

SESSION OF 2009

SUPPLEMENTAL NOTE ON SENATE BILL NO. 46

As Recommended by Senate Committee on
Transportation

Brief*

SB 46 would exempt a port authority from certain restrictions on sale of real or personal property if that port authority had entered into certain types of agreements regarding lease, purchase, or both, before July 1, 1987. The restrictions to which the sale would be exempt are listed in KSA 12-3412 subsection (b):

- The current lessee of such property shall have the first right to purchase such property;
- Such property shall be appraised by an independent appraiser prior to sale; and
- Such property shall be sold for no less than the appraised value.

Background

The bill was requested by the Kyle Railroad Company, a short-line railroad that runs from north central Kansas into eastern Colorado on track leased from the Mid-States Port Authority (MSPA). The Kyle Railroad has been owned by RailAmerica, Inc., since 2002.

The MSPA was formed pursuant to KSA 12-3401 *et seq.* in 1980 to restore rail service on line owned by the Chicago, Rock Island, and Pacific Railroad Company when that railroad went bankrupt. The Authority's members represent Decatur, Jewell, Norton, Phillips, Republic, Sheridan, Sherman, Smith,

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

and Thomas counties. The MSPA has used bonds guaranteed by state funds to finance indebtedness incurred for purchase of the rail line; the last payment on those bonds will be made June 1, 2009.

John Giles, Chief Executive Officer, RailAmerica, Inc., and Bob Alderson, General Counsel for the Mid-States Port Authority, testified in favor of the bill. Both said the bill would clarify a lease agreement originally entered into by the Kyle Railroad and the MSPA in 1984. They further made these points:

- The 1984 lease agreement provided the Kyle Railroad with an option to buy MSPA's right-of-way and other real property at the termination of its lease, which is June 1, 2009.
- Review in preparation for the termination of the lease and option to buy had shown that subsection (b) of KSA 12-3412, which took effect July 1, 1987, had made the validity of the lease-purchase agreement uncertain. Mr. Giles said that the 1987 amendments were not intended to apply to a 1984 agreement.

Also providing testimony in favor of the bill were Tom Tunnell, Kansas Grain and Feed Association, and Leslie Kaufman, Kansas Cooperative Council. No other testimony was received on this bill.

The MSPA also has lease agreements with shippers. Documentation provided to the Senate Committee after the hearing shows that the Kyle Railroad has exercised its purchase option and that the Kyle Railroad and the MSPA have agreed that the Kyle Railroad will continue all of MSPA's leases with other lessees (generally, shippers such as cooperatives) if SB 46 is signed into law.

According to the fiscal note provided by the Division of the Budget, both the Kansas Department of Transportation and the Department of Commerce indicate that passage of the bill would have no fiscal effect.