

Approved April 1, 1991
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by REPRESENTATIVE M. J. JOHNSON at
Chairperson

1:35 ~~am~~ p.m. on MARCH 28, 1991 in room 521-S of the Capitol.

All members were present except:
Representative Garry Boston, excused

Committee staff present:
Mike Heim, Legislative Research Dept.
Theresa Kiernan, Revisor of Statutes
Connie Smith, Committee Secretary

Conferees appearing before the committee:
Gerald Carter, Dept. of Administration, Division of Architectural Services,
Deputy Director, Planning and Project Management
Ramon Powers, Executive Director, Kansas State Historical Society
Martha K. Gabehart, Exec. Director, Kansas Commission on Disability
Concerns
Representative Ed McKechnic
Larry J. Stevens, City Manager, City of Pittsburg
Representative Melvin Neufeld
Ernie Mosher, League of Kansas Municipalities

Chairman Johnson opened a hearing on HB 2602.

HB 2602 - Concerning public and governmental buildings and facilities;
relating to handicapped accessibility standards.

Gerald R. Carter, Division of Architectural Services, Dept. of
Administration, gave background and intent of HB 2602 and provided written
testimony. (Attachment 1) Mr. Carter responded to questions from
committee.

Ramon Powers, Executive Director of Kansas Historical Society, testified
in support of HB 2602 and offered a balloon of a proposed amendment.
(Attachment 2) Mr. Powers answered questions from committee.

Martha K. Gabehart, Executive Director, Kansas Commission on Disability
Concerns, testified in support of the concept of HB 2602 and offered
suggested amendments. (Attachment 3)

There were no opponents to HB 2602 and the Chairman closed the hearing
on HB 2602.

Chairman opened a hearing on HB 2606.

HB 2606 - Act relating to public streets, avenues, alleys or lanes, and
adjacent rights-of-way; concerning the transfer of title between
cities.

Representative Ed McKechnic gave background and intent of HB 2606 and
distributed to committee a letter from City of Pittsburg and a resolution.
(Attachment 4)

Larry J. Stevens, City Manager, City of Pittsburg, testified in support
of HB 2606. (Attachment 5)

No other proponents or opponents to HB 2606.

Committee discussion followed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,

room ~~521-S~~, Statehouse, at 1:35 ~~am~~/XX p.m. on MARCH 28, 1991

A committee member expressed concern about making this statewide without thinking of the ramifications of it, but wouldn't mind localizing it.

Chairman closed the hearing on HB 2606.

Chairman opened a hearing on HB 2607.

HB 2607 - Transfer of cemetery property from Ford County to Dodge City authorized.

Representative Melvin Neufeld testified in support of HB 2607. (Attachment 6) Representative Neufeld stated Ford County received the cemetery as an abandoned cemetery and it was a perpetual care cemetery. This bill allows Dodge City to receive the trust fund and the cemetery. Representative Neufeld stated there was an AG's opinion that a perpetual care cemetery that has been vacated, the law says it becomes the property of the county, and the county can neither give it away nor their responsibility of maintaining the cemetery. Representative Neufeld responded to questions from committee.

There were no opponents to HB 2607 and the Chairman closed the hearing on HB 2607.

Chairman opened a hearing on HB 2119.

HB 2119 - Cities of third class; vacancies in office of mayor.

Ernie Mosher testified in support of HB 2119 and asked committee to put it on the consent calendar or leave it in committee. (Attachment 7) Mr. Mosher responded to questions from committee.

There were no opponents to HB 2119 and the Chairman closed the hearing on HB 2119.

Chairman called for discussion and possible action on the following bills:

SB 258 - Relating to the powers and duties of certain township fire departments.

Staff gave a briefing on SB 258.

Representative Harder moved to pass SB 258; seconded by Representative Mollenkamp. The motion carried.

SB 295 - Lease of county space by county commissioners.

Representative Minor made a motion to pass SB 295; seconded by Representative Harder. The motion carried.

SB 349 - Jennings, Ks., authority to transfer money to general fund.

Staff distributed a copy of a proposed amendment to SB 349, which applies to any municipality that has power to issue a general obligation bond. (Attachment 8)

Representative Holmes moved to accept the proposed amendment. The motion was seconded by Representative Wempe. The motion carried.

Representative Mollenkamp moved to pass SB 349 favorably as amended. The motion was seconded by Representative Holmes. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,

room 521-S Statehouse, at 1:35 ~~XX~~ p.m. on MARCH 28, 1991

SB 24 - Concerning fire districts in Johnson Co.

Representative Brown offered an amendment to SB 24 to make it apply uniformly to all cities in Johnson County. The motion was seconded by Representative Sluiter. The motion carried.

Representative Brown moved to pass SB 24 favorably as amended. The motion was seconded by Representative Sluiter. The motion carried. Representative Tom Thompson wanted to be recorded as voting "no".

Representative Watson moved to approve the minutes of March 25 and March 26, 1991. The motion was seconded by Representative Wempe. The motion carried.

Meeting was adjourned at 2:45 p.m.

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STATE OF KANSAS



DEPARTMENT OF ADMINISTRATION
Division of Architectural Services

JOAN FINNEY,
Governor
EDWARD A. MARTIN, AIA
Director

625 Polk
Topeka, Kansas 66603-3288
(913) 233-9367

M E M O R A N D U M

TO: Members, House of Representatives
Committee on Local Government

FROM: Department of Administration
Division of Architectural Services
Gerald R. Carter, AIA *GRC*
Deputy Director, Planning & Project Management

RE: House Bill 2602; Handicapped Accessibility Standards

DATE: March 28, 1991

1. Introduction:

- A. The purpose of this legislative proposal is to bring the existing Handicapped Accessibility Standards, K.S.A. 58-1301, 58-1304 and 58-1311, affecting all State, County and Municipality facilities, into compliance with the new Federal requirements of the Americans with Disabilities Act of 1990 (ADA), enacted by President Bush on July 26, 1990.
- B. The Americans with Disabilities Act (ADA) of 1990 extends to those individuals with disabilities, comprehensive civil rights protections similar to those provided to persons on the basis of race, sex, national origin, and religion under the Civil Rights Act of 1964. Title III of the ADA prohibits discrimination on the basis of disability in places of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation. Title III establishes accessibility requirements for new construction and alterations in places of public accommodation and commercial facilities.

JS
3-28-91
Attach. 1

2. Policy Implication/Background:

- A. The purpose of these proposed revisions would be to establish one set of handicapped accessibility standards as the requirements for all Federal, State, County, Municipality and private sector projects undertaken in the State of Kansas.
- B. The current handicapped accessibility standard, required by K.S.A. 58-1301, is the American National Standards Institute (ANSI) A117.1-1980. According to the requirement of Sec. 504 of the ADA, the Architectural and Transportation Barriers Compliance Board (Board), an independent Federal agency, has the responsibility of establishing the accessibility standards that will apply under the ADA. According to the Board, guidelines developed for ADA compliance will largely follow ANSI-A117.1-1986. The original Board guidelines published in 1982 were based on ANSI-A117.1-1980.
- C. As required by the ADA (refer to Attachment No. 1), the new guidelines developed by the Board will cover a broader variety of buildings than the current ANSI A-117.1 standards, including additional scoping provisions and technical specifications for transit facilities, recreation facilities, childrens' facilities and communication accessibility. As with the original Board guidelines, the Board intends to cover those areas not described in ANSI-A117.1 such as restaurants, health care facilities, libraries and postal facilities. The Board has determined it will incorporate its new guidelines into the ANSI-A.117-1 format with the differences between the two guidelines noted in italics. In this way, the new guidelines would be a self-contained document (refer to Attachment No. 2).
- D. Modification of K.S.A. 58-1301 will assure compliance with the new requirements of the ADA. It will also provide more detailed analysis and directions on public

facilities than acknowledged in the current ANSI A117.1 standards.

- E. A new office devoted to implementing and enforcing the ADA, as required in Sec. 308 Enforcement paragraph (b)(1)(A)(ii), has been established at the U.S. Justice Department. This new office, a branch of the existing Coordination and Review section of the Civil Rights Division of Justice, will develop and implement regulations to govern the state and local government (title II) and public accommodations provisions (title III) of the ADA. It will be necessary, under the requirements of this paragraph, for the U.S. Attorney General to certify that our statutes meet, or exceed, the minimum requirements for the accessibility and usability of public facilities covered by the ADA.

3. Impact on Other State Agencies: Minimal

- A. A variety of officials in state and local agencies enforce handicapped accessibility/building code requirements, depending on the type of building and the funding source.
1. State Buildings: Department of Administration, Division of Architectural Services and Division of Facilities Management. This includes all buildings owned and leased by the State, as well as buildings constructed or renovated by institutions governed by the Board of Regents.
 2. Schools: Department of Education. This includes all private and public elementary, secondary and post-secondary schools, not governed by the Board of Regents.
 3. City and County Buildings: The local governing body, or an agency designated by that body. In practice, the local building officials monitor compliance and enforce the requirements.

4. Senate Bill No. 298, under consideration in the House Judiciary Committee, strengthens K.S.A. 58-1304 by making the State Attorney General responsible for the oversight of all enforcement activities. It also clarifies the responsibility of county and district attorneys and provides additional power to District Courts to order modification by mandatory injunction.

We have noted that Senate Bill 298 and this bill both modify certain language in K.S.A. 58-1304. The enforcement procedures of Senate Bill 298 are extremely important whereas Sec. 2 of House Bill 2602 is a technical modification clarifying our Department's responsibility for code enforcement for all projects built on state property regardless of funding source. This is an important provision for our Department; however, it could be added easily to Senate Bill 298 to avoid any confusion between the two bills in this area.

- B. The primary impact of the ADA requirements will ensure that all public buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities. The agencies charged with the enforcement of K.S.A. 58-1301 have, by the enactment of the ADA, been presented with additional responsibilities that should be recognized in our current statutes.
- C. The enactment of the ADA was widely reported around the State, and the Nation, in July 1990. The details of its provisions are, only now, being distributed to the public. The effect on all the agencies that enforce handicapped accessibility standards is not well understood. The Department of Administration has communicated with several of the Regents institutions and other state agencies that also have responsibility for

associated code enforcement activities. These state agencies have requested backup materials and copies of the guidelines required to be used by the provisions of the ADA. It is the intent of the Department to have review and briefing sessions with the other State agencies and institutions to coordinate our approach to handicapped accessibility issues.

After review of the backup materials and the proposed handicapped accessibility standards, Mr. Ramon Powers, Executive Director of the Kansas State Historic Society, pointed out several areas within the existing statutes where the Society should be consulted when historic properties are renovated. Mr. Powers will present his ideas for further modification of these statutes as a balloon amendment to this bill. We have reviewed his addition to the bill and concur with this observation regarding handicapped accessibility to historic properties in the State.

- D. The code enforcement agencies in county and municipal government, represented by organizations such as the Heart of America Chapter of the International Conference of Building Officials, are generally aware of the Federal regulations. They are unsure how the Federal requirements will interface with State statutes as well as the supplemental requirements the local governments have adopted for use in their jurisdictions.

Establishing one source of handicapped accessibility standards, which apply to all projects in the State, will have a lesser impact on the enforcement agencies of the State than the continued use of superseded versions of previous guidelines. Continued use of these older guidelines, which do not comply with the requirements of the ADA, will be a violation of the ADA and may result in the Justice Department filing a legal action against the State for its nonconformance with Federal law.

4. Fiscal Impact: Minimal

- A. No funds are requested, or required, this fiscal year to implement these proposed revisions. No additional FTE's are required to administer this program. All capital improvement projects undertaken by the State, Counties and Municipalities have had to comply with basic handicapped accessibility guidelines since the original statute was enacted in 1968.
- B. Current, and future, capital projects will have to meet the new handicapped accessibility standards of the ADA proposed herein. Federal regulations already require any State, County or Municipality representative or agency receiving Federal funding to comply with the standards of the ADA.
- C. Any additional costs associated with these new standards can be readily absorbed by the construction contingency amounts which are, typically, included as part of each project's appropriation request.

Attachment No. 1

Presentation on House Bill 2602; Revise Handicapped Accessibility Standards

March 28, 1991

Under Section 306(b) of the ADA, the Department of Justice is responsible for issuing final regulations that include accessibility standards for newly-constructed and altered places of public accommodation and commercial facilities.

"Section 504 of the ADA requires that the Architectural and Transportation Barriers Compliance Board issue guidelines by April 26, 1991, to provide guidance to the Department of Justice in establishing the standards [referenced above]. Section 306(c) of the ADA provides that the Department of Justice's standards must be consistent with the Board's guidelines.

The Board is an independent Federal agency established pursuant to section 502 of the Rehabilitation Act of 1973 to ensure that the requirements of the Architectural Barriers Act of 1968 are met and to propose alternative solutions to architectural, transportation, communication, and attitudinal barriers faced by individuals with disabilities. The Board has developed guidelines to provide guidance to the four Federal agencies (the General Services Administration, the Department of Defense, the Department of Housing and Urban Development, and the United States Postal Service) responsible for establishing accessibility standards for those federally owned, leased, or financed buildings covered by the Architectural Barriers Act of 1968. Those guidelines are called the Minimum Guidelines and Requirements for Accessible Design (MGRAD) and are published at 36 CFR part 1190. The standards established by the four Federal agencies are called the Uniform Federal Accessibility Standards (UFAS) and were published in the Federal Register on August 7, 1984 (49 FR 31528). UFAS is generally consistent with MGRAD.

Section 504 of the ADA requires that the guidelines issued by the Board under the ADA supplement the existing MGRAD and 'establish additional requirements, consistent with this Act, to ensure that buildings [and] facilities . . . are accessible in terms of architecture and design . . . and communication, to individuals with disabilities.' The legislative history further explains that the guidelines may not 'reduce, weaken, narrow or set less accessibility standards than those included in existing MGRAD' and should provide greater guidance in the area of communication accessibility for individuals with hearing and visual

impairments. H. Rept. 101-485, pt 2, at 139. Section 504 of the ADA also requires that the guidelines include provisions based on UFAS for alterations to qualified historic properties.

[The] MGRAD includes technical specifications which describe how to make entrances, telephones, drinking fountains, toilet rooms, and other elements and spaces of a building or facility accessible; and scoping provisions which specify the extent to which the technical specifications must be followed (how many, when, and where accessible elements and spaces must be provided in a facility). Throughout the development of its guidelines, the Board has used the 1980 and 1986 versions of the American National Standard Institute's ANSI A117.1 standard as the basis for the technical specifications. The ANSI A117.1 standard is developed through a consensus process by a committee made up of over 50 organizations representing associations of individuals with disabilities, rehabilitation professionals, designers, builders, manufacturers, and government agencies. The ANSI A117.1 standard has been generally accepted by the private sector, and has been incorporated or referenced in the model building codes. Two thirds of the States[, including Kansas,] currently incorporate or reference the 1980 or 1986 versions of the ANSI A117.1 standard, or other documents such as the model building codes of UFAS which are based on those standards, in their building codes."

"The ANSI A117.1 standard is reviewed at five year intervals and is presently in the process of being revised by the ANSI A117 Committee. The Board is a member of the ANSI A117 Committee and has actively participated in the revision process. A proposed draft ANSI A117.1-1991 is expected to be issued in early 1991; however the final version is not expected to be approved in time for the Board to review for purposes of issuing these guidelines. Nonetheless, the Board has considered the planned revisions to the ANSI A117.1 standard when proposing revisions to the technical specifications."

In preparing these revisions, "The Board has decided to use the ANSI format and numbering system and reprint the text and illustrations of ANSI A117.1 standard, with modifications and additions noted by italics. This is the format followed by UFAS. Since the substantive requirements of UFAS are generally consistent with MGRAD, and because UFAS was written so as to be incorporated as accessibility

standards in regulations issued by other Federal agencies, the Board has used UFAS as the model for these proposed guidelines."

In summary, "The proposed ADA guidelines are issued as an appendix to 36 CFR part 1191. As discussed above, the proposed guidelines use UFAS as their model; follow the ANSI format and numbering system; and are consistent with the existing MGRAD. The proposed guidelines consist of nine main sections and a separate appendix. Sections one through three contain general provisions and definitions. Section four contains scoping provisions and technical specifications applicable to all covered buildings and facilities. The scoping provisions are listed separately for new construction of sites and exterior facilities; new construction; additions; alterations; and alterations to qualified historic properties. The technical specifications reprint the text and illustrations of the ANSI A117.1 standard with differences noted by italics. Sections five through nine of the guidelines are special application sections and contain additional requirements for restaurants and cafeterias, medical care facilities, business and mercantile facilities, libraries, and transient lodging. The appendix to the guidelines contains additional information to aid in understanding the technical specifications. The section numbers in the appendix correspond to the sections of the technical specifications to which they relate. An asterisk after a technical specification section number indicates that additional information appears in the appendix."

Data presented herein has been taken from the Federal Register/ Vol. 56 No. 14/Tuesday, January 22, 1991/Proposed rules; Part V., Architectural and Transportation Barriers Compliance Board, 36 CFR Part 1191, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Proposed Rules.

4.3 Accessible Route

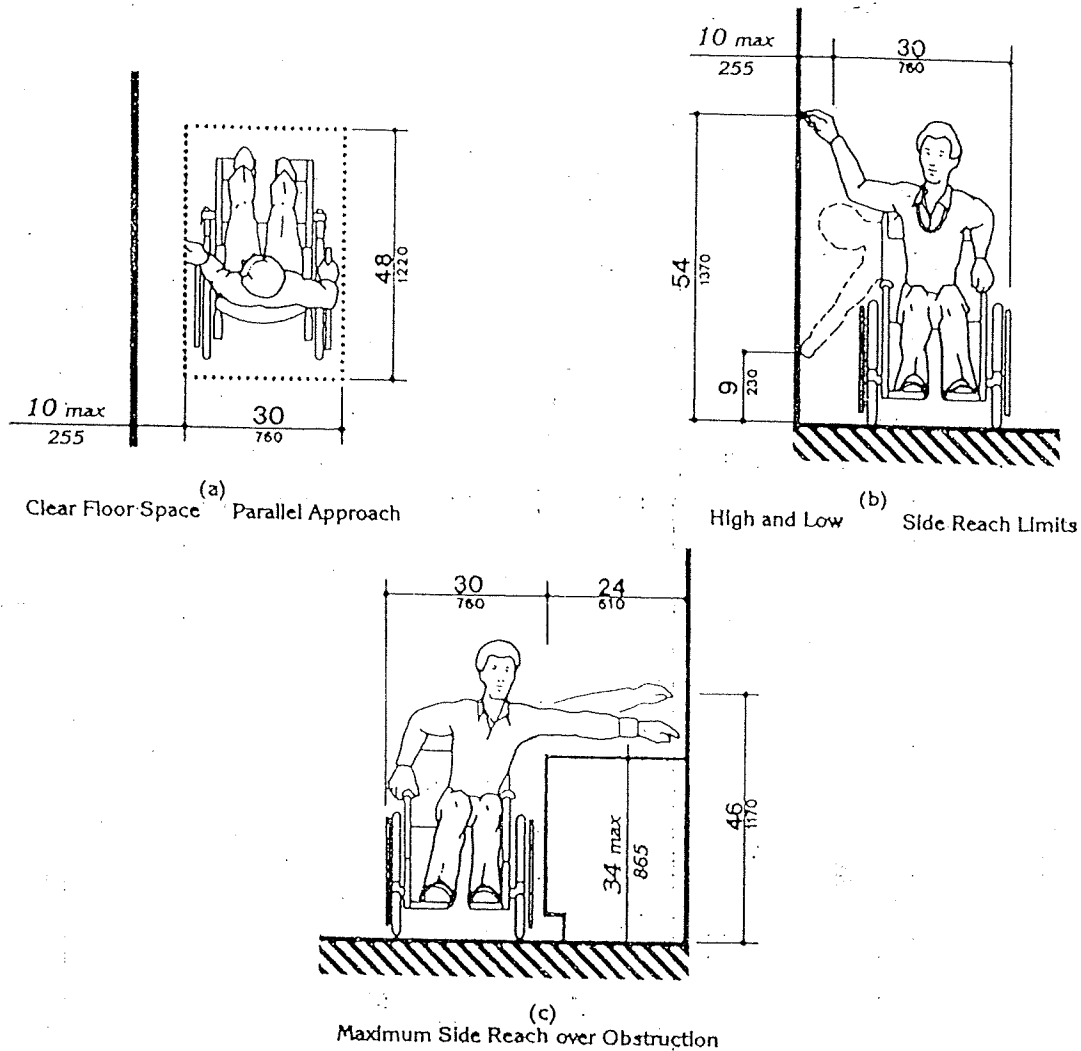


Fig. 6
Side Reach

4.3 Accessible Route

4.3.1* General. All walks, halls, corridors, aisles, and other spaces that are part of an accessible route shall comply with 4.3.

4.3.2 Location.

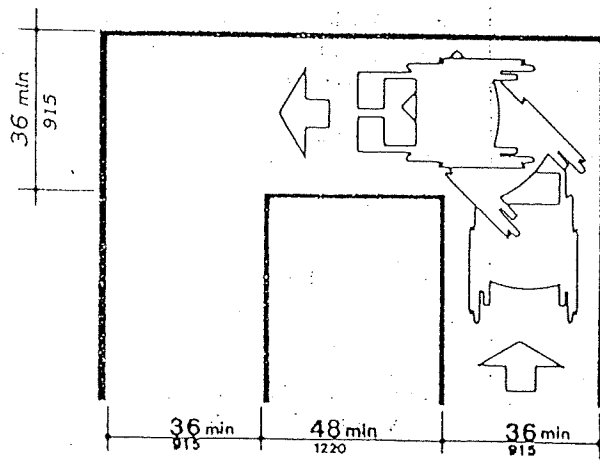
(1) At least one accessible route *within the boundary of the site* shall be provided from public transportation stops, accessible park-

ing, and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve.

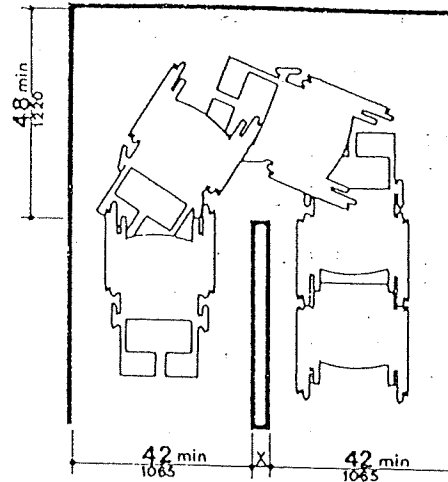
(2) At least one accessible route shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

(3) At least one accessible route shall connect accessible building or facility entrances with all accessible spaces and

4.3 Accessible Route

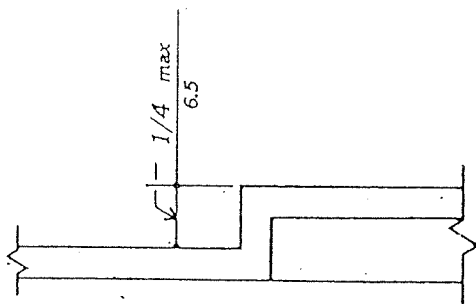


(a)
90° Turn

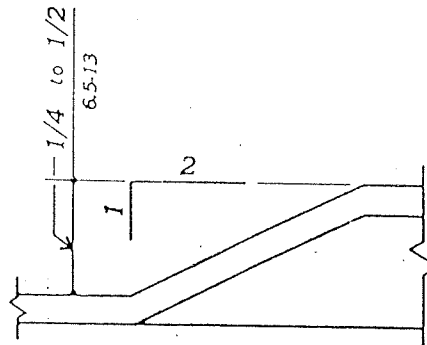


(b)
Turns around an Obstruction

NOTE: Dimensions shown apply when $x < 48$ in (1220 mm).



(c)
Changes in level



(d)
Changes in level

Fig. 7
Width of Accessible Route

elements and with all accessible dwelling units within the building or facility.

(4) An accessible route shall connect at least one accessible entrance of each accessible dwelling unit with those exterior and interior spaces and facilities that serve the accessible dwelling unit

4.3.3 Width. The minimum clear width of an accessible route shall be 36 in (915 mm) ex-

cept at doors (see 4.13.5). If a person in a wheelchair must make a turn around an obstruction, the minimum clear width of the accessible route shall be as shown in Fig. 7.

4.3.4 Passing Space. If an accessible route has less than 60 in (1525 mm) clear width, then passing spaces at least 60 in by 60 in (1525 mm by 1525 mm) shall be located at reasonable intervals not to exceed 200 ft (61 m).

1-11

4.3 Accessible Route

A T-intersection of two corridors or walks is an acceptable passing place.

4.3.5 Head Room. Accessible routes shall comply with 4.4.2.

4.3.6 Surface Textures. The surface of an accessible route shall comply with 4.5.

4.3.7 Slope. An accessible route with a running slope greater than 1:20 is a ramp and shall comply with 4.8. Nowhere shall the cross slope of an accessible route exceed 1:50.

4.3.8 Changes in Levels. Changes in levels along an accessible route shall comply with 4.5.2. If an accessible route has changes in level greater than 1/2 in (13 mm), then a curb ramp, ramp, elevator, or platform lift shall be provided that complies with 4.7, 4.8, 4.10, or 4.11, respectively. Stairs shall not be part of an accessible route.

4.3.9 Doors. Doors along an accessible route shall comply with 4.13.

4.3.10* Egress. Accessible routes serving any accessible space or element shall also serve as a means of egress for emergencies or connect to an accessible area of refuge.

4.3.11 Areas of Refuge. Every area of refuge shall have a one-hour minimum

fire-resistive separation. Every area of refuge above or below the level of exit discharge (the ground floor level) shall have direct access to an exit stairway and, in addition, may have access to an egress elevator where such elevator is designed and constructed in compliance with other regulations as being suitable for emergency evacuation when operated by trained emergency service personnel. Doors to the area of refuge shall be in compliance with all requirements of 4.13, shall swing in the direction of exit travel, and shall not prevent re-entry from the egress side. Every area of refuge shall provide a minimum of two wheelchair spaces, each 30 inches by 48 inches. Wheelchair spaces shall not be part of, nor encroach upon, any required exit/corridor/landing dimension. Travel in two directions to an area of refuge shall be possible from any point on the level served by the area of refuge. A two-way communication system, with both visible and audible signals, shall be provided between an area of refuge and a central emergency management control point. Where telephone handsets are provided as one means of communication, they shall comply with 4.31. A landing in an exit stair which does not contain a standpipe may be used as an area of refuge if the spaces for wheelchairs do not encroach upon the required landing dimensions. Signage identifying and directing people to the area of refuge is required and shall use the international symbol of accessibility.

4.6 Parking and Passenger Loading Zones

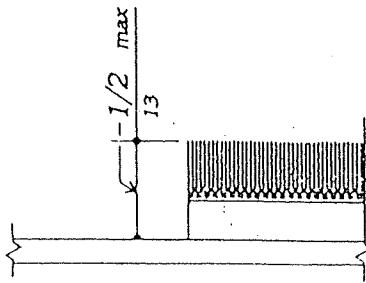


Fig. 8(f)
Carpet Tile Thickness

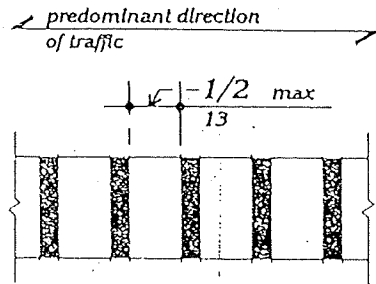


Fig. 8(g)
Gratings

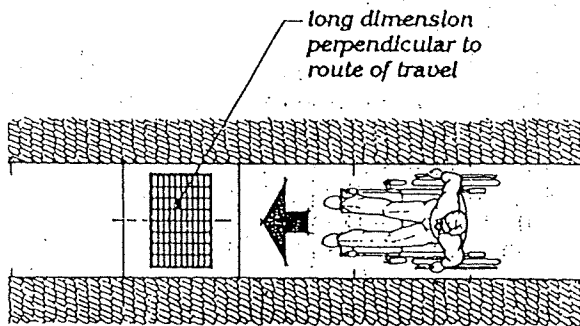


Fig. 8(h)
Grating Orientation

4.6 Parking and Passenger Loading Zones.

4.6.1 Minimum Number. *Parking spaces required to be accessible by 4.1 shall comply with 4.6.2 through 4.6.4. Passenger loading zones required to be accessible by 4.1 shall comply with 4.6.5 and 4.6.6.*

4.6.2 Location. *Parking spaces for disabled people and accessible passenger loading zones that serve a particular building shall be the spaces or zones located closest to the nearest accessible entrance on an accessible route. In separate parking structures or lots that do not serve a particular building, parking spaces for disabled people shall be located on the shortest possible circulation route to an accessible pedestrian entrance of the parking facility.*

4.6.3* Parking Spaces. *Parking spaces for disabled people shall be at least 96 in (2440 mm) wide and shall have an adjacent access aisle 60 in (1525 mm) wide minimum (see Fig. 9). Parking access aisles shall be part of an accessible route to the building or facility entrance and shall comply with 4.3. Two accessible parking spaces may share a common access aisle. Parked vehicle overhangs shall not reduce the clear width of an accessible circulation route. *Parking spaces and access aisles shall be level with surface slopes not exceeding 1:50 in all directions.**

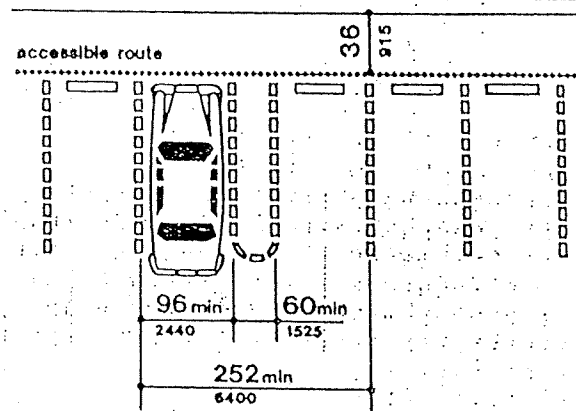


Fig. 9
Dimensions of Parking Spaces

4.6 Parking and Passenger Loading Zones

EXCEPTION. If accessible parking spaces for vans designed for handicapped persons are provided, each should have an adjacent access aisle at least 96 in (2440 mm) wide complying with 4.5, Ground and Floor Surfaces.

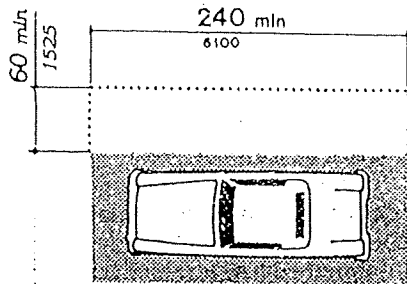


Fig. 10
Access Aisle at Passenger Loading Zones

4.6.4* Signage. Accessible parking spaces shall be designated as reserved for the disabled by a sign showing the symbol of accessibility (see 4.30.7). Such signs shall not be obscured by a vehicle parked in the space.

4.6.5 Passenger Loading Zones. Passenger loading zones shall provide an access aisle at least 60 in (1525 mm) wide and 20 ft (6 m) long adjacent and parallel to the vehicle pull-up space (see Fig. 10). If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with 4.7 shall be provided. *Vehicle standing spaces and access aisles shall be level with surface slopes not exceeding 1:50 in all directions.*

4.6.6 Vertical Clearance. Provide minimum vertical clearance of 114 in at accessible passenger loading zones and along vehicle access routes to such areas from site entrances.

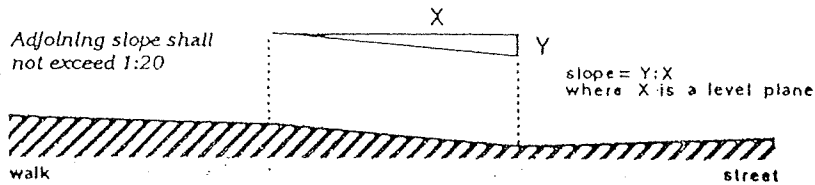
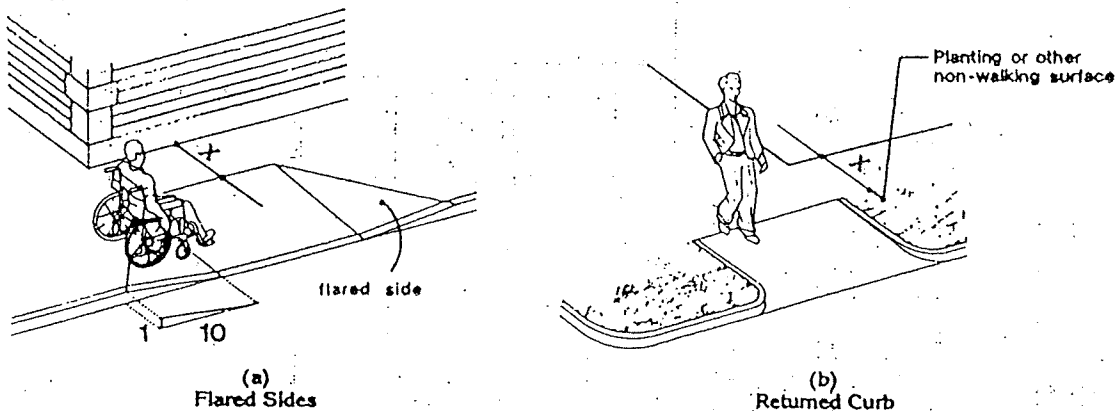


Fig. 11
Measurement of Curb Ramp Slopes



If X is less than 48 in, then the slope of the flared side shall not exceed 1:12.

Fig. 12
Sides of Curb Ramps

Testimony of
Dr. Ramon Powers
Executive Director
Kansas State Historical Society
March 28, 1991

Thank you for the opportunity to present testimony on HB 2602 regarding the state's handicapped accessibility standards. We support efforts to make public accommodations accessible to persons with disabilities. I come here today to propose amendments to this bill so that the state may balance its commitment to access for persons with disabilities and its commitment to the preservation of significant historic properties. A balloon of the proposed amendments is attached to my testimony. In developing these proposed revisions, we have worked with the Department of Administration and the Kansas Commission on Disability Concerns and believe that our proposals meet their objectives.

There are two proposed revisions directly related to historic preservation. The first one defines the term historic properties as those properties that are listed in the State or National Registers or are designated historic by local governments that have been certified by the State Historic Preservation Officer and the National Park Service. Local governments that have been certified by the State Historic Preservation Officer and the National Park Service have made a commitment to historic preservation and have entered into a special relationship with the State Historic Preservation Officer. The other proposed revision that is directly related to historic preservation provides for the granting of waivers by the person, agency or governing body responsible for

LP
3-28-91
Attach. 2

enforcement of the state Handicapped Accessibility Standards if the State Historic Preservation Officer finds that meeting the accessibility standards will encroach upon, damage or destroy a historic property.

Of the two other amendments, one is a technical issue and introduces the exceptions provided through waivers and the other limits the Secretary of Administration's responsibility for enforcement of K.S.A. 58-1301 to 58-1309, inclusive, to all construction and renovation which affects state property regardless of funding source. Without this amendment, the Secretary of Administration would be responsible for enforcement of the accessibility standards for all funds expended on all properties, including all private property.

HOUSE BILL No. 2602

By Committee on Appropriations

3-25

8 AN ACT concerning public and governmental buildings and facilities;
9 relating to handicapped accessibility standards; amending K.S.A.
10 58-1301 and 58-1311 and K.S.A. 1990 Supp. 58-1304 and repealing
11 the existing sections.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 58-1301 is hereby amended to read as follows:

15 58-1301. (a) ~~All public buildings and facilities in this state, and ad-~~
16 ~~ditions thereto, and all governmental buildings and facilities in this~~
17 ~~state, and additions thereto, shall conform to the American national~~
18 ~~standards institute specifications Minimum Guidelines and Re-~~
19 ~~quirements for Accessible Design, 36 CFR Part 1190, as in effect~~
20 ~~on February 3, 1989, and the Uniform Federal Accessibility Stand-~~
21 ~~ards, 49 Federal Register 31528, as required by the public accom-~~
22 ~~modations title of the Americans With Disabilities Act of 1990, 42~~
23 ~~USCA 12101 et seq., enacted on July 26, 1990, for making buildings~~
24 ~~and facilities accessible to, and usable by, the physically handicapped,~~
25 ~~which specifications were approved March 3, 1980, by the~~
26 ~~American national standards institute, 1430 Broadway, New~~
27 ~~York, N.Y. 10018, and as. Such standards may be modified by~~
28 ~~rules and regulations adopted by the secretary of administration in~~
29 ~~accordance with the provisions of K.S.A. 77-415 et seq., and amend-~~
30 ~~ments thereto. Any public building or facility or any governmental~~
31 ~~building or facility, or any addition to any such building or facility,~~
32 ~~to which the provisions of this section were applicable prior to July~~
33 ~~1, 1981 1991, shall be governed by the provisions of this section~~
34 ~~which were in effect on the date the contract for the construction~~
35 ~~or renovation of such public building or facility or such governmental~~
36 ~~building or facility, or addition thereto, was entered into.~~

37 (b) A building or facility for which a standard has been waived
38 or modified pursuant to K.S.A. 58-1307, and amendments thereto,
39 shall be deemed to conform to the standards established pursuant
40 to this section if such building or facility conforms to all such stand-
41 ards which have not been waived or modified and to any modified
42 standard approved for such building or facility pursuant to K.S.A.
43 58-1307, and amendments thereto.

Except as provided in K.S.A. 58-1307 and 58-1321, all

26
3

on state property

1 Sec. 2. K.S.A. 1990 Supp. 58-1304 is hereby amended to read
2 as follows: 58-1304. The responsibility for enforcement of K.S.A. 58-
3 1301 to 58-1309, inclusive, and amendments thereto, shall be as
4 follows: (a) For all school building construction or renovation, the
5 state board of education, by plan approval as required by K.S.A.
6 31-150, and amendments thereto;

7 (b) for all construction or renovation for which *state federal, state*
8 *or private* funds are utilized, the secretary of administration;

9 (c) for all construction or renovation where funds of a county,
10 municipality or other political subdivision are utilized, the governing
11 body thereof or an agency thereof designated by the governing body;

12 (d) for all other construction or renovation of buildings or facilities
13 which are subject to the provisions of K.S.A. 58-1301 to 58-1309,
14 inclusive, and amendments thereto, the building inspector or other
15 agency or person designated by the municipality in which the build-
16 ing or facility is located.

17 Sec. 3. K.S.A. 58-1311 is hereby amended to read as follows:
18 58-1311. From and after January 1, 1979, every building or facility
19 which is used by or open to the public and which was constructed
20 in whole or in part by moneys appropriated by the state or any
21 political or taxing subdivision thereof shall be provided with at least
22 one parking space, ~~easily accessible to such building,~~ which is
23 clearly marked as being reserved for handicapped persons or persons
24 responsible for the transportation of a handicapped person. *Parking*
25 *spaces or zones for handicapped people and accessible passenger*
26 *loading zones, that serve particular buildings, shall be located closest*
27 *to the nearest accessible entrance on an accessible route.*

28 Sec. 4. K.S.A. 58-1301 and 58-1311 and K.S.A. 1990 Supp. 58-
29 1304 are hereby repealed.

30 Sec. 5. This act shall take effect and be in force from and after
31 its publication in the statute book.

1307. Waiver and modification of standards. If a person or governmental entity undertaking the construction or renovation of any building or facility which is subject to the provisions of K.S.A. 58-1301 through 58-1309, and amendments thereto, determines that full compliance with any standard established pursuant to K.S.A. 58-1301 and amendments thereto is impractical or unreasonable in that it would defeat the purpose of such construction or renovation, such person or governmental entity may apply to the person, agency or governing body responsible for the enforcement of the provisions of this act with respect to such construction or renovation for a waiver or modification of such standard. The application for waiver or modification shall be accompanied by reasons for the determination and a proposal setting forth the maximum extent of compliance with the particular standard which is believed practical. The application shall include all relevant data that may be helpful in evaluating the request for waiver or modification, including cost of the total project, cost of construction and facilities necessary to comply with standards established pursuant to K.S.A. 58-1301 and amendments thereto, and one copy of the building plans for the applicable areas of the construction or renovation.

The person, agency or governing body responsible for enforcement shall consider the submitted application and any other data it may find helpful, including data collected from on-site inspection of the construction or renovation project. Such person, agency or governing body shall investigate the application and determine the estimated building costs and the incremental cost of construction or renovation to conform to the standards established pursuant to K.S.A. 58-1301 and amendments thereto.

and with regard to historic properties, the state historic preservation officer's comments.

Upon the basis of the findings of the investigation, the person, agency or governing body responsible for enforcement ~~shall~~ waive or modify a particular standard if: (a) The purpose of K.S.A. 58-1301 through 58-1309, and amendments thereto, can be fulfilled by an acceptable alternative to the particular standard, ~~or~~ (b) the incremental construction cost to conform to the standards exceeds 7% of the total construction or renovation costs. Such person, agency or governing body shall notify the applicant for waiver or modification of its action thereon. Any action by a state officer or agency pursuant to this section is subject to review in accordance with the act

may

, or (c) compliance with K.S.A. 58-1301 through 58-1309, and amendments thereto, would encroach upon, damage or destroy a historic property as determined by the state historic preservation officer

for judicial review and civil enforcement of agency actions. Any action pursuant to this section by another person or entity is subject to review by the district court of the county where the building or facility is located.

History: L. 1978, ch. 213, § 5; L. 1986, ch. 208, § 5; L. 1986, ch. 318, § 79; July 1.

1321. Same; waiver and modification of standards. (a) If a person undertaking the construction or renovation of any apartment complex, hotel or motel which is subject to the provisions of this act determines that full compliance with any standard established pursuant to K.S.A. 1986 Supp. 58-1316 is impractical or unreasonable in that it would defeat the purpose of such construction or renovation or that there is a lack of need for compliance with the provisions of this act, such person may apply to the governing body of the municipality through its building inspector or the agency or person responsible for the enforcement of the provisions of this act with respect to such construction or renovation for a waiver or modification of such standard. The application for waiver or modification shall be accompanied by reasons for the determination and a proposal setting forth the maximum extent of compliance with the particular standard which is believed practical. If the waiver is requested on a basis of lack of need for compliance with the provisions of this act, documentation showing no need for the handicap accessible units shall be included in the application for waiver. The application shall include all relevant data that may be helpful in evaluating the request for waiver or modification, including cost of the total project, cost of construction and facilities necessary to comply with standards established pursuant to this act and one copy of the building plans for the applicable areas of the construction or renovation.

(b) The person or agency responsible for enforcement of the provisions of this act shall consider the submitted application and any other data it may find helpful, including data collected from on-site inspection of the construction or renovation project. Such person or agency shall investigate the application and determine the estimated building costs and the incremental cost of construction or renovation to conform to the standards established pursuant to this act. If the waiver is requested on a basis of lack of need for compliance with the provisions of this act, such person or agency shall conduct a need survey when considering the application.

and with regard to historic properties, the state historic preservation officer's comments

Upon the basis of the findings of the investigation, the person or agency responsible for the enforcement of the provisions of this act shall waive or modify a particular standard if: (a) The purpose of this act can be fulfilled by an acceptable alternative to the particular standard, or (b) the incremental construction cost to conform to the standards exceeds 7% of the total construction or renovation costs. The person or agency responsible for the enforcement of the provisions of this act shall notify the applicant for waiver or modification. Denial of an application for waiver or modification of a standard may be appealed to the district court having jurisdiction in the county where the apartment complex, hotel or motel is located.

may

, or (c) compliance with K.S.A. 58-1301 through 58-1309, and amendments thereto, would encroach upon, damage or destroy a historic property as determined by the state historic preservation officer

Article 13.—PUBLIC BUILDINGS

HANDICAPPED ACCESSIBILITY STANDARDS

58-1301a. Standards for governmental or public buildings or facilities; definitions. As used in K.S.A. 58-1301 to 58-1309, inclusive, and amendments thereto:

(a) "Governmental building or facility" means: (1) Any building, structure, recreational area, street, curbing or sidewalk, and access thereto, which is used by the public, or in which physically handicapped persons may be employed, and which is constructed, purchased, leased or rented in whole or in part by moneys appropriated by the state or any political subdivision thereof and, to the extent not required otherwise by federal law or regulations or not beyond the power of the state to regulate, all buildings and structures used by the public which are constructed, purchased, leased or rented in whole or in part by use of federal funds; or

(2) any entrance to or accommodation in any building, structure or recreational area described in paragraph (1) of this subsection, which is available for use by the public or employees, including bathrooms, toilet stalls, dining areas, drinking fountains, phone booths and lodging rooms or quarters.

(b) "Physically handicapped person" includes any person having a physical handicap due to any nonambulatory, semiambulatory, sight, hearing or any disability of incoordination or aging.

(c) (1) "Public building or facility" means: (A) Any building, structure, recreational area, street, curbing or sidewalk, and access thereto, which is used by the public, or in which physically handicapped persons may be employed, and which is constructed, purchased, leased or rented by the use of private funds; or

(B) any entrance to or accommodation in any building, structure, or area described in paragraph (1) of this subsection which is available for use by the public or employees, including bathrooms, toilet stalls, dining areas, drinking fountains, phone booths and lodging rooms or quarters.

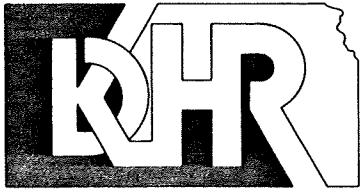
(2) "Public building or facility" does not include any private single-family dwelling or duplex or any entrance thereto or accommodation therein.

(d) "Renovate" means reconstruct or remodel in an amount equal to 25% or more of the replacement value of a building or

facility but shall not include construction of an addition to a building or facility or acquisition and installation of insulation, as defined by K.S.A. 79-32,117, and amendments thereto, or of a solar system, as defined by K.S.A. 79-32,169, and amendments thereto.

(e) For purposes of this legislation, a historic property is one listed on the national register of historic places or the state register of historic places or one designated by a local government which has been designated a certified local government by the state historic preservation officer and the national park service.

History: L. 1986, ch. 208, § 1; July 1.

**Commission on Disability Concerns**

1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877

913-296-1722 (Voice) -- 913-296-5044 (TDD)

913-296-4065 (Fax)

Joan Finney, Governor

Michael L. Johnston, Secretary

Testimony on HB 2602 to the
House Local Government Committee
by Martha K. Gabehart,
Executive Director
Kansas Commission on Disability Concerns
March 28, 1991

The opinions stated here are those of the Kansas Commission on Disability Concerns (KCDC) and do not necessarily reflect the opinions of the administration.

We support the intent of HB 2602 - that is to bring our state accessibility law into conformance with the Americans with Disabilities Act (ADA). The ADA requires the use of the Minimum Guidelines and Requirements for Accessible Design (MGRAD) supplemented with accessibility requirements produced by the Architectural and Transportation Barriers Compliance Board (ATBCB). The present state law requires the 1980 American National Standards Institute's (ANSI) specifications for making buildings and facilities accessible to and usable by people with physical disabilities.

We have concerns about changing K.S.A. 58-1301 et seq. at this time. ATBCB has not published their final accessibility regulations for the ADA. They are due April 26 of this year. The comment period closed on Monday, March 25 and ATBCB will probably meet their deadline.

Since we are not sure of what these regulations are going to require, we would like to deal with HB 2602 in the 1992 legislative session. If the ADA requirements do not provide as much accessibility as the current state requirements, we would support leaving the 1980 ANSI's in tact in K.S.A. 58-1301. The ADA allows states to require different accessibility specifications if they choose to so long as they provide at least as much accessibility as the ATBCB regulations. We would like to know what the ATBCB requirements will be before we decide which accessibility specifications the state should require.

When HB 2602 is worked we would recommend three amendments. The 1st is to lines 23 and 24 on page 1. If we decide to change the accessibility standards the phrase "for making buildings and facilities accessible to, and usable by, the physically handicapped," needs to be struck. It is a part of the title of the 1980 ANSI specifications and is not necessary for the purposes of this law.

The 2nd is to line 8 on page 2. We would recommend the phrase "on state property" be added after the word "utilized". The Secretary of Administration has taken no interest in enforcing this law in the past. Giving that person more authority to enforce the law statewide on any property is pointless. We can see the benefits of giving the Secretary of Administration the power to enforce the law when any money is used to renovate or build on state property if they will in reality enforce the law.

Also with respect to this change, the Attorney General has expressed concern about the lack of enforcement on the local government level. He indicated that giving him more authority over the other enforcement people would allow him to enforce

the law. Our office as well as the Attorney General's office have received many complaints from individuals concerning buildings which have been built without accessibility features and the lack of enforcement available from the local enforcement officials. SB 298 gives the Attorney General the authority to oversee these local enforcement entities. We support this bill and feel that the present form of HB 2602 would be counterproductive with respect to line 8 on page 2.

The 3rd amendment has to do with historical property. The ADA does address historical property and allows the Advisory Council on Historic Preservation to make comments on accessibility modifications in relation to historic preservation. K.S.A. 58-1301 et seq. does not address historical property. The Kansas State Historical Society has proposed amendments which I have attached to this testimony. These amendments appear to be equivalent to those in the Uniform Federal Accessibility Standards which are referenced in the ADA. We support the inclusion of amendments which preserve the historical value of buildings.

In summary, we support the concept of this legislation. We would recommend that it be held until the next legislative session so that final accessibility regulations are available.

\hb2602h

HOUSE BILL No. 2602

By Committee on Appropriations

3-25

8 AN ACT concerning public and governmental buildings and facilities;
9 relating to handicapped accessibility standards; amending K.S.A.
10 58-1301 and 58-1311 and K.S.A. 1990 Supp. 58-1304 and repealing
11 the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 58-1301 is hereby amended to read as follows:

15 58-1301. (a) ~~All~~ public buildings and facilities in this state, and ad-
16 ditions thereto, and all governmental buildings and facilities in this
17 state, and additions thereto, shall conform to the American national
18 standards institute specifications *Minimum Guidelines and Re-*
19 *quirements for Accessible Design, 36 CFR Part 1190, as in effect*
20 *on February 3, 1989, and the Uniform Federal Accessibility Stand-*
21 *ards, 49 Federal Register 31528, as required by the public accom-*
22 *modations title of the Americans With Disabilities Act of 1990, 42*
23 *USCA 12101 et seq., enacted on July 26, 1990, for making buildings*
24 *and facilities accessible to, and usable by, the physically handicapped,*
25 *which specifications were approved March 3, 1980, by the*
26 *American national standards institute, 1430 Broadway, New*
27 *York, N.Y. 10018, and as. Such standards may be modified by*
28 *rules and regulations adopted by the secretary of administration in*
29 *accordance with the provisions of K.S.A. 77-415 et seq., and amend-*
30 *ments thereto. Any public building or facility or any governmental*
31 *building or facility, or any addition to any such building or facility,*
32 *to which the provisions of this section were applicable prior to July*
33 *1, 1991, shall be governed by the provisions of this section*
34 *which were in effect on the date the contract for the construction*
35 *or renovation of such public building or facility or such governmental*
36 *building or facility, or addition thereto, was entered into.*

37 (b) A building or facility for which a standard has been waived
38 or modified pursuant to K.S.A. 58-1307, and amendments thereto,
39 shall be deemed to conform to the standards established pursuant
40 to this section if such building or facility conforms to all such stand-
41 ards which have not been waived or modified and to any modified
42 standard approved for such building or facility pursuant to K.S.A.
43 58-1307, and amendments thereto.

Except as provided in K.S.A. 58-1307 and 58-1321, all

7-2

Article 13.—PUBLIC BUILDINGS

HANDICAPPED ACCESSIBILITY STANDARDS

58-1301a. Standards for governmental or public buildings or facilities; definitions. As used in K.S.A. 58-1301 to 58-1309, inclusive, and amendments thereto:

(a) "Governmental building or facility" means: (1) Any building, structure, recreational area, street, curbing or sidewalk, and access thereto, which is used by the public, or in which physically handicapped persons may be employed, and which is constructed, purchased, leased or rented in whole or in part by moneys appropriated by the state or any political subdivision thereof and, to the extent not required otherwise by federal law or regulations or not beyond the power of the state to regulate, all buildings and structures used by the public which are constructed, purchased, leased or rented in whole or in part by use of federal funds; or

(2) any entrance to or accommodation in any building, structure or recreational area described in paragraph (1) of this subsection, which is available for use by the public or employees, including bathrooms, toilet stalls, dining areas, drinking fountains, phone booths and lodging rooms or quarters.

(b) "Physically handicapped person" includes any person having a physical handicap due to any nonambulatory, semiambulatory, sight, hearing or any disability of incoordination or aging.

(c) (1) "Public building or facility" means: (A) Any building, structure, recreational area, street, curbing or sidewalk, and access thereto, which is used by the public, or in which physically handicapped persons may be employed, and which is constructed, purchased, leased or rented by the use of private funds; or

(B) any entrance to or accommodation in any building, structure, or area described in paragraph (1) of this subsection which is available for use by the public or employees, including bathrooms, toilet stalls, dining areas, drinking fountains, phone booths and lodging rooms or quarters.

(2) "Public building or facility" does not include any private single-family dwelling or duplex or any entrance thereto or accommodation therein.

(d) "Renovate" means reconstruct or remodel in an amount equal to 25% or more of the replacement value of a building or

facility but shall not include construction of an addition to a building or facility or acquisition and installation of insulation, as defined by K.S.A. 79-32,117, and amendments thereto, or of a solar system, as defined by K.S.A. 79-32,169, and amendments thereto.

History: L. 1986, ch. 208, § 1; July 1.

(e) "Historic property" means any building, structure, object, district, area or site that is significant in the history, architecture, archeology or culture of the state of Kansas, its communities or the nation and listed in the state register of historic places or the national register of historic places.

on state property

1 Sec. 2. K.S.A. 1990 Supp. 58-1304 is hereby amended to read
 2 as follows: 58-1304. The responsibility for enforcement of K.S.A. 58-
 3 1301 to 58-1309, inclusive, and amendments thereto, shall be as
 4 follows: (a) For all school building construction or renovation, the
 5 state board of education, by plan approval as required by K.S.A.
 6 31-150, and amendments thereto;

7 (b) for all construction or renovation for which state federal, state
 8 or private funds are utilized, the secretary of administration;

9 (c) for all construction or renovation where funds of a county,
 10 municipality or other political subdivision are utilized, the governing
 11 body thereof or an agency thereof designated by the governing body;

12 (d) for all other construction or renovation of buildings or facilities
 13 which are subject to the provisions of K.S.A. 58-1301 to 58-1309,
 14 inclusive, and amendments thereto, the building inspector or other
 15 agency or person designated by the municipality in which the build-
 16 ing or facility is located.

17 Sec. 3. K.S.A. 58-1311 is hereby amended to read as follows:
 18 58-1311. From and after January 1, 1979, every building or facility
 19 which is used by or open to the public and which was constructed
 20 in whole or in part by moneys appropriated by the state or any
 21 political or taxing subdivision thereof shall be provided with at least
 22 one parking space, easily accessible to such building, which is
 23 clearly marked as being reserved for handicapped persons or persons
 24 responsible for the transportation of a handicapped person. *Parking*
 25 *spaces or zones for handicapped people and accessible passenger*
 26 *loading zones, that serve particular buildings, shall be located closest*
 27 *to the nearest accessible entrance on an accessible route.*

28 Sec. 4. K.S.A. 58-1301 and 58-1311 and K.S.A. 1990 Supp. 58-
 29 1304 are hereby repealed.

30 Sec. 5. This act shall take effect and be in force from and after
 31 its publication in the statute book.

58-1307. Waiver and modification of standards. If a person or governmental entity undertaking the construction or renovation of any building or facility which is subject to the provisions of K.S.A. 58-1301 through 58-1309, and amendments thereto, determines that full compliance with any standard established pursuant to K.S.A. 58-1301 and amendments thereto is impractical or unreasonable in that it would defeat the purpose of such construction or renovation, such person or governmental entity may apply to the person, agency or governing body responsible for the enforcement of the provisions of this act with respect to such construction or renovation for a waiver or modification of such standard. The application for waiver or modification shall be accompanied by reasons for the determination and a proposal setting forth the maximum extent of compliance with the particular standard which is believed practical. The application shall include all relevant data that may be helpful in evaluating the request for waiver or modification, including cost of the total project, cost of construction and facilities necessary to comply with standards established pursuant to K.S.A. 58-1301 and amendments thereto, and one copy of the building plans for the applicable areas of the construction or renovation.

The person, agency or governing body responsible for enforcement shall consider the submitted application and any other data it may find helpful, including data collected from on-site inspection of the construction or renovation project. Such person, agency or governing body shall investigate the application and determine the estimated building costs and the incremental cost of construction or renovation to conform to the standards established pursuant to K.S.A. 58-1301 and amendments thereto.

and with regard to historic properties, the state historic preservation officer's comments.

Upon the basis of the findings of the investigation, the person, agency or governing body responsible for enforcement ~~shall~~ waive or modify a particular standard if: (a) The purpose of K.S.A. 58-1301 through 58-1309, and amendments thereto, can be fulfilled by an acceptable alternative to the particular standard, ~~or~~ (b) the incremental construction cost to conform to the standards exceeds 7% of the total construction or renovation costs. Such person, agency or governing body shall notify the applicant for waiver or modification of its action thereon. Any action by a state officer or agency pursuant to this section is subject to review in accordance with the act

may

, or (c) compliance with K.S.A. 58-1301 through 58-1309, and amendments thereto, would encroach upon, damage or destroy a historic property as determined by the state historic preservation officer

for judicial review and civil enforcement of agency actions. Any action pursuant to this section by another person or entity is subject to review by the district court of the county where the building or facility is located.

History: L. 1978, ch. 213, § 5; L. 1986, ch. 208, § 5; L. 1986, ch. 318, § 79; July 1.

58-1321. Same; waiver and modification of standards. (a) If a person undertaking the construction or renovation of any apartment complex, hotel or motel which is subject to the provisions of this act determines that full compliance with any standard established pursuant to K.S.A. 1986 Supp. 58-1316 is impractical or unreasonable in that it would defeat the purpose of such construction or renovation or that there is a lack of need for compliance with the provisions of this act, such person may apply to the governing body of the municipality through its building inspector or the agency or person responsible for the enforcement of the provisions of this act with respect to such construction or renovation for a waiver or modification of such standard. The application for waiver or modification shall be accompanied by reasons for the determination and a proposal setting forth the maximum extent of compliance with the particular standard which is believed practical. If the waiver is requested on a basis of lack of need for compliance with the provisions of this act, documentation showing no need for the handicap accessible units shall be included in the application for waiver. The application shall include all relevant data that may be helpful in evaluating the request for waiver or modification, including cost of the total project, cost of construction and facilities necessary to comply with standards established pursuant to this act and one copy of the building plans for the applicable areas of the construction or renovation.

(b) The person or agency responsible for enforcement of the provisions of this act shall consider the submitted application and any other data it may find helpful, including data collected from on-site inspection of the construction or renovation project. Such person or agency shall investigate the application and determine the estimated building costs and the incremental cost of construction or renovation to conform to the standards established pursuant to this act. If the waiver is requested on a basis of lack of need for compliance with the provisions of this act, such person or agency shall conduct a need survey when considering the application.

and with regard to historic properties, the state historic preservation officer's comments

Upon the basis of the findings of the investigation, the person or agency responsible for the enforcement of the provisions of this act shall waive or modify a particular standard if:

may

(a) The purpose of this act can be fulfilled by an acceptable alternative to the particular standard, or (b) the incremental construction cost to conform to the standards exceeds 7% of the total construction or renovation costs. The person or agency responsible for the enforcement of the provisions of this act shall notify the applicant for waiver or modification. Denial of an application for waiver or modification of a standard may be appealed to the district court having jurisdiction in the county where the apartment complex, hotel or motel is located.

, or (c) compliance with K.S.A. 58-1301 through 58-1309, and amendments thereto, would encroach upon, damage or destroy a historic property as determined by the state historic preservation officer



TOPEKA

HOUSE OF
REPRESENTATIVES

ED McKECHNIE

REPRESENTATIVE, THIRD DISTRICT

224 W. JEFFERSON

PITTSBURG, KANSAS 66762

(316) 231-1669

ROOM 281-W

STATEHOUSE

TOPEKA, KS 66612

ASSISTANT MAJORITY WHIP

COMMITTEE ASSIGNMENTS

VICE CHAIRMAN: COMPUTERS, COMMUNICATION
AND TECHNOLOGY

MEMBER: ELECTIONS
ENERGY AND NATURAL RESOURCES
TRANSPORTATION
PENSIONS, INVESTMENTS AND
BENEFITS

TESTIMONY OF REP. ED McKECHNIE

TO THE HOUSE LOCAL GOVERNMENT COMMITTEE
RE: HOUSE BILL 2606

Thank you Madam Chairman for scheduling a hearing on HB 2606 and for the opportunity to be before you today.

This bill was requested by the City of Pittsburg due to a unique situation on the Northern boundry of Pittsburg. The Kansas Department of Transportation has awarded a \$1.4 million grant for a \$1.7 million project to rehabilitate Atkinson Avenue.

The City of Pittsburg has agreed to pay the entire \$300,000.00 balance of the project, but only if jurisdictional control of the North side of the street is transferred to the City of Pittsburg. HB 2606 allows the easy transfer of such jurisdiction.

There are Representatives of the City of Pittsburg present to answer your specific question. Again thank you for your time.

LL
3-28-91
Attach. 4



City of Pittsburg

201 West 4th St. • P.O. Box 688 • Pittsburg, Kansas 66762 •

LARRY J. STEVENS

CITY MANAGER

March 20, 1991

Ph: 316-231-4100
Fax: 316-231-0964

City Office
4th & Pine Street
Pittsburg, KS 66766

The Honorable Ed McKechnie
Kansas House of Representatives
3rd District
Room 281-W
State Capitol
Topeka, Kansas 66612

Dear Ed:

Per our discussion last Friday concerning special legislation that might help to salvage the Atkinson Road Project, I have the following information. The enclosed resolution was approved by the Frontenac City Council on Monday evening, and by the Pittsburg City Commission on Tuesday evening. A copy of the proposed legislation is also enclosed.

We are very pleased to have obtained formal support from both communities for the proposed legislation, and both communities are aware the legislation would simply make it possible for communities to transfer title and interest in such circumstances. However, the passage of such a bill will hopefully allow us to salvage this project (including the KDOT grant) through the development of an appropriate agreement between the two communities.

Thank you again for taking time from your very busy schedule to try to accommodate our need concerning this project. Your assistance is very much appreciated, and we are ready to provide any additional information that might be required. We are also available to make a trip to Topeka concerning this legislation if the need arises. We look forward to working with you during this process.

Sincerely,

THE CITY OF PITTSBURG



Larry J. Stevens
City Manager

LJS:lp

Enclosures

cc: C. A. Menghini, City Attorney

JOINT RESOLUTION NO. 1991-A

WHEREAS, the City of Pittsburg, Kansas, desires to improve Atkinson Avenue from Broadway Avenue to the east city limits; and

WHEREAS, Atkinson Avenue, for most of the length to be improved, forms a boundary between Pittsburg and Frontenac, Kansas; and

WHEREAS, the City of Frontenac, Kansas, has no objection to the proposed improvements to Atkinson Avenue but is unable to pay a proportionate share of the initial improvement costs and future maintenance costs; and

WHEREAS, the City of Pittsburg, Kansas, is willing to pay all the local costs for said improvements and maintain Atkinson Avenue but only if Frontenac will transfer its title and interest to said street and the adjacent right of way to Pittsburg; and

WHEREAS, both cities believe such a transfer to be in their best interests; and

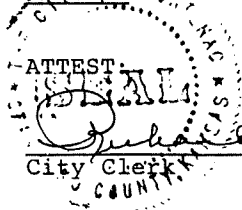
WHEREAS, there is no current state statute which allows for such a transfer.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. The current Kansas Legislature approve a bill to allow a city to transfer its title and interest in streets and adjacent rights of way which lie upon a boundary line with another city to the other city.

Section 2. The passage of such a statute will allow adjoining cities to alleviate problems which frequently arise concerning the improvement and maintenance of boundary line streets.

PASSED AND APPROVED BY THE CITY OF FRONTENAC, KANSAS, ON THE 7th DAY OF MARCH, 1991.



City Clerk

Conrad J. O'Hara
Mayor

PASSED AND APPROVED BY THE CITY OF PITTSBURG, KANSAS, ON THE 19th DAY OF MARCH, 1991.

ATTEST:

Kevin G. Lorman
City Clerk

Robert A. Sweeney
Mayor





March 28, 1991

PRESENTATION TO HOUSE LOCAL GOVERNMENT COMMITTEE
RE: H.B. 2606

By: Larry J. Stevens, City Manager, City of Pittsburg

On behalf of the City of Pittsburg, I certainly appreciate the allowance of time in your busy schedule to address our immediate need for the legislation contained in H.B. 2606. We have found it necessary to pursue this legislation after our City Attorney and League of Kansas Municipalities General Counsel, Jim Kaup, have carefully reviewed the existing State statutes concerning our particular problem. At this point, there seems to be no other method under Kansas law to accomplish the transfer of title and interest from one city to another of a boundary road between the two cities.

The current situation arose concerning a potential improvement project to Atkinson Road, a boundary road between the City of Pittsburg, a City of the First Class, and the City of Frontenac, a City of the Second Class. This road is a main thoroughfare for industrial traffic to and from the Pittsburg Regional Industrial Park. The City of Pittsburg staff has been working with the Kansas Department of Transportation (KDOT) for the past year in attempting to obtain financial assistance to rebuild the road from a two-lane to a three-lane facility, and provide for storm drainage. The total estimated cost of the project is \$1.7 million, and at this point KDOT has tentatively agreed to approve a grant of \$1.275 million, with the remaining project money to be provided by local match.

The City of Frontenac is unwilling to provide any of the local matching funds needed for the project. The City of Pittsburg is willing to pick up the entire local share of approximately \$426,000, if we can acquire the entire right-of-way (approximately 60 feet) for the road. The City of Pittsburg has taken this position because we believe legal issues exist for the expenditure of City of Pittsburg tax dollars to be spent for improvements to property in another community.

LS
3-28-91
Attach. 5

The pending KDOT grant includes a provision for the selection of an engineering firm to be retained by the City of Pittsburg no later than May 27, 1991. Since this process will take several weeks, it is imperative that we move as quickly as possible. For this reason, H.B. 2606 has been drafted to become effective upon publication in the Kansas Register.

The proposed legislation would merely allow cities to mutually agree to transfer title and interest in certain boundary streets and alleys. We realize it will still be necessary to develop a formal agreement with the City of Frontenac concerning this particular road. However, both communities have formally approved a resolution of support for such legislation, and we are hopeful such an agreement can occur. Without the grant funds it would be virtually impossible to accomplish this project within the next several years, and the road will continue to worsen with the passage of time.

The proposed legislation represents the only practical method we know of to allow for the transfer of boundary line roads and adjacent rights-of-way. Vacating the road (using the state law procedure under K.S.A. 12-504) is not really an acceptable solution, as it would not actually accomplish the transfer to the City, but rather revert the road and right-of-way to adjoining property owners. Both cities are interested in finding some way to legally transfer this boundary line road to the City of Pittsburg, and naturally the City of Pittsburg would be responsible for all future maintenance.

Passage of this legislation will provide another method for adjoining cities to work together for the benefit of their citizens. We thank you again for allowing us the opportunity to review our problem with you.

STATE OF KANSAS

MELVIN J. NEUFELD
REPRESENTATIVE, 115TH DISTRICT
GRAY, FORD, CLARK, MEADE
AND HASKELL COUNTIES
ROUTE 1, BOX 13
INGALLS, KANSAS 67853-9706



TOPEKA

HOUSE OF
REPRESENTATIVES

March 28, 1991

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE AND SMALL
BUSINESS
INSURANCE
PUBLIC HEALTH AND WELFARE

HOUSE COMMITTEE ON LOCAL GOVERNMENT

HOUSE BILL 2607

Thank you to Chairman Johnson and Committee for hearing this bill at this late date.

HB 2607 is a local bill requested by Ford County to allow the transfer of a cemetery to Dodge City.

The County received the cemetery by order of the Court. It is across the road from the city cemetery and the city has agreed to take the cemetery and be responsible for it's upkeep. Dodge City will also receive the maintenance trust fund.

Thank you for your support and passage of this bill.

Representative Melvin Neufeld

LN
3-28-91
Attach. 6



League of Kansas Municipalities

Municipal Legislative Testimony

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: House Committee on Local Government
FROM: E.A. Mosher, Executive Director, League of Kansas Municipalities
RE: HB 2119--Certain Officers in Cities of the Third Class
DATE: March 27, 1991

The League is in support of HB 2119, by action of the Governing Body of the League, consistent with a convention-adopted policy statement. The bill amends K.S.A. Supp. 15-311, which is a statute that applies to 509 mayor-council cities of the third class. The present law contains some confusing language, contrary to the provisions of K.S.A. 15-201. Further, because of certain changes made to K.S.A. Supp. 15-311 in 1988, it has been interpreted to mean that a council president, in the temporary absence of the mayor, may make appointments to fill council vacancies, which we do not believe was the legislative intent.

While HB 2119 is only 24 lines long, it does three things:

(1) **it cross-references in K.S.A. Supp. 15-311 the existing provisions of K.S.A. 15-201 relating to filling vacancies of the office of mayor.** The last sentence of this section now provides: "In case of a vacancy of the office of mayor, the president of the council shall become mayor until the next regular election for that office and a vacancy shall occur in the office of the councilmember becoming mayor." The changes on lines 16:17 makes it clear that K.S.A. 15-201 is the controlling statute.

(2) **It clarifies that when the mayor is temporarily absent, the president of the council exercises the powers and duties of the office of mayor.** When there is a vacancy of the office of mayor, the former council president becomes the mayor. The president exercises the jurisdiction of the mayor only in the temporary absence of the mayor.

(3) **It specifies that appointments to fill vacancies on the council, which must be approved by the council, may only be done by the mayor.** The changes made to this statute in 1988 brought some unintended results. It has been interpreted by the attorney general (AGO No. 90-85) that, since the council president is now only prevented from appointing city administrative officials (e.g. city clerk or treasurer) when the mayor is temporarily absent, then the president does have authority to make appointments to fill council vacancies when the mayor is temporarily absent. This attorney general opinion was issued notwithstanding the provisions of K.S.A. 15-201, which provides that when a council office is vacant, it is the mayor who makes the appointment, "by and with the advise and consent of the remaining councilmembers".

Ly
3-28-91
Attach 7

President: Frances J. Garcia, Commissioner, Hutchinson * **Vice President: Robert G. Knight**, Mayor, Wichita * **Past President: Irene B. French**, Mayor, Merriam * **Directors: Michael A. Conduff**, City Manager, Manhattan * **Ed Eilert**, Mayor, Overland Park * **Harry L. Felker**, Mayor, Topeka * **Greg Ferris**, Councilmember, Wichita * **Idella Frickey**, Mayor, Oberlin * **William J. Goering**, City Clerk/Administrator, McPherson * **Judith C. Hollinsworth**, Mayor, Humboldt * **Jesse Jackson**, Commissioner, Chanute * **Stan Martin**, City Attorney, Abilene * **Mark Mingenback**, Councilmember, Great Bend * **Joseph E. Steineger, Jr.**, Mayor, Kansas City * **Bonnie Talley**, Commissioner, Garden City * **Executive Director: E. A. Mosher**

Thus, we have a paradoxical situation that the council president in the absence of the mayor may appoint persons to fill vacancies in the office of councilmember, but may not make such appointments for administrative officers. We don't think this makes sense, nor do we believe it was legislative intent. While we understand the reasoning of the attorney general, departing from a practice that had existed since 1871 because of a 1988 amendment relating to administrative officers, seems paradoxical. Passage of HB 2119 would restore the clear intent of the 1988 change.

Finally, while the bill is complex given its length, we are aware of no controversy about its provisions and suggest it is an appropriate bill for the consent calendar.

SENATE BILL No. 349

By Committee on Local Government

2-27

LY
3-28-91
Attach. 8

9 AN ACT concerning ~~the city of Jennings, Kansas;~~ authorizing the municipalities
10 transfer of certain money to the general fund. thereof

11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. (a) Notwithstanding the provisions of K.S.A. 10-117,
13 and amendments thereto, ~~the governing body of the city of Jennings,~~ ✓ whenever all bond issues have been completely
14 ~~Kansas,~~ is hereby authorized to transfer ~~from any unexpended bal-~~ retired
15 ~~ance of money in the city~~ bond and interest fund to the ~~city~~ general ✓ municipality which issued such bonds
16 fund an amount of money not to exceed \$4,000. Such transfer such
17 shall be subject to the provisions of K.S.A. 79-2958, and amendments of the municipality
18 thereto.

19 (b) ~~The provisions of this section shall expire on January 1, 1992.~~

20 Sec. 2. This act shall take effect and be in force from and after
21 its publication in the Kansas register.
22

When used in this section, "municipality" shall have the same meaning ascribed thereto by K.S.A. 10-101, and amendments thereto; "bond" shall mean a general obligation bond.