

House Committee on Agriculture

RE: HB-2062 - Relating to the applicability of conditions for operating recreational trails.

**January 30, 2019
Topeka, KS**

**Presented by: Tracy Presnell
McPherson County**

Chairman Highland and Members of the Committee, my name is Tracy Presnell and I live in rural McPherson County. I am here today to voice my support of HB-2062.

The bill proposes minor wording additions to what is referred to as the Kansas Recreational Trails Act (or KRTA). The Act sets out the compulsory requirements for entities that have taken on the role of responsible party for recreational trails created pursuant to Federal statute 16 USC 1247(d), generally referred to as rail-trails. The Act also sets out the oversight responsibilities for counties and/or cities through which these trails pass.

The reasoning behind the word additions is simple, sections of the Act are ambiguous and have led to interpretations inconsistent with legislative intent. The appellate and supreme courts have routinely held that when a statute is plain and unambiguous, there is no need for the courts to speculate as to the legislative intent behind it. A statute is ambiguous where it is open to two or more interpretations. The KRTA as it was recently interpreted by a district court judge, revealed ambiguities in the statutory language that resulted in interpretations inconsistent with the legislative intent of the Act.

For section 58-3212 of the Act, the judge concluded that the provisions of the section did not apply to the responsible party for a trail. That same judge also concluded that section 58-3213 applied to an entity that was *not* the responsible party for the same trail.

A review of the legislative history of the KRTA which began as HB-2711 in 1996, revealed that the requirements of the Act were not applicable to entities that had just applied for and received permission to negotiate with a railroad for a trail. They are only applicable to those entities where negotiations had come to fruition and the entity had taken transfer of the interest by deed and was actually responsible for developing, operating or maintaining a trail on a railbanked right-of-way.

It would be eminently unfair to have the requirements of the Act apply to an entity that had only received permission to negotiate for a trail but had not yet concluded those negotiations to become the responsible party. On the other hand, for those entities that did conclude negotiations for a trail and became the responsible party, it would be unacceptable that the requirements of the Act not be applied.

For two trails in McPherson County, one of which was the subject of the district court's ruling, there were 2 entities for each trail that petitioned the Federal agency to negotiate with the railroads. But, only one entity ultimately became the responsible party for each of those trails as defined in the statute.

Section 58-3213, as it is currently worded, was interpreted by the district court to apply to an entity that had only received permission to negotiate for a trail but had not actually reached the point of becoming the responsible party by receiving the right-of-way interest by deed. That entity never became responsible for developing, operating or maintaining a trail.

Section 58-3212, as it is currently worded, was interpreted by the district court as not applying to the entity that did reach the point of receiving the right-of-way interest by deed and was responsible for developing, operating or maintaining a trail.

These interpretations by the court reveal that the statutory language may lack clarity. It seems prudent that when vagueness, ambiguity or lack of clarity is revealed in statutory language that the legislature, upon becoming aware of it, act to resolve it.

By adding the words, "to the responsible party" to sections 58-3212 and 58-3213 as proposed in this Bill, ambiguity is removed to ensure that the Act will be read to not apply to entities that merely received permission to negotiate a transfer deal with a railroad, but only apply to entities that become the responsible party as defined in the Act.

I encourage your affirmative vote for HB-2062.

Respectfully Submitted,

Tracy Presnell