

RAILROAD SERVICE STUDY COMMITTEE

Report to the Legislative Council
and the Members of the
First Session of the Sixty-fifth General Assembly

F I N A L R E P O R T

RAILROAD SERVICE STUDY COMMITTEE

At its April, 1972 meeting, the Legislative Council created the Railroad Service Study Committee pursuant to Senate Concurrent Resolution 126 which directed that a study be made of the needs for railroad service and methods to improve heavy freight transportation service to the communities of this state. The Legislative Council appointed Representative Theodore R. Ellsworth as temporary Chairman of the Study Committee.

The following members of the General Assembly were appointed to the Study Committee:

Representative Theodore R. Ellsworth, Temporary Chairman
Senator Charles F. Balloun
Senator C. Joseph Coleman
Senator Charles P. Miller
Senator W. R. Rabedeaux
Senator John C. Rhodes
Representative John H. Clark
Representative Richard F. Drake
Representative Berl E. Priebe
Representative James D. Wells

At the first meeting of the Railroad Service Study Committee held on September 21, 1972, the Study Committee elected Representative Theodore R. Ellsworth as permanent Chairman and Senator John C. Rhodes as permanent Vice Chairman. In discussing the scope and purpose of the Study Committee, the members agreed that the study should include a review of present freight and passenger service offered by the railroads to the communities of this state.

At its first two meetings, the Study Committee received testimony from Chairman Maurice Van Nostrand of the Iowa State Commerce Commission, representatives of the Iowa Railway Association, Mr. James D. Wolf, Vice President of the Chicago and Northwestern Railway Company, and several interested individuals.

The basic issue underlying a study of rail transportation services requires a determination regarding the extent of the jurisdiction of the states to regulate railroads. Commissioner Van Nostrand testified that states have the right to exercise little jurisdiction over railroads and pointed out that the Iowa State Commerce Commission presently has authority to rule in cases regarding the closing of depots in this state, railroad mergers which affect the state, railroad safety and highway crossings, and the regulation of intrastate railroad rates and tariffs. Railroad regulation has been preempted by the federal government and the authority to regulate railroads is presently under the jurisdiction of the Interstate Commerce Commission. It appears that the restrictive jurisdiction which is retained by the states severely

limits the types of recommendations which the Study Committee could make after conducting this study. One issue which the members of the Study Committee expressed considerable concern with relates to the liberalized abandonment procedures which have been proposed by the Interstate Commerce Commission. Commissioner Van Nostrand explained that the proposed rules on abandonment would allow Interstate Commerce Commission approval without public hearing of the abandonment of any railroad line generating less than thirty-four cars of freight per mile per year. Commissioner Van Nostrand noted that in Iowa this could mean the abandonment of 1,700 miles of track out of a total of 8,400 miles of track in this state without any public hearing before the Interstate Commerce Commission. The Pennsylvania Commerce Commission has filed a suit challenging the proposed Interstate Commerce Commission rules and Iowa joined Pennsylvania in this action. The net affect of railroad abandonment is serious to any state because it means the loss of a transportation system within that state, a loss of tax revenue, and an immediate need for more and better highways or other transportation facilities.

Mr. James Wolf, Vice President of the Chicago and Northwestern Railroad Company, noted that presently Iowa has an excess of transportation capacity because of all of the branch lines located throughout the state, making these branch lines unprofitable and obsolete. Mr. Wolf noted that while the railroad companies have been accused of not being affirmative in proposing new ideas to solve the transportation problems, the Chicago and Northwestern Railroad has developed an affirmative plan which involves the loading of commodities at specified farm service centers which will allow volume shipments to the Gulf and Great Lakes ports at low rates. Several farm service centers have been completed by private persons or associations and more are in the planning and development stage. He also noted that the present rate structure imposed upon the railroads by the Interstate Commerce Commission does affect the feasibility and economy in shipping goods by railroad. As a case in point, he noted that the rate imposed on a weight basis means that a shipment of goods transported from Avoca, Iowa to Omaha costs the exact amount as shipping the exact same load of commodities from Council Bluffs, Iowa to Omaha, Nebraska.

Mr. A. E. Meyer representing the Linn County Association of Groups of the Elderly, appeared before the Study Committee and supported the reinstatement of railroad passenger service. He pointed out the needs of the elderly for inexpensive, comfortable, and fast transportation, noting that only railroads can provide this type of service. Mr. Steven J. Wylder, a representative of the University of Iowa Student Senate, supported the need for passenger service for students as well as for the elderly citizens in Iowa. Mr. Wylder recommended that the Study Committee consider recommending the implementation of an experimental train between Des Moines and Rock Island to determine the feasibility of providing passenger service to the citizens of this state.

The Railroad Service Study Committee also considered the issues surrounding the title to existing railroad right-of-way

property. It appears that railroads acquired many types of interests in property for right-of-way purposes. In some cases, the railroad companies acquire a fee simple interest in property. In these cases, the railroad company owns the right-of-way property. However, railroad companies also acquired other property interests such as easements and fee simple determinables. It is this type of property interest which creates some legal problems in the transfer of real property. The provisions of Iowa's Marketable Record Act and the provisions on preservation of reversionary restrictions appear to apply. Under both laws, some affirmative action is required on the part of the record titleholder to retain his interests. Another problem which arises is the fact that some of the railroad companies presently operating in this state have acquired smaller railroads. When these railroads were acquired, the right-of-way was also acquired, and it appears that some railroad companies do not know what kind of property interest it has in a railroad right-of-way.

During the course of its meetings, several proposals were submitted to the Study Committee and considered by the Study Committee. These proposals include the following:

1. That the Iowa State Commerce Commission be extended the authority to approve the sale of abandoned right-of-way to private individuals or business groups and to permit these groups to operate the abandoned line as a branch line. The abandonment of the Hills-Montezuma line was discussed as well as the efforts of local businessmen to acquire this right-of-way and to operate the railroad. It is noted that the business association which is attempting to acquire the Hills-Montezuma line did apply to the Iowa State Commerce Commission for a certificate of public convenience and necessity to operate this line. The petition was rejected by that body on the grounds that that agency lacked proper jurisdiction to grant the authority sought by the private business group. The Commission opinion pointed out that the authority to grant permits for the operation of any railroad lies with the Interstate Commerce Commission. It is anticipated that the Interstate Commerce Commission will act favorably upon any petition presented to it regarding the transfer of railroad property from a railroad company to a private business association or individual. Several members of the Study Committee suggested that the acquisition and operation of railroad property by business groups would be one method of solving the railroad abandonment problem. The real problem appears to be that in many cases it will not be economically feasible for private individuals or business associations to acquire abandoned railroad property for the purposes of continuing rail transportation services.

2. That the state grant tax-exempt status to railroad lines producing less than thirty-four cars per mile per year as an incentive to the railroads to continue operating these lines rather than abandoning them. It was pointed out to the Study Committee that the present property tax on railroad right-of-way averages approximately \$1,100 per mile per year. Railroad representatives appearing before the Study Committee testified that such a proposal would have little or no effect upon plans of the railroad companies to

abandon the less profitable lines. It was pointed out that the costs of maintaining railroad right-of-way averages approximately \$1,300 per mile and the costs of operating and maintaining the rolling stock far exceeds this amount. The Study Committee members agreed not to submit such a recommendation in light of testimony received by the Study Committee.

3. That railroads be prohibited from disposing of abandoned railroad right-of-way for a period not to exceed two years to allow ample opportunity for the state or any county or city or town to exercise an option to acquire the property for public or private purposes. The state would have the first option to acquire the property, the county would have the second option, and the city or town would have the last option. A railroad company shall not be liable for property taxes levied against the railroad right-of-way for a period of two years when the state, county, and city or town hold options to acquire the property. This property could also be used and developed as public utility corridors within the state. Two years would give ample opportunity for a state agency or a governmental subdivision to determine whether the abandoned right-of-way could be used for highway purposes, whether it might be developed as a bike trail or for other recreational purposes, or whether it might be developed as wildlife habitat or public game preserves. The Study Committee recommends that a bill be drafted on this subject matter and a copy of the bill as approved by the Study Committee is attached. The Study Committee recommends this bill to the Sixty-fifth General Assembly.

4. That additional study be made by the state concerning the feasibility of operating passenger service on an experimental basis between Des Moines and Rock Island, Illinois. In testimony before the Study Committee, it was pointed out that the most costly item in providing railroad passenger services arises from the maintenance of depots. It was pointed out that this problem does not exist with regard to depots in Iowa because depots in Iowa are not the large, ornate depots found in many of the larger cities of the country. It is further recommended that the passenger service be extended to the use of a self-contained, self-propelled, diesel passenger car. It was pointed out to the Committee that such diesel passenger cars have been used with a great deal of success in both Canada and Mexico and that the cost of operating such diesel passenger cars greatly reduces the cost of passenger operations. The need for a feasibility study of this subject matter is required because Amtrak requires that before it will begin the operation of a new passenger service, the state must agree to pay two-thirds of any debt that the railroad line may incur annually. The testimony received by the Railroad Service Study Committee indicated that if any debt were incurred, it should not exceed \$100,000.

BILL I - DRAFT 2
Prepared by the Legislative
Service Bureau for the use
of the Railroad Service Study
Committee for discussion pur-
poses only.
December, 1972

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to abandoned railroad right-of-way.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 Section 1. NEW SECTION. When any railroad company makes
2 application to the interstate commerce commission for author-
3 ity to abandon any part of its right-of-way on which passenger
4 or freight services are operated, or to abandon, sell, or
5 lease any of its right-of-way over which services have pre-
6 viously been abandoned, the railroad company shall, within
7 ten days from the date the application was filed, serve no-
8 tice upon the state and each county and city or town in which
9 any part of the right-of-way proposed for abandonment is lo-
10 cated. The railroad company shall not sell or convey any
11 part of the right-of-way which it proposes to abandon for
12 a period of two years from the effective abandonment date
13 set out in the order issued by the interstate commerce com-
14 mission on the application for abandonment.

15 Sec. 2. NEW SECTION. Each notice shall contain a de-
16 scription sufficient to identify the right-of-way intended
17 to be abandoned. The notice shall also grant to the state
18 and each county and city or town in which any part of the
19 right-of-way proposed for abandonment is located, an option
20 to purchase the right-of-way for a period of two years from
21 the date of the issuance of the order permitting the aban-
22 donment by the interstate commerce commission.

23 The notice to the state shall be served upon the director
24 of the natural resources council. The notice to the county
25 shall be served upon the board of supervisors, and the notice
26 upon the city or town shall be served upon the city or town
27 council.

28 The option granted to the state under the provisions of
29 this section shall take precedence over the options granted
30 to any county or city or town and the option granted under
31 the provisions of this section to any county shall take pre-
32 cedence over any options granted to a city or town.

33 The state may terminate the option by giving notice to
34 the counties, cities, and towns and the railroad company that
35 the state will not exercise the option. The county may ter-

1 minate its option in the same manner as provided for the
2 state.

3 Sec. 3. NEW SECTION. The natural resources council shall
4 represent the state or any of its agencies under the provisions
5 of this Act. Service of notice by the railroad company shall
6 be upon the natural resources council and any acquisition
7 of abandoned right-of-way pursuant to the provisions of this
8 Act shall be by the council for the state or any of its
9 agencies.

10 Sec. 4. NEW SECTION. The state or county or city or town
11 may acquire the abandoned right-of-way for any public use,
12 by purchase, lease, gift, or exercising the power of eminent
13 domain.

14 Sec. 5. NEW SECTION. If the state or any county or city
15 or town granted an exclusive option under the provisions of
16 this Act fails to exercise its exclusive option within two
17 years, the railroad company may dispose of the abandoned
18 right-of-way in any manner it shall see fit, provided that
19 if the railroad company has less than a fee simple absolute
20 interest in the property, the abandoned right-of-way property
21 shall revert to the owners of the tract from which the
22 abandoned right-of-way was taken.

23 Sec. 6. NEW SECTION. A railroad company shall not be
24 liable for the payment of taxes levied pursuant to chapter
25 four hundred thirty-four (434) of the Code on any right-of-
26 way abandoned under the provisions of section one (1) of this
27 Act during the two years following the abandonment when options
28 have been granted to the state and county and any city or
29 town to acquire the abandoned right-of-way.

30 Sec. 7. Sections four hundred seventy-one point fifteen
31 (471.15), four hundred seventy-one point sixteen (471.16),
32 four hundred seventy-one point seventeen (471.17), four hun-
33 dred seventy-one point eighteen (471.18), four hundred seventy-
34 three point one (473.1), and four hundred seventy-three point
35 two (473.2), Code 1973, are repealed.

EXPLANATION

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This bill provides that upon the abandonment of any rail-
road right-of-way, the railroad company must serve notice
to the state, each county and city or town in which any part
of the abandoned right-of-way lies and grant to the state
and each county and city or town an option to acquire the
property within two years from the date of the abandonment.
If the property is acquired by a governmental body, it may
be used for any public purpose.

The Natural Resources Council is designated as the state
agency upon which the notice of abandonment is served and
this agency shall negotiate the acquisition of any abandoned
right-of-way for the state or any of its agencies.

The railroad company is not liable for payment of property
taxes during the two-year period when options have been granted
to the state and any county and city or town.