



KANSAS FARM BUREAU
The Voice of Agriculture

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PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON TRANSPORTATION

Re: HB 2735 ; Federally Rail Right-of-Ways; Taxation

March 05, 2012

Topeka, Kansas

Testimony Provided by:

Michael D. Irvin

Kansas Farm Bureau

Proponent

Chairman Hayzlett and members of the House Transportation Committee, thank you for the opportunity to share our thoughts on HB 2735 which would address taxation of landowners for federally railbanked right-of-ways by the Kansas assessors. We stand as a proponent of the bill.

As you know, KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations. Our members, who are directly engaged in agricultural pursuits, have a substantial economic and legal interest in this matter, since it could significantly impact their farming and ranching operations.

Kansas landowners deserve the certainty of knowing that they will not be forced to pay any amount of taxes for which they are not personally responsible. It is important to understand that our member-adopted policy vigorously supports landowners' rights. In this case we have a significant concern with any action based on what we believe is an erroneous decision by the Court of Tax Appeals (COTA) that will produce or enhance the burdens or liabilities imposed on owners of land.

On November 3, 2011, the COTA of the State of Kansas ruled that landowners in Marshall County were the appropriate taxable party by the Kansas assessors and must pay the assessed taxes upon a right-of-way that had been railbanked by a trail group.

COTA's rationale was that in the past, the right-of-way property was used as an active rail line, its value was included in the railroad company's unit assessment by the director of Property Valuation. But the court reasoned that this property was no longer valued and assessed as part of the railroad unit by the state-level authorities. As a result, local authorities should assume this responsibility for valuing and assessing the right-of-way property.

As a result of the COTA decision, our members in Marshall County and numerous other Kansas landowners will be assessed and levied ad valorem taxes that were the statutory and regulatory obligation of the railroads and now trail groups.

This decision is fundamentally unsound and unfair for the landowners around our state that are to be assessed taxes for parcels of land (right-of-way) that they have no control over, cannot access, nor can they derive any benefits from this area. For instance, our landowners would not have the right or the ability to use this area for crop production, pasture or pursue any other income producing agricultural pursuits. In essences, this area (right-of-way) is off limits to them, yet they will be tax for the same.

The above decision was triggered when landowners in Marshall County were assessed and taxed for parcels of land that were "railbanked" in 2003 by the trail group called Nebraska Trails Foundation Inc. Railbanking is a mechanism through which inactive railroad lines are converted into public recreational trails for interim use, pursuant to the National Trails System Act (Trails Act) (16 U.S.C. Sec. 1241 et seq.).

Before this land was railbanked in 2003, the right-of-way was held by the Union Pacific Railway Corp. for longer than a century. The railroad company would have been responsible for and all taxes paid for the easement prior to this dispute.

During the railbanking process in 2003, the trail group received a Notice of Interim Trails Use (NITU), based on filed comments and a document filed with the Surface Transportation Board (STB), which is entitled "Statement of Willingness to Assume Financial Responsibility." This document contains that Federally required assurances the trail group are "willing to assume full responsibility for management of, for any legal liability arising out of, and for the payment of **any and all taxes** that may be levied and assessed against the right-of-way," in accordance with 49 C.F.R. 1152.29. [Emphasis Added]

The trail groups were fully aware that they were stepping in the railroad company's shoes by signing the agreements and then submitting it for approval with the Surface Transportation Board (STB). Further, this was and is the intent of the federal Trails Act.

There is substantial acreage within the railbanked right-of-ways around this state that will now be shifted from the railroad units to landowners. We think this is fundamentally unfair.

We support HB 2735, which provides certainty to landowners that they will not be assessed or taxed for railbanked right-of-ways.

Thank you for the opportunity to share the policy of our members. We stand ready to assist as you discuss this important topic.

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Kansas Farm Bureau represents grass roots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.