claim deed to the county and have the deed placed in escrow when the responsible party was a non-governmental entity;
- ! deleting the time limit to file with the county the name and address of the person to whom notice is to be given when the responsible party is a non-governmental entity;
- ! deleting the provisions which would have allowed the county commission to appoint an advisory board to conduct inspections of trails and hold hearings;
- ! deleting provisions which would have allowed the county commission to authorize the county or adjacent property owners to perform necessary trail maintenance or to have the county seek to have the quit claim deed released to the county;
- ! deleting a provision which would have allowed responsible parties to file a complaint when adjoining property owners are interfering with trail development;
- ! deleting a provision which would have allowed the county commission or advisory board to consolidate hearings;
- ! deleting provisions which would have outlined some of the actions which a district court could have imposed if the decision of the county commission was challenged;
- ! adding a provision which would allow any adjacent property owner, city, or county aggrieved by non-compliance by a responsible party to bring an action in district court;
- ! adding a provision which would allow a district court to enter any one or more of the following orders:
 - " an order requiring the responsible party to comply with provisions of law relating to trails; or
 - " an order requiring the responsible party to pay a civil penalty to the aggrieved party in an amount not exceeding \$100 for each day of non-compliance; and

! adding a provision that would provide that if the time has expired for action required by the bill to be performed, the party required to perform the action would have 90 days after the effective date of the bill to comply.

The fiscal note on the original bill states that there would be no fiscal impact on the state.