

KANSAS OFFICE *of*
REVISOR *of* STATUTES

LEGISLATURE *of* THE STATE *of* KANSAS
Legislative Attorneys transforming ideas into legislation.

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: House Committee on Agriculture
From: Kyle Hamilton, Assistant Revisor of Statutes
Date: January 30, 2019
Subject: Bill Brief on HB 2062

In 1920, the Nation's railway system reached its peak of 272,000 miles, but then began to steadily decline. ¹ To preserve shrinking rail trackage, Congress implemented the Railroad Revitalization and Regulatory Reform Act of 1976. That Act encouraged the conversion of abandoned rights-of-way to recreational and conservational use by offering financial, educational, and technical assistance to federal, state and local governments. However, implementation of the Act was hampered by the fact that railroads had received their track property through a mix of easements and fee simple property interests. If a railroad had gained the property through an easement, and then, at a future point, ceased to use to that property for railroad purposes, that property could revert back to the property owner. But if the railroad had received the property through a fee simple interest, it could convey that property to another entity for other uses. This issue hindered the federal government's goal of preserving rail property, so it passed amendments to the Trails Act that stated that using rail property for recreational trails would not constitute an abandonment of the property. That meant that even if the railroad had originally been given just an easement interest on the property, and was no longer using the property for railroad purposes, it wouldn't be deemed "abandoned" as long as an entity had agreed to preserve the property through trail use, and the property wouldn't have to revert back to the adjacent property owners.

On August 18, 1995, the City of Lindsborg, Kansas filed a request with the federal government that a certain line of rail property be used for a trail system. ² On September 20, 1995, the federal

¹ Information in this paragraph came from Justice Brennan's opinion in *Preseault v. I.C.C.*, 494 U.S. 1 (1990).

² Information in this paragraph came from Judge Wilder's "Journal Entry Concerning Parties' Motions for Summary Judgment", 2015-CV-000067 (Oct. 12, 2016).

government issued a decision allowing for negotiation of trail use between the city and the railway owners. On March 25, 1997, Central Kansas Conservancy, Inc., was granted permission by the federal government to extend negotiations and effectively took the place of the City of Lindsborg in those negotiations.

In the meantime, in order to help better implement the federal law, the Kansas legislature had passed the Kansas Recreational Trails Act (KRTA), K.S.A. 58-3211 et seq., which became effective on July 1, 1996. One section of the act, K.S.A. 58-3213, lays out certain procedures an entity must follow when developing a trail. There are two particularly relevant provisions in this statute. Subsection (c) states that “The responsible party shall complete development of a recreational trail within a period of time equal to two years times the number of counties in which the recreational trail is located.” Subsection (d) states that the “provisions of this section shall apply to only recreational trails for which approval to enter into negotiations for interim trail use is received from the appropriate federal agency on or after the effective date of this act.”

A McPherson County District Court judge ruled in 2016, that because the City of Lindsborg had received federal permission to negotiate with the railroad in 1995, before the Kansas law was passed, the provisions of K.S.A. 58-3213 do not apply to the Meadowlark Trail.³ According to the ruling, the statute’s time limit for completing a trail does not apply to the Central Kansas Conservancy’s development of Meadowlark Trail, even though it had not been the original entity to start the negotiations in 1995. Federal law provides no time limit on how quickly a trail must be developed to its intended level of use.

HB 2062, Section 2, subsection (d), would add the words “to the responsible party” to clarify that the section will apply to any responsible party that received approval by the federal government to negotiate with a rail company, as long as that negotiation started on or after the effective date of the Kansas Recreational Trails Act, July 1, 1996. In K.S.A. 58-3211, “responsible party” is defined as “any person, for-profit entity, not-for-profit entity or governmental entity that is responsible for developing, operating or maintaining a recreational trail.” Potentially, as a result, even if one entity started negotiations with a railroad before the

³ Id.

state law passed on July 1, 1996, and then a different entity finished negotiations after the state law passed, that second entity would be subject to K.S.A. 58-3213.

A similar amendment has been made in Section 1, subsection (d), of the bill, but this change is more technical, because the provisions of that section apply regardless of when the federal government approved the start of negotiations for interim trail use.

HB 2062 would become effective upon publication in the statute book on July 1, 2019.