

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 - 1st 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](#))

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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 - 1st 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 is 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 recreational trail which is located within the county. ([Attachment 10](#))

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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.