

Approved: March 30, 2012

Date

## MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE

The meeting was called to order by Chairman Gary Hayzlett at 1:30 p.m. on March 5, 2012, in Room 783 of the Docking State Office Building.

All members were present.

### Committee staff present:

Scott Wells, Office of the Revisor of Statutes  
Daniel Yoza, Office of the Revisor of Statutes  
Jill Shelley, Kansas Legislative Research Department  
Betty Boaz, Committee Assistant

### Conferees appearing before the Committee:

Representative Willie Prescott  
Jim Foster, Overbrook Community Citizen  
Michael Pruitt, Osage County Commissioner  
Brandon Jones, Osage County Attorney  
Aaron Popelka, General Counsel, KS Livestock Association  
R. Deryl Edwards, Jr., Attorney for Marty Nordhus  
Mike Irvin, Kansas Farm Bureau  
Leslie Kaufman, KS Coop Council, KS Grain & Feed Ass'n., KS Agribusiness  
Scott Allen, Kwanza Railtrail Conservancy  
Doug Walker, President, Kwanza Railtrail Conservancy  
Dale Crawford, Representing KanBikeWalk  
Frank Meyer, Kwanza Railtrail Conservancy/Commissioner, Wildlife & Parks Tourism  
Larry Baer, League of KS Municipalities  
Bill Waters, Attorney with Property Valuation, KS Dept. of Revenue  
Tom Krebs, KS Association of School Boards

### Others attending.

See attached list.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

## CONTINUATION SHEET

Minutes of the House Transportation Committee on March 5, 2012 in Room 783, DSOB

Chairman Hayzlett called the meeting to order and opened the hearing on **HB 2735**.

### **HB 2735 – Valuation of federally railbanked rights-of-way**

Chairman Hayzlett asked staff to brief the Committee on this bill. After the briefing and questions the Chairman recognized Representative Willie Prescott as the first proponent. According to Representative Prescott, this matter came to light after a recent Court of Tax Appeals decision in Marshal County to have the adjoining landowners pay property taxes on the abandoned rail-bed and a court ruling in Miami County enforcing the current Kansas statutes on trail development. (Attachment #1) He said after the railroads ceased operation in the eighties the Federal Surface Transportation Board chose to rail-bank the easements by authorizing “operators” to develop public trails. The State Legislature then wrote very specific laws concerning the development and management of the rail-bed property pertaining to fencing, weed control, littering, signage, etc. and the procedure for closing out a trail for lack of completion. **HB 2735** would require the county, the district appraiser, or the Director of Property Valuation of the Department of Revenue to value all property within a federally rail-banked right-of-way.

Representative Prescott introduced the landowner who brought this matter to light. Marty Nordhous said he is a farmer and has a lot of property impacted by this matter. He said he feels this bill is just and that those who use the trail area should pay the taxes. He said this bill should clear up the problem and that he just wants what is fair.

The Chairman recognized James Foster. According to Mr. Foster (Attachment #2) the trail sponsors voluntarily assume the financial liability by agreeing to a willingness clause. He said the Kansas Recreational Trail Act states “a city or county **may** institute procedures for recourse against the responsible party.” He said if this act was changed to read “a city or county **shall** institute procedures for recourse against the responsible party” it would resolve some problems.

The next proponent was Michael Pruitt an Osage County Commissioner. (Attachment #3) He outlined the responsibilities for the rail-trail sponsors. He said currently these responsibilities are not being met. He cited some of the problems along the trails that his county is experiencing. He said in addition to those problems no one knows who to contact in case of an emergency or any other problems that may come up.

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The Chairman recognized Brandon L. Jones, who was speaking on behalf of the Board of County Commissioners of Osage County. (Attachment #4) According to Mr. Jones, Osage County has several miles of federally railbanked rights-of-way which have been turned over to rails-to-trails conservancies. He said since these conservancies have taken over as trail operators, very little has been done to maintain or convert these railbeds to functional trails in many areas of the county. Mr. Jones said Osage County is in hopes that some clarity can be brought to the issue of who is responsible for maintaining and paying for the maintenance of these rights-of-way.

The next proponent was Aaron Popelka representing the views of the Kansas Livestock Association. (Attachment #5) According to Mr. Popelka **HB 2735** is necessary as a result of a recent misguided opinion by the Kansas Court of Tax Appeals that assessed the value of a railbanked right-of-way to the adjoining landowners rather than the trail management entity. He said this legislation would clarify the proper procedure to assess property taxes on railbanked right-of-ways in Kansas and prevents future improper decisions by the Kansas Court of Tax Appeals.

Chairman Hayzlett recognized R. Deryl Edwards, Jr. Mr. Edwards said he was the attorney for Marty Nordhus who was the landowner who initiated this action. Mr. Edwards discussed the Nebraska Trails Foundation-Statement of Willingness to Pay Taxes, the Surface Transportation Board-Order for Notice of Interim Trail Use, Quit Claim Deed from Union Pacific Railway to Nebraska Trails Foundation, in particular “Nordhus v. United States” Order granting partial summary judgment on liability, the Affidavit of Marshall County Appraiser Janet Duever and the Kansas Court of Tax Appeals Judgment. (Attachment #6)

The next proponent was Michael Irvin (Attachment #7) He said Kansas landowners deserve the certainty of knowing they will not be forced to pay any amount of taxes for which they are not personally responsible. Mr. Irvin suggested an amendment to statutorily exempt federally railbanked trails from taxation. Mr. Irvin said there is substantial acreage within the railbanked right-of-ways around this state that will now be shifted from the railroad units to landowners and they think this is fundamentally unfair.

Chairman Hayzlett recognized Leslie Kaufman (Attachment #8) She said several years ago the KS legislature passed legislation outlining responsibilities for trail operators to maintain corridors.

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Ms. Kaufman said they did not include provisions regarding taxation in the Kansas law as federal railbanking agreements included payment of taxes as a condition for a trail group to be granted interim trail use. She said they agreed that the question of whom to assess the taxes on railbanked corridor needs to be resolved and taxes should be assessed to the interim trail user.

### OPPONENTS

The next conferee was Scott Allen who was opposed to **HB 2735**. Mr. Allen provided some background on this matter from 2009 when Marshall County assessed a value of \$10 per acre on the taxpayer's property within the trail right of way to two cases being filed before the Court of Tax Appeals and their findings. He said their ruling applies only to the parcels of land in this particular case. (Attachment #9)

Doug Walker was the next opponent to this bill. (Attachment #10) He said due to a Court of Tax Appeals ruling, all railbanked corridors are currently exempt from taxes and this bill would require counties to appraise all federally railbanked right of ways and assess, levy and collect taxes upon them, including the state owned, Prairie Spirit Trail and municipally owned trails.

The Chairman recognized Dale Crawford. He said **HB 2735** would erroneously place property taxes on railbanked trails within Kansas that are being developed by not-for-profit organizations. According to Mr. Crawford, Kansas ranks as one of the lowest states in the country in publicly accessible lands and in tourism. He said Kansas ranks so low that thousands of Kansans leave the state every year to pursue recreation and nature based activities, such as bicycling, hiking, and horse riding that could be pursued in Kansas. (Attachment #11)

Larry Baer was the next opponent to this bill. Mr. Baer said as written, this bill would require that the operator be responsible for the payment of property taxes although the operator does not hold fee title to the real estate. He said there is no tax exemption provision within the bill for city or county operators, and that municipalities do not own the property and they cannot make application for a tax exemption. In addition he said under this bill, taxes would be assessed back to the date of the initial issuance of the notice of interim trail use and some of these trails have been in existence for more than 30 years. Mr. Baer said this would result in significant additional expense to a municipality that operates one or more trails at the expense of local taxpayers. (Attachment #12)

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Frank Meyer was the next opponent (Attachment #13) According to Mr. Meyer, the Kanza Railtrail Conservancy is developing two trails totaling one hundred and fifty miles. He said almost all labor is volunteer, equipment and material used for trail development is given at little cost or at cost. He impressed upon the Committee how important Railtrails are to tourism and industrial development. He said he did not understand why a bill would be passed which would discourage or kill something they feel is vital to promoting tourism and industrial development in Kansas.

The Chairman drew the Committee's attention to written testimony submitted in opposition to **HB 2735** by Brent Hall, President, Central Kansas Conservancy (Attachment #14), Clark Coan, citizen, Topeka, KS (Attachment #15), Eric Rogers, KanBikeWalk member (Attachment #16), Aron E. Cromwell, Mayor, City of Lawrence, Kansas (Attachment #17), Doug Vance, Executive Director, Kansas Recreation and Park Association (Attachment #18), and Heath Glenn, President, Kaw Valley Bicycle Club (Attachment #19).

### NEUTRALS

Chairman Hayzlett recognized Bill Waters. (Attachment #20) Mr. Waters asked that **HB 2735** be amended to remove the language requiring the director of property valuation to value all property within a federally railbanked right-of-way. According to Mr. Waters the director of property valuation shall value all railroad property, except such real property as is not used in the daily operation of a railroad. He said railbanked property is not used in the daily operation of a railroad. Mr. Waters said including nonoperating properties or real property not used in the daily operation of a railroad presents appraisal and apportionment problems.

The Chairman drew the Committee's attention to a letter from Janet Duever, RMA, Marshall County Appraiser. (Attachment #21)

There being no other proponents nor opponents Chairman Hayzlett closed the hearing on **HB2735**.

The Chairman opened the hearing on **HB2749**.

### **HB 2749 – Regulation on school buses**

The Chairman recognized Tom Krebs as the only proponent on this bill. (Attachment #22)

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According to Mr. Krebs, the Kansas Association of School Boards board of directors believes that school districts should have more ability to make decisions regarding the most effective use of resources in meeting the needs of their community. He said **HB 2749** addresses that priority. He said districts would always be able to replace busses earlier if necessary but this bill will remove an arbitrary date for replacement and make it the district's decision as far as safety and expenditures.

There were no other proponents and no opponents so the Chairman closed the hearing on **HB 2749**.

There being no further business before the Committee the meeting was adjourned.

