Approved: 2-23-98
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION & ELECTIONS.

The meeting was called to order by Vice Chairperson Ted Powers at 9:00 a.m. on February 18, 1998, in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Mary Galligan, Legislative Research Department
Mike Heim, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Fulva Seufert, Committee Secretary

Conferees appearing before the committee: Mr. Chris McKenzie, Executive Director, League of Kansas Municipalities
Mr. Jim Kaup, Representing the City of Hays
Mr. Mike Oxford, Executive Director, Topeka Independent Living Resource Center
Mr. Jim Germer, Attorney and Executive Director of Kansas Advocacy and Protective Services, Inc. (KAPS)
Ms. Gina McDonald, President/CEO, Kansas Association of Centers for Independent Living (KACIL) Writen only
Ms. Martha K. Gabehart, Executive Director, Kansas Commission on Disability Concerns (Written only)
Mr. Bob Burke, Investigator representing the Shawnee County District Attorney's Office, Kansas Third Judicial District
Mr. Greg Jones, Director of Advocacy for Southeast Kansas Independent Living
Mr. Ray Petty, ADA Project
Ms. Shannon M. Jones, Statewide Independent Living Council of Kansas (SILCK)
Mr. Dennis Jackson
Mr. David P. Calvert, Attorney
Mr. Thaine Hoffman, Director of the Division of Architectural Services
Mr. Mike Armstrong, Water District No. 1 of Johnson County

Others attending: See attached list

Since Chairperson Glasscock had to be a few minutes late, Vice Chairperson Powers opened the Public Hearing on **HB 2814.**

HB 2814 - Public buildings; relating to enforcement of accessibility standards

The Vice Chair welcomed Mr. Chris McKenzie, Executive Director, League of Kansas Municipalities, who spoke as a proponent for **HB 2814.** Mr. McKenzie stressed that the 1994 Legislature did not intend to impose responsibility for enforcement of Title III of the ADA by existing businesses which do not require an occupancy or building permit on the cities of Kansas. He said for that reason the League supports **HB 2814.** Mr. McKenzie's testimony included a copy of the 1994 testimony of then Robert T. Stephan, Attorney General of Kansas, which explained **1994 HB 3028** which was enacted so that the federal and the state laws would be in better alignment with each other and therefore, would be easier to understand and implement. (Attachment 1.)

Chairperson Glasscock recognized Mr. Jim Kaup, who represented the City of Hays and spoke as a proponent for **HB 2814.** Mr. Kaup's testimony gave the Legislative history of the **1994 HB 3028** amending accessibility law. He also included testimony on behalf of the Cities of Dodge City and Garden City in which he said both cities were in support of **HB 2814.** Mr. Kaup said that the cities are in agreement with Hays that enforcement responsibilities for cities with respect to Title III existing structures are not a part of State law, and that **HB 2814** would resolve this dispute and clear up the language. (Attachment 2.)

Chairperson Glasscock recognized Mr. Mike Oxford, Executive Director, Topeka Independent Living Resource Center, who spoke as an opponent to **HB 2814**. Mr. Oxford said that he was disturbed that he was having to present his testimony because he believes the committee has sponsored the gutting of 30 years of progress in accessibility, equality, and integration for people with disabilities. He stressed that **HB 2814** means that local government would not have to enforce accessibility of public places of business and that he believes it is an extreme over-reaction to the Hays' lawsuit. (Attachment 3.)

Chairperson Glasscock had to leave for page pictures, so Vice Chair Powers introduced Mr. Jim Germer, Attorney and Executive Director of Kansas Advocacy and Protective Services, Inc. (KAPS), who spoke as an opponent to **HB 2814**. His testimony explained the KAPS's services and gave an analysis of **HB 2814**. Mr. Germer said that it makes sense to divide up ADA enforcement responsibility into smaller units and to place responsibility for the rights of local citizens with local government. (Attachment 4.)

Chairperson Glasscock returned and called the Committee's attention to the written testimony of Ms. Gina McDonald, President/CEO Kansas Association of Centers for Independent Living (KACIL). (Attachment 5.)

The Chair also called the Committee's attention to the written testimony of Ms. Martha K. Gabehart, Executive Director, Kansas Commission on Disability Concerns. (Attachment 6.)

Chairperson Glasscock told the Committee that they had copies of several faxes that had been sent to his office. (Attachment 7.)

The Chair recognized Mr. Bob Burke, Investigator representing the Shawnee County District Attorney's Office, Kansas Third Judicial District, who spoke as an opponent to **HB 2814** and presented testimony informing the Committee about the number of complaints about existing businesses not being accessible. He said that many times "barriers" cannot be removed because the business is actually protected by the language in the "Americans with Disabilities Act." He invited members of the Committee to go with him to survey an actual complaint and see first hand how easy it is to "remove barriers." (Attachment 8.)

The Chair recognized Mr. Greg Jones, Director of Advocacy for SE Kansas Independent Living who spoke in opposition to **HB 2814.** Mr. Jones said many disabled and elderly do not even attempt to venture out into the community because there are so many risks. He said the responsibility for accessibility for all citizens is on the horizon and that he hoped the Committee members would not change the law so that the disabled community would not have the opportunity to pursue equal access to basic goods and services. (Attachment 9.)

Chairperson Glasscock recognized Mr. Ray Petty who represented the ADA Project and spoke as an opponent to **HB 2814**. He had no written testimony but basically said that since 1979 local governments have been responsible for enforcing accessibility standards on public buildings, but he said he felt that often times buildings are constructed without being in compliance. Therefore, if they are not built according to code, every day is another day of violation. He pointed out that many of the existing facilities were built after the 1979 law was enacted and were not in compliance.

The Chair welcomed Ms. Shannon M. Jones, Statewide Independent Living Council of Kansas (SILCK) who spoke in opposition to **HB 2814**. Ms. Jones said that to better assist cities and business owners with compliance, Centers for Independent Living has been providing technical assistance for free or at a nominal fee. (Attachment 10.)

Chairperson Glasscock recognized Mr. Dennis Jackson who spoke as an opponent to **HB 2814**, but provided no written testimony. He said that he became disabled overnight, had served in the U.S. Military, pays taxes, and also wants to be able to go out to dinner with his friends, but needs to have more facilities accessible. Mr. Jackson said that this is a basic human right and that he believed voluntary compliance is not happening.

Chairperson Glasscock welcomed Mr. David P. Calvert, Attorney, who represented the Hays Center for Independent Living in a case brought by it against the City of Hays. Mr. Calvert spoke as an opponent to **HB 2814**. He said he thought that discrimination against persons with disabilities was eliminated years ago, but that **HB 2814** sets Kansas civil rights laws back 30 years. He presented some new language which he thought would better clarify the law. His testimony included a copy of the Decision on the court case in Hays, Kansas. Mr. Calvert said the effect of the change would mean that it is no longer against Kansas law for Title III entities such as restaurants, motels, theaters, and retail stores, to discriminate against persons with disabilities. (Attachment 11.)

Representative Tomlinson inquired if the city of Hays made a minimal attempt to comply with the law, and he was told "no."

Chairperson Glasscock closed the Public Hearing on **HB 2814**.

The Chair opened the Public Hearing on **HB 2813.**

HB 2813 - Public improvements; relating to public works bonds

Chairperson Glasscock welcomed Mr. Jim Kaup, Attorney representing the city of Garden City, who spoke as a proponent for **HB 2813** which would increase the threshold for requiring public works bonds. He said that raising the bonding threshold on public projects from $10,000 to $40,000 would not appreciably increase the risk to public agencies in privately contracted projects. He mentioned the following benefits: 1) more small contractors could bid on such projects; 2) public agencies would not incur the direct pass-through costs for bonding; and 3) the turnaround time on contract paperwork would be reduced by eliminating bonding company involvement. (Attachment 12.)

The Chair welcomed Mr. Chris McKenzie, Executive Director, League of Kansas Municipalities, who spoke as a proponent for **HB 2813.** He gave the following two compelling reasons for raising the threshold in current law of $10,000: 1) the consumer price index has increased by approximately 102% since the limit was last raised in 1980 from $1,000 to $10,000; and 2) raising this limit will allow cities and other local units to experience increased competition for smaller contracts from contractors who may find the current threshold prohibitive due to the cost of public works bonds. (Attachment 13.)

Chairperson Glasscock welcomed Mr. Thaine Hoffman, Director of the Division of Architectural Services, who spoke as a proponent for **HB 2813** which under the proposed legislation would require bonding only on projects costing over $40,000. He said that of the 359 projects presently under contract, the increase in this limit would eliminate the need to bond 41 of them, thus saving the cost of the bonds. (Attachment 14.)

The Chair closed the Public Hearing on **HB 2813.**

Chairperson Glasscock opened the Public Hearing on **HB 2769.**

HB 2769 - Certain water districts; powers and duties of governing bodies

The Chair welcomed Mr. Mike Armstrong, Water District No. 1 of Johnson County, who spoke as a proponent of **HB 2769**. Mr. Armstrong explained that **HB 2769** would authorize the Water District to utilize lease purchase agreements and financing leases to acquire goods when most economical to the District. It would clarify its existing statutory provisions and specifically authorize the use of lease purchases and financing leases. (Attachment 15.)

The Chair closed the Public Hearing on **HB 2769.**

Chairperson Glasscock asked what the Committee's pleasure was on **HB 2769**.

During the discussion, the Committee was reminded that this bill was amended because the original version did not mention financing leases and that the amendment is on page 3 of the balloon.

Representative Ray made a motion to adopt the amendment, and Representative Benlon seconded. Motion passed.

Representative Ray made a motion to pass **HB 2769** out as amended marked favorable for passage, and Representative Welshimer seconded.

Representative Haley commented that **HB 2769** impacts how these leases are by changing the payment schedule of this particular Water District..

The vote was taken on **HB 2769** and the Motion Passed.

Chairperson Glasscock directed the Committee's attention to **HB 2813** and said that the bill raises the performance bond limit from $10,000 to $40,000 which would relieve some burden on small and minority contractors.

Representative Campbell made a motion to pass **HB 2813** out marked favorable, and since it was of a non

controversial nature to have it placed on the Consent Calendar. Representative Huff seconded, and motion passed.

The meeting adjourned at 10:50 a.m.

The next meeting is scheduled for February 19, 1998.

GOVERNMENTAL ORGANIZATION & ELECTIONS COMMITTEE GUEST LIST

DATE: WEDNESDAY, FEBRUARY 18, 1998

NAME	REPRESENTING
Chris McKenzie	League of Ks. Municipalities
Roy Seeber	Dept of Admin.
Anthony A. Fadale	Dept of Admin.
Maryellen O'Shaughnessy	Assis. Tech. for Kansas
Brad Bryant	Sec. of State
Richard Smith	Attorney General Office
Phyllis Fast	" " "
Jim Edwards	KCCI
Trudy Aron	Am Inst of Architects
Kelly Kultala	City of Overland Park
Harriet Lange	Ks Assn of Broadcasters
Michelle Rola'	Kansas Advocacy & Protective Services
DeAnna Peter	Governor's Office
Janelle Wilhite	Division of Budget
Thaine Hoffman	DOAS
Shannon Jones	SILCK
Robin Troppa	LINK, Inc.
Lelen Blair	" "
Corey Jones	SouthEast Kansas Independent Living

Bob Burke — Sn. Co. District Attorney

GOVERNMENTAL ORGANIZATION & ELECTIONS COMMITTEE GUEST LIST

DATE: THURSDAY, FEBRUARY 18, 1998

NAME	REPRESENTING
Byron N. Johnson	WD #1 of Jo Co. Ks
MIKE ARMSTRONG	WATER DISTRICT No. 1
Bruce Dimmitt	Kansans for Life and Independent
Ray Petty	ADA Project
Michael Byington	Envision.
Jim Zinnen	KAPS
Charlie Smythson	KCCSC
Carl Wellmeier	KCCSC
Lou Ann Kibblee	LINK, Inc

League
of Kansas
Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 300 S.W. 8TH TOPEKA, KS 66603-3896 (785) 354-9565 FAX (785) 354-4186

TO: **House Committee on Governmental Organization and Elections**
FROM: Chris McKenzie, Executive Director
DATE: February 17, 1998
RE: Support for HB 2814

Thank you for the opportunity to appear this morning in support of HB 2814.

ADA Passed in 1990. There was widespread public support for the enactment of the Americans With Disabilities Act of 1990, and cities across Kansas have taken great strides to increase the accessibility of public services and facilities (as required by Title II of the ADA) and to respond to the employment related requirements of Title I of the ADA. It is enforcement with the requirements of Title III of the ADA, however, which prohibits discrimination on the basis of disability in "places of public accommodation" (such as hotels, restaurants, theaters, etc.) and "commercial facilities" (such as factories, warehouses, office buildings, etc.) which has given rise to concerns underlying this bill. Neither the ADA nor the Department of Justice regulations adopted in response to the ADA delegate enforcement of Title III of the ADA to local governments.

1992 State Legislation. In 1992 legislation (HB 2602) the Kansas legislature imposed the responsibility of enforcing compliance with Title III of the ADA in new or modified structures on the local building inspector. In Attorney General Opinion No. 92-106 the Attorney General stated that local building code officials are not required to investigate complaints or do random checks on buildings to see that they are accessible. The Attorney General stated that "their **only means of enforcement** is to deny an application for a building permit for the construction or renovation of the building." That opinion was authored and signed by *Assistant Attorney General Mary Jane Stattelman* along with Attorney General Robert T. Stephan. Due to the widespread local interest in this subject, an article on this opinion appeared in the November, 1992 *Kansas Government Journal* (attached).

1994 State Legislation. Two years later the legislature considered and passed **HB 3028**, which was described throughout the legislative process by *Assistant Attorney General Mary Jane Stattelman* as an effort to reconcile the federal ADA and counterpart state laws. In her testimony to the House Committee on Public Health and Welfare on February 22, 1994 (attached), Ms. Stattelman described the changes in the bill as leading to easier enforcement and lower costs:

> The changes that you see, although appearing to be numerous, do not change the enforcement role of any governmental entity and should simplify the

House G O and E
2-18-98
Attachment 1

> building code officials' role in that with the amendment they will not have to juggle both the state and the federal laws. Furthermore, this bill will not have an increased fiscal impact on either the private or the public sectors, and actually may decrease the costs of complying with this act. [Emphasis added]

An identical statement was made to the Senate Public Health and Welfare Committee on March 14, 1994, when the bill was heard in that Committee.

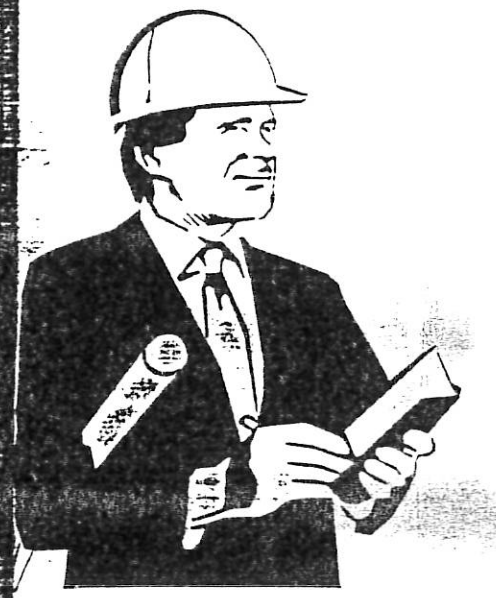
With assurances such as these, the 1994 legislature passed **HB 3028**, including the section amended in Section 1 of HB 2814---K.S.A. 58-1304, concerning enforcement of the act. It is that section that brings use here today. It wasn't until recently that it posed any problems. The City of Hays has already explained the details of a recent ruling involving that city, and I can assure you other cities are very concerned about its repercussions statewide.

The attached copy of a memorandum which was distributed statewide earlier this month perhaps best explains the strategy of those who would favor the interpretation that requires cities to compel compliance with Title III of the ADA by the owners of existing commercial facilities and public accommodations. The author alleges they have had difficulty securing enforcement of Title III by the Attorney General and the Department of Justice, and they have set their sights on local enforcement. The only problem, of course, is that local officials have taken some degree of comfort from the fact that the legislature was told in 1994 that this would not happen and has not been considered the law until now by one judge.

You may be informed by the opponents of this measure that requiring local enforcement of K.S.A. 58-1301 et seq. is no different than local enforcement of a state traffic law. The difference, of course, is that local officials enforce traffic laws in criminal courts at the municipal and district court levels. Local police officers are empowered to enforce the criminal laws of the state of Kansas, but I am not aware of any other instance in which a city is required by state law to enforce a state civil law in the district court by seeking an injunction. There is typically some type of criminal sanction involved and it is the police officers of the city, not its building inspectors, that are involved. While K.S.A. 58-1308 authorizes the district court to order the owners of facilities covered by Title III to pay civil penalties covering the city's cost of investigation and enforcement, it is not required and the local property taxpayers, in cases in which the penalties are not imposed, will bear the brunt of the cost of such enforcement actions.

RECOMMENDATION: The 1994 legislature clearly did not intend to impose responsibility for enforcement of Title III of the ADA by existing businesses which do not require an occupancy or building permit on the cities of Kansas. For that reason, we recommend your support for HB 2814.

Local Building Codes and Enforcement by Local Building Inspectors



by Don Moler

Editor's Note: The author is Senior Legal Counsel at the League of Kansas Municipalities.

Much confusion has been generated as a result of House Bill 2602, now codified at Chapter 208 of the 1992 Session Laws of Kansas. This confusion stems from whether local building inspectors are charged with enforcement of the Americans with Disabilities Act (ADA) building requirements as a result of this action by the Kansas state legislature. Clearly, HB 2602 incorporates those building standards required under the Federal ADA of 1990. It is also clear from K.S.A. Supp. 58-1304, as amended by House Bill 2602, that the responsibility for enforcement of K.S.A. 58-1301:58-1309 and 58-1311, as amended, falls to the building inspector or other agency or person designated by the municipality in which the building or facility is located for all buildings which are not owned by a governmental entity (federal, state, county, school district, etc.).

Duty to Inspect Permitted Buildings

This legislation places a special mandate on local building inspectors. It requires building inspectors who issue building permits, renovation permits and/or occupancy permits to enforce the standards adopted by House Bill 2602. These standards are taken directly from the ADA. Thus, the local official responsible for enforcement of K.S.A. 58-1301 *et seq.*, as amended by House Bill 2602, has a duty to ensure that building permits and occupancy permits issued for construction of new "public buildings" are in accordance with the Americans With Disabilities Act Accessibility Guidelines (ADAAG). This applies to all new construction for which first occupancy is scheduled to begin after January 26, 1993. The regulations also require enforcement of the ADAAG standards on all public buildings which are being renovated within the jurisdiction.

No Duty to Inspect Non-Permitted Buildings

Further responsibility of local building officials was limited in Attorney General Opinion 92-106. Specifically, the Attorney General was asked "Does K.S.A. 58-1304, as amended, impose any duty upon local public officials to investigate a complaint regarding barriers in 'public buildings' which deny accessibility to individuals with disabilities if no one has made application for a permit for any alteration or construction of the building?" The Attorney General responded that "[L]ocal public building code officials are not required to investigate complaints or do random checks on buildings to see that they are accessible. Even though they are responsible for the enforcement of the provisions found at K.S.A. 58-1301 through 58-1309, their only means of enforcement is to deny an application for a building permit for the construction or renovation of the building." All complaints about the inaccessibility of non-permitted buildings should be addressed to the Kansas Commission on Civil Rights at (913) 296-3206.

Summary

In summary, House Bill 2602, now codified at Chapter 208 at the 1992 Session Laws of Kansas, imposes a duty on local building officials who issue building and occupancy permits to enforce ADAAG standards for all buildings within their jurisdiction designed for first occupancy after January 26, 1993 and for other buildings and structures for which a permit is requested for alteration of an existing structure. This requirement does not extend to local building officials the responsibility of enforcing these regulations on other units of government which may have buildings or structures located within the municipality. Each unit of government is charged by House Bill 2602 with ensuring its own compliance with the ADAAG standards in governmental structures.

It should be stressed that House Bill 2602 places no duty on those jurisdictions which do not issue building or occupancy permits. Only those jurisdic-tions which issue building and oc-cupancy permits are affected by this legislation.

Questions regarding this information should be directed to the attention of Mary Jane Stattelman, Assistant Attorney General, at (913) 296-2215.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Testimony on Behalf of
Attorney General Robert T. Stephan
Presented by
Mary Jane Stattelman
Assistant Attorney General

House Committee on Public Health and Welfare
Re: House Bill No. 3028
February 22, 1994

Good afternoon and thank you for this opportunity to testify regarding House Bill No. 3028.

In 1992, the legislature enacted various provisions in the hopes of assisting individuals with disabilities obtain access to private and public buildings in Kansas. However, over the past several years, it has been apparent that there are some discrepancies between the federal ADA act and the state legislation that this bill would eliminate. For instance, the federal act exempts churches and private clubs yet the current state law covers these entities; federal law makes a distinction between a public accommodation (i.e. restaurant or grocery store) and a commercial facility (i.e. a warehouse); however, the current state law does not make this distinction.

PHHW
2-22-94
Attm #1

Because of the confusion that these differences can cause to those who are trying to work with and implement this act, a group of individuals, most of whom are here today, from both the private and the public sector and the disability community got together last year and worked to eliminate the differences between these two acts. The changes that you see, although appearing to be numerous, do not change the enforcement role of any governmental entity and should simplify the building code officials' role in that with the amendments they will not have to juggle both the state and the federal laws. Furthermore, this bill will not have an increased fiscal impact on either the private or the public sectors, and actually may decrease the costs of complying with this act.

Attorney General Stephan would urge you to favorably pass HB 3028 so that the federal and the state laws are in better alignment with each other and therefore easier to understand and work with. I would be happy to answer any questions you may have of me at this time.

PH&LC
2-22-94
Attm 1-2
Pg 2&3

Approved: February 24, 1994
Date

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chairperson Joann Flower at 1:30 p.m. on February 22, 1994 in Room 423-S of the Capitol.

All members were present except:

Committee staff present:
William Wolff, Legislative Research Department
Norman Furse, Revisor of Statutes
Sue Hill, Committee Secretary

Conferees appearing before the committee:
Mary Jane Stattleman, Assistant Attorney General, Civil Division, Specialist on ADA
Martha Gabehart, Kansas Commission on Disability Concerns
Jane Knight, State American Disabilities Act Coordinator
Trudy Aron, American Institutes of Architects
Mike Oxford, Kansas Assn. of Centers of Independent Living, (Written only)
Andrew O'Donovan, Commissioner, Bureau of Alcohol/Drug Abuse Services, Department of SRS, (Written only)
Robert Miller, Bureau of Alcohol/Drug Abuse Services, Department of SRS (answered questions)
Gene Johnson, Ks. Association of Alcohol& Drug Program Directors
(Written only)-Richard Pfeiffer, Community Mental Health, Crawford County
(Written only)-John Gilbert, Mirror, Inc., Newton, Kansas

Others attending: See attached list

Chair called the meeting to order drawing attention to Committee minutes for February 16, asking members to read them. If there are corrections contact Committee secretary by 5:00 tomorrow, February 23. If no corrections or additions, these minutes will be considered approved as presented.

Chair reversed the order of business as scheduled on the posted agenda, drawing attention to HB 3028.

Chair agreed to forego a staff briefing.

HEARINGS BEGAN ON HB 3028.

Mary Jane Stattleman, Assistant Attorney General speaking on behalf of Attorney General, Robert Stephen offered a hand-out (Attachment No. 1). She noted over the past several years it has been apparent there are discrepancies between the federal and state laws related to access to public building for individuals with disabilities. HB 3028 if enacted would eliminate these discrepancies. This past year a group of individuals from both the private and public sector and the disability community have worked together to bring to compliance the state and federal laws relating to assisting individuals with disabilities to obtain access to private and public buildings. Changes proposed do not change the enforcement role of any governmental entity and should simplify the building code officials' role. She noted there will be no fiscal impact, and actually may decrease costs of complying with the American Disabilities Act.

Ms. Stattleman distributed an amendment that had been proposed by the various individuals that worked together, laboriously. (See Attachment No. 2). She drew attention to page 3, line 10, of HB 3028, noting after the word "the, she suggested adding the words, "design and". This was erroneously omitted when the balloon amendment was drafted. Ms. Stattleman answered numerous questions.

2-22

HB 3028 continued:

It was noted by Ms. Stattleman, the members of the Committee that worked diligently on refining language dealing with access to churches and private clubs, were from the Department of Administration; Office of the Attorney General; Division of Architectural Services, ARC Services, AIA of Kansas, Kansas Association of Centers for Independent Living, Commission on Disability Concerns, Office of the State Fire Marshall, Human Rights Commission, Board of Education, with all working together since last May to formulate the language provided today in Attachment No. 2. Ms. Stattleman noted this legislation applies only to building accessibility.

Martha Gabehart, Executive Director, Kansas Commission on Disability Concerns, Kansas Department of Human Resources offered hand-out (see Attachment No.3) HB 3028, if enacted, would change current language regarding the specifications for making buildings accessible to people with disabilities to more closely parallel the Americans with Disabilities Act Accessibility Guidelines. The Kansas Commission Disability Concerns (KCDC) is in support of this measure up to Section 12, which amends accessibility tax credit for principal dwellings and business. She noted the tax portion has been amended into HB 2687 which is currently in the Senate Taxation Committee. She drew attention to technical changes recommended in Section 5, line 8 on page 3, i.e., "T" should be lower case, "t". In Section 6, line 39, page 3, "this act" should be inserted. Ms. Gabehart stated she had discussed these recommendations with Revisor, Ms. Kiernan and she was in agreement these changes should be made. Ms. Gabehart then answered numerous questions.

Jane Knight, State ADA Coordinator, (see Attachment No.4), also a member of the group that drafted the balloon and HB 3028, believes it is important and necessary to bring the state law into conformity with the ADA. She noted, there would be no fiscal impact. She urged support.

Trudy Aron, Executive Director, American Institute of Architects spoke in support for HB 3028. (see Attachment No. 5). HB 3028 as amended would make Kansas' accessibility standards for buildings identical to the public law passed by the federal government in the Americans With Disabilities Act (ADA). Current law has led to confusion, and perhaps even some non-compliance, since building owners have had trouble understanding differences between the federal law and state law.

Mr. Mike Oxford had prepared written testimony in support for HB 3028. He was unable to attend in person and requested his testimony be distributed to Committee members. (See Attachment No.6).

HEARING CLOSED ON HB 3028.

Chair drew attention to SB 448 requesting a briefing by staff.

Dr. Wolff gave a comprehensive explanation of SB 448, i.e., the issue is whether or not the language (rules and regulations and standards) meets the definition of what a rule and regulation is. He drew attention to chapter 77 of statutes, article 4, 77-415. He read the definition, noting the language states, "includes standards". He gave a detailed explanation, noting the Committee on Rules and Regulations could see the importance of clarification, thus, the proposed language in SB 448 to strike "and standards", and to say whatever it is the secretary might want to do, must do by rules and regulations.

Written testimony had been provided by Mr. Andrew O'Donovan, Department of Drug/Alcohol Abuse Services. Mr. Robert Miller from the Drug and Alcohol Abuse Services Department was present to answer questions. It was noted the testimony was written in opposition to SB 448, since it would eliminate language referring to the standards they have used for many years. There were questions.(See Attachment No. 7)

A lengthy discussion ensued, regarding authority to regulate a business that had not complied with regulations or had failed the examination. It was brought out that the authority to regulate comes from rules and regulations. Rules and regulations have the force and effect of law, while "standards" have no force of the law, therefore, if a license had been revoked because a person had violated a "standard", it might be difficult to take any administrative action against that party because of the lack of authority. Only a rule and regulation that has gone through the Filing Act, has the force in effect of law. Guidelines and standards are just that, i.e., can give guidance, but are not something the Agency can take an enforcement action on.

Gene Johnson, stated he was speaking in opposition for SB 448, in behalf of the Kansas Community Alcohol Safety Project Coordinators Association, the Kansas Alcoholism/Drug Addiction Counselors Association, the Kansas Association of Alcohol/Drug Program Directors, (Attachment No. 8). He stated,

LINK

Living Independently in Northwest Kansas

2401 E. 13th Street
(785) 625-6942(V/TT)

Hays, KS 67601
(785) 625-6137 (FAX)

ALERT ALERT ALERT

DATE: February 06, 1998

TO: KS CIL's, Dave Calvert, KAPS, KCDC

FROM: Lou Ann Kibbee, Systems Change Coordinator

In response to the decision November, 21, 1997, of the LINK lawsuit against the City of Hays, a bill has been introduced in the State House to change K.S.A. 58-1304 of the Kansas Accessibility Standards for Public Buildings.

We want the City of Hays to enforce accessibility compliance for Title III existing facilities, only when a complaint has been filed. The state law, K.S.A. 58-1301 requires city government to enforce such and that the Kansas AG's office over see it. As we know this has not been happening.

The City of Hays, the Kansas League of Municipalities, and probably other cities have gotten a bill introduced by Rep. Eber Phelps, (HB 2814). We have talked with Rep. Phelps. We feel he has been misled to believe that we want the cities to survey and enforce accessibility of every Title III existing entity in the community. We have explained this is not true.

If HB2814 goes through, the cities would not have to enforce the accessibility standards under Title III existing entities at all. We know this is their true goal!

We CANNOT allow this to happen. We are already unable to get anywhere with the DOJ for enforcement of Title III existing facilities. If this bill gets passed we will have no enforcement method available.

The bill is in the Committee on Governmental Organizations and Elections. Act now and contact the committee members (listed) and your local Reps and tell them:

1) We only want cities to enforce compliance of a Title III (public accommodation) existing facility, when there has been a complaint filed.
2) Explain that to comply with ADA, Title III existing facilities only have to do what is "readily achievable" and would not cause an "undue burden".
3) HB2814 would change the law to where there would not be enforcement of compliance with Title III existing entities.

If anyone has filed a complaint on a Title III existing entity with the AG's office and has had problems with getting compliance issues resolved, please contact me at 785-625-6942 ASAP. Hearings have not been set as of yet, but will probably be scheduled for early next week.

We need everyone to call. This affects everyone in the state! CALL! CALL! CALL!

GOVERNMENT ORGANIZATIONS & ELECTIONS

Chair: Kent Glasscock, 785-296-7642: rep_kent_glasscock@mail.ksleg.state.ks.us
V. Chair: Ted Powers 785-296-7653: rep_ted_powers@mail.ksleg.state.ks.us
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LEGISLATIVE TESTIMONY

TO: House Governmental Organization and Elections Committee
FROM: Jim Kaup, on behalf of the City of Hays
RE: **HB 2814; Legislative History of 1994 Amendments to Accessibility Standards Law**
DATE: February 18, 1998

The question of whether local governments like Hays have a statutory duty to enforce accessibility standards with respect to Title III existing structures turns on amendments made to K.S.A. 58-1304 in 1994. The following is a summary of testimony presented during the 1994 Session on HB 3028.

LEGISLATIVE HISTORY OF 1994 HB 3028 AMENDING ACCESSIBILITY LAW

IN BRIEF:

HB 3028 was a decidedly non-controversial amendment to the accessibility law. This appears to be due to the fact that proponents consistently advised the 1994 Legislature that the objective of HB 3028 was to reconcile differences between the ADA and State law which inadvertently resulted from State law amendments in 1992. Those differences between the ADA and State law related to which buildings were covered by State law -- i.e. as a result of amendments made in 1992 more buildings in Kansas were subject to the State accessibility laws than were subject to the ADA. Specific standards for accessibility for certain buildings and for parking were also inconsistent between the ADA and State law, due to those 1992 amendments.

Another reason HB 3028 was non-controversial was because prior to the 1994 Session interested parties worked together to resolve how best to amend the State law to make it more closely parallel the ADA. The Attorney General, Department of Administration,

House GO and E
2-18-98
Attachment 2

Division of Architectural Services, AIA of Kansas, Kansas Association of Centers for Independent Living, Commission on Disability Concerns, Office of the State Fire Marshal, and the Kansas Human Rights Commission all worked together beginning in May of 1993 to develop the consensus amendments in HB 3028 as presented to the 1994 Legislature.

A review of the written legislative history of HB 3028 shows no discussion of a need to change, or any request to change, how State law was enforced. In fact, as is noted in greater detail below, the representative of the Attorney General's Office, in testimony to both the House and Senate Public Health and Welfare committees, specifically noted in her written testimony that HB 3028 does "not change the enforcement role of any governmental entity".

ANALYSIS:

1. There does not appear to be any dispute that until the 1994-passed amendments to K.S.A. 58-1304 there was no duty upon local governments to enforce the State's accessibility standards with respect to existing, privately-owned structures that were open to the public, i.e. Title III buildings under the ADA.

2. It was the language that first appeared in 1994 (amending K.S.A. 58-1304(a)(3) in the form of HB 3028) upon which the Ellis County District Court based its ruling that there is a State-mandated duty upon Hays and other cities to enforce accessibility standards with regard to Title III existing facilities. The 1994 amendments to K.S.A. 58-1304(a)(3) are attached to this memo. .

3. **Nothing in the legislative history of HB 3028 indicates that proponents were asking for any change in how the accessibility law was to be enforced.** Note the following excerpts from testimony presented to the House Committee on Public Health and Welfare on HB 3028 on February 22, 1994:

   a. Kansas Department of Human Resources, Commission on Disability Concerns:

   "This bill would change the current language regarding the specifications for making buildings accessible to people with disabilities to more closely parallel the Americans with Disabilities Act Accessibility Guidelines (ADAAG). ... KCDC (Kansas Commission on Disability Concerns) staff worked with the Attorney General's office, the Kansas Association of Centers for Independent Living, the State Architect's office and AIA of Kansas to work out language which is agreeable to all parties. We are in agreement with the changes proposed to those laws which deal with making facilities accessible to people with disabilities."

   b. State ADA Coordinator:

   "HB 3028 parallels the ... (ADA) ... There is no fiscal note involved in this bill nor is there any hardship to consider."

   c. Kansas Chapter, American Institute of Architects (AIA):

"This bill would only get us back to the Federal law. ... For more than six months, we have worked with the Kansas Attorney General's office, the Department of Administration, Division of Architectural Services, Kansas Commission on Human Rights, the Independent Living Centers and the State ADA Coordinator. We all agree that Kansas needs to adopt the ADA without changes, as the Kansas accessibility standards for buildings, construction and parking."

d. Kansas Association of Centers for Independent Living:

"KACIL supports HB 3028. It amends Kansas law to conform with the ... (ADA) standards for accessibility in public and private facilities, including, for example, parking lots and buildings."

e. Kansas Attorney General:

"... over the past several years, it has been apparent that there are some discrepancies between the Federal ADA Act and the State legislation that this bill would eliminate. ... The changes that you see, although appearing to be numerous, do not change the enforcement role of any governmental entity and should simplify the building code officials' role in that with the amendments they will not have to juggle both the state and federal laws. Furthermore, this bill will not have an increased fiscal impact on either the private or the public sectors, and actually may decrease the costs of complying with this act." (Emphasis added)

f. Supplemental Note on HB 3028, Legislative Research Department:

In its bill brief on HB 3028, as amended by the Senate Committee, Legislative Research notes:

"In general, the amendments are intended to rectify discrepancies between the Americans with Disabilities Act and the Kansas statutes relating to handicapped parking and access to public and private buildings in Kansas. The current statutory language, adopted in 1992 is more inclusive in terms of the types of buildings required to conform with accessibility standards than the Federal act. HB 3028 is intended to adopt the Americans with Disabilities definitions and standards as the Kansas definitions and standards for purposes of accessibility by the disabled to buildings and parking."

4. Nothing in the legislative record of HB 3028 indicates any intent by the group of State agencies and interested organizations which was formed in May 1993 to propose any enforcement-related change to the State law. That group did not include anyone representing local governments -- a curious absence if those amendments sought to place enforcement duties upon local governments. No testimony exists in the files of either the House or the Senate committees to indicate that enforcement was an issue -- indeed the only reference to enforcement of the State law comes from the Attorney General's office, which expressly stated that HB 3028 would "... not change the enforcement role of any governmental entity ...".

5. Certainly had HB 3028 been viewed as changing the enforcement responsibilities of local governments, as has been concluded by the Ellis County District Court, something in the legislative record would have reflected that. It is also noteworthy that in all the votes casts on HB 3028 -- House final action, Senate final action and House concurrence in the Senate amendments -- not a single vote was cast against HB 3028. This bill was simply a technical, clean-up to cure problems created by the 1992 legislation. HB 3028 was not a proposal to change State policy as to enforcement of this State law.

6. The Ellis County District Court, after finding there was no ambiguity in the wording of K.S.A. 58-1304, did go on to say of that statute: "The language of this statute is awkward and it would benefit by rewriting. ... The enforcement requirement came to the city as what is commonly called an "unfunded mandate" from the State legislature ... The statute is long on responsibility and short on details. ... There are many issues that are left open for Title III existing facilities. It is not clear whether the Kansas act incorporates the ADA concepts of "undue hardship" or "reasonable accommodation" that provide flexibility and might serve to soften the fiscal impact on certain business. It is also not clear what administrative steps should be provided to allow for adequate notice and opportunity to be heard by property owners."

"This will require thoughtful action by the City. They (the city) may decide to coordinate effort with other municipalities or perhaps counties to keep costs at a minimum. However, they must take affirmative steps to begin implementing the Title III requirements for existing buildings."

The Court then went on to order Hays to: "... with due diligence establish by ordinance or other rule a mechanism for enforcement of accessibility standards pursuant to K.S.A. 58-1304(a)(3) ... that the enforcement procedure contain adequate mechanism for receiving and determining complaints of non-compliance with accessibility standards; ... (and) that the enforcement procedure provide procedural due process for adjudication of claims under the act".
(November 21, 1997 Memorandum Decision)

As Amended by Senate Committee

As Amended by House Committee

Session of 1994

HOUSE BILL No. 3028

By Committee on Public Health and Welfare

2-15

AN ACT concerning individuals with disabilities; relating accessibility to certain facilities; amending K.S.A. 1993 Supp. 8-1,128, 58-1301, 58-1303, 58-1304, 58-1306 to 58-1310a, 79-32,175, 79-32,176 and 79-32,177 and repealing the existing sections; also repealing K.S.A. 1993 Supp. 8-1,128a, 58-1301a, 58-1305, 58-1311 and 58-1316 to 58-1324, inclusive.

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

Sec. 5. K.S.A. 1993 Supp. 58-1304 is hereby amended to read as follows: 58-1304. (a) The responsibility for enforcement of ~~K.S.A. 58-1301 to 58-1309, inclusive, and 58-1311, and amendments thereto,~~ *This this act* shall be as follows: (1) For all ~~school building construction or renovation~~ *existing Title II school facilities, and the* design and *construction of all new, additions to and alterations of Title II school facilities*, the state board of education, by plan approval as required by K.S.A. 31-150, and amendments thereto. *School facilities under the control of the state board of regents shall not be subject to the provisions of this subsection*;

(2) for all ~~construction or renovation~~ *existing state government facilities, and the design and construction of all new, additions to and alterations of, facilities* for which federal, state, *county,* ~~*municipality*~~ funds or funds of other political subdivisions of the state or private funds are utilized on state property, the secretary of administration;

(3) for all ~~construction or renovation~~ *existing facilities, and the design and construction of all new, additions to and alterations of, any local government facilities* where funds of a county, municipality or other political subdivision are utilized, the ~~governing body~~ governmental entity thereof or an agency thereof designated by the ~~governing body~~ governmental entity;

(4) for ~~all other construction or renovation of buildings or facilities which are subject to the provisions of K.S.A. 58-1301 to 58-1309, inclusive, and amendments thereto~~ *the design and construction of all other new, additions to and alterations of, facilities which are subject to the provisions of this act*, the building inspector or other agency or person designated by the ~~municipality~~ *governmental entity* in which the ~~building or~~ facility is located.

(b) The attorney general of the state of Kansas shall oversee the enforcement of this act ~~by the persons listed in paragraphs (1), (2), (3) and (4) of subsection (a)~~.

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MEMORANDUM

TO: Chairman Glasscock and Members of the House Governmental Organization and Elections Committee
FROM: Jim Kaup on behalf of the Cities of Dodge City and Garden City
RE: **HB 2814; Enforcement of State Accessibility Standards**
DATE: February 17, 1998

Garden City and Dodge City appear in support of HB 2814.

Both cities have the identical policy position in their respective City Commission-adopted 1998 State Legislative Policy Statement, as follows:

> "State laws relating to disabilities should not impose requirements on public agencies which are more stringent than the Federal Americans with Disabilities Act. The cost to the City of complying with State mandates which go beyond the requirements set by the federal ADA should be funded by the state".

The cities are in agreement with Hays that enforcement responsibilities for cities with respect to Title III existing structures are not a part of State law, and that this dispute can be easily resolved by passage of HB 2814 at the 1998 Session.

Garden City and Dodge City are familiar with the legislative history of this law, specifically

the 1994 amendments. The cities see no evidence of any legislative intent in those 1994 amendments to shift the enforcement responsibilities, by unfunded State mandate, to cities.

Responsibility for enforcement of a State law is a major policy matter. It is inconceivable to Dodge City and Garden City that enforcement duties could be simply shifted over to local governments without any written record of any legislative discussion or consideration of that policy question. Clearly, the 1994 Legislature did not intend any such change in the State law, and just as clearly the 1998 Legislature can put this matter to rest.

If we are wrong, and it is the Legislature's desire for local governments to be responsible for enforcement with respect to the tens of thousands, if not hundreds of thousands, of Title III existing structures across the State, then the Legislature should set aside some of those surplus State moneys to help local units offset the cost of carrying out this State mandate.

We respectfully request the Committee's favorable consideration of HB 2814.

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February 17, 1998

Testimony opposing House Bill 2814
presented to
The House Committee
on
Government Organizations and Elections
by
Mike Oxford
Executive Director

I have had the privilege of working closely with almost all of the other conferees opposing this bill over many years. Others will present cogent amendatory language with which I am in complete agreement. Wisdom dictates that those of us who care to end needless oppression and discrimination would use this opportunity to clarify and strengthen this grossly misunderstood and little used law. Make this law better. Make it work for everyone, including people with disabilities. Listen to what Dave Calvert, KS Protection and Advocacy and others may say.

It is sad and disturbing, frankly, to even be having this discussion. In one small page, this committee has sponsored the gutting of 30 years of progress in accessibility, equality and integration for people with disabilities. The disability community of Kansas hears loud and clear that favoring this bill dishonors the civil rights of Kansans with disabilities.

This bill means that local government would not have to enforce accessibility of public places of business. It must be too burdensome. One wonders what kind of factual evidence has been marshalled to support this? Wondering aside, local government does typically enforce every other aspect of public places of business and to name just a few:

Fire safety inspections
building and renovation permits
regulating wiring, plumbing, water, stairwells, etc.
occupancy permits

Apparently regulating and enforcing all of these other things are not burdensome compared to protecting the basic civil rights of people with disabilities which is summarized below.

House GO and E
2-18-98
Attachment 3

Businesses are only required to carry out such as activities toward accessibility as are "readily achievable". This means things which are inexpensive and easy to accomplish. Units of local government are familiar with businesses within their corporate limits generally through property records and taxing authority. This makes local government perfect arbiters of whether or not removal of a given barrier is "readily achievable" just like local government monitors fire safety, occupancy, trash dumping and whether your lawn is mown. Under current law, the city would notify a business that a complaint had been received about an accessibility barrier. An employee of the local government (the same person who would be sent to investigate occupancy, fire safety, or any other issue of public concern) would investigate the complaint (What is the barrier? Is it cheap and easy to remove it?) and make a finding. Absent any other local legal authority, if the finding were not agreeable to both parties, the matter would be referred to the Attorney General of Kansas.

This isn't that hard especially given the low number of such complaints.

The disability community much prefers to resolve issues at the lowest possible level and without having to go to court. This bill removes the probability of any such resolution. The bright side is that this bill should provide a lot of work for lawyers since federal district court will be the only place left for any relief. The down side is that a couple of hours of attorney time would probably have paid for the barrier removal in the first place.

Kill this bill!

This bill is an extreme over-reaction to the Hays lawsuit. At least get facts as to numbers of "existing facility" complaints and numbers and costs of investigations and resolutions of such complaints by local government. Then compare this against other types of complaints to see if the premise behind this legislation is even true. This at least you owe the disability community before you land such a blow against us. We don't want our only option to be federal district court.

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TO: Committee on Government Organizations and Elections
FROM: Kansas Advocacy & Protective Services, Inc.
RE: House Bill 2814
DATE: February 18, 1998

Introduction

My name is Jim Germer, and am an opponent to this Bill. I am an attorney with and the Executive Director of Kansas Advocacy & Protective Services, Inc. (KAPS). KAPS is a federally funded nonprofit corporation. KAPS is the designated protection and advocacy agency for individuals with disabilities for Kansas. Each state and territory in the United States has a similar organization. KAPS' role is to advocate for the rights of individuals with disabilities. Pursuant to federal law, KAPS has authority to pursue resolution of disputes through legal, administrative, and other appropriate remedies.

KAPS' Services

KAPS administers four federal programs: 1) Protection and Advocacy for Individuals with Developmental Disabilities (PADD), 2) Protection and Advocacy for Individuals with Mental Illness (PAIMI), 3) Protection and Advocacy for Individual Rights (PAIR), and 4) Protection and Advocacy for Assistive Technology (PAAT). Each program has a different federal funding source. KAPS averages approximately 125 requests for assistance each month. KAPS limits the number of cases it accepts for representation based on program priorities developed annually based on public comment. KAPS provides information, legal advice, and referrals to those individuals whose situation does not fall within program priorities.

PADD serves individuals who have a lifelong disability that manifests itself before age 22 and impairs three of seven life activities including mobility, learning, ability to live independently, language, economic self-sufficiency, self-care, and self-direction. KAPS' caseload is approximately 60% special education issues and 40% adults living in residential and community settings.

PAIMI serves individuals with mental illness who are in 24-hour residential facilities or if an issue arises within 90 days of the individual's discharge from a residential facility. Because of the eligibility limitations imposed by federal law, the PAIMI program primarily serves individuals

House G O and E
2.18.98
Attachment 4

with mental illness admitted to one of the state psychiatric hospitals or who reside in nursing facilities.

PAIR serves "other" individuals with disabilities. PAIR can serve anyone with a lifelong disability who is not eligible for services under either PADD or PAIMI. Because KAPS does not have the funding to serve this large group, PAIR's priorities are generally limited to Americans With Disabilities Act issues, particularly access to state and local government services and access to public accommodations. Present activities under this program include working with David Calvert on the LINK v. Hays case.

The Kansas University Affiliated Program at Parson administers the PAAT Program. KAPS performs the legal advocacy component of the program to advocate for individuals with disabilities to obtain assistive technology from public or private funding sources so that they can live and work independently in the community.

Analysis of HB 2814

We believe, or at least hope, that no one - even the proponents of this bill - really wants to set the clock back on the enforcement of accessibility standards in this state; we certainly hope that nobody really wants local units of government to shun their responsibilities to enforce the ADA for all citizens. We hope that no one wants wiring and plumbing inspections to be more important than whether local taxpaying citizens with disabilities are even able to enter the buildings in the first place. In other words, the test before us is whether Kansans are really seriously committed to upholding the rights of persons with disabilities especially on the local level, or whether instead we are going to back pedal on them.

Our agency, KAPS, is committed to accessibility for all Kansans. At KAPS, we want to assure for ADA accessibility for all Kansans by working with city and county governments on an informal level. Cities and counties with an ADA coordinator already should know the ADA. Regardless, I know that we, as well as the Independent Living Centers, DBTAC and others want to and are planning to provide training to ADA coordinators and assist them in networking with each other. We have also indicated to the Kansas League of Municipalities and Kansas Association of Counties that we would like to publicize good examples of cities and counties who are complying with the ADA - and there are some good examples - for example, this committee has already received a letter from Allen Martin from Lawrence - and who was in Manhattan before that - who says that in his experience barrier removal is usually not a very big deal, and that for existing local businesses, the cost of accessibility improvements is *de minimis*.

Our concern is that by taking away the option of being able to work closer to the source, that is, by relieving cities and counties of the responsibility for enforcing Title III of the ADA for existing facilities, one result that is not too hard to foresee is that with fewer enforcement mechanisms available, it is much more likely that the best, or perhaps only, remedy will be to litigate in federal court. Although we certainly would strongly prefer having greater options to

work out accessibility barriers on the local level, please be assured that we will not shirk our duties to do whatever is necessary to assure for the civil and human rights of Kansans with disabilities.

Following are some ideas for statutory changes that may help clarify the picture.

K.S.A. 58-1304(a)

In the Hays decision, Judge Madden noted that although the statute [K.S.A. 58-1304(a)(3)] is not ambiguous, "the language of the statute is awkward, and it would benefit by rewriting." Here are some possibilities:

> (3) for all existing *Title III* facilities, ~~[and the design and construction of all new, additions to and alterations of, any local government facilities where funds of a county, municipality or other political subdivision are utilized,]~~ the *county or municipal* governmental entity ~~[thereof or an agency thereof designated by the governmental entity]~~ *of the county or city in which the facility is located; provided, however, that a municipal entity that is not required to designate a responsible employee under 28 C.F.R. 35.107 shall not be required to enforce this act and the enforcement for such municipal entity shall be with the county in which the municipal entity is located.*
>
> (5) *for all existing local government facilities, and the design and construction of all new, additions to and alterations of facilities where funds of a county, municipality or other political subdivision are utilized, the governmental entity in which the facility is located; provided, however, that a municipal entity that is not required to designate a responsible employee under 28 C.F.R. 35.107 shall not be required to enforce this act and the enforcement for such municipal entity shall be with the county in which the municipal entity is located.*

The cited federal regulation, 28 C.F.R. 35.107, states in subparagraph "a" that "a public entity that employs 50 or more persons shall designate al east one employee to coordinate its efforts to comply with and carry out its responsibilities under this part" [Title II of the ADA], and further in subparagraph "b" that "a public entity that employs 50 or more persons shall adopt and publish grievance procedures..." In other words, one equitable clarification for Kansas Law may be to state that if the City does not have to have an ADA Coordinator, than it is not required to enforce Title III within its jurisdiction; and that in such situations the county wherein the city is found would have to enforce Title III of the ADA. I do not believe that there are any counties in Kansas with less than 50 employees, but if there are, then language could be added that such counties can either coordinate efforts with adjoining counties for ADA Title III enforcement, or such cases would be directly enforced by the State Attorney General's Office.

Attorney General Enforcement

Another helpful option would be to specifically authorize the State Attorney General's Office, which oversees enforcement of the act, to bring suit to ensure compliance in situations where there has been a pattern and practice of discrimination or where there is an issue of general public importance. Perhaps this could be modeled upon the relevant regulation authorizing the federal Attorney General to bring suit under the ADA in such circumstances (see 28 C.F.R. 36.503), and it might look something like this:

> *(New section). In addition to the remedies provided in K.S.A. 58-1308, at any time in his or her discretion, the Attorney General may commence a civil action in any appropriate state court if the Attorney General has reasonable cause to believe that --*
>
> *(a) Any person or group of persons is engaged in a pattern or practice of discrimination in violation of the Act or this part; or*
>
> *(b) Any person or group of persons has been discriminated against in violation of the Act or this part and the discrimination raises an issue of general public importance.*

Building Permit Enforcement

Finally, it might be helpful to amend K.S.A. 58-1301 to read as follows:

> (a) Except as provided in K.S.A. 58-1307, and amendments thereto, all existing facilities, and the design and construction of all new, additions to and alterations of, facilities in this state shall conform to Title II or Title III, as appropriate. The design and construction of new, addition to or alteration of, any facility which receives a building permit or permit extension after the effective date of this act shall be governed by the provisions of this act.
>
> *(b)The entity responsible for issuing building permits or permit extensions shall also be responsible for assuring Title II or Title III compliance, as appropriate.*
>
> *(c) The Title II and III requirements shall be incorporated into the Uniform Building Code.*

Summary

It only makes sense to divide up ADA enforcement responsibility in smaller units such as in counties and cities. It only makes sense to require counties and cities who already have had to develop knowledge of the ADA to enforce it for existing facilities as well as for new ones. It only makes sense to place responsibility for the rights of local citizens with local government. It only makes sense that persons with disabilities who are elderly or who have disabilities have an informal means of recourse when they are not able to shop in local grocery store. Passage of the bill that way it now stands will send the wrong message.

Thank you for your consideration.

James L. Germer, Director
KAPS

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Testimony to:
House Governmental Organization and Elections
February 17, 1998
House Bill 2814

Thank you for the opportunity to testify today. My name is Gina McDonald. I am the President of the Kansas Association of Centers for Independent Living (KACIL). For purposes of this testimony I will also tell you that I have been providing training on the Americans with Disabilities Act nationally and in Kansas since 1991. In that time I have worked with many state and local governments as well as private businesses to understand the ADA.

KACIL's mission is to ensure the rights of people with disabilities in Kansas. We represent eleven of the thirteen Centers for Independent Living (CIL's) in the state. CIL's are advocacy organizations which promote the rights of people with disabilities. We provide assistance to anyone who wants to live independently. CIL's also provide technical assistance to any entity who wants information about disabilities.

The Americans with Disabilities Act (ADA) was signed into law by President Bush on 1990. It was a landmark piece of legislation which gave basic civil rights to persons with disabilities with regard to employment, state and local government activities, public accommodations and telecommunications.

Title III of the ADA says that public accommodations must make their goods and services available to people with disabilities. During negotiations for passage of the ADA, one of the arguments against passage that was being used was that this law would shut down "mom and pop" businesses. As a compromise to ensure that existing businesses would not be in danger of closing, a new term was added to say that existing businesses must do what is "readily achievable" to ensure that goods and services were accessible to people with disabilities. Readily achievable means whatever is "cheap and easy" . It is a weak standard, but was agreed to and added into law.

In 1991 advocates worked to include the ADA as a part of the Kansas Act Against Discrimination. The League of Cities and the Chamber of Commerce was very concerned about the inclusion of the ADA and it's impact. We worked together with representatives of the League, KACIL, Kansas Commission on Disability Concerns (KCDC) the Attorney General's Office and others to develop regulations that would be acceptable to everyone.

House GO and E
2-18-98
Attachment 5

Today we are fighting that same battle. The concerns that we have heard which resulted in H.B. 2814 are completely unfounded and untrue. The law as it stands simply says that the Cities are responsible for following up on complaints filed for noncompliance with Title III. In our opinion, this is exactly what has been promoted by the League of Cities for years. That is, that they don't want Federal mandates, that the law should be enforced at the local level. This law now should be being enforced locally.

Most Cities, and public accommodations for that matter have access to resources through the 13 Centers for Independent Living across the state and from KCDC to provide technical assistance for compliance with the law. In addition, the Disability Business Accommodation Center for Region VII located at the University of Missouri at Columbia is available for free technical assistance.
This law has been in effect since 1991 and we are aware of no city that has been overwhelmed with complaints. We are also not aware of any existing businesses that have been forced to close due to being in compliance with this law. If, in fact they have, then the law was interpreted incorrectly.

KACIL is opposed to H.B. 2814. We see no logical reason for it, and believe that it is simply a knee jerk reaction to the law suit that was filed in Hays. KACIL would be happy to meet with representatives of the group who wrote this bill to determine if there is another way their reach goals.

I would be happy to stand for questions.

STATE OF KANSAS
DEPARTMENT OF HUMAN RESOURCES

Bill Graves, Governor

Wayne L. Franklin, Secretary

COMMISSION ON DISABILITY CONCERNS
1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877
Voice: (785) 296-1722 • TTY: (785) 296-5044 • Fax: (785) 296-0466
Toll Free: (Outside Topeka) 1-800-295-5232

TESTIMONY ON HB 2814
GIVEN BY
MARTHA K. GABEHART, EXECUTIVE DIRECTOR
KANSAS COMMISSION ON DISABILITY CONCERNS
FEBRUARY 17, 1998

Thank you for the opportunity to testify in opposition of HB 2814. The Kansas Commission on Disability Concerns (KCDC) is a unit of state government in the Ks. Department of Human Resources (KDHR). We are statutorily mandated to provide information and make recommendations to the Governor and Legislature on issues of concern to Kansans with disabilities.

HB 2814 would eliminate the responsibility of local governments to process complaints against private businesses which are open to the public because their existing buildings have not been modified to provide better accessibility to people with disabilities in accordance with the Americans with Disabilities Act (ADA). During the Town Hall Meetings KCDC has held across the state for the last five years, we have heard from many citizens with disabilities and their families that accessibility to public accommodations is poor. The advertising of the means by which a person can file a complaint has been non-existent or local governments have denied having the responsibility.

The recent court case, LINK, Inc., et al., vs City of Hays, has officially interpreted the law to include processing complaints against private businesses which are open to the public on accessibility issues. This interpretation does not require the local governments to perform surveys on all buildings to determine access, only those against which a complaint is filed. We believe there will not be a "flood" of complaints filed, because past numbers of complaints filed have not been high. There should be no litigation costs, because if a business refuses to comply, they are forwarded on to the Attorney General's office for processing. As building inspectors get into the habit of reviewing building plans for compliance with the state accessibility law, there will be fewer complaints filed.

The move to push responsibilities to the local level is apparent in Congressional and Legislative action. Maintaining the law in its current form is appropriate with this trend. It is also much easier and quicker to have a local mechanism to start enforcement of the state accessibility law. Thank you for the opportunity to testify.

House GO and E
2-18-98
Attachment 6

From: Kent Glasscock (2/14/98)
To: Fulva Seufert

[1]HB2814 2/14/98 9:40 PM

Forwarded mail...

2814 Tues.

Date: 2/14/98 10:33 PM
From: jmvoge
Dear Representative Glasscock,

I am writing you concerning HB2814 that is in the Government Organizations and Elections Committee. This bill will eliminate enforcement of ADA compliance of Title III existing facilities.

Please consider the following:

1. The cities do not have to survey every Title III existing facility. They only have to enforce this law on existing facilities when there has been a complaint filed.

2. If the cities are doing their job as far as enforcing compliance of Title II facilities and Title III new construction, then they already have the knowledge available just as they would with any other code.

3. To comply with the ADA, Title III existing facilities only has to do what is "readily achievable" and would not cause an "undue burden".

4. Cities shouldn't experience a flood of complaints, because the past has not shown this.

5. If the cities are concerned about costs of litigating with businesses, they shouldn't be because if the business refused, then the complaint would go back to the Attorney General to take care of.

Please oppose HB2814! HB2814 would change the law to where there would not be enforcement of compliance with Title III existing entities. It violates our civil rights! Kill it in committee!

Sincerely yours,

Jerry Vogel
1572 ElDorado Dr.
Lawrence, KS 66047
E-mail: jmvogel@juno.com

RFC-822 Header:
RECEIVED: from M2.BOSTON.JUNO.COM by mail.ksleg.state.ks.us ; 14 FEB 98 22:32:30 UT
Received: (from jmvogel@juno.com)
by m2.boston.juno.com (queuemail) id XKO22527; Sat, 14 Feb 1998 23:27:44 EST
To: rep_kent_glasscock@mail.ksleg.state.ks.us
Date: Sat, 14 Feb 1998 21:40:10 -0600
Subject: HB2814
Message-ID: <19980214.222453.4486.2.jmvogel@juno.com>
X-Mailer: Juno 1.49
X-Juno-Line-Breaks: 0-1,4-7,10-11,14-15,17-18,20-21,24-25,28-35

House GO and E
2-18-98
Attachment #6

From: Kent Glasscock (2/16/98)
To: Fulva Seufert

[1] 2/16/98 11:47 AM

Forwarded mail...

Date: 2/16/98 11:58 AM
From: DKaufma
Concerning the hearing set for HB2814. Response to the ruling of LINK VS. The City of Hays that will eliminate the enforcement of ADA Compliance of the Title III existing facilities.

1) The cities do not have to survey every Title III existing facility. They only have to enforce this law on existing facilities when there has been a complaint filed.

2) If the cities are doing their job as far as enforcing compliance of Title II facilities & Title III new constructions, then they already have the knowledge available just as they would with any other code.

3) We do not believe cities will experience a flood of complaints, because the past has not shown this.

4) The cities are concerned about costs of litigating with businesses. This would not occur because if the business refused, then the complaint would go back to the AG to take care of.

5) The fact of the matter is that cities do not want to enforce this law, that is why they want it changed.

Thank you for your time

H.R.C.I.L.
915 S. Main
Hutchinson, KS 67501

RFC-822 Header:
RECEIVED: from ONYX.SOUTHWIND.NET by mail.ksleg.state.ks.us ; 16 FEB 98 11:58:51 UT
Received: from iasitojd (hut37.southwind.net [206.53.98.229])
by onyx.southwind.net (8.8.8/8.8.8) with ESMTP id LAA06359
for <rep_kent_glasscock@mail.ksleg.state.ks.us>; Mon, 16 Feb 1998 11:56:51 -0600 (CST)
Message-Id: <199802161756.LAA06359@onyx.southwind.net>
From: "DKaufman" <hrcil1@southwind.net>
To: <rep_kent_glasscock@mail.ksleg.state.ks.us>
Subject:
Date: Mon, 16 Feb 1998 11:47:46 -0600
X-MSMail-Priority: Normal
X-Priority: 3
X-Mailer: Microsoft Internet Mail 4.70.1162
MIME-Version: 1.0
Content-Type: text/plain; charset=ISO-8859-1
Content-Transfer-Encoding: 7bit

==========

From: Kent Glasscock (2/16/98)
To: Fulva Seufert

[1]HB 2814 2/16/98 9:46 AM

Forwarded mail...

Date: 2/16/98 9:57 AM
From: Jean Hall
Dear Mr. Glasscock,
As a person with a disability, I am writing to ask that you vote against House Bill 2814, which would eliminate enforcement of the ADA by cities in Kansas. Please consider the following points:
1) Cities do not have to check every public facility for compliance. They only have to enforce the ADA when a complaint is filed.
2) Cities do not have to worry about litigation expenses. If a business refused to comply, the complaint would go to the AG.
Everyone benefits when public accommodations are accessible to people with disabilities, including parents with baby carriages, and the elderly. Please do your part to ensure that cities remain responsible for seeing that the ADA is enforced. Thank you for your time in this matter.
Sincerely, Jean P. Hall

RFC-822 Header:
RECEIVED: from QUEST.SPED.UKANS.EDU by mail.ksleg.state.ks.us ; 16 FEB 98 09:56:53 UT
Date: 16 Feb 98 09:46:53 +0000
From: Jean Hall <jean_hall@quest.sped.ukans.edu>
Subject: HB 2814
To: Kent Glasscock <rep_kent_glasscock@mail.ksleg.state.ks.us>
Message-ID: <980216.094653@quest.sped.ukans.edu>
X-Mailer: QM-Internet Gateway 1.0.1
X-Priority: 4
MIME-Version: 1.0
Content-Transfer-Encoding: quoted-printable
Content-Type: text/plain;
charset="iso-8859-1"

==========

Allen Martin
914 Christie Court
Lawrence, KS 66049
785-842-3304

VIA TELEFAX

February 13, 1998

Representative Kent Glasscock
Committee on Government Organizations & Elections
Room 183 West
State Capitol Building
Topeka, KS 66612

Re: House Bill No. 2814

Dear Rep. Glasscock:

The proposed legislation appears to omit provisions for enforcement of "Barrier Removal" from existing public buildings (other than for renovations and alterations).

I am gravely concerned that this omission will essentially give license to avoid compliance with Title III, ADA. Most of the public buildings in the State of Kansas were constructed prior to enactment of the ADA and there are thousands, if not tens of thousands, of public buildings which are not accessible to people with disabilities. While it is clear that the Kansas Human Rights Commission (KHRC) has jurisdiction to enforce accessibility provisions of the KAAD, it is equally clear that the nineteen investigators, employed by the KHRC, cannot address the magnitude of this challenge. It must also be mentioned that neither the Kansas Attorney General's Office nor the US Dept. of Justice are capable of full enforcement, due to staff limitations.

"Barrier Removal" is usually not a very big deal. During the period of 1995 through 1997, I was the ADA Coordinator for the City of Manhattan, KS. As you are aware, Manhattan was the center of Advocacy activity, both during and after the Tyler case. During this time, I was able to lead the municipality into full compliance with

Allen Martin
914 Christie Court
Lawrence, KS 66049
785-842-3304

Title II, ADA. Subsequent to this, the attention of Advocacy groups turned to local businesses. In my role, I investigated these complaints and mediated compliance with local businesses. By this method, I was able to gain a voluntary compliance rate of approximately 80%. It should be noted that my approach was to work with the business owners and not against them. In the greatest majority of cases, the cost of accessibility improvements was *de minimus* and even that cost was greatly reduced by available tax credits, not to mention the increase in business from disabled customers. It is noteworthy that these activities comprised less than 10% of my total work load.

In my experience, I've heard many business people cry that they would be bankrupted by costs involved in accessibility improvements. Of course, that never happened. Obviously, business owners are protected by the *undue financial burden* provisions of Title III and the KAAD.

Most cities of the first class and many cities of the second class, have people employed in positions of building officials and / or human relations specialists. Obviously, theses cities have the capability of enforcement. Equally obvious is the fact that the majority of Kansas citizens live within the geographical boundaries of these cities. Accordingly, I would recommend that Cities that have these resources should be required, by the pending legislation to enforce the "Barrier Removal" provisions of Title III, ADA, as implemented by the Kansas Architectural Accessibility Standards Act. For those Cities that do not have these resources, the KHRC and the Kansas Attorney General should bear the burden of enforcement.

The disabled citizens of Kansas are counting on you to insure their rights. Please do not let them down.

Respectfully,

Allen Martin

First Assistant District Attorney
Joe[illegible]. Meinecke

Assistant District Attorneys
Athena E. Andaya
James A. Brown
Nancy S. Brumbeloe
Edward M. Collazo
Gwynne E. Harris
E. Bernard Hurd
Lisa C. Kelly
Cynthia J. Long
Ilene J. K. Miller
Kenneth J. Morton
Katherine K. Murray
Alexandra T. Nguyen
Tony W. Rues

Joan M. Hamilton
District Attorney
Kansas Third Judicial District
Suite 214 • Shawnee County Courthouse • Topeka, Kansas 66603-3922
Telephone: (785) 233-8200 Ext. 4330 • Fax: (785) 291-4909

Director of Victim[illegible]es
Suzanne H. Ja[illegible]

Investigators
Donald M. Murphy
Ken Hendrix
Mick Meyer
Bob Burke

February 18, 1998

To: The Committee on Governmental Organization and Elections

From: Bob Burke, Investigator, Shawnee County District Attorney

Ref: HB 2814

District Attorney Hamilton has been receiving access complaints for 4½ years from the elderly and disabled who live and work in Shawnee County. I investigated these for 3 years as a volunteer. I joined her staff 1½ years ago to handle the many complaints about existing business's not being accessible. Most of my job is helping find ways for the business to "remove barriers" AFTER we receive a written complaint. Many times "barriers" can't be removed, because the business is ACTUALLY PROTECTED by the language in the "Americans with Disabilities Act"!

These surveys can be conducted by volunteer groups, current city/county building employees all ready on the payroll, and I find the extra cost of $75,000 a year for this very hard to believe. I work in a county 4-5 times larger that Ellis County, receive less than half that amount of money, and I am currently working on 150-200 cases. All of the previous closed cases, and NONE of the current cases are COURT BOUND, they are easily worked out.

House GO and E
2.18.98
Attachment 8

We have cases that are given 2-3 years to correct for various reasons.

All of you will likely become disabled, unless you meet a tragic death or have a fatal health problem. Look at your local nursing homes, those people still like to go out and participate in activities, but most of them aren't to mobile anymore.

I ask you to not "WATER DOWN" the current law, IT MAY EVEN HELP YOU IN THE FUTURE TO CARRY ON YOUR LIFE ACTIVITIES!

I would like to invite this committee to participate and go with me to survey an actual complaint, see first hand how easy it is to "remove barriers", and visit with the owner. When they understand how simple this is they wonder why they didn't do this removal sooner.

If any of you would like to visit with me or go on a survey, please let me know, thank you!

Sincerely,

Bob Burke, Investigator
Shawnee County District Attorney

First Assistant District Attorney
Joel ... Meinecke

Assistant District Attorneys
Athena E. Andaya
James A. Brown
Nancy S. Brumbeloe
Edward M. Collazo
Gwynne E. Harris
E. Bernard Hurd
Lisa C. Kelly
Cynthia J. Long
Ilene J. K. Miller
Kenneth J. Morton
Katherine K. Murray
Alexandra T. Nguyen
Tony W. Rues

Joan M. Hamilton
District Attorney
Kansas Third Judicial District
Suite 214 • Shawnee County Courthouse • Topeka, Kansas 66603-3922
Telephone: (785) 233-8200 Ext. 4330 • Fax: (785) 291-4909

Director of Victim ...es
Suzanne H. Jam...

Investigators
Donald M. Murphy
Ken Hendrix
Mick Meyer
Bob Burke

SHAWNEE COUNTY DISTRICT ATTORNEY'S OFFICE
OFFENSE REPORT

1. Name, address and phone number of the business where the violation(s) is/are located.

_____

_____

Business phone _____
Owner/Manager _____

2. Please place a checkmark to all applicable violation(s) and specify what the violation(s) is/are. For instance, no upright sign designating disabled parking, etc.

_____ Parking

_____

_____

_____ Doorways

_____

_____

_____ Elevators

_____

_____

_____ Ramp/Curb Cut

_____

_____

_____ Restrooms

_____

_____

_____ Other. Please specify

_____

_____

_____ _____
Name Date

_____
Address

_____
City/State/Zip Code

_____
Telephone

Withhold Name: _____ Yes _____ No

Justice for All

8-3

Southeast Kansas Independent Living Resource Center, Inc.
S.K.I.L. Resource Center, Inc.
P.O. Box 1035 1801 Parsons Plaza Parsons, KS 67357-1035
Phone: (316) 421-5502 Fax: (316) 421-3705 TDD: (316) 421-0983 Toll Free: 1-800-688-5616

Columbus Office
5174 S.W. Hwy. 69
Columbus, KS 66725
(316) 674-3138

Coffeyville Office
714 Union
P.O. Box 497
Coffeyville, KS 67337
(316) 251-5400

Pittsburg Office
104 W. 6th
P.O. Box 217
Pittsburg, KS 66762
(316) 231-6780

Chanute Office
1028 S. Santa Fe
Chanute, KS 66720
(316) 431-0757

Assistive Technology for Kansans
1-800-526-3648

TESTIMONY: TO HOUSE COMMITTEE ON GOVERNMENT ORGANIZATION AND ELECTIONS

Mr. Chairman and Committee Members:

My name is Greg Jones. I am employed as Director of Advocacy for Southeast Kansas Independent Living. I would like to thank you for this opportunity to share the current situation in regards to accessibility for the disabled in South East Kansas.

Currently our administrative office is located in Parsons. We have satellite offices in Coffeyville, Chanute, Columbus, Pittsburg, and Fredonia. Accessibility for the disabled in each of these cities is a problem for the disabled and the elderly. For many of these folks it is easier to remain homebound than to experience the frustrations of not being able to access the basic goods and services many of us enjoy on a daily basis. To many of the disabled and the elderly there are definite risks to their safety should they attempt to venture into the community.

In recent years we have attempted to address these with our local municipalities. We have made progress, sometimes stonewalled by others, and are often completely ignored.

Kansas Association of KACIL Centers for Independent Living

SKIL Working Hard for the People We Work For

BBB

House GO and E
2-18-98

Attachment 9

We have, on several occasions, filed complaints, or assisted customers with such, to the State Attorney General's office in regards to the cities and their compliance. To this point in time, response has been minimal to non-existent. In a "nutshell" enforcement of Accessibility enforcement of Title III "existing facilities", is non existent. Recently legal precedence was established ruling that city entities are responsible for enforcement only when a complaint had been filed. Enforcement of this ADA would only mean modification that existing facilities can obtain readily with undue financial burden.

Mr. Chairman and Committee Members, the municipalities of Kansas assuming responsibility for accessibility for all citizens is on the horizon. Not implementing HB2814 and allowing KSA 58-1304 to stand, unamended, will allow the disabled community, at least, the opportunity to pursue equal access to basic goods and services in the community.

Thank you.

Statewide Independent Living Council of Kansas

SILCK

700 S.W. Jackson, Suite 1003, Topeka, KS 66603 ☎ (913) 234-6990 voice / tdd ☎ (913) 234-6651 fax

Testimony Presented to House Governmental Organizations and Elections
Regarding HB 2814
By Shannon M. Jones
February 17, 1998

I am Shannon Jones with the Statewide Independent Living Council of Kansas (SILCK) and I am here today to speak in opposition to HB 2814. The SILCK is mandated by federal law, the Rehabilitation Act to study existing services for people with disabilities and make recommendations to improve and expand services that will enable Kansans with disabilities to achieve their optimum level of independence and improve their quality of life.

The SILCK opposes HB 2814. Every year the Council conducts public hearings across the state to receive input from the constitiency we represent, Kansans with disabilities. The purpose of these hearings is to find out what Kansans with disabilities need in order to live independent lives. Time after time, year after year the Council receives comments regarding the lack of enforcement within local communities concerning accessible buildings. Now we have a bill before us that would totally ignore the plea of Kansas citizens. The need for accessible communities for someone with a disability is essential, not a mere convenience. This bill is particilarly disturbing in light of recent legislative, educational and sociological developments that have illuminated the overdue need for the full and complete integration of people with disabilities into the mainstream of society.

The state of Kansas in recent years has made clear it's commitment to community based placement with the closure of two state hospitals. What good will it do to move people into the community from the institutional setting if they cannot get around in their own community. Kansans with disabilities only want a mechanism for enforcement of accessibilty standards when a complaint has been filed against an existing facility. However, city officials want you to believe that this enforcement would create a huge financial burden. This simply is not the case.

To better assist cities and business owners with compliance efforts, Centers for Independent Living have been providing technical assistance for years and in most cases for free or a nominal fee. CILs are are more than willing to provide this information, however according to the Kansas statute and recent rulings the local city must establish a mechanism for enforcement of Title III requirements for existing facilities.

The SILCK urges this committee to oppose HB 2814 and uphold the current Kansas law.

House G O and E
2.18.98
Attachment 10

Testimony Concerning HB 2814
Before The
Governmental Organization and Elections Committee
By
David P. Calvert
February 17, 1998

My name is David Calvert. I am the attorney who represented the Hays Center for Independent Living--known as LINK--in a case brought by it against the City of Hays. I am here this morning to do my part to prevent the undoing of years of progress by this legislature.

I believed that discrimination against persons with disabilities was eliminated years ago. But today, this Committee is considering legislation that sets Kansas civil rights laws relating to persons with disabilities back 30 years. As a lawyer and a citizen who believes that all persons are created equal, I am offended by this bill. As a human being, I am outraged. If you believe that persons with disabilities should have equal access as guaranteed by the Americans with Disabilities Act, you should be outraged too.

In 1968, this legislature passed an act relating to the elimination of architectural barriers and the introduction to Chapter 216 of the 1968 Session Laws which reads like this:

> WHEREAS, There is an ever increasing number of our population with permanent physical disabilities. Among these are many different causes and manifestations of physical disability and each has its own particular associated problems; and
>
> WHEREAS, The most frustrating of all problems to physically disabled individuals are buildings and facilities, supposedly created for the public, that are designed and constructed in such a manner that they prohibit the full participation of the physically disabled; and
>
> WHEREAS, It is equally frustrating to professional people dedicated to rehabilitation to find that architectural barriers prohibit the disabled individual, however well rehabilitated, from pursuing his aspirations, developing his talents, and exercising his skills. . .

The law has undergone changes over the years to keep up with changing accessibility standards. In 1990, the Congress passed the Americans with Disabilities Act which guaranteed that persons with disabilities would not be discriminated against, and the Kansas legislature incorporated the ADA into Kansas law. That

House GO and E
2-18-98
Attachment 11

further demonstrated the intent of the legislature to guarantee that persons with disabilities will not be discriminated against. In that regard, 58-1303 clearly shows the legislative intent and requires no interpretation:

> **"This act is intended to prohibit discrimination on the basis of disability by Title II and Title III entities. All facilities covered by this act are to be designed, constructed and altered to be readily accessible to and usable by individuals with a disability."**
>
> **1301(a) provides: "Except as provided in K.S.A. 58-1307 [regarding historic facilities], and amendments thereto, all existing facilities, and the design and construction of all new, additions to and alterations of, facilities in this state shall conform to Title II or Title III, as appropriate. ..."**

Title II entities are governmental entities. Title III entities are public accommodations and commercial facilities other than governmental entities.

So, Kansas has made it against Kansas law to violate the Americans with Disabilities Act. Enforcement of Kansas law is logically divided in 58-1304.

Subsection 1 places the responsibility for existing and new school facilities on the state board of education. Regents institutions are subject to other provisions of the law.

Subsection 2 places the responsibility for existing state government facilities and new government facilities built on state property on the secretary of administration.

Subsection 3 places the responsibility for all existing Title II and Title III facilities on municipal and county government. It also places the responsibility relating to new local government facilities on that local government.

Finally, in subsection 4 the responsibility for all new buildings is on the governmental entity in which the facility is located.

By reading all of the enforcement responsibilities together, one can see that the law assures that the legislative intent will be achieved; that someone has the responsibility to enforce laws against discrimination for all Title II and all Title III entities.

House Bill 2814 repeals a substantial part of that law. It repeals that part of the law which requires local governments to enforce the ADA as it relates to all existing facilities by applying it only to existing local government facilities.

House Bill 2814 eliminates public accommodations and commercial facilities from Kansas law. Stated harshly but quite accurately, this bill makes access discrimination against persons with disabilities legal under Kansas law but not, of course, under Federal law. The reason is that there would be nobody charged with enforcement and private individuals are not permitted to sue under the act.

Since the language of the change was proposed -- according to him, anyway -- by the attorney who represented the City of Hays in litigation concerning existing Title III facilities, it is probably relevant to discuss the outcome of that litigation. Judge William Madden of Ellis County was asked by LINK to direct the City of Hays to comply with its responsibilities and come up with a procedure for handling complaints. He did so and I have attached a copy of his order to this testimony. It is significant to note that he has not directed the City to conduct any survey of existing facilities or to do anything that would require the hiring of any additional people. He has only ordered that the City adopt a method of handling complaints. Further, he suggested that the city may decide to coordinate efforts with other municipalities or perhaps counties to keep costs at a minimum. Rather than do this, the city's response was to seek legislation simply repealing the law. Frankly, the city should be ashamed of itself.

Judge Madden noted that if the city's interpretation of the law--which is the same as the proposed amendment in 2814--were correct that the enforcement relating to the majority of buildings covered by the ADA would not be dealt with by the law.

In his written opinion, Judge Madden found that the statute was not ambiguous and that it is not susceptible to more than one potential interpretation. However, he did note that "the language of this statute is awkward, and it would benefit by rewriting." Given Judge Madden's suggestion, I would suggest that the following change be made:

> (3) for all existing *Title III* facilities, ~~and the design and construction of all new, additions to and alterations of, any local government facilities where funds of a county, municipality or other political subdivision are utilized,~~ the *county or municipal* governmental entity ~~thereof or an agency thereof designated by the governmental entity~~ *of the county or city in which the facility is located; provided, however, that a municipal entity that is not required to designate a responsible employee under 28 CFR 35.107 shall not be required to enforce this act and the enforcement for such municipal entity shall be with the county in which the municipal entity is located.*

(5) for all existing local government facilities, and the design and construction of all new, additions to and alterations of facilities where funds of a county, municipality or other political subdivision are utilized, the governmental entity in which the facility is located; provided, however, that a municipal entity that is not required to designate a responsible employee under 28 CFR 35.107 shall not be required to enforce this act and the enforcement for such municipal entity shall be with the county in which the municipal entity is located.

Although this would not change existing law, it would eliminate the awkward language of the statute.

If you believe that I should not have the right of access at the same restaurants where you eat, that I should not have a right to shop at the same stores where you shop, and that I should not have a right to stay at the same motels where you stay or go to the same movies you see, then you should vote for this bill.

When we as a society recognize that persons with disabilities make a contribution to our society, we elevate our personal values. But when we decide to repeal a civil rights law because it is too much trouble to enforce it, we not only set back the civil rights laws this country has worked so hard to create, but we also deny people of diverse backgrounds the opportunity to learn from each other. When we repeal these laws we adopt an elitist attitude that says "only those without disabilities may enter here."

I urge you to vote against this bill in its current form and to clarify the law as I have suggested in my testimony.

IN THE DISTRICT COURT OF ELLIS COUNTY, KANSAS

LINK, INC., LOU ANN KIBBEE, and BRIAN ATWELL,

Plaintiffs,

vs.

CITY OF HAYS, KANSAS,

Defendant.

Case No. 97-C-40

MEMORANDUM DECISION

Plaintiffs' basis for seeking relief depends upon the responsibility of the Defendant under state law to enforce the provisions of K.S.A. §58-1301, et seq. In particular, Plaintiffs contend that these statutes are to be enforced by the municipality. Defendants argue that they do not have this responsibility, at least insofar as they apply to existing or "Title III" structures.

K.S.A. §58-1301, et seq., bears the title "Accessibility Standards for Public Buildings". The statute is heavily influenced by the federal Americans with Disabilities Act, or ADA, although some portions of the Kansas statute pre-date the federal law by several years.

In evaluating the Kansas statutes, it is helpful to understand the history of the federal and state laws and how they relate to each other. Kansas first enacted provisions in this area in 1968. See L. 1968, ch. 216. This earliest provision specifically limited its scope to buildings constructed after January 1, 1970, which were built in whole or part with state or local government funds. The statute incorporated by reference the specifications for accessibility approved seventeen years earlier on October 31, 1961, by the American Standards Association, Inc. The 1968 law provided that enforcement of the law was by the state Department of Administration for buildings utilizing state funds, and by the entity providing the funds in the case of counties or municipalities.

In 1978, the Kansas laws were amended. See L. 1978, ch. 212; L. 1978, ch. 213; L. 1978, ch. 336. In pertinent part, these provisions expanded the scope of application of the act to include facilities that were not necessarily built using tax money. See L. 1978, ch. 212, sec. 2. Enforcement delegation was modified to allow enforcement by a political subdivision such as a county or city by designation of an agency of the entity. Presumably, this would allow a city or county to designate an existing agency involved in zoning or related activity to undertake this duty as well. For buildings not involving tax revenue funding, enforcement fell to the county or district attorney.

Again in 1986, the Kansas law was amended. See L. 1986, ch. 208. The county or district attorney's enforcement responsibility was terminated and substituted with the "building inspector or other agency or person designated by the municipality in which the building or facility is located". L. 1986, ch. 208, sec. 2(d).

On July 26, 1990, Congress passed the Americans with Disabilities Act, or ADA, Pub.L. 101-336, July 26, 1990. This was codified at 42 U.S.C.A. §§12101, et seq. The ADA begins with a Congressional finding that 43,000,000 Americans have one or more mental or physical disabilities, and that this number is increasing as the population ages. The statute gives as one stated purpose "to provide a clear and comprehensive mandate for elimination of discrimination against individuals with disabilities". 42 U.S.C.A. §12101(b)(1).

The ADA is very broad in coverage rights of disabled persons in employment and transportation, as well as accessibility of public buildings. However, the ADA does have some "safety-valves", in the form of exclusions of certain groups and requirements of "reasonableness" to mitigate the harshness of application of the act in certain situations. For example, the ADA uses the term "reasonable accommodation" to describe the efforts necessary to bring an existing facility into

legal compliance. 42 U.S.C.A. §12111(9). Similarly, "undue hardship", is defined as an action "requiring significant difficulty or expense", and "readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense". See 42 U.S.C.A. §12111; 42 U.S.C.A. §12181. These and similar measures in the ADA are designed to provide some flexibility where the requirements of the act are particularly burdensome. Enforcement of the federal act lies with the Attorney General as well as other governmental entities such as E.E.O.C. There is also authorization for suits by private individuals in the federal courts. The ADA also specifically allows state and local governments to pass measures in this area, so long as these laws are at least as strong in protecting rights of the disabled: "Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. . ." 42 U.S.C.A. §12201(b).

Passage of the ADA was well publicized and accompanied by its share of controversy. In this context, Kansas passed amendments to the state law counterpart, K.S.A. §58-1301, et seq., in 1992 (L. 1992, ch.208) and again in 1994 (L. 1994, ch. 195). The 1992 amendments to K.S.A. §58-1304 added a section giving the attorney general of the state oversight of enforcement of the act by the secretary of administration, county or municipality or their designee agencies. The 1992 amendments also substituted reference to the ADA for the old American National Standards Institute (ANSI) specifications.

The 1994 amendments, L. 1994, ch. 195, effective July 1, 1994, brought the Kansas law to its present form. The Kansas provision is much shorter than the ADA. The Kansas law in its final form was passed two years after the ADA, and it incorporates the ADA into the Kansas law. It is

clear that the legislature had the ADA in mind in drafting the Kansas law, including the requirement of equal or greater protections required by 42 U.S.C.A. §12201(b). The stated intent of the Kansas law is set out in K.S.A. 58-1303:

> This act is intended to prohibit discrimination on the basis of disability by Title II and Title III entities. All facilities covered by this act are to be designed, constructed and altered to be readily accessible to and usable by individuals with a disability.

There are two definitions of importance in this case that also refer to the ADA, both from K.S.A. §58-1301b:

> (c) "Title II" means 28 CFR Part 35, non-discrimination in state and local government services as required by sections 201 to 205, inclusive, of the Americans with disabilities act of 1990, 42 USCA 12,115 et seq. (d) "Title III" means 28 CFR Part 36, non discrimination on the basis of disability by public accommodations and commercial facilities as required by section 301 et seq of the Americans with disabilities act of 1990, 42 USCA 12,181 et seq.

With these definitions in mind, the Kansas law provides the following as the general rule of accessibility standards for public buildings, set out at K.S.A. §58-1301:

> (a) Except as provided in K.S.A. 58-1307, and amendments thereto, all existing facilities, and the design and construction of all new, additions to and alterations of, facilities in this state shall conform to Title II or Title III as appropriate. The design and construction of new, addition to or alteration of, any facility which receives a building permit or permit extension after the effective date of this act shall be governed by the provisions of this act.

The exception mentioned above, K.S.A. §58-1307, deals with application to historic facilities, which is not an issue in this case. Restated, this provision of state law requires that all new buildings, existing buildings, and modifications of existing buildings must conform with either Title II or Title III of the ADA.

There is no argument by the city concerning Title II property and new construction of Title III property. The city has conceded that they must review buildings for ADA compliance as part of the building permit process, along with the other codes that they presently enforce for plumbing, electric, zoning, etc. Plaintiffs have raised the issue of enforcement, citing examples of permits being granted, but the final result being out of compliance. Because the city does not dispute that they are charged with this responsibility, and the question is instead a factual determination of compliance of particular buildings, the district court will defer resolving this issue until it is presented to the court in that context and including the owners of the property as parties.

The crux of Plaintiffs' case lies with the assertion that the city is responsible for enforcement of accessibility standards for Title III, existing facilities. Stated another way, does the city have the legal responsibility to enforce accessibility standards for privately owned and privately funded buildings built before the standards were required for new construction? It is agreed that if a government entity is the owner of the property, such as a school, courthouse, or city office, the act is clear on the issue of enforcement by the particular entity set out in the statute. It is also agreed that new construction of private facilities must comply, and that this will be enforced along with other codes. The point of contention is the role of the city in ensuring that existing private facilities comply with the law. This would include retail establishments, motels, offices, etc., that have been in existence since before the law was in place. In fact, this probably would include the majority of business buildings in the city.

From the stated intent set out above, as well as the definitions, it is clear that the existing Title III buildings anywhere in the state of Kansas must comply with the accessibility standards. The only question is whether the city is responsible for ensuring that existing Title III buildings within the city

limits comply with the law.

Enforcement responsibilities of the Kansas act are covered by K.S.A. §58-1304(a). The first two provisions deal with public schools and government facilities, which are not germane to this case. Enforcement in these areas is assigned to the state board of education and the secretary of administration, respectively. The fourth provision deals with new construction. The statute provides that for new construction, whether a totally new facility or an addition to an existing facility, enforcement falls to "the building inspector or other agency or person designated by the governmental entity in which the facility is located". K.S.A. §58-1304(a)(4). The city acknowledges that it has this responsibility, although Plaintiffs may dispute the effectiveness of the enforcement in particular cases. K.S.A. §58-1304(b) states: "The attorney general of the state of Kansas shall oversee the enforcement of this act."

It is the remaining provision of the enforcement statute that must be interpreted to decide the issue here, i.e., K.S.A. §58-1304(a)(4). In pertinent part it states:

> The responsibility for enforcement of this act shall be as follows: . . . (3) for all existing facilities, and the design and construction of all new, additions to and alterations of, any local government facilities where funds of a county, municipality or other political subdivision are utilized, the governmental entity thereof or an agency thereof designated by the governmental entity; . . .

The city has taken the position that this section only deals with local government facilities. Paraphrased, this interpretation could be rewritten as: "For all existing facilities of local government, and design and construction of new and modification of existing facilities of local government". Plaintiffs take the position that this section covers <u>both</u> existing public Title III facilities and local government facilities. This could be paraphrased to be: "For all existing facilities not otherwise covered above and <u>also</u> for all new and modification of existing local government facilities".

In determining the meaning of a statute, certain fundamentals must be kept in mind. First, courts do not make laws. That is a legislative function. If the meaning of a law is not clear from the plain wording of the statute, a court may be called upon to settle the interpretation of the statute. To do this, various rules of construction have developed over the years to assist in determining the meaning of a statute. The appellate courts frequently must decide cases in which the meaning of a statute is in issue. However, the goal in all cases is for the court to determine what the legislature intended by the language in the statute. The court does not pass on the wisdom of a statute or substitute its opinion for that of the legislature.

> When a statute is plain and unambiguous, the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be. Martindale v. Tenny, 250 Kan. 621 (1992).
>
> In order to ascertain the legislative intent, courts are not permitted to consider only a certain isolated part or parts of an act, but are required to consider and construe together all parts thereof in pari materia. When the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the strict letter of the law. Todd v. Kelly, 251 Kan. 512 (1992).

In the present case, the court does not find that the statute is ambiguous, i.e. that it is susceptible to more than one potential interpretation. The phrase "for all existing facilities, and the design and construction of all new, additions to and alterations of, any local government facilities where funds of a county, municipality or other political subdivision are utilized" indicates two groups. The first group is all existing facilities. This is not qualified. The second group, separated by ", and", consists of certain local government facilities. The language of this statute is awkward, and it would benefit by rewriting. However, the court finds that the meaning is discernible from the plain language

of the statute.

Even if the meaning were ambiguous, the obvious intent of the legislature would not be met by the city's interpretation. The enforcement of the majority of buildings would not be clearly dealt with by the act.

This action was brought as a mandamus, seeking to compel the city to perform a duty assigned to it by law. In cases where the duty subject to mandamus is clear, case law has allowed a party to be awarded attorney fees. This action also has characteristics of a suit for declaratory and injunctive relief, and arguably that is a more appropriate way of looking at the matter. In any event, the court does not find that the duty of the city was so clear under the act prior to this decision as to require they pay attorney fees. It appears that this is a case of first impression, although the statute in one form or another has been around for nearly twenty years. The enforcement requirement came to the city as what is commonly called an "unfunded mandate" from the state legislature, and indeed ultimately to Congress. The statute is long on responsibility and short on details. Although the attorney general is charged with the duty of "overseeing" the enforcement of this act, the court could find little helpful guidance in the form of regulations or opinions from the attorney general. There are many issues that are left open for Title III existing facilities. It is not clear whether the Kansas act incorporates the ADA concepts of "undue hardship" or "reasonable accommodation" that provide flexibility and might serve to soften the fiscal impact on particular businesses. It is also not clear what administrative steps should be provided to allow for adequate notice and opportunity to be heard by property owners.

The accessibility standards cannot be enforced in a vacuum. There needs to be a governmental process for the orderly implementation of the law. This will require thoughtful action

by the city. They may decide to coordinate effort with other municipalities or perhaps counties to keep costs at a minimum. However, they must take affirmative steps to begin implementing the Title III requirements for existing buildings.

IT IS THEREFORE ORDERED THAT the city with due diligence establish by ordinance or other rule a mechanism for enforcement of accessibility standards pursuant to K.S.A. §58-1304(a)(3).

IT IS FURTHER ORDERED THAT the enforcement procedure contain adequate mechanism for receiving and determining complaints of non-compliance with accessibility standards;

IT IS FURTHER ORDERED THAT the enforcement procedure provide procedural due process for adjudication of claims under the act;

IT IS FURTHER ORDERED THAT the court will retain jurisdiction to monitor and enforce compliance with this order;

IT IS FURTHER ORDERED THAT Plaintiffs' request for attorney fees for proceedings to this point are denied;

IT IS FURTHER ORDERED THAT Plaintiffs are awarded their costs.

IT IS FURTHER ORDERED THAT counsel for Plaintiffs will prepare a Journal Entry in accordance with this decision.

Dated this 21st day of November, 1997.

DISTRICT COURT SEAL ELLIS COUNTY, KANSAS

William J. Madden
District Judge

Copies to: David Calvert
John T. Bird

Supplemental Testimony Opposing HB 2814
Before The Governmental Organization and Elections Committee
David P. Calvert
532 N. Market
Wichita, Kansas
February 18, 1998

What is the current law?

"...all existing facilities, and the design and construction of all new, additions to and alterations of, facilities in this state shall conform to Title II or Title III, as appropriate." (K.S.A. 58-1301) This means that Kansas law requires all public and commercial buildings in Kansas to comply with the ADA.

"This act is intended to prohibit discrimination on the basis of disability by Title II and Title III entities." (K.S.A. 58-1303)

K.S.A. 58-1304 (a) "The responsibility for enforcement of this act shall be as follows:
(3) for all existing facilities . . . the governmental entity thereof or an agency thereof designated by the governmental entity. . ."

What does it do?

Current law, along with Judge Madden's Order, requires cities to establish a complaint procedure to deal with the failure of Title III entities to comply with the ADA. Only cities and counties enforce this law. The attorney general only oversees enforcement; the attorney general does not enforce this law.

Title III entities are public accommodations and commercial facilities such as restaurants, motels, theaters, and retail stores.

This is the only Kansas law that requires Title III entities to comply with the ADA.

What does HB 2814 change?

It changes the phrase "for all existing facilities" in 58-1304 to "for all existing local government facilities."

What is the effect of the change?

Passage of HB 2814 would mean that it is no longer against Kansas law for Title III entities such as restaurants, motels, theaters, and retail stores, to discriminate against persons with disabilities.

House GO and E
2-18-98

Attachment 11 10-14

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LEGISLATIVE TESTIMONY

TO: House Governmental Organization and Elections Committee
FROM: Jim Kaup, on behalf of Garden City
RE: **HB 2813; Increasing the Threshold for Requiring Public Works Bonds**
DATE: February 18, 1998

HB 2813, amending K.S.A. 60-1111, was introduced at the request of Garden City.

As set forth in K.S.A. 60-1111(a), the current threshold amount at which private contractors must bond public projects is $10,000. This amount has not changed since at least 1963. Certainly, the comparable value in today's dollars is significantly higher.

Since 1993, Garden City has entered into 140 construction contracts, totaling nearly $30,000,000. Of these contracts, 68 were for under $40,000. At an assumed average value of $26,000 and at an average of 1.5% for bond costs, bonding on these small contracts cost the City $25,000.

While bond costs are a relatively minor expense in a construction project (approximately 1-2% of contract value, normally), the City's primary concern is that the bond requirement acts as an impediment to competition in smaller public projects. Many small contractors, including local contractors quite capable of handling these types of projects, do not participate in the bidding process due to the inordinate time and paperwork involved in becoming bondable. (This is a particular problem in Garden City where exceptional growth in recent years has provided local contractors with plenty of private opportunities that do not involve the hassle of working on public projects.)

Unless there is a large amount of public work available to bid on, the small contractor who might only do one or two city jobs per year will not expend the time and trouble to meet bonding company requirements. At the least, the contracting business may be required to open its books the previous

House GO and E
2-18-98
Attachment 12

2-3 year period and may have to change accounting procedures.

Therefore, if a small contractor wishes to work on city projects, it is usually in the role of subcontractor working under a larger general contractor. The general contractor adds 5-10% cost for administration and overhead to the subcontractor's price, which is then compounded by the bonding costs.

The existing $10,000 threshold is too low. Few public projects are built for this amount. A city block's worth of curb and gutter (without pavement), for example, of 500 feet will exceed $10,000. A 500 foot sanitary sewer extension will also cost more than $10,000.

Raising the bonding threshold on public projects from $10,000 to $40,000 will not appreciably increase the risk to public agencies in privately contracted projects. The proposed change will result in the following benefits: 1) more small contractors will bid on such projects, thus generating more competition, and lower costs to the taxpayer; 2) public agencies will not incur the direct pass-through costs for bonding these smaller projects, again resulting in lower overall project costs; and 3) the turnaround time on contract paperwork will be reduced by eliminating bonding company involvement, thus enabling public projects to be undertaken on a more timely basis.

The City respectfully requests the Committee's favorable action on HB 2813.

League
of Kansas
Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 300 S.W. 8TH TOPEKA, KS 66603-3896 (785) 354-9565 FAX (785) 354-4186

TO: **House Governmental Organization and Elections Committee**

FROM: Chris McKenzie, Executive Director

DATE: February 18, 1998

SUBJECT: Support for HB 2813

Thank you for the opportunity to appear today in support of HB 2813. By action of the League's Convention of City Voting Delegates, the League's *Statement of Municipal Policy* formally endorses amending K.S.A. 60-1111 to raise the total value of any public works project for which a public works bond is required to $50,000. As you know, HB 2813 would increase the amount to $40,000.

We believe there are at least two compelling reasons to raise the threshold in current law of $10,000. First, the consumer price index (CPI) has increased by approximately 102% since the limit was last raised in 1980 from $1,000 to $10,000, and a change based on inflation alone is long overdue. Second, raising this limit will allow cities and other local units to experience increased competition (and hopefully lower costs) for smaller contracts from contractors who may find the current threshold prohibitive due to the cost of public works bonds.

RECOMMENDATION: We urge your favorable consideration of HB 2813.

House G O and E
2.18.98
Attachment 13

HB 2813 - PUBLIC WORKS BONDS

Testimony for the COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS.

by Thaine Hoffman, Director of the Division of Architectural Services

February 6, 1998

Under existing legislation, public works projects costing over $10,000 must be bonded. Under the proposed legislation, bonding would only be required on projects costing over $40,000.

We favor this increase.

1. With inflation, smaller projects must be bonded.

2. The question is how much protection do we loose if this is raised. We do not see much of a loss.

- First, many small projects are short and only have one or two payments, thus most of the funds are held until the project is complete. If there is a problem, we have the funds to cover the work.

- Second, turning a project over to a bonding company is a major effort. On small projects, it may be more efficient to arrange for the work ourselves than to turn it over to the bonding company.

- Of the 359 projects presently under contract, the increase in this limit would eliminate the need to bond 41 of them, saving the cost of the bonds which are included in the bids, plus eliminating extra administrative time for the state.

We respectfully request your support of this bill.

House GO and E
2.18.98
Attachment 14

Testimony Presented on Behalf of
WATER DISTRICT NO. 1 OF JOHNSON COUNTY
Regarding House Bill No. 2769

Presented at the
House Committee On Governmental Organization & Elections
On February 18, 1998

Water District No. 1 of Johnson County appears in support of House Bill No. 2769, which would authorize the Water District to utilize lease purchase agreements and financing leases to acquire goods when most economical to the District.

Water District No. 1 is a political subdivision organized as a regional water utility under K.S.A. 19-3501 et seq. to serve the suburban region in and around Johnson County. Water District No. 1 is governed by a seven (7) member elected Board and operates as a quasi-municipal corporation. It currently serves over 320,000 consumers.

Water District No. 1 is seeking this amendment to its statutes to specifically authorize the use of lease purchases and financing leases to acquire certain goods when more advantageous than a conventional lease or the initial purchase of the item. An increasing number of vendors are proposing the use of lease purchase agreements and financing leases to the Water District to acquire office machines, such as copy machines, computers, and other goods. In certain instances, the terms of these lease purchase agreements and financing leases are more favorable than the terms of conventional leases. Currently, the District's enabling statutes only authorize financing through the issuance of revenue bonds. Those statutes have been interpreted to allow the use of conventional leases but may prevent the use of lease purchase agreements or financing leases. Cities, counties and other entities subject to the cash basis law are specifically authorized by statute (K.S.A. 10-1116b) to enter into lease purchase agreements. A financing lease is a hybrid method of leasing that was created several years ago by Article 2A of the UCC and is similar to a conventional lease or a lease purchase agreement.

The elected Board of Water District No. 1 is requesting this amendment to K.S.A. 19-3516 to authorize the most economical method of acquiring goods. Water District No. 1 of Johnson County therefore urges your support of House Bill 2769 to clarify its existing statutory provisions and specifically authorize the use of lease purchases and financing leases.

MJA/grl

House GO and E
2-18-98
Attachment 15