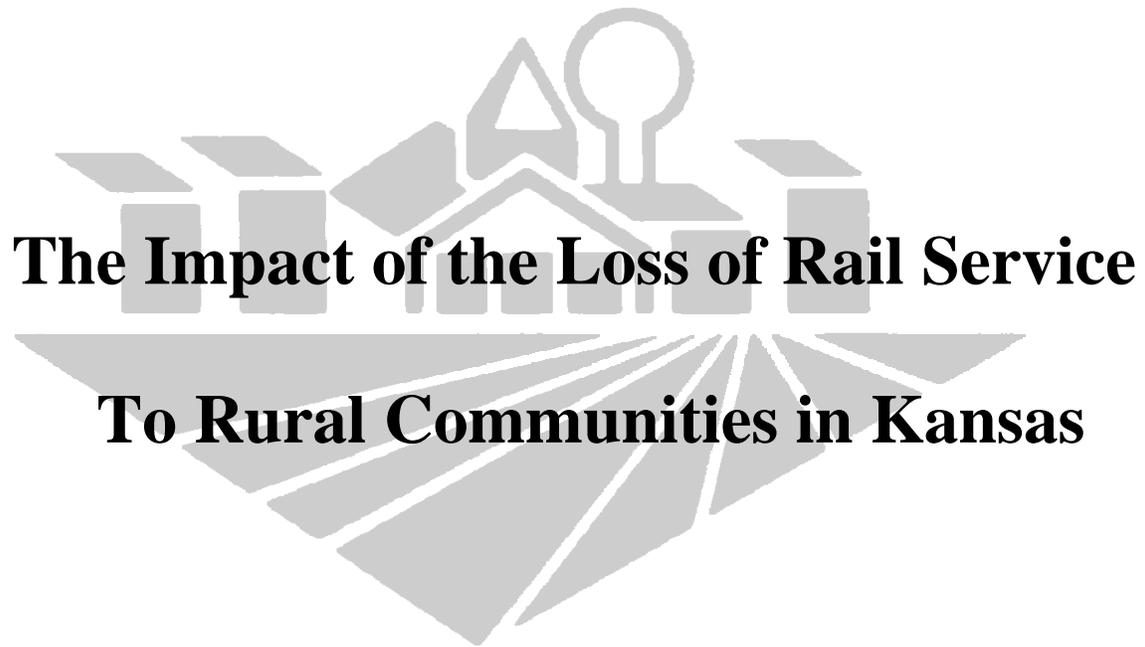


# **Kansas Rural Development Council**



## **The Impact of the Loss of Rail Service To Rural Communities in Kansas**

March 20, 2000  
Prepared by  
Steven G. Bittel  
Executive Director

## **Statement of Purpose**

This monograph is designed to demonstrate the far-reaching problems of our rural communities which may lose their rail service. While everyone associated with rural communities knows that rail abandonment is a very serious problem, few of us know what can be done to lessen this dramatic attack on the social fabric of the family farm and our rural communities. This paper brings to light broad reaching policy implications that need to be addressed as well as detailed information on how to work with regulatory agencies that have rail service under their purview. Also, if local communities want to take charge of their future, information on how to form a **port authority** is contained in this piece. Much of this information was presented at a rail forum sponsored by the Kansas Rural Development Council in January 2000.

## **Acknowledgement**

The Kansas Rural Development Council would like to thank Loren Medley, Business Development Coordinator, Kansas Electric Power Cooperative for all the time and work he put into this effort. We would also like to thank the Kansas Electric Power Cooperative for its vision and deep seeded commitment to rural Kansas. Without them, we could not have brought these resources to bear.

## **The Impact of the Loss of Rail Service To Rural Communities in Kansas**

No one would disagree that transportation is a key ingredient for rural communities to thrive and that the lack of transportation makes it difficult for rural communities to survive. It is a well recognized fact that rural communities need a well-balanced multimodal transportation system. The freight rail system, including branch lines, mainlines, rail corridors, terminals, yards and equipment is an important element of this multimodal system. As this paper will demonstrate, the freight rail system is a vital component of the multimodal transportation system and it is especially important to rural communities where grain production is an integral part of the local economy.

The loss of a freight rail system is devastating to rural communities. Lost rail service impacts not only the shippers but it also effects farmers and local government as well as the entire community. The impacts on rural communities are:

- Lower grain prices received by farmers.
- Higher transportation costs and lower profits for rail shippers.
- Loss of market options for shippers.
- Lost economic development opportunities in rural communities resulting in less diversification of employment.
- Higher road maintenance and reconstruction costs.

Rail abandonment alters the delivery to market of many commodities. In addition, the resultant motor vehicle freight traffic increases the burden on state highways and county roads. In many cases, the cost of maintaining and upgrading the state highways and county roads exceeds the cost of maintaining rail freight service. **A national study states that over one-half of the direct economic impact will be incurred by farmers<sup>1</sup>.** Lower grain prices due to higher shipping costs (as much as 10 to 12 cents) to the shipper and in many instances, increased hauling costs essentially wallop the farmer's balance sheet from two directions, lower revenue and increased production costs. The shipper, due to competition, can not pass on all increased costs, which results in lower revenue. Also, the cost of increased road and bridge maintenance (which easily reaches millions of

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<sup>1</sup> Keith A. Klindworth and John A. Batson, *Economic Impact of Proposed Kansas Rail Abandonments*. Agriculture Marketing Service, U.S. Dept of Agriculture (Washington, DC, June 1990), p. 25.

dollars) is absorbed by the farmer and the shipper through increased taxes. Movements from production origins to country elevators by farm truck, result in increases in road damage costs by 43 percent after a rail line has been abandoned. Similarly, for movements from country elevators to terminal elevators by commercial truck, road damage costs increase by 50 percent after abandonment<sup>2</sup>. It is rare that a county experiencing rail abandonment will experience increased valuation.

### **Rural Rail Forum**

The Kansas Rural Development Council (KRDC) and Council member, Kansas Electric Power Cooperative (KEPCo), delved into the rail abandonment situation after being contacted by Kansas Senator Pat Roberts' staff. A new round of rail abandonment was scheduled for South Central Kansas. Since the production of grain is prevalent in this area, rail service is critical to the sustainability of rural communities in this area. Following the pattern of rail abandonment in the past, strategic loss of track could lead to greater rail abandonment that could affect a larger portion of South Central Kansas as well as Southwest Kansas. Since 1965 Kansas has lost approximately 30 percent of its rail lines.

The first steps taken by KRDC and KEPCo were to interview impacted businesses in communities along the track about to be abandoned. After this process, it was determined that there was no clear cut recourse for communities along abandoned track and some sort of a plan of attack was needed. The next step led to interviews and discussions with the following groups of interested parties:

- Operators of Class III Railroads (short-line railroads)
- Legislators in South Central and Southwest Kansas
- Legislators on the Transportation Committees
- Grain shippers in South Central and Southwest Kansas
- Kansas Department of Transportation
- Representatives from the Port Authority operating a short-line
- Associations representing shippers and producers
  - Kansas Grain and Feed Association
  - Kansas Farm Bureau
  - Kansas Farmers Union
- The Kansas Association of Counties
- Transportation experts who have had experience with the Surface Transportation Board
- Economists with expertise in short-line railroads
- U.S. Departments of Agriculture and Transportation

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<sup>2</sup> Michael Babcock, Professor of Economics, Kansas State University, Testimony before The Special Committee on Rail Transportation, Kansas State Legislature, 1998.

Based on information compiled and discussions with the above-mentioned entities, it was determined that the first step to be taken was to have a public forum. The purpose was to get as much information out to persons living in the impacted area as quickly as possible. A copy of the agenda is attached. Participants were presented with the following information:

- Overview of the past rail abandonment
- Current rail and possible future abandonment
- Economic impact of lost rail service to rural communities
- Economic viability of operating a short-line railroad
- The purpose and development of a multi-county port authority
- Information on Kansas programs designed to assist railroads
- Information on what other States are doing for rail service
- Open discussion

The salient points that emerged from early discussions with the above-mentioned groups and the transportation experts on the dais at the forum are rather simple and straightforward. However, this does not mean they are easy to accomplish. Local initiative, regional trust and action, Statewide policy change and public/private partnerships will be necessary for Kansans to save their railroads.

1. Kansas lacks a clear policy on rail abandonment. While the Kansas Department of Transportation has a low interest loan program for Class III Railroads, it has no clear policy for helping communities facing track abandonment. In some cases, the low interest loans are made to companies that are abandoning track within the boundaries of the State. Studies show that the cost of truck traffic raises exponentially to the ton-miles carried. Kansas's taxpayers, in some cases, subsidize railroads and pay for additional costs of truck traffic for the same areas. In some areas of the State, seemingly inexplicable activities such as the removable of diamonds (track intersections) and the paving over of track thus impeding the movement of freight have occurred.
2. Not all costs associated with lost rail service to rural communities are immediately felt by the residents. If the increased maintenance costs of roads in the county are included into the profit formula for short-line rail operation, in some cases, it would be advantageous to continue the operation of the rail. In other words, local government needs to understand the high cost of road and bridge repair. Currently, trucks pay only 90 percent of road costs through taxes and fees associated with usage.
3. More study is needed to measure the potential economic losses suffered by shippers, producers and communities when rail is abandoned. Traditionally railroads have concentrated on showing financial insolvency on the rail line in question, leaving impacted communities to argue the impacts to their respective community without hard economic facts. Estimating economic impacts on communities has to be based

on loss of income, additional road damage costs and loss of property taxes<sup>3</sup>. A 1990 rail abandonment study of 480 miles of track in Kansas showed that the direct loss would be approximately \$2.3 million per year. This figure did not consider the potential multiplier effects, which could greatly increase the total costs of abandonment<sup>4</sup>. Obviously, measuring the community impacts of abandonment of rail service is more complex than measuring operating losses suffered by a railroad. Greater usage of regional input/output models along with other economic models are needed to support the community's case. The results should then be made readily available to local communities.

4. A public entity that has the authority to purchase and maintain existing rail is necessary for the continuance of a freight rail system. A port authority that has jurisdiction in all of the impacted counties is the most logical and possibly most cost efficient method of maintaining rail service to our small rural communities. The port authority could operate in a multi-county area with a board of directors having the authority to purchase rail, seek financing, upgrade track where necessary, enter into contracts and lease track to short-line railroad operators. Legislation is in place for the creation of a port authority and a large multi-county port authority is in existence. While the establishment of such an entity would be difficult to say the least, it is not impossible. "The first step of many is to build support with community leaders and county commissioners. Their support, along with shippers and producers and a lot of hard work can make it happen<sup>5</sup>."

Production of agricultural commodities in Kansas has doubled since 1980, to a record high in 1998 of 31,115,500 tons of feed, which was available for shipping. This discounts the feed that would be shipped directly from the farm to the feedlot. Within a 27 county study area (see map in attachment 2), where at-risk rail is located, 20,632,000 tons would be available for shipping. During this time period, freight carried by rail decreased. Since Class I railroads move large amounts of freight at high speeds, low volume tracks are a burden to them and therefore they are cast aside.

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<sup>3</sup> The Kansas Department of Revenue uses a five factor formula based on operated mileage, owned mileage, ton-miles, car and locomotive miles and railway operating income to appropriate a percentage of the market value of railroad to the State. The percentage of the railroad market value allocated to Kansas for tax purposes is determined by the Kansas percentage of the railroad's system total of each of these five operating statistics. These five factors are given equal weight and a simple average of all five yields the percentage of the railroad market value which is allocated in the state.

<sup>4</sup> Keith A. Klindworth, et. al., p. 23

<sup>5</sup> Cy Moyer, President, First National Bank, Phillipsburg, Presentation before the Kansas Rural Development Council Rail Forum, January 5, 2000

The railroads at risk in Kansas are owned and operated by OmniTrax Railroad located in Denver, Colorado. Their rail lines comprise 1051 miles of Kansas track (see attachment 2). OmniTrax is just one of the short-line railroads operating in Kansas. Other short-line railroads operate in the Southwest, South Central, Southeast and North Central and Northwest Kansas<sup>6</sup>.

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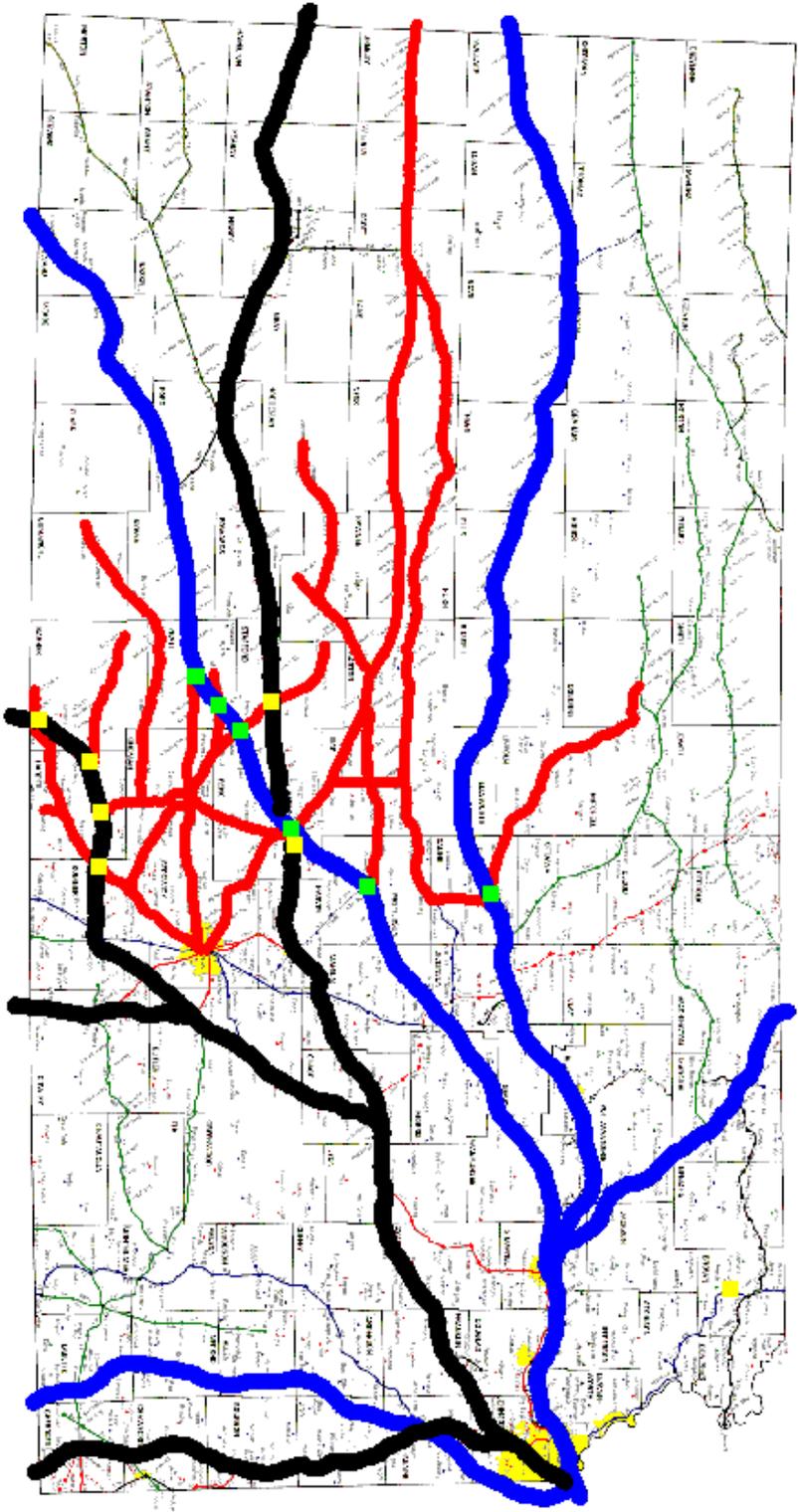
<sup>6</sup> Loren Medley, Business Development Coordinator, Kansas Electric Power Cooperative, Presentation before the Kansas Rural Development Council Rail Forum, January 5, 2000

**Attachment 1**

**Agenda  
Kansas Rail Forum  
January 5, 2000  
Holiday Inn  
Great Bend Kansas  
10:00 am --- 3:00 pm**

<b>Welcome and Introductions</b>	Honorable Laurie Bleeker Kansas Senate, 33 <sup>rd</sup> District John Barnes, Chair Kansas Rural Development Council Mel Thompson, Agriculture Director Senator Pat Roberts Office
<b>Overview of Rail Status</b>	Loren Medley Business Development Coordinator Kansas Electric Power Cooperative
<b>Impact of Lost Rail Service and The Viability of Short Line Rail Service</b>	Michael Babcock, Professor Kansas State University and Marvin Prater, Economist Agriculture Marketing Service US Dept of Agriculture
<b>Developing a Port Authority: The Kyle Experience</b>	Cy Moyer, President First National Bank, Phillipsburg
<b>Bringing It All Together</b>	J.W. Platt, President Hardtner-Kiowa Pacific Railroad

Attachment 2



Interconnections with UP Railroad = 6  
Interconnections with BNSF Railroad = 6

### **Attachment 3**

The following information was gleaned from the transportation economists speaking at the transportation forum held in Great Bend, Kansas. The purpose of this section is to give the reader background information on the costs of lost rail service and to better arm communities to combat this loss. It is the hope of the Kansas Rural Development Council that farmers, shippers, local government, and communities will use this information to save our remaining low volume rail lines in Kansas.

**Dr. Michael Babcock  
Professor of Economics  
Kansas State University**

Background on Class III (short-line) railroads.

The passage of the Staggers Act in the 1980's brought on the growth in short-line railroads. Prior to that, there were very few short-lines in existence. Following the legislation, 227 new short-line railroads were created operating on 21,000 miles of track. This trend continues today, where approximately 30 percent of all the U.S. rail industry is operated under short-line franchises. Kansas is no exception with approximately 40 to 45 percent of the State's rail service operated by short-line franchises. With this degree of short-line activity within the State, it is imperative that they stay economically healthy.

The negative impacts on rural communities from loss of rail service are:

1. The producers receive less money for their grain because the shipper has to reduce the bid price due to more expensive forms of transportation.
2. The raised transportation costs ultimately reduces the amount of product shipped.
3. Market options are reduced. If there is no rail option, then shippers are confined to the local truck market, possibly closing some market options.
4. The communities' options are limited in business recruitment. Obviously, no company that needs rail service can locate in the community. When rail service disappears, trucks move the grain, causing increased road and bridge maintenance. A combination of decreased tax base because of loss of railroad and increased road maintenance due to increased truck traffic directly impacts all quality of life services in the community.

Short-line rail service offers some advantages over large railroads (Class I) and these advantages are:

1. Short-line railroads have lower costs than Class I railroads and have greater efficiency in operating low density lines.
2. Since the number of shippers on a particular line is small, short-line operators know each individual shipper and those shippers needs. Short-line railroads are generally known for their great service.
3. If short-lines are viable, there are fewer truck shipments and less road and bridge maintenance.

Many challenges face short-line railroads and the greatest challenge is deferred maintenance of track. Most often when a short-line takes over track from a Class I or another short-line, the condition of the track is poor. The cost of restoration has to be paid at some point in order to keep the line open. Another challenge that can make or break short-line railroads is the access and the ability to negotiate with Class I rails. Since short-lines serve the feeder rail system, long haul freight ultimately is carried by Class I rail service.

The Surface Transportation Board is the Federal body that has regulatory powers over railroad matters. The Surface Transportation Board (STB) was established on January 1, 1996 as a decisionally independent, bipartisan, adjudicatory body organizationally housed within the U.S. Department of Transportation, with jurisdiction over certain surface transportation and economic regulatory matters. It was created when the Interstate Commerce Commission was terminated. The STB adjudicates disputes and regulates interstate surface transportation through various laws pertaining to the different modes of surface transportation. In this regard, the STB's general responsibilities include the oversight of firms engaged in transportation in interstate and in foreign commerce to the extent that it takes place within the United States and its territories. The STB's jurisdiction, as it pertains to railroads, includes railroad rate and service issues, rail restructuring transactions (mergers, line sales, line construction and line abandonments) and labor matters.

Rail issues on the STB venue are adjudicated in the same manner as issues before the Federal Communication Commission, the Federal Energy Regulatory Commission and the Kansas Corporation Commission. One has to remember that it is easier for a railroad to prove its case than it is for a community to prove its case. It is much easier to measure costs of operation and revenue or lack thereof, than it is to measure and understand economic impact to a community or area due to loss of rail service. Lost economic opportunity costs are hard to measure. In the same vein, it is difficult for the railroad to prove its case when it is recovering its operating costs and part of its opportunity cost. This means that it is up to the community as well as the railroad to prove its respective case. However, it is still easier for the railroad to prove this than the community. Having said that, it is not impossible for the community to win and there are alternatives that the

STB can consider. In all cases, the railroad when filing for abandonment, has to compute how much of a subsidy it needs in order to continue operations. The community needs to study these numbers very carefully because these numbers can very easily be inflated. There is also a tendency for railroads to reduce service on lines prior to abandonment and then use these reduced income figures to justify abandonment.

The STB provides an alternative to rail abandonment, the Feeder Railroad Development Program. Through this program, the STB may force the sale of a line if the:

- Rail carrier refused to make efforts to provide adequate service on the line.
- Transportation over the line is inadequate for the majority of shippers.
- Sale of the line would not adversely affect the overall performance of the rail carrier.
- The sale of the line would be likely to result in improved rail transportation for shippers using the line.

If a public entity wants to purchase a rail line it has to demonstrate its ability to compensate the current owner and also demonstrate its ability to pay operating expenses. If an entity decides to purchase a rail, it has the following considerations to make:

- Cash flow is a very important consideration. Oftentimes, it is difficult to arrive at a positive cash flow, so it is necessary to include the positive effect of avoidance of abandonment.
- Most likely the cost of track rehabilitation will be the major drag on the cash flow.
- Since the cash flow will be so tight, the interest rate on borrowed capital will be critical.

Assistance is available through a variety of sources:

- The current transportation act, TEA 21, has \$1 billion dollars set aside for railroads that are not Class I. This money administrated by the Federal Rail Administration, U.S. Department of Transportation, is in the form of direct loans and loan guarantees for terms up to 25 years. The money administrated through the Railroad Rehabilitation and Improvement Financing Program can be used to:
  - Acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings and shops.
  - To refinance existing debt incurred for the previous purposes.
  - To develop and establish new intermodal or railroad facilities.
- Eligible applicants include:
  - State and local governments
  - Government sponsored authorities and corporations
  - Railroads and joint ventures that include at least one railroad
- The State of Kansas has a loan program using Federal pass-through monies. It is designed as very low interest loan to short-line rail operators. To date, Kansas,

through the Kansas Department of Transportation, has loaned over \$3 million. Other states have been much more ambitious in keeping rail service. Oklahoma, for instance, purchases rail lines that are in danger of abandonment. South Dakota has also purchased rail to keep it from being abandoned. Both Oklahoma and South Dakota contract with short-line carriers to operate the lines. Oklahoma helps hold down maintenance costs by using prison honor camp inmates to work on track maintenance. The State also provides tie and track for their lines. The state of Washington provides state-owned hopper cars for the hauling of grain.

There are five major threats to the viability of the short-line railroad.

1. Class I railroad restriction on co-loading by short-line railroads. Short-line railroads are unable to receive the same price structure for assembling rail cars for delivery to Class I switching destinations as do co-loading operations on existing Class I tracks.
2. Class I railroads are moving toward 286,000 pound rail cars. They currently are using 268,000 pound cars. These cars haul eleven tons more than the smaller cars.
3. Short-line railroads are operating on light track, which is usually 75 or 90 pound rail with fewer ties per mile than Class I lines. Much deferred maintenance is prevalent on these lines making it almost impossible to use the new larger cars.
4. The cost differential between unit trains and 25 car units can be as much as 12 to 15 cents per bushel. Elevators on Class I track are able to pass on part of this cost saving onto their customers. Elevators on short-line tracks do not get this break.
5. The inability or failure of Class I railroads to interchange properly. Sometimes, rail cars from short-lines will sit for an inordinate amount of time before being picked up by the connecting Class I railroad.

**Dr. Marvin Prater, Economist**  
**Marketing and Transportation Analysis Division**  
**Agricultural Marketing Service, U. S. Department of Agriculture**

Perspectives of a staff transportation economist

Short-line railroads have purchased many lines that otherwise would have been abandoned. The short-line operators can do this because their cost structure is lower. The following factors reduce the cost structure:

- Lower labor and benefit costs
- Work rules are less restrictive
- Lower equipment costs due to use of smaller and/or used equipment
- Lower fixed costs (investment in track)

Often, increased rail traffic can be generated through aggressive marketing:

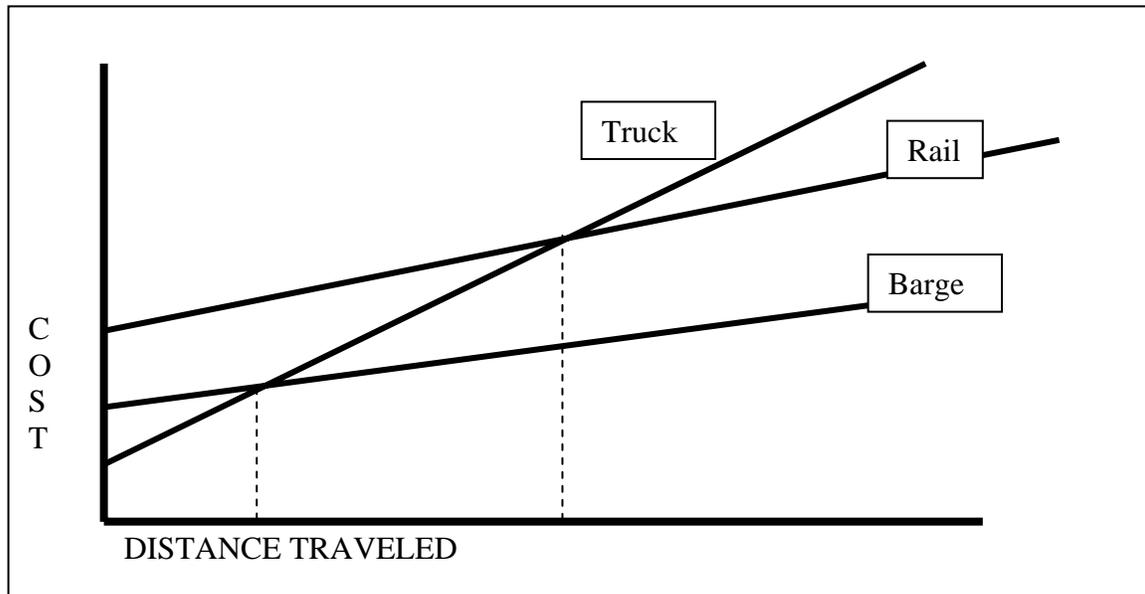
- Closer contact with customers has resulted in tailored service (try to fit the customer rather than making the customer fit the railroad)
- Loss of a customer affects the firm much more when there are fewer customers
- Active sales contacts often regained business that had long since moved to truck

Recently, short-line railroads have been abandoning more track segments because they are unable to continue operating low-density lines. The major reasons for this are the poor shape of lines because of the deferred maintenance of Class I rails before they were purchased and the profits on low-density lines are not enough to maintain these lines. Another newer development affecting short-lines is the incentives given to unit-train loading elevators on Class I track. Elevators on Class I lines receive these incentives, which can be as much as 10 to 15 cents per bushel and elevators on short-lines are not offered these cost breaks.

Rail service is extremely important to farmers due to the fact that agricultural producers cannot pass on increased transportation costs. This causes the agricultural producer to operate in a competitive market as a price taker and all cost increases decrease producer net income. Rail and water are the only cost efficient transportation modes for hauling bulk products long distances. Rail service becomes more important as the distance to water transportation increases. Raw agricultural products are bulk commodities having a low value in relation to the costs of transportation. Since agricultural producers rely on export markets to support domestic prices, transportation costs affect the ability of U.S. producers to compete in world markets.

The following graph demonstrates the relative cost of competing transportation modes. The left axis reflects the fixed costs for each mode of transportation and the slope of each

line reflects the variable costs for each mode of transportation. When observing the graph, one will see the cost structure of the various transportation modes determines the lengths of haul for which the modes are cost effective. Transportation by truck is more competitive on shorter hauls, transportation by barge or rail is more competitive for longer hauls and transportation by truck/barge combination is more competitive to rail when the truck portion of the haul is a shorter distance.



In 1998, if all of the Kansas grain produced had been shipped, it would have filled **1,392,000** semi-trucks or **379,000** rail cars. Obviously, not all grain is actually shipped. Some of the grain is stored, some is used locally for animal feed, etc. and some grain is shipped more than once. In 1998 Kansas produced:

- Wheat 494.4 million bushels
- Corn 418.9 million bushels
- Sorghum 264.0 million bushels
- Soybeans 75.0 million bushels

A recent study on the transportation of U.S. grains shows that truck transportation now has a greater market share of the grain transportation market than does rail. The following table shows the comparison of rail shipments of grain from Kansas elevators between the years 1992 and 1997. It should be noted that the rail shipments during 1997 were less than normal due to the Western rail crises.

<b>Percent shipped by rail:</b>	<b>1992</b>	<b>1997</b>
• Overall	57	42
• Wheat	68	53
• Corn	33	13
• Sorghum	48	43
• Soybeans	49	23

As noted above, increased transportation costs result in decreased income to producers. However, it should also be noted that increased costs also effect the value of agricultural land. Using the formula that the value of a perpetual annuity =  $P/i$ , and after abandonment the value =  $(P-IC)/i$ , then for each \$1.00 increase in transportation cost at 8 percent interest one can expect a \$12.50 decrease in the property value. This will also translate into reduced borrowing capacity. Increased transportation costs are calculated by adding the costs of additional truck transportation, additional loading and elevator costs and new rail rates (if any). From this amount, subtract pre-abandonment rail rates.

Reduced business volume and personal income can also be attributed to loss of rail service. By using an input/output model with Kansas values, one can determine the appropriate multiplier effect of lost income to the community. One can also conclude that reduced income will lead to reduced employment. This will ultimately lead to reduced local property values and a decreasing tax base.

#### Road Maintenance

Most rural highways were not designed for heavy semi-truck traffic. The average pavement damage method of deriving costs does the best job of estimating the increase in costs due to additional truck traffic. Additional highway maintenance costs are affected by the:

- Amount of additional truck traffic
- Loaded axle weights of each truck
- Type and thickness of highway construction
- Sub-base conditions
- Condition of the highway
- Climate

User fees paid by single-unit and semi-trucks cover approximately 90 percent of the damage costs that those trucks impose upon the Federal highway system. Using marginal pavement cost indices for an 80,000 pound semi-truck which has a value of 1 for a rural interstate, we find that the value for a rural arterial highway is 4, a major rural collector highway is 13.5 and a minor rural collector highway is 21.0. This means that the damage created by a semi-truck on a rural arterial highway is 4 times greater than on a rural interstate, 13.5 times greater on a major rural collector highway and 21.5 greater on a minor rural collector highway. This demonstrates that the roads that have the smallest maintenance budget receive the greatest amount of damage.

**Attachment 4**

RESOLUTION

A RESOLUTION TO CREATE A PORT AUTHORITY AND SOLICITING AND ENCOURAGING THE APPROVAL THEREOF BY THE KANSAS LEGISLATURE.

WHEREAS, The Commission of \_\_\_\_\_ County, Kansas, has for some time been aware of certain indications that \_\_\_\_\_ may or will abandon certain of its railroad trackage which passes through \_\_\_\_\_ County, Kansas; and

WHEREAS, Numerous businesses in \_\_\_\_\_ County, Kansas, depend on the continuous operation of said railroad trackage for both the in-bound and out-bound shipment of goods and materials processed and/or manufactured by said businesses; and

WHEREAS, The State of Kansas encourages economic development and cooperation to maintain and foster the economic stability and continued growth needed for a prosperous economy and, among other actions, permits the creation of port authorities under K.S.A. 12-3401, et seq., for purposes among others of acquiring, operating and maintaining land, transportation facilities, railroad facilities, industrial-use facilities, water and sewer utility districts and other facilities related thereto; and

WHEREAS, The Commission of \_\_\_\_\_ County, Kansas, believes that it is in the best interests of the citizens and residents of \_\_\_\_\_ County, Kansas and in the interest of preserving, enhancing and improving the economic prosperity of \_\_\_\_\_ County, Kansas, that it take the initiative to create a port authority such other governmental units in the counties of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, including said counties, as elect by appropriate resolution and/or ordinance to join the said port authority by cooperative agreement; and

WHEREAS, The Commission of \_\_\_\_\_ County, Kansas, further believes that it is in the best interests of pursuing the creation of such port authority that the Kansas legislature be solicited and encouraged to adopt the necessary concurrent resolution authorizing the creation of such proposed port authority under the provisions of K.S.A. 12-3402 and in advance of the creation of such port authority, so as to permit representatives of \_\_\_\_\_ County, Kansas, to undertake necessary activities exploring the retention of the aforementioned railroad trackage and its continuous operation for both existing and future commercial, industrial and manufacturing enterprises in \_\_\_\_\_ County, Kansas, and in the counties of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, which said activities may necessitate the creation of a cooperative agreement between the port authority to acquire and operate said railroad trackage and related facilities; Now, therefore,

Be it resolved by the Commission of \_\_\_\_\_ County, Kansas: That the legislature of the State of Kansas be solicited and encouraged, in accordance with the provisions of K.S.A. 12-3402, to approve the creation of such port authority as the Commission of \_\_\_\_\_ County, Kansas, and such other governmental units in the counties of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, including said counties, may appropriate resolutions and/or ordinances determine to join by cooperative agreement, with the name of said port authority to be set forth in such cooperative agreement; and

APPROVED, PASSED AND ADOPTED, the \_\_\_\_ day of \_\_\_\_\_, 2000.

BOARD OF COMMISSIONERS  
\_\_\_\_\_ COUNTY, KANSAS

By \_\_\_\_\_  
Chairman, Board of Commissioners

ATTEST:

By \_\_\_\_\_  
County Clerk

## Attachment 5

# Rail Line Abandonment<sup>7</sup>

### History of Rail Line Abandonment Regulation

Rail line abandonment is not a new issue to the railroads or the shippers and communities they serve. Despite increased significance in recent years, it is an issue that predates Federal regulation of railroads. As the railroad industry and the Nation's transportation system have evolved, the regulatory environment in which abandonments occur has adjusted to reflect these changes.

A unique relationship has always existed between agriculture and railroads. Initially, the railroads offered an exclusive opportunity to transport agricultural products from isolated and distant areas of production to more centrally populated areas of consumption. During the years immediately following the Civil War, this exclusive control over commodity movements led to substantial rate abuse by the railroads. To support below-cost pricing on competing lines during rate wars, railroads subsidized losses with revenues from excessive rates on isolated lines. Located on these lines, it was often the agricultural shipper and ultimately the farmer who ended up on the short end of this discriminatory monopoly practice.

This period of destabilizing competition and abuse led to increased interest by many groups in seeking more effective control over rail transportation. Owing much of their success to this cause, the Patrons of Husbandry, or Grangers as they were better known, provided a strong and unified voice in support of more equitable rates for agricultural shippers. The railroads of the day also became increasingly aware of the benefits that could be gained through a more consistent and stable business environment than that being offered by the State authorities who were attempting to regulate rail transportation. To address these concerns and needs, Congress enacted the Interstate Commerce Act of 1887. This Act provided for the Federal regulation of the railroad industry for the first time.

The Interstate Commerce Act of 1887, in addition to establishing the Interstate Commerce Commission to rule on the law, also attempted to lay out the principles of common law, as had been interpreted by the courts to apply to rail transportation. Much of what was considered to be common law and foundations is the principle of common carriage. Broadly applied this principle states that railroads, as common carriers, are required to provide reasonable service equally to all and do so at reasonable rates. Although the 1887 Act relied heavily on this long accepted standard to regulate monopoly practices and rate making policies, it was not until the Transportation Act of

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<sup>7</sup> John A. Batson, Martha A. Bearer and Jerry D. Norton, *Maintaining Local Rail Freight Service*. Agricultural Marketing Service, U.S. Dept. of Agriculture (Washington, DC, January 1997), p.p. 3-7.

1920 that the principle of common carriage was applied to rail line abandonments at the Federal level.

Prior to the Transportation Act of 1920, rail line abandonments had been regulated by State authorities and in even earlier days by the courts. Basing their decisions on interpretations of common law and the principle of common carriage, the courts consistently found that, once a railroad had begun service on a line, it could not discontinue service unless the entire system was endangered by losses on the losing line. As the regulation of railroads gradually passed from the courts to State authorities, this principle of service obligation weakened. State regulatory commissioners were responsible for representing a broader range of interest, but too often they also weighed the interests of local parties too heavily in their decisions to prevent abandonments. In 1916, a sudden increase in abandonments, brought on by shifts in the economy, resulted in increased pressure to change the regulatory framework which controlled abandonments. What resulted was ultimately the Transportation Act of 1920, which made abandonments a Federal responsibility under the control of the ICC.

To a limited extent the Transportation Act of 1920 could be thought of as liberalizing the abandonment process. This legislation granted the ICC the power to permit abandonments over the opposition of State charters which had previously denied them. In most cases, however, the ICC continued to support the established common carrier obligations on the grounds that public convenience and necessity required the continuation of service. Although the 1920 Act put the regulation of rail line abandonment under Federal control, it was not until the Transportation Act of 1958 that the regulation of passenger train service was placed under the ICC. As had often been the case with line abandonments, State regulatory authorities had required operating carriers to continue passenger service despite the obvious unprofitability of many lines. The Transportation Act of 1958 continued the trend away from the rigid service obligations established by earlier court decisions. It established provisions by which railroads could eliminate interstate passenger trains if it could be established that either the service was no longer required for the public convenience and necessity, or the cost of continued passenger service on the line would hinder interstate commerce. Intrastate passenger trains could be eliminated if both of these conditions were satisfied. Under the ICC's direction, the 1958 Act provided for a more liberal policy toward the discontinuance of passenger service. Despite the improved regulatory environment offered the railroads through the Transportation Act of 1958, the railroads continued to struggle because of stiff intermodal competition and the maintenance of unprofitable passenger lines. Their final relief from passenger service obligations came with the passage of the National Rail Passenger Act of 1971 and the subsequent formation of Amtrak.

By the early 1970's even the elimination of passenger service obligations offered no reprieve for many of the Nation's railroads, especially those carriers servicing the Northeast. To deal with the immediate danger of railroad failure and service discontinuation in the Northeast and Midwest, the Regional Rail Reorganization Act of 1973 or 3R Act was passed. Although the specific goal of the Act was to modernize and reorganize, the ailing legislation represented a substantial divergence from previously

existing regulatory policies. The 3R Act recognized not only the need for government takeover and subsidization of some rail freight services, ultimately resulting in the formation of Conrail, but also the need for railroads to eliminate unprofitable lines through more expeditious abandonment. In a broader sense, the 3R Act continued the break from established common carriage obligations already begun with the National Transportation Act of 1958 and the National Rail Passenger Act 1971. Underlying the 1973 Act was a new philosophy toward service on branch lines. This new philosophy stated that the railroads of the Northeast and Midwest regions could no longer be required to support uneconomical rail service. The 3R Act also addressed the problems faced by shippers and communities on lines where rail service would no longer be supported by failing railroads. To assist shippers and communities, the 3R Act provided for operation and rehabilitation grants through the Local Rail Service Assistance Program.

The 3R Act did improve the business conditions for some railroads, but for the most part the Nation's railroads continued to decline as the problems first evident in the Northeast spread to the West. In recognition of this, and as a solution to the otherwise unavoidable collapse of the Nation's rail system, the Railroad Revitalization and Regulatory Reform Act of 1976 was established.

More commonly referred to as the 4R Act, the Railroad Revitalization and Regulatory Reform Act served to expand the Federal assistance available for rail service beyond the original 17 Northeast and Midwest States and the District of Columbia to include all the States except Hawaii. More importantly, the 4R Act provided for a dramatic reform of railroad regulation that included greater freedom to set rates and established less restrictive guidelines for mergers and abandonments. In its philosophy towards abandonments, the 4R Act went even further than the 3R Act in establishing that railroads could no longer be required to provide service on lines which were unprofitable. The definition of unprofitable was also expanded by this Act to include a return on investment as a cost of operating any line. In instances where shippers required service, the 4R Act, unlike the 3R Act, further recognized that shippers should support the cost of unprofitable rail service.

The 4R Act went beyond subtle changes in philosophy and effectively streamlined the abandonment process to eliminate many procedural roadblocks that had previously made abandonments too costly and time consuming for railroads to pursue. The Act was the first to set specific time limits on many of the deliberative actions required during the abandonment process. It also required railroads, for the first time, to submit complete system diagram maps to the ICC, establishing for public record those lines which were targeted for future abandonment. The most dramatic change provided by the 4R Act was the exemption authority given the ICC to automatically approve abandonment applications for lines on which no traffic had moved for at least 2 years, provided no shipper complaints had been filed during that period.

Once again, despite eased restrictions, the railroad industry still continued in decline. With carriers losing money and some facing bankruptcy the need for further regulatory reform and greater reliance on market forces was evident. The Staggers Rail Act of 1980

grew out of these conditions, and it established the regulatory environment under which the industry operated during the 1980's and the first half of the 1990's. The Staggers Rail Act of 1980 was the most sweeping legislation to affect the railroad industry since the Interstate Commerce Act of 1887. In many ways the Staggers Rail Act was much more dramatic in its purpose than was the original Interstate Commerce Act. While the purpose of the 1887 Act was to reaffirm existing principles and policies toward rail transportation, the 1980 Act served to reverse almost all standing regulatory policies, many of which had been based on the principles of common carriage and as such, predated the railroads themselves.

The principle that underlies the Staggers Rail Act is that less regulation and more dependence on real economic forces will provide a more efficient rail system. Toward implementing this principle the Staggers Act, like the 4R Act, continued to streamline the abandonment procedures. It defined costs to include opportunity costs on the investment capital of the railroad, making abandonments even more easily justifiable. It granted the ICC the authority to establish terms of sale on lines where operating carriers were petitioning for abandonment. The Staggers Rail Act also increased the discretionary powers of the ICC in deciding abandonment cases by allowing the Commission to bypass formal investigations. Unlike the 4R Act, which only limited some steps in the process, the 1980 Act, for the first time, established a time limit for the entire abandonment procedure. These seemingly simple changes greatly reduced the cost and the time required of railroads to eliminate unprofitable lines through abandonment.

Although the ICC Termination Act of 1995 eliminated the ICC, those Federal authorities over abandonments and discontinuations of service that existed under Staggers are retained with the STB. The 1995 Act requires that the STB apply the same standards when considering petitions for abandonment as those applied by the ICC. Continuing the trend toward rail deregulation, the 1995 Act should also strengthen local rail service by allowing smaller rail carriers greater freedom to acquire lines abandoned or spun-off by the major railroads.

## **Overview of Rail Line Abandonment Procedures**

National policy governing the authorization of rail line abandonment and discontinuance of rail service is found in Section 10903 of 49 United States Code (U.S.C.), the Revised Interstate Commerce Act. A rail carrier may abandon or discontinue service over all or part of any of its lines if the STB finds that the abandonment or discontinuance is consistent with the present or future public convenience or necessity. Whether an abandonment or discontinuance will result in a serious adverse impact on rural and community development will be considered by the STB. This means that the STB must balance the interests of and benefits to local communities against the burden of larger public interests in releasing railroads from financial or other harm they might incur by continued operations.

### ***System Diagram Map***

Railroads must maintain a complete diagram, or map, of their systems and file it with the STB annually. The map identifies and describes the lines of each railroad that are potentially subject to abandonment. This enables shippers and communities to keep abreast of a railroad's abandonment plans. Lines on rail system diagram maps are color coded and categorized as follows:

- Category 1     All lines or parts of lines that may be the subject of an abandonment application within 3 years.
- Category 2     All lines under study for possible abandonment.
- Category 3     All lines for which a decision on an abandonment application is pending before the STB.
- Category 4     All lines being operated by law under rail service continuation provisions.
- Category 5     All other lines owned by the railroad.

### ***Notice of Intent to Abandon or Discontinue Service***

Prior to abandoning or discontinuing service on a line, railroads must file a notice of intent with the STB. Among those who must also be served notice are significant users of the line and the State government agencies responsible for rail planning. The notice must be published in local newspapers at least weekly for 3 weeks. The applicant railroad must also post notice of the proposed abandonment at each station and terminal on the line. If an abandonment is opposed by the State or a significant user, the STB will not grant abandonment authority unless the public has been notified at least 4 months prior to the filing of the application. This allows citizens and public officials time to develop measures for continued rail service.

### ***Abandonment Application Contents***

Applications to abandon or discontinue service over a line must contain detailed information relative to costs, revenues, and service. A detailed map of the line, drawn to scale, must be included. Rural and community impact information is also required, including the identification and population count of communities in which stations on the line are located.

### ***Protests and Comments***

Interested persons or groups may submit comments or protests supporting or opposing an abandonment or discontinuance application and thus become parties to the proceeding. Protests are due 30 days after the application is filed. Based on protests received, the STB will make a determination as to whether an investigation is warranted within 45 days after an application is filed.

### ***Verified Statements***

If the STB determines that an investigation is warranted, it may be accomplished by an oral hearing or modified procedure. A modified procedure investigation consists of written, verified statements only. Applicants' initial verified statements are due at the STB no later than 15 days after the date announcing the investigation. Applicants' verified statements should be designed to convince the STB that the abandonment is necessary. Verified statements from parties protesting the abandonment are due at the STB no later than 40 days after an investigation is announced. In their statement, protesters should describe their interest in the proceeding in as much detail as possible and their qualifications for making the statement. For instance, if the line sought to be abandoned is used for grain shipments and the protester is a grain producer, the statement should contain, at the very least, the number of years in farming, the farm's size, the number of bushels produced and shipped by rail, the number of people employed directly on the farm, the availability of truck transportation, the cost of rail shipments compared to the cost of truck shipments, and any other factors believed to be pertinent. In addition, protesters may present any evidence they may have acquired that contradicts the revenue and evidence the applicant has submitted. Protesters should always use specific numbers, facts, and figures, when possible, and document sources of information and the methodology for compiling such information.

### ***Applicants' Reply or Rebuttal***

Verified reply statements by applicants are due 55 days after an STB decision to investigate.

### ***Close of Evidence Deadline***

The deadline for submitting evidence supporting or protesting an abandonment or discontinuance of service is 135 days after the application is filed with the STB.

### ***Initial Decision***

STB must serve an initial decision within 165 days after an abandonment application is filed.

### ***Appeals***

Discretionary appeals to the initial decision must be filed within 20 days after the decision. Parties must exhaust appellate efforts with the STB before appealing the decision in a U. S. Court of Appeals.

***Surface Transportation Board Decision on Appeals***

The STB must decide whether to hear the appeal within 30 days after the initial decision. New evidence or changed circumstances are among the criteria that must exist for the STB to hear an appeal.

***Replies to Appeal***

Parties have 15 days from the date of the decision to hear an appeal and to file replies.

***Final Decision***

A final decision must be issued by the STB within 255 days of the filing of an abandonment application. The effective date of the decision will be 30 days after it is published in the Federal Register.

## Attachment 6

### Maintaining Local Rail Service<sup>8</sup>

#### Preventing Abandonments

Generally, railroads may abandon a line when it no longer turns a profit. A current trend by the carriers, however, has been the abandonment of sections of track that are marginally profitable. Attempts by railroads to abandon service on marginal line segments have been met with stiff opposition. Once an abandonment application has been filed, only exceptional circumstances can prevent approval of the abandonment by the STB. Shippers and communities would be well-advised to constantly explore ways to ensure the railroad of economically attractive business by:

- coordinating the efforts of local rail users to build and maintain rail traffic volume on the line;
- developing agreements or contracts to guarantee a quantity of carloads to be shipped and the cars to be supplied over a period of time as a way of ensuring uninterrupted service;
- encouraging nonusers in the area to utilize rail service;
- supporting surcharges or increased freight rates under certain circumstances to offset the deficit created by inadequate revenues from the existing level of traffic;
- expressing a willingness to invest money in facilities for rail purposes, such as upgraded loading equipment, as a way of showing a genuine long-term commitment to rail service; and
- exploring public sector sources of help by contacting legislators and other public officials for information and assistance early in the abandonment process.

#### Alternatives/Options to Abandonment

There are several alternatives or options that may be considered to circumvent an abandonment once shippers or other interested parties become aware that their rail line may be the target of an abandonment attempt. Just because the owning railroad deems a section of track unprofitable or unworthy for its purposes does not mean a local community, individual, or shipper group cannot turn such a situation into a successful short line operation that meets its needs. There are many, many cases on record throughout the railroad industry of successful takeovers of sections of Class I railroad trackage by enterprising operators.

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<sup>8</sup> John A. Batson, et. al., p.p. 9-15

### ***The Feeder Railroad Development Program***

This program, administered by the STB, may require railroads to sell specific lines under certain conditions. Created to enable shippers and communities to acquire rail lines before they are downgraded or abandoned, the program allows financially responsible persons to apply to purchase lines at no less than their minimum value. Acquiring a line prior to abandonment saves both shipper and selling railroad the time and expense of having to become involved in or go through the abandonment process.

The STB may determine that public convenience and necessity require or permit the forced sale of a rail line if:

- the rail carrier operating the line in question refused within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over such line;
- the transportation over the line is inadequate for the majority of shippers who transport traffic over such line;
- the sale of the line would not have an adverse effect on the overall operational performance of the rail carrier operating such line; and
- the sale of a line would be likely to result in improved railroad transportation for shippers that transport traffic over such line.

If the owning railroad is compelled to sell a line, the ensuing working relationship between it and the new owners could be adversarial. This is the principal disadvantage of the Feeder Railroad Development Program. A small operator taking over a rail line from a major carrier needs to establish and maintain a good working relationship from the start.

### ***Offers of Financial Assistance***

Interested parties, carrier or non-carrier, seeking to provide continued service over a line (even if abandonment has been approved) may petition the STB to purchase or financially subsidize the line within 10 days after the STB grants the abandonment and publishes its decision. The offer of assistance must be served on the carrier owning the line, all parties to the abandonment proceeding, and concurrently the STB. The offer must:

- identify the line or portion of the line in question;
- demonstrate that the offeror is financially responsible, that it has or will be able to come up with the finances required to satisfy the contractual obligations within a reasonable amount of time; and
- explain the disparity between the offeror's purchase price or subsidy and that of the carrier if it is less than the carrier's estimate, and explain how the offer or subsidy is calculated.

*To inquire about purchasing or financially subsidizing a rail line contact:*

Surface Transportation Board  
Office of Public Assistance  
12th & Constitution Avenue, NW  
Washington, DC 20423  
(202) 927-6184

***Lease Directly From Owning Carrier***

Some Class I railroads prefer to lease their marginal branch lines to small or short-line operators rather than selling them, as an alternative to abandonment. This arrangement allows the owning railroad to retain a controlling interest in the line. Leasing assures shippers that a "name operator," with all its resources, will back the transaction and eliminate, to a great degree, worry about nonperformance. Leasing of lines, therefore, provides a safety net that is not available with sales. With sales, it may be difficult to dislodge an unsatisfactory operator. In addition, with a leasing arrangement, the operator does not need to have strong financial resources, which is often a problem with small railroad operations.

*To inquire about leasing a rail line contact:*

Surface Transportation Board  
Office of Public Assistance  
12th & Constitution Avenue, NW  
Washington, DC 20423  
(202) 927-6184

***Streamlined Procedures for Acquiring Small Railroads***

New provisions in the ICC Termination Act of 1995 authorize the STB to approve acquisition, construction, and operation of rail lines by small railroads and non-carriers. The new provisions are designed to reduce regulatory delay, costs, and litigation created by the ambiguity between carrier and non-carrier transactions, which can be crucial to the startup of new small railroads. Procedures that promote easier and quicker rail line transactions should benefit rural regions and communities as Class I carriers are expected to shed thousands more miles of branch lines within the next few years.

**Guidelines for Evaluating the Feasibility and Success of Small Railroad Operations**

Many small railroads have failed because of poor initial and long-range planning. Key elements that should be considered when evaluating the purchase and operation of a local or regional railroad follow.

- I. Startup.**
  - A. Consider cost of acquisition, subsidy, or lease.**
  - B. Examine source of funding.**
    - 1. Private: loans or equity?
    - 2. Federal and State government: loans or grants--may be limited to purchase or rehabilitation of right of way.
    - 3. Private venture capital: there are thousands of venture capital investment firms in the United States, some of which have been active in financing small railroad operations.
  - C. Determine initial operating capital requirements.**
    - 1. Should you buy or lease equipment?
    - 2. Personnel.
      - a. Jobs may be offered to employees of former owners of the line.
      - b. Labor is the largest expense for both large and small railroads.
      - c. Union or nonunion wage scales can be used (base on local wage scale).
    - 3. Short-term start-up expense.
      - a. Try to keep 2 to 3 months of initial operating funds on hand.
      - b. Try to obtain traffic guarantees from shippers for revenue commitments.
  - D. Examine cash flow considerations.**
    - 1. Monitor receipts and disbursements.
    - 2. Plan cash flow so that it never runs out.
  - E. Assess financial viability.**
    - 1. Traffic description.
    - 2. Income statement. (The true measure of what you have coming in.)
    - 3. Balance sheet. (Indicates equities, liabilities, etc.)
  - F. Seek assistance from State and Federal regulatory authorities.**
    - 1. Find out who they are; get to know them. Develop a good relationship, especially with State officials.
    - 2. Their roles should be to speak out for the public interest in rail service matters.
    - 3. The STB is receptive to the concerns of small railroads and rural shippers.
  - G. Develop service and operating contracts.**
    - 1. Equipment maintenance considerations.
      - a. Leased locomotives should carry an agreement that lessor performs maintenance in a way that avoids extended down time. Locomotives have to be performing in order to generate revenues.
      - b. Class I repair facility should be accessible when you need it as agreed. Some Class I railroads have shut down repair shops.

- c. If locomotives are leased, try to obtain the best ones possible so that constant repairs are not necessary.
- 2. Check to see if agreements with connecting carriers are in place.
  - a. Trackage rights, divisions, interchanges.
  - b. Service coordination.
    - (1) Think about how you can enhance the relationship with your Class I connection(s).
    - (2) Think about how you can integrate your short line system with Class I connection(s) to form a cooperative relationship.
    - (3) Small railroads are better than Class I's with certain niches; i.e., traffic that has to be nurtured. Show your Class I connection how it can share in successes in this area.
- 3. Shipper rate and service contracts can be used as a means of ensuring traffic and commitment.

#### **H. Accounting.**

- 1. Account settling.
  - a. Late waybills could be a problem. Try to be diplomatic initially; eventually threaten to cut off service.
  - b. Accounts should be put in order each day.
  - c. Consider hiring a part-time accountant to come in each day. Warning: Railroad accounting is extremely complex. Qualified persons are hard to find.

## **II. Operations.**

### **A. Locomotive requirements.**

- 1. Railroad profile.
  - a. Prepare and use to determine the number of locomotives needed.
  - b. Rebuilt locomotives will cost about \$250,000 each.
  - c. Engine overhaul will cost about \$100,000.
  - d. Used locomotive visual inspection.
    - (1) Check condition of wheels; they should be good for 3-4 years.
    - (2) Know condition of the electrical group: brush motors, generator, contacts, fans, etc.
    - (3) Check condition of cab. Does the floor have to be replaced? Do doors fit tightly? Are the seals good? Inspect gauges, meters, and fire extinguisher in cab. When was the last inspection?

### **B. Car requirements.**

- 1. Will there be enough cars for shippers originating traffic on your line?
  - a. Class I connection(s) may furnish cars.
  - b. Shippers may purchase their own equipment to ensure supply.

### **C. Evaluating a line segment.**

1. Look at carriers' track chart.
2. Inspect and check locations of crossings.
3. Check road crossings inspection reports.
4. Inspect bridges.
5. Major track rehabilitation can be a primary consideration.
  - a. Rehabilitation should be done up front, if necessary.
  - b. Administration costs are about the same for major or lesser rehabilitation.

### **D. Track maintenance.**

1. Most local railroads move over light rail designed for 70 to 80 tons.
  - a. As tonnage increases, the degree of maintenance goes up significantly.
  - b. For mixed traffic the need for maintenance is fairly predictable; unit trains may require more unscheduled maintenance.
  - c. Empty cars cause more track maintenance.
2. Second-hand cross ties are not recommended.
  - a. The longer the cross tie, the better the stability.
  - b. All ties should be treated.
3. Rail is the most expensive to maintain with ties being the next most expensive.
4. Deferral of maintenance may result in an increase in the number and severity of accidents and cause more loss and damage claims and higher costs for insurance coverage.

## **III. Management.**

### **A. Good railroad managers are a necessity.**

1. Railroad managers should be familiar with all phases of the business.
2. Poor management is a major reason for small railroad failures.

### **B. Employee relations.**

1. Respect must be shown to all employees.
2. Good communications are important.
3. Get to know individuals.
4. Employees should watch out for each other to avoid accidents.

### **C. Operating policy.**

1. Establish and maintain a "book of rules."
  - a. To avoid lawsuits, maintain a book of railroad operating rules which are adhered to.
  - b. Have general orders which are adhered to the same as the "book of rules."
  - c. Employees must be convinced that their security depends on the service the company provides.

**D. Traffic and marketing.**

1. Current shippers should:
  - a. Examine seasonality of traffic on the line.
  - b. Interview shippers to determine their service needs.
  - c. Try to obtain traffic and volume guarantees.
  - d. Do more than just know who your shippers are.
    - (1) Develop an interest in shippers' business and be able to converse freely with shipper about the business.
    - (2) Shippers like the idea of on-site management that small railroads provide.
    - (3) Discuss long-term plans with shippers.

**E. Pricing requirements.**

1. Monitor the competitiveness of rates.
2. Develop pricing arrangements with connections.

**F. Revenue requirements.**

1. Determine if current traffic is compensatory.
2. Determine if rates should be increased.
3. Consider using surcharges if rates are inadequate.

**G. Interline relationships.**

1. The local carrier needs to know who to contact on Class I connections for service, such as track maintenance.
2. Administration responsibilities of Class I's and short lines have to be defined.
3. The objective should be increased traffic for all.
  - a. Be aware that Class I's now realize that local railroads can generate small segments of business better than they can and feed this business to the larger carriers.
  - b. There has to be cooperation between Class I's and local and regional railroads. Most short-lines connect with Class I railroads.
  - c. It is desirable to have two Class I connecting carriers.

**H. Divisions of revenue.**

1. Revenues may be split by agreed upon divisions: per-car basis or junction settlement.
2. Local and regional carriers should analyze the business and revenue possibilities on a particular line segment, then try to obtain a junction settlement as opposed to a division of revenue.
3. Class I connections normally require a large share of the revenues since they perform the longest haul for the traffic.

### **I. Car supply, hire, and interchange agreements.**

In order to handle traffic with connecting railroads, the small carrier must subscribe to standardized agreements covering interchange rules and the rates to be paid for using another carrier's rail cars.

### **J. Marketing: identifying potential shippers and competition.**

1. Focus beyond on-line shippers.
  - a. Find out why non-rail shippers have not been using rail
  - b. Identify major industry groups.
  - c. Check out import/export activity.
  - d. Investigate effects of rail mergers/consolidations.
  - e. Check out industrial development. See if any new plants are proposed.
2. Shipper trends.
  - a. Shippers are developing a logistics mentality.
  - b. There is more centralization of operations.
  - c. There is more integrated decision-making.
3. Results of shipper trends.
  - a. A demand for higher service quality.
  - b. A need to offer just-in-time service.
  - c. A need to tailor service packages through contracts.
  - d. A shift to more sophisticated logistical systems.

### **K. Competitive analysis.**

1. What are modal trends?
2. Has area rail service been in decline?
3. What are the effects of one-stop rail shopping now available?
4. How much of a competitive force are motor carriers?
5. Is there competition from other short-lines in the area?

## **Insurance Considerations**

In the past, the inability to obtain affordable insurance coverage has been responsible for forcing some small railroads out of business. In mid-1985, only one insurance company was writing insurance for small railroads. The environment for insurance coverage, however, has improved significantly in past years. The American Short Line Railroad Association advises that rates are down and coverage has expanded. The group is in the process of forming a captive insurance company to handle the higher levels of liability coverage railroads have traditionally found difficult to obtain. When evaluating insurance coverage, consider the following:

### **I. Look at several alternatives.**

### **II. Recognize exposures and cover risks.**

#### **A. Purchase only what you need.**

**B. Do not just buy on the basis of the cheapest quote.**

**III. How to obtain coverage.**

**A. Choose an insurance agent or broker, because of:**

1. Experience with railroad insurance.
2. List of clients and references.
3. Servicing of account throughout the year.

**B. Types of insurance to consider.**

1. Liability.
2. Property.
3. Employee benefits.
4. Miscellaneous.

**C. Services to be provided by insurer.**

1. Claims assistance.
2. Certificates of insurance.
3. Rail safety and fire engineering.
4. Insurance placement.
5. Premium financing proposals.
6. Loss control.

**D. Limits of liability insurance (very important).**

1. Local railroads: \$2-5 million.
2. Regional railroads: \$10-30 million and up (limits include legal costs for defense).
3. Minimum self-insured deductibles for short-lines: \$25,000; for regionals: \$250,000.
4. Minimum railroad property insurance deductibles for short-lines: \$5,000; for regionals: \$100,000.

**1. At what cost? Premiums are due 10 to 30 days from inception of policies and depend on the following:**

2. Condition of track.
3. Past loss record.
4. Limits chosen.
5. Background of management.
6. Types of contractual agreement.
7. Total property values.
8. Types and amounts of commodities hauled.
9. Amount of maintenance of way and equipment expenditures.
10. Number and protection of grade crossings.
11. Size: amount of payroll and revenue and miles of track.
12. Self-insured retention chosen.

## **Considerations for Negotiating With Class I Connections**

Class I railroads are aware of the ability of small railroads to generate and feed them traffic that may have been overlooked, undermarketed, or otherwise neglected by the larger carriers. To the extent that small railroads are able to accomplish this, the additional revenue from such traffic may encourage a more cooperative and supportive attitude from the larger carriers.

Disputes between small railroads and their larger connections appear to be based mainly on attitude. Small railroads have often been viewed as unprofessional by larger railroads, who in turn have been accused of being uncooperative in revenue negotiations or in providing service.

One of the critical items for many small railroads is a dependable source of car supply, as many small carriers are financially unable to purchase their own equipment. It is essential that small railroads work closely with their connecting carriers to obtain needed car supply on mutually beneficial terms.

Concerning service contracts with shippers, it is advisable to investigate previous arrangements either the larger connection or another small railroad had with the shippers on the line. It may be advantageous to arrange to inherit contract terms that were negotiated between the previous owner and the shippers on the line.

The small railroad should focus on obtaining commitments from shippers that as much traffic as possible will be routed its way, especially from those shippers that have transportation alternatives.

With regard to the actual sale of branch lines by Class I railroads, the selling carrier will typically desire maximum retention of assets, including equipment, and will seek the highest purchase price for the sale. Restrictions imposed on the buyer by the selling carrier may be in the form of "tying agreements," whereby the connecting carrier will not serve the small railroad at certain points unless it delivers traffic to the connection at specified additional points. This could cause the purchasing carrier to have to move traffic through expensive switches, unless a satisfactory agreement is negotiated. The smaller railroad may seek either regulatory relief or, possibly, judicial relief under the antitrust laws.

In the long term, it is usually in the best interest of the small railroad to develop its own asset base. High quality locomotives, for instance, are critical to small railroads just beginning operations.

The selling carrier may try to push the risk of not closing the deal onto the buyer in order to ascertain the commitment of the buyer. The buyer must be prepared to demonstrate the sincerity of its offer.

Other negotiation areas will typically include routing, sub-contracting for services, arbitration of disputes, record keeping responsibilities, complaints, options, length of contracts, emergency charges, communications, credit, and payment terms.

## Attachment 7

### **Chapter 12.--CITIES AND MUNICIPALITIES** **Article 34.--PORT AUTHORITIES**

12-3401. Port authorities; definitions. As used in K.S.A. 12-3402 to 12-3433, inclusive:

(a) "Port authority" means a port authority or joint port authority created pursuant to K.S.A. 12-3402, and amendments thereto.

(b) "Submerged lands" means the lands presently underlying the navigable streams of the state of Kansas and the lands underlying the waters of lakes, harbors, and navigation channels which have already been or which shall be created by the impoundment of the waters and the creation of commercial navigation facilities in the navigable streams.

(c) "Uplands" means lands contiguous to or fronting upon any submerged lands in this state.

(d) "Publication" means publication once a week on the same day of the week for three consecutive weeks in a newspaper of general circulation in the county or counties wherein such publication is required to be made. Publication shall be complete on the date of the last publication.

(e) "Created," as related to port authorities, means the activation of such authorities by ordinance or resolution as provided herein.

(f) "Port" means water-port facility, airport facility, terminal facility, land transportation facility, railroad facility or industrial-use facility.

(g) "Industrial-use facility" means any agricultural, commercial, industrial or manufacturing facility, including the site therefor, which is a part of or contiguous to another port facility or which a port authority determines will further the purposes of this act and will promote the general welfare and economic development of the area of its jurisdiction.

An agricultural, commercial, industrial or manufacturing facility need not be part of or contiguous to another port facility if the governing body of the city or county creating a port authority also determines that such facility will further the purposes of this act and promote the general welfare and economic development of such city or county. If the port authority was created by two or more cities or counties, such determination also shall be made by the governing body of the city or county in which such facility is located. In determining whether agricultural, commercial, industrial or manufacturing facilities, not part of or adjacent to another port facility, will further the purposes of this act and promote the general welfare and economic development of cities and counties, such port authorities and governing bodies shall consider:

- (1) The desirability and economic feasibility of the proposed facility;
- (2) the technical and economic capability of the port authority or private interests to operate the proposed facility;
- (3) the potential economic impact of the proposed facility on the city or county in which the facility will be located;
- (4) the impact such facility will have on the development of interstate and intrastate traffic which will make use of ports within the state;
- (5) the impact such facility may have on the growth of new ports within the state; and
- (6) the impact such facility may have on any existent comprehensive land-use plan covering the proposed location of the facility.

History: L. 1969, ch. 89, § 1; L. 1980, ch. 70, § 3; L. 1981, ch. 76, § 1; L. 1987, ch. 75, § 1; July 1.

12-3402. Port authorities; purpose; creation; legislative approval; tax levy; election required; dissolution. (a) It is the purpose of this act to promote, stimulate and develop the general welfare, economic development and prosperity of the state of Kansas by fostering the growth of intrastate and interstate commerce within the state; to promote the advancement and retention of ports within the state; to encourage and assist in the location of new business and industry in this state and the expansion, relocation or retention of existing business and industry when so doing will help maintain existing levels of commerce within the state or increase the movement of commodities, goods and products produced, manufactured or grown within or without the state through existing ports within the state or lead to the development of new ports within the state; and to promote the economic stability of the state by maintaining and providing employment opportunities, thus promoting the general welfare of the citizens of this state, by authorizing port authorities to be established in each city and in each county of the state.

A port authority shall be a public body corporate and politic which if established shall be known as the "port authority" of the city or of the county. Joint port authorities may be created under authority of this act by cooperative agreement executed by the governing bodies of any city or county or cities or counties. Such joint authorities formed by such cooperative agreement shall have all the powers and jurisdiction enumerated in this act. Such creation shall be by ordinance or resolution. Except for port authorities created prior to April 1, 1981, no port authority shall be created without approval of the legislature by concurrent resolution. The authority shall not transact any business or exercise powers hereunder until the passage of a concurrent resolution by the legislature as herein before provided.

A cooperative agreement creating a joint port authority may be amended by the governing bodies of the cities and counties which executed such agreement. Any amendment to such a cooperative agreement, including amendments which allow other cities located within counties which are parties to the original agreement to join in such agreement, shall not require approval by the legislature.

No member of the authority shall serve as such who owns land, other than a residence, or represents in a fiduciary capacity or as agent any person who owns land surveyed or examined for port locations, except that this prohibition shall not prevent a user of a port facility from serving as a member of the authority.

A port authority may sue and be sued, plead and be impleaded, subject to the limitations and other provisions of the Kansas tort claims act. The exercise by such port authority of the powers conferred upon it shall be deemed to be essential governmental functions of the creating city or county.

(b) Any city or county creating or participating in the creation of a port authority, before any taxes are levied shall submit the question of whether an annual tax levy may be made on the assessed taxable tangible property of such city, county, or a combination thereof, and the amount thereof to the electors of such city or county comprising such authority. If a majority of those voting on the question vote in favor of such tax levy, the same may be made for such purpose and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county, and otherwise such tax levy shall not be made. If such tax levy is approved, the authority may expend funds not otherwise appropriated to defray the expense of surveys and examinations incidental to the purposes of the port authority and may expend funds for any of the purposes as set forth in K.S.A. 12-3406, and amendments thereto.

(c) Subject to making due provisions for payment and performance of its obligations, a port authority may be dissolved by the city or county, or combination thereof, comprising it. If the port authority is dissolved, the properties of the port authority shall be transferred to the subdivision comprising it, or, if comprised by more than one city or county, to the city or county comprising it in such manner as may be agreed upon by them. Obligations of the authority shall not be obligations of the state of Kansas, nor of any city or county which creates the authority, unless the obligations are specifically approved by a majority vote of the electors of such city or county voting on the issue. Notice of such election shall be published in a newspaper of general circulation in the county or counties once each week for two consecutive weeks. The first publication shall be not less than 21 days prior to such election. Such notice shall set forth the time and place of holding the election and the issue which the vote is to determine.

History: L. 1969, ch. 89, § 2; L. 1970, ch. 366, § 12; L. 1979, ch. 52, § 56; L. 1980, ch. 70, § 4; L. 1981, ch. 76, § 2; L. 1981, ch. 173, § 32; L. 1987, ch. 75, § 2; L. 1999, ch. 42, § 1; July 1.

12-3403. Same; board of directors; membership, appointment, removal, terms, officers, quorum, expenses. (a) A port authority created in accordance with this act shall be governed by a board of directors. Members of a board of directors of a port authority created by the exclusive action of a city shall consist of the number of members, not less than five, it deems necessary and be appointed by the governing body. Members of a board of directors of a port authority created by the exclusive action of a county shall consist of such members as it deems necessary and be appointed by the county commissioners of such county. Members of a board of directors of a port authority created by a combination of cities and counties shall be divided among such political subdivisions in such proportions as such political subdivisions may agree and appointed in the same manner as this section provides for their appointment when such political subdivision creates its own port authority. When a port authority is created by a combination of political subdivisions, the number of directors composing the board shall be determined by agreement between such political subdivisions. The appointing body may at any time remove a director appointed by it for misfeasance, nonfeasance, or malfeasance in office.

(b) The directors of any port authority first appointed shall serve staggered terms. Thereafter each successor shall serve for a term of four years, except that any person appointed to fill a vacancy shall be appointed to only the unexpired term and any director shall be eligible for reappointment, and no director shall be removed except for cause, and if removed shall have the right of appeal to the district court of the county from which the director was appointed.

(c) The directors shall elect one of their membership as chairperson and another as vice-chairperson, and shall designate their terms of office, and shall create and appoint such other positions and officers as the directors deem appropriate and provided for in their rules and regulations. A majority of the board of directors shall constitute a quorum, the affirmative vote of which shall be necessary for any action taken by the port authority.

(d) Each member of the board of directors of a port authority shall be entitled to receive from the port authority reimbursement for necessary and actual expenses incurred in the performance of such director's duties.

History: L. 1969, ch. 89, § 3; L. 1987, ch. 75, § 3; July 1.

12-3404. Same; employees; advisory board; professional help. A port authority created in accordance with K.S.A. 12-3402 shall employ and fix the qualifications, duties, and compensation of such employees and professional help as it may require to conduct the business of the port and may appoint an advisory board which shall serve without compensation. Any employee may be suspended or dismissed, and the services of professional help may be terminated at any time by the port authority.

12-3405. Same; area of jurisdiction. The area of jurisdiction of a port authority created in accordance with K.S.A. 12-3402, and amendments thereto, shall include all of the territory of the city or county, or combination thereof, comprising it, together with any other property outside thereof conveyed to it, or over which it exercises control pursuant to subsection (a) of K.S.A. 12-3406, and amendments thereto, or pursuant to the right of eminent domain set forth in subsection (g) of K.S.A. 12-3406, and amendments thereto, except that in no case shall the same area be included in more than one port authority, but the jurisdiction of the port authority first attaching shall be exclusive unless the first attaching shall cede or convey to another.

History: L. 1969, ch. 89, § 5; L. 1981, ch. 76, § 3; L. 1987, ch. 75, § 4; July 1.

12-3406. Same; general powers and authority; limitations. A port authority established by K.S.A. 12-3402, and amendments thereto, shall have full power and authority to:

(a) Purchase, acquire, construct, reconstruct, improve, equip, furnish, maintain, repair, enlarge, remodel, own, sell, lease, and operate docks, wharves, warehouses, piers, and other water-port facilities, airport facilities, terminal facilities, land transportation facilities, railroad facilities or industrial-use facilities within the area of its jurisdiction, as defined by K.S.A. 12-3405, and amendments thereto, consistent with the purpose of the port authority, which purpose is hereby declared to be for a public purpose;

(b) (1) borrow money from either private financial institutions or any agency of the state of Kansas or of the United States of America, and to issue therefor such notes or other evidence of indebtedness as may be required and to mortgage, pledge, or otherwise encumber the assets of the authority as security therefor, and (2) issue bonds as provided in K.S.A. 12-3415, and amendments thereto;

(c) apply for, receive, and participate in any grants from the state of Kansas or from the United States of America;

(d) construct, straighten, deepen, and improve any canal, channel, river, stream, or other watercourse or way which may be necessary or proper in the development of the facilities of such port;

(e) purchase, acquire, own, maintain, furnish, improve, repair, enlarge, remodel, construct, reconstruct, equip, hold, sell, lease, or operate real or personal property for the authorized purposes of the port authority, which exercise of such authority is hereby declared to be for a public purpose;

(f) apply to the proper authorities of the United States government for a grant within the limits of the port authority either individually or in conjunction with a corporate instrumentality of this state and one or more states, or a bi-state compact or a not-for-profit corporation authorized to do business in this state and to establish, operate and maintain foreign trade zones pursuant to the foreign trade-zone act, 19 U.S.C.A. 81a to 81u, inclusive, as amended;

(g) exercise the right of eminent domain, if approved by a 2/3 vote of the governing body of the port authority, to appropriate any land, rights, rights-of-way, franchises, easements, or other property, necessary or proper for the construction or the efficient operation of any facility of the port authority and included in an official plan, pursuant to the procedure provided by law, if funds equal to the appraised value of the property to be acquired as the result of such proceedings shall be on hand and available for such purposes. The port authority shall not exercise the right of eminent domain without first having received approval, by resolution, of the governing body of the city or county which created such port authority. If the port authority was created by two or more cities or counties, the port authority shall not exercise the right of eminent domain without first having received approval, by resolution, of the governing body of the city or county in which such property is located. If such property is located outside the boundaries of the port authority, such port authority shall not exercise the right of eminent domain without first having received approval, by resolution, of the governing body of the city if such property is located within the corporate limits of a city or from the board of county commissioners if such property is located within the unincorporated area of a county. A port authority shall not have the right of eminent domain to acquire a site for an industrial-use facility.

Nothing contained in K.S.A. 12-3401 to 12-3433, inclusive, and amendments thereto, shall authorize a port authority to take or disturb property or facilities belonging to any public corporation, public utility, or common carrier, which property or facilities are necessary and convenient in the operation of such public corporation, public utility, or common carrier, unless provision is made for the restoration, relocating, or duplication of such property or facilities, or upon the election of such public corporation, public utility, or common carrier for the payment of compensation, if any, at the sole cost of the port authority.

If any restoration or duplication proposed to be made hereunder shall involve a relocation of such property or facilities, the new facilities and location shall be of at least comparable utilitarian value and effectiveness and such relocation shall not impair the ability of the public utility or common carrier to compete in its original area of operation.

If any restoration or duplication made hereunder shall involve a relocation of such property or facilities, the port authority shall acquire no interest or right in or to the appropriated property or facilities, except as provided in subsection (c) of K.S.A. 12-3406, and amendments thereto, until the relocated property or facilities are available for use and until marketable title thereto has been transferred to the public utility or common carrier.

Provisions for restoration, relocation, or duplication shall be described in detail in the plan specified in K.S.A. 12-3407, and amendments thereto;

(h) maintain such funds as it deems necessary;

(i) direct its agents or employees, when properly identified in writing, and after at least five days' written notice, to enter upon lands within the confines of its jurisdiction in order to make surveys and examinations preliminary to location and construction of works for the purposes of the port authority, without liability of the port authority or its agents or employees except for actual damage done;

(j) sell, lease or convey real and personal property not needed for the operation of the port authority and grant easements of rights-of-way over property of the port authority; and

(k) promote, advertise, and publicize the port and its facilities; provide traffic information and rate information to shippers and shipping interests.

History: L. 1969, ch. 89, § 6; L. 1973, ch. 60, § 2; L. 1980, ch. 70, § 5; L. 1981, ch. 76, § 4; L. 1987, ch. 75, § 5; July 1.

12-3407. Same; plans for development, notice and hearing; filing of objections to plan; revised plan, when. The board of directors of a port authority shall prepare or cause to be prepared plans for the future development, construction, improvement and utilization of ports within its area of jurisdiction and its facilities, including such maps, profiles, and other data and descriptions as may be necessary to set forth the location and character of the work to be undertaken by the port authority. Upon the completion of any such plan the board of directors shall cause notice by publication as provided in K.S.A. 12-3401, and amendments thereto, to be given in each county in which there is a political subdivision participating in the port authority and in which any proposed facility is to be located, and shall likewise cause notice to be served upon the owners of the uplands contiguous to any submerged lands affected by any such plan in the manner provided by law for service of notice in the levy of special assessments by cities or counties, and shall permit the inspection thereof at their office by all persons interested. The notice shall fix the time and place for the hearing of all objections to the plan, which shall be not less than 30 nor more than 60 days after the last publication of such notice and after service of notice upon the owners of such uplands. Any interested person may file written objections to such plan, provided such objections are filed with the secretary of the board of directors at the office of the secretary not less than five days prior to the date fixed for the hearing. Objections to the plan by 20% or more of the persons owning real property contiguous to the real property contained in the proposed plan shall require the affirmative vote of at least 3/4 of all of the members of the board of directors for the adoption of the plan with any modifications or amendments thereto as an official plan of the port authority.

History: L. 1969, ch. 89, § 7; L. 1981, ch. 76, § 5; L. 1987, ch. 75, § 6; July 1.

12-3408. Same; modification, amendment or extension of plan; notice and hearing. The board of directors shall, from time to time after the adoption of an official plan, have the power to modify, amend or extend the same, provided that upon the making of any such modification, amendment or extension thereof, the board of directors shall cause notice to be given and shall conduct a hearing, all as provided in K.S.A. 12-3407, and amendments thereto. The board shall not adopt any modification, amendment, or extension until the notice has been given and the hearing held as therein provided.

History: L. 1969, ch. 89, § 8; L. 1981, ch. 76, § 6; April 18.

12-3409. Same; validity of modification, amendment or extension of plan. A plan and any modification, amendment or extension thereof, when adopted by the board of directors after notice and hearing as provided in K.S.A. 12-3407 or 12-3408, and amendments thereto, shall be final and conclusive and its validity shall be conclusively presumed.

History: L. 1969, ch. 89, § 9; L. 1981, ch. 76, § 7; L. 1987, ch. 75, § 7; July 1.

12-3410.

History: L. 1969, ch. 89, § 10; L. 1981, ch. 76, § 8; Repealed, L. 1987, ch. 75, § 15; July 1.

12-3411. Same; inapplicability to other laws. Nothing contained in K.S.A. 12-3401 to 12-3414, inclusive, shall:

(a) Impair the provisions of law or ordinance directing the payment of revenues derived from public property into sinking funds or dedicating such revenues to specific purposes;

(b) Enlarge, alter, diminish, or affect in any way, any lease or conveyance made, or action taken prior to the creation of a port authority by any city, or by any county;

(c) impair or interfere with the exercise of any permit for the removal of sand or gravel, or other similar permits issued by this state or the United States.

History: L. 1969, ch. 89, § 11; July 1.

12-3412. Port authorities; contracts; public bids, when required; disadvantaged business enterprises; negotiation of sale or lease of property, when. (a) No contract for the construction, alteration or repair of any building, structure or other improvement undertaken by a port authority created in accordance with K.S.A. 12-3402, and amendments thereto, and involving an expenditure exceeding \$10,000 shall be awarded by the port authority unless a notice calling for bids shall have been given by publication in the Kansas register at least 30 days prior to the opening of such bids. No contract requiring public bids shall be awarded except to the lowest responsible bidder, except when bids are received from one or more disadvantaged business enterprises and any applicable funding guidelines require, such contracts may be negotiated to assure disadvantaged business participation in the project.

Every contract awarded which requires public bids shall be in writing and signed by the chairperson of the port authority and by the contractor and, if the contract involves work or construction, it shall be accompanied by or shall refer to plans and specifications for the work to be done, prepared for and approved by the port authority.

(b) In exercising the port authority's power to sell real or personal property, the port authority may seek public bids upon specifications approved by the port authority or the port authority may negotiate the sale of any real or personal property upon such terms as the port authority deems to be in the public interest, except that a negotiated sale of any real or personal property shall be subject to the following:

(1) The current lessee of such property shall have the first right to purchase such property;

(2) such property shall be appraised by an independent appraiser prior to such sale of property; and

(3) such sale of property shall be for no less than the appraised value of such property.

History: L. 1969, ch. 89, § 12; L. 1980, ch. 70, § 1; L. 1981, ch. 76, § 9; L. 1987, ch. 75, § 8; July 1.

12-3413. Same; budget; rents and charges; surplus of funds, use. (a) The board of directors of a port authority created in accordance with K.S.A. 12-3402, and amendments thereto, shall annually prepare a budget for the port authority.

(b) Rents, charges and administrative fees received by the port authority shall be used for the general expenses of the port authority and to pay interest, amortization, taxes and retirement charges on money borrowed and reserves therefor. If there remains, at the end of any calendar year, any surplus of such funds after providing for the above uses and reserves therefor, the board of directors may pay such surplus into the general funds of the political subdivisions creating and comprising the port authority in proportion to their taxable tangible property valuation as adjusted by the assessment ratio of the state.

History: L. 1969, ch. 89, § 13; L. 1981, ch. 76, § 10; L. 1987, ch. 75, § 9; July 1.

12-3414. Same; treasurer's bond; deposits and disbursements of funds. Before receiving any moneys, the treasurer and deputy treasurer of a port authority created in accordance with K.S.A. 12-3402, and amendments thereto, shall furnish bond in such amount as shall be determined by the port authority, with sureties satisfactory to it, and all funds coming into the hands of such treasurer or deputy treasurer shall be deposited by the treasurer or deputy treasurer to the account of the port authority in one or more such depositories as shall be qualified to receive deposits of county funds, which deposits shall be secured in the same manner as county funds are required to be secured. No disbursements shall be made from such funds except in accordance with rules and regulations adopted by the port authority.

History: L. 1969, ch. 89, § 14; L. 1987, ch. 75, § 10; July 1.

12-3415. Same; borrowing money; issuance of bonds; approval required. (a) For the purpose of paying all or any part of the cost of purchasing or acquiring land or interests therein, and the cost of purchasing, acquiring, constructing, equipping, reconstructing, improving, repairing, enlarging, remodeling and furnishing buildings, structures, plants, docks, wharves, warehouses, piers, sidings and other water-port facilities, airport facilities, terminal facilities, land transportation facilities, railroad facilities or industrial-use facilities or any part thereof; including additions, improvements, relocations, renovations, extensions and modifications thereof (all of which as are included in a single project are hereafter referred to in this act as "facility or facilities"), a port authority created pursuant to this act, is authorized to borrow money upon credit of the income and revenues to be derived from the operation of such facilities, together with any other available income and revenues from other revenue producing facilities of such port authority, and to issue negotiable bonds of such port authority in such amount as the board of directors of the port authority shall deem necessary for the purpose; and to provide for payment of such bonds and rights of holders thereof as herein provided.

(b) The port authority shall not issue bonds without first having received approval, by resolution, of the governing body of the cities or counties which comprise such port authority.

History: L. 1969, ch. 89, § 15; L. 1980, ch. 70, § 6; L. 1981, ch. 76, § 11; L. 1987, ch. 75, § 11; July 1.

12-3415a.

History: L. 1981, ch. 74, § 10; L. 1981, ch. 65, § 1; L. 1982, ch. 298, § 21; Repealed, L. 1987, ch. 75, § 15; July 1.

12-3415b.

History: L. 1981, ch. 76, § 14; Repealed, L. 1987, ch. 75, § 15; July 1.

12-3416. Port authorities; conditions of bonds; negotiability. Bonds and other obligations authorized by this act shall be executed by the chairperson and secretary of the port authority. Such bonds and other obligations may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding 40 years from their date, may be in such denominations and in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment at such place or places, may be subject to such terms of redemption with or without premium, and may bear such rate of interest, and may contain such other terms and conditions not inconsistent with this act, as may be provided by official resolution of the board of directors of such port authority, notwithstanding the provisions of any other statute affecting the issuance of municipal bonds.

Such bonds may be sold in such manner and at such price or prices, not less than par plus accrued interest to date of delivery, as provided in K.S.A. 12-3428, and amendments thereto. Bonds issued under this act are declared to be negotiable instruments.

History: L. 1969, ch. 89, § 16; L. 1981, ch. 76, § 12; L. 1987, ch. 75, § 12; July 1.

12-3417. Same; bonds; installment payment of bonds; conversion provisions. In the event any issue or series of bonds is issued pursuant to this act pursuant to a loan agreement or bond purchase agreement with any agency of the United States government, then and in that event, notwithstanding any other provision of law, the board of directors of the port authority may in any resolution authorizing bonds hereunder provide for the initial issuance of one or more bonds, in this section called "bond," aggregating the amount of the entire issue; and may make such provision for installment payments of the principal amount of any such bond as it may consider desirable and may provide for the making of any such bond payable to bearer or otherwise, registrable as to principal and interest, and where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bond. The board of directors of the port authority may further make provision in any such resolution for the manner and circumstances under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal or principal and interest.

History: L. 1969, ch. 89, § 17; L. 1983, ch. 49, § 54; May 12.

12-3418. Same; exercise of powers constitutes governmental function; tax exemption for property acquired, exceptions. The exercise of the powers granted by this act will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and the activities and operations of a port authority will constitute the performance of essential governmental functions. No port authority shall be required to pay any taxes or assessments upon any property acquired and used by it or leased to another under the provisions of this act or upon the income therefrom, and any bonds issued under the provisions of this act, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the state except that property acquired by a port authority shall be exempt from ad valorem property tax only until the calendar year in which the same is rented, leased, subleased or developed and returns revenue to such authority in excess of the amount necessary to retire the obligations of the port authority and pay administrative costs of the port authority, and in such year such property shall be placed upon the tax rolls and thereafter ad valorem property taxes shall be paid thereon as is provided by law. The provisions of this subsection shall not apply to Kansas retailers' sales tax, ad valorem property tax on industrial-use facilities, state inheritance tax or any intangible tax.

All sales of: (1) Tangible personal property and services purchased directly by any port authority for use exclusively by such authority; (2) tangible personal property or services purchased by a port authority for constructing, maintaining, equipping, reconstructing, repairing, enlarging, remodeling or furnishing port facilities other than an industrial-use

facility; and (3) tangible personal property or services purchased with funds of a political subdivision by a contractor for constructing, reconstructing, repairing, enlarging or remodeling a port or industrial-use facility for any port authority shall be exempt from the Kansas retailers' sales tax imposed by K.S.A. 79-3603, and amendments thereto.

History: L. 1969, ch. 89, § 18; L. 1980, ch. 70, § 7; L. 1981, ch. 76, § 13; L. 1987, ch. 75, § 13; July 1.

12-3419. Same; payment of bonds from combined revenues; priorities; subsequent series of bonds, liens. The board of directors of a port authority may in its discretion authorize one issue of bonds hereunder for the purpose of purchasing, acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging and remodeling of more than one building structure, project or facility, as herein defined, and may make such bonds payable from the combined revenues of all such buildings and facilities so constructed, acquired, improved or equipped, in whole or in part, with the proceeds of such bonds; together with revenues from the operation of any existing revenue producing buildings or facilities. If more than one series of bonds shall be issued hereunder, payable from the revenues of such buildings and facilities, priority of lien thereof as to such revenues shall be as prescribed by proceedings authorizing the issuance of such respective bond issues. It shall be within the discretion of the board of directors of such port authority at the time the first series of bonds is authorized, to provide that subsequent series of bonds payable from the same revenues, in whole or in part, shall not be issued; or that subsequent series of bonds shall be subordinate as to lien; or that subsequent series of bonds shall enjoy parity of lien upon such conditions and restrictions as are specified therein.

History: L. 1969, ch. 89, § 19; L. 1981, ch. 76, § 15; April 18.

12-3420. Same; issuance of bonds and refunding bonds; approval required. The board of directors of a port authority may issue bonds hereunder for the purpose of refunding any bonds or other obligations of the port authority theretofore issued pursuant to this act; or it may authorize a single issue of bonds hereunder for the purpose in part of refunding such previous obligations and in part for the purchasing, acquiring, constructing, reconstructing, improving, equipping, repairing, enlarging and remodeling facilities of such port authority. The port authority shall not issue such refunding bonds without first having received approval, by resolution, of the governing body of the cities or counties which created such port authority.

Where bonds are issued under this section solely for refunding purposes, such bonds either may be sold as provided in K.S.A. 12-3428, and amendments thereto, or may be exchanged for outstanding obligations. If sold, the proceeds either may be applied to payment of obligations refunded or may be deposited in escrow for the retirement thereof. All refunding bonds issued under this section shall in all respects be authorized, issued and secured in the manner provided for other bonds issued under this act and shall have all attributes of such bonds. Except as otherwise provided in this section, all refunding bonds issued hereunder shall be issued in the manner prescribed by and subject to the provisions of

K.S.A. 10-116a, and amendments thereto. The board of directors may provide that any such refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was provided for obligations refunded thereby.

History: L. 1969, ch. 89, § 20; L. 1977, ch. 58, § 8; L. 1981, ch. 76, § 16; L. 1987, ch. 75, § 14; July 1.

12-3421. Same; bonds not debt of state, county or city, exception; special obligations, required recitals. No bonds issued under provisions of this act shall ever become a debt or obligation of the state of Kansas, nor shall the faith and credit of the state of Kansas be pledged in whole or in part, directly or indirectly, for the payment of such bonds, or interest thereon, except if so authorized by election as provided in subsection (c) of K.S.A. 12-3402. Bonds issued under this act shall not be an indebtedness of any county or counties, or any city or cities, which shall have created or joined in the formation of the port authority issuing the same. All bonds issued pursuant to this act shall be special obligations of the port authority concerned, payable solely from the revenues of the buildings and facilities referred to therein. Such bonds shall contain on the face thereof a statement to the effect that neither the state, nor any county or city concerned shall be obligated to pay the same, or the interest thereon, except from revenues of such facilities; and that neither the faith and credit nor the taxing power of the state or any political subdivision thereof is pledged or may hereafter be pledged to the payment of principal of or interest on such bonds.

History: L. 1969, ch. 89, § 21; July 1.

12-3422. Same; pledges of revenues and income; powers of board of directors. The board of directors of a port authority issuing bonds pursuant to the provisions of this act shall pledge for the payment of principal of or interest on such bonds, all or any part of the revenues to be derived from the management and operation of the buildings and facilities for the construction, acquisition or improvement of which the bonds are issued; together with any other available income and revenues from revenue producing facilities of such port authority. In order to secure prompt payment of the principal and interest, and the proper application or revenues pledged thereto, the board of directors of such port authority is authorized by appropriate resolution:

- (a) To covenant as to the use and disposition of the proceeds of the sale of such bonds;
- (b) to covenant as to the operation of the facilities and buildings and the collection and disposition of the revenues derived from such operation;
- (c) to covenant as to the rights, liabilities, powers and duties arising from the breach of any covenant or agreement into which it may enter in authorizing and issuing the bonds;
- (d) to covenant and agree to carry such insurance on the buildings and facilities, and the use and occupancy thereof as may be considered desirable and, in its discretion, to provide that the cost of such insurance shall be considered a part of the expense of operating the buildings and facilities;

(e) to vest in a trustee or trustees the right to receive all or any part of the income and revenues pledged and assigned to or for the benefit of the holder or holders of bonds issued hereunder and to hold, apply and dispose of the same, and the right to enforce any covenant made to secure the bonds; and to execute and deliver a trust agreement or agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and may limit the liability thereof and prescribe the terms and conditions upon which such trustee or trustees or the holder or holders of the bonds in any specified amount or percentage may exercise such rights and enforce any or all such covenants and resort to such remedies as may be appropriate;

(f) to fix rents, charges and fees to be imposed in connection with and for the use of the buildings, services and facilities of such port authority, which rents, charges and fees shall be considered to be income and revenues derived from the operation of the buildings and facilities, and are hereby expressly required to be fully sufficient to assure the prompt payment of principal and interest on the bonds as each becomes due, and to make and enforce such rules and regulations with reference to the use of the buildings and facilities, as it may deem desirable for the accomplishment of the purposes of this act;

(g) to covenant to maintain a maximum percentage of use and occupancy of the buildings and facilities for revenue producing purposes;

(h) to covenant against the issuance of any other obligations payable from the revenues to be derived from the buildings and facilities; and to covenant as to priority of resort to such revenues between obligations of such port authority;

(i) all such agreements and covenants entered into by the board of directors of such port authority shall be binding upon the board and the authority, its agents and employees, and upon its successors in interest; and all such agreements and covenants shall be enforceable by appropriate action or suit at law or in equity, which may be brought by any holder or holders of bonds issued hereunder or in their behalf.

History: L. 1969, ch. 89, § 22; July 1.

12-3423. Same; agreement with federal government. The board of directors of a port authority may enter into any agreement or contract with the United States of America or any agency or instrumentality thereof which it may consider advisable or necessary in order to obtain a grant of funds, a contract for purchase of its bonds, or any other aid or assistance in connection with the construction, addition, furnishing and equipping of any building or facility as herein defined.

History: L. 1969, ch. 89, § 23; July 1.

12-3424. Same; segregation and use of proceeds; contracts for buildings and facilities. The proceeds to be derived from the sale of bonds herein authorized shall be segregated and used solely for the purpose for which the bonds are authorized. The board of directors of a port authority is authorized to make any contracts and execute all instruments which in its discretion may be deemed necessary or advisable to provide for the construction, furnishing and equipping of any building or facility as herein defined.

History: L. 1969, ch. 89, § 24; July 1.

12-3425. Same; approval of bonds by attorney general; effect. All bonds issued hereunder shall be submitted to the attorney general of Kansas for examination, and when such bonds have been examined and certified as legal obligations of the issuing authority by the attorney general in accordance with such requirements as he or she may make, the same shall be incontestable in any court in the state of Kansas unless suit thereon shall be brought in a court having jurisdiction thereof within ninety (90) days from the date of such approval.

History: L. 1969, ch. 89, § 25; July 1.

12-3426. Same; investments in bonds of authority authorized. Bonds issued under the provisions of this act are hereby made securities in which all banks, trust companies, savings and loan associations, investment companies, and others carrying on a banking business; all insurance companies and insurance agencies and others carrying on an insurance business, may lawfully invest funds, including capital funds, under their control or belonging to them, providing such bonds shall not be used by any depository as security for any public funds.

History: L. 1969, ch. 89, § 26; July 1.

12-3427. Same; borrowing money in anticipation of issuance of bonds; restrictions; failure to issue bonds, effect. Whenever the board of directors of a port authority shall have adopted a resolution authorizing the issuance of any series of bonds hereunder and said bonds have been sold but prior to the time as of which the bonds can be delivered, the board of directors of a port authority finds it necessary to borrow money for the purpose for which the bonds were authorized, such board of director may, by appropriate resolution, authorize the borrowing of money in anticipation of the issuance of the bonds, and the issuance of the note or notes of the board of directors to evidence such borrowing. The amount so borrowed shall not exceed the principal amount of the bonds and shall not bear interest at a rate exceeding the average interest rate of the bonds. Such note or notes shall be signed in the manner prescribed by the board of directors and shall be made payable at such time or times as the board of directors may prescribe, not later than one year from their respective dates and may be renewed from time to time by the issuance of new notes hereunder. The proceeds of any loan made under this section shall be devoted exclusively to the purpose for which the bonds shall have been authorized and the note or notes and the interest thereon shall be paid with the proceeds of the bonds simultaneously with the delivery of the bonds. If for any reason the bonds shall not be issued, the holder or holders of the notes shall be entitled to all rights which would have been enjoyed by the holders of the bonds had they been issued; and the notes shall be paid from the revenues provided for the payment of the bonds, and shall be

entitled to the benefit of all covenants, agreements and rights appearing in the resolution authorizing the bonds for the benefit of the bonds.

History: L. 1969, ch. 89, § 27; July 1.

12-3428. Same; sale of bonds; conditions. All bonds sold hereunder may be sold at public or private sale in the discretion of the board of directors. If such bonds are sold at public sale, they shall be awarded to the best bidder, based upon an open competitive public offering. Notice of sale of such bonds shall be advertised at least fourteen (14) days in advance of the time of receiving bids and said notice shall appear at least once a week for two (2) successive weeks in a newspaper of general circulation in the county where the principal office of the port authority is located. No bonds shall be sold for less than par value.

History: L. 1969, ch. 89, § 28; July 1.

12-3429. Same; emergencies; contracts. If the port authority determines that an emergency exists and an expenditure in an amount exceeding ten thousand dollars (\$10,000) is necessary in order to avoid loss of life, substantial damage to property, or damage to the public peace, health, safety or welfare, the contracts to deal with such emergency may be made and entered into without public notice or competitive bids.

History: L. 1969, ch. 89, § 29; L. 1980, ch. 70, § 2; April 15.

12-3430. Same; oath and bond of trustees. Any trustee or trustees, as provided herein, first shall take the oath of office required of an elected public officer and shall be under a good and sufficient fidelity bond, to be approved by the attorney general, in a surety company authorized to transact surety business in the state of Kansas. The cost of said bond shall be paid from funds of the revenue bonds. The oaths of office shall be administered by any person authorized to administer oaths in the state of Kansas.

History: L. 1969, ch. 89, § 30; July 1.

12-3431. Same; meetings open to public; records. After the effective date of this act, meetings of an organized port authority shall be open to the public to the same extent as is required by law of other public boards and commissions. All records of said authority shall be public records and shall be kept in a place, the location of which shall be listed in the office of the county clerk of each county wherein any revenue bond authorized by them hereunder shall be recorded.

History: L. 1969, ch. 89, § 31; July 1.

12-3432. Same; liability of trustees. No trustee or beneficiary shall be charged with any liability whatsoever by reason of any act or omission committed or suffered in the performance of such trust or in the operation of the trust property, except for willful or grossly negligent breach of trust: Provided, however, Any act, liability for any omission, or obligation of a trustee or trustees, in the execution of such trust, or in the operation of the trust property, shall extend to the whole of the trust estate or so much thereof as may be necessary to discharge such liability or obligation and not otherwise.

History: L. 1969, ch. 89, § 32; July 1.

12-3433. Same; liberal construction; severability. This act being necessary for the welfare of the state and its inhabitants, and for the growth and development of commerce and industry in the state of Kansas, it shall be liberally construed to effect the purposes thereof. The provisions of this act are severable, and if any section, sentence, clause or provision hereof shall be held unconstitutional by any court of competent jurisdiction, the remaining provisions shall not be impaired or invalidated thereby.

History: L. 1969, ch. 89, § 33; July 1.