

Approved:

February 23, 2000

Date

MINUTES OF THE SENATE WAYS & MEANS COMMITTEE.

The meeting was called to order by Chairperson Dave Kerr at 11:00 a.m. on February 21, 2000 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Alan Conroy, Chief Fiscal Analyst, KLRD
Rae Anne Davis, KS Legislative Research Department
Debra Hollon, KS Legislative Research Department
Norman Furse, Revisor of Statutes
Michael Corrigan, Asst. Revisor of Statutes
Judy Bromich, Administrative Assistant to the Chairman
Ronda Miller, Committee Secretary

Conferees appearing before the committee:

Bobbi Mariani, Division of Personnel Services, Department of Administration
Andy Sanchez, Kansas Association of Public Employees
Major General Greg Gardner
Roger Aeschliman, National Guard Association of Kansas

Others attending: See attached list

Senator Salisbury moved, Senator Jordan seconded, that bill draft 9rs 1501 be introduced as requested by the Workers' Compensation Advisory Council. The motion carried on a voice vote.

Senator Morris reviewed the FY 2001 subcommittee report on the **Kansas Guardianship Program** (Attachment 1). It was moved by Senator Morris and seconded by Senator Gilstrap that the subcommittee report be adopted. The motion carried on a voice vote.

SB 138: State employees; disciplinary actions

Paul West, Kansas Legislative Research Department, explained that **SB 138** clarifies that the State Civil Service Board has the authority to modify a disciplinary action taken by a state agency and states that a notice of an appeal from an agency 's action must be **received** by the Division of Personnel Services within 30 days as opposed to **mailed** within that time frame.

The Chairman reminded members that **SB 138** had received a public hearing on February 9, 1999 and today's hearing would be modified.

Bobbi Mariani, Assistant Director, Division of Personnel Services, Department of Administration, testified before the Committee in support of **SB 138** (Attachment 2) with the amendments proposed by the revisor in 1999 (Attachment 3). A representative from the Revisors' Office stated that the proposed amendment would more clearly reflect the intent of the Humphreys decision and would bring the statute in line with the Supreme Court's decision.

Andy Sanchez, Executive Assistant to the President of the Kansas Association of Public Employees, appeared before the Committee and reviewed his written testimony in support of **SB 138** (Attachment 4). He noted that his testimony included a syllabus of the Kansas Department of Transportation v. Humphreys case.

Senator Salisbury offered a motion which was seconded by Senator Morris to amend **SB 138** with the balloon(Attachment 3) and recommend the bill as amended favorably for passage. The motion carried on

CONTINUATION SHEET

SENATE WAYS & MEANS COMMITTEE MINUTES

a roll call vote.

SB 592: Armory repair and reconstruction

Robert Waller, Kansas Legislative Research Department, explained that **SB 592** authorizes the Adjutant General to issue up to \$22 million in bonds through the Kansas Development Finance authority for capital improvements to renovate, repair, and reconstruct 58 armories in 51 counties. He stated that the agency plans to issue bonds in five phases beginning in FY 2001 and bond payments would begin in FY 2002.

Major General Gregory Gardner, Adjutant General, appeared before the Committee and provided a power point presentation over the written testimony he distributed to members (Attachment 5). The General introduced representatives of organizations that have an interest in the passage of **SB 592**. He told members how different communities use the armories and how the National Guard provides assistance to communities during disasters. He reported on the deterioration of the armories and reviewed the agency's capital improvement plan.

In answer to questions, General Gardner told members that the agency would use federal matching funds in the amount of \$3 to \$5 million to compensate for inflation, unforeseen contingencies, and to supplement new construction costs instead of renovation costs. He stated that the bonds would be paid off in FY 2019 and that the average SGF payment from FY 2004-FY2019 would be \$2.1 million annually. Chairman Kerr inquired whether there were any specific arrangements made with the entities associated with the joint projects. (Attachment 5-9) General Gardner stated that when the agency does a joint project on new construction, the federal government will match 75% of the requirement for space based on what National Guards needs are, but there are no firm arrangements with any of the other entities listed. In answer to a question, General Gardner stated that local monies would pay only for the square footage for that entity; this plan fixes the armories with state and federal matching monies. Concern was expressed that the bill does not specify the funding source or the details for the capital improvements projects.

Roger Aeschliman, Captain of the Kansas Army National Guard, appeared before the Committee on behalf of the National Guard Association of Kansas, and reviewed his written testimony in support of **SB 592** (Attachment 6). There were no questions.

The Chairman stated that before the Committee could recommend the bill favorably for passage, several issues need to be addressed either in the bill or in a trailer bill:

- details and restrictions on the Guard that are in the plan presented to the Committee
- funding source and time frame for the issuance of bonds as listed in the agency's proposed plan (It was noted that the bond holders will look to the state to get a good bond rate so there needs to be some kind of side agreement that would spell out the payment plan.)

The Chairman asked that the General review some of the concerns addressed by the Committee and respond with a letter.

The Chairman adjourned the meeting at 12:00 noon. The next meeting will be February 22, 2000.

SENATE WAYS & MEANS COMMITTEE GUEST LIST

DATE: February 21, 2000

NAME	REPRESENTING
Marc Hamann	Div. of the Budget
Chuck Bredahl	Adjutant General's Dept
Bill Henry	Ks Gov Consulting
Harry Thomas	American Legion Post 1
Jim Langford	DOE
Jack Elliott	Ks National Guard (Ret)
Donald J. O'Leary	KS ARMY National Guard
Brian K. Spiller	KS Army National Guard
Eric Corder	Explorers Post 2127
Adam Walker	Explorers Post 2127
Steve Leiss	Ks Army Nat'l Guards
Randy Frederick	KSARNG
Sweet R Weaver	Ks Army Nat'l Guard
Cynthia R. Tibben	Ks ARMY NATIONAL GUARD
DARRY A. HOFFMAN	VETERANS OF FOREIGN WARS - U.S.
Catherine A. Decker	Kansas STARBASE
DAVID K. BURKE, Colonel (Ret) US	AF/Air Force JUNIOR ROTC, TOPEKA
Paul E. Adol COL (R)	KSARNG, Topeka
M. Travis	KSCB Topeka
Gene Krabel	Ks G-shop Aug.

SENATE WAYS & MEANS COMMITTEE GUEST LIST

DATE: February 21, 2000

NAME	REPRESENTING
Case Segmund	KS - National Guard - NEK-CAF
Danielle Kloe	D of A
J. P. SMALL	National Guard Assn of Kansas
Joy D. Maser	The Adjutant General's Dept.
William VANDERSCHMIDT	The Adjutant General's Dept.

Need
start

Senate Subcommittee Report

Agency: Kansas Guardianship Program

Bill No. --

Bill Sec. --

Analyst: Hollon

Analysis Pg. No. 354

Budget Page No. 183

Expenditure Summary	Agency Req. FY 01	Gov. Rec. FY 01	Senate Subcommittee Adjustments*
State Operations:			
State General Fund	\$ 1,221,055	\$ 1,083,532	\$ (10,469)
Employee Positions**	15.0	13.0	0.0

* Entire reduction for the Governor's employee salary adjustments.

** Employees of the Guardianship Program are not state employees but are listed here for informational purposes.

Agency Request/Governor's Recommendation

The agency requests expenditures for FY 2001 of \$1,221,055 which is an increase of \$105,997 (9.5 percent) from the FY 2000 estimate. The request includes \$549,131 for salaries and wages, \$644,840 for contractual services, \$15,984 for commodities, and \$11,100 for capital outlay. The agency requests an enhancement package of \$90,180 for two Recruiter/Facilitator positions (\$63,980 including benefits) and related operating expenditures (\$26,200).

The Governor recommends funding of \$1,083,532 for FY 2001 operating expenditures which is a decrease of \$53,000 (4.7 percent) from the FY 2000 recommendation. The recommendation includes \$482,828 for salaries and wages, \$586,720 for contractual services, and \$13,984 for commodities. The Governor does not recommend the enhancement package.

Senate Subcommittee Recommendation

The Subcommittee concurs with the Governor's recommendation with the following adjustments and notations:

1. Delete \$10,469 from the State General Fund for the Governor's employee salary adjustment (unclassified merit pool).

Senate Ways and Means Committee


Date *February 21, 2000*

Attachment #

1

2. The Subcommittee commends the agency on receiving the Phil Lewis Award of Distinction from the Kansas Bar Association "in recognition of distinctive service which has enriched the lives of others."
3. The Subcommittee recognizes that the Program's volunteers average ten hours per month in such activities as visiting the ward/conservatee, handling the individual's finances, following up on varied issues (e.g., medical treatment or housing), and filing monthly reports with the Guardianship Program and an annual financial accounting with the judicial system. The time required of the volunteer varies given the medical difficulties or financial complexities involved.
4. Approximately 25 percent of the Program's volunteers have served for ten or more years and approximately 53 percent have served for five or more years. The Subcommittee notes the agency's belief that a trend toward fewer wards/conservatees per volunteer has assisted in the retention of volunteers due to the amount of time required for each ward/conservatee.
5. The Subcommittee notes the residential status of the individuals being served by the Guardianship Program.

Residential Status (FY 1999)	Percentage of Individuals
Intermediate Care Facility	33%
Own Home	30%
Community Residential Setting	16%
Intermediate Care Facility/Mental Re- tardation	10%
Nursing Facility for Mental Health	6%
State Hospital	5%



Senator Stephen Morris, Chair



Senator Mark Gilstrap

**Testimony by
Bobbi Mariani
Assistant Director, Division of Personnel Services
Department of Administration
before the
Senate Ways & Means Committee
February 21, 2000**

Senate Bill 138 - Civil Service Board

Mr. Chairperson and members of the committee, thank you for the opportunity to appear before you today. This bill clarifies that the state Civil Service Board has authority to modify agency disciplinary actions pursuant to the Kansas Supreme Court's decision in Kansas Department of Transportation v. Humphreys which was filed November 6, 1998. The bill also clarifies the time frame for filing appeals.

Last year, I appeared before you in support of this bill and subsequent to that testimony, the Revisor of Statute's Office drafted an amendment to this bill which more clearly reflects the intent of the Humphreys decision. I am appearing before you today in support of Senate Bill 138, as amended by the Revisor.

The amendment regarding the Board's authority to modify agency actions will bring the statute in line with the Supreme Court's decision. The amendment clarifying that an appellant must have their appeal filed with the Board within 30 days of the effective date of the final agency action will clarify a matter of uncertainty. This will ensure that the Board is able to perform its duties in a more fair and efficient manner.

Thank you for the opportunity to offer testimony in favor of Senate Bill 138. I would be happy to answer any questions that you have for me.

Senate Ways and Means Committee

Date *February 21, 2000*

Attachment # *2*

SENATE BILL No. 138

By Committee on Ways and Means

1-26

9 AN ACT concerning state employees; relating to disciplinary actions;
10 amending K.S.A. 75-2929d and 75-2949 and repealing the existing
11 sections.

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

14 Section 1. K.S.A. 75-2929d is hereby amended to read as follows: 75-
15 2929d. (a) The state civil service board shall hear appeals taken to it
16 pursuant to: (1) K.S.A. 75-2940, 75-2949 and 75-3747, and amendments
17 thereto, concerning demotion, dismissal or suspension of a permanent
18 employee in the classified service, or concerning refusal to examine an
19 applicant or to certify a person as eligible for a job class, and (2) K.S.A.
20 75-2973, and amendments thereto, concerning disciplinary action in vi-
21 olation of that statute.

22 (b) When an appeal is taken to the board, the board shall establish a
23 time and a place for the hearing which shall be held within 45 days after
24 receipt of request for the appeal. The board shall notify the person bring-
25 ing the appeal and the appointing authority or other person whose action
26 is being reviewed of the time and the place of the hearing at least 14 days
27 prior to such hearing. Each party at the hearing shall have the right to be
28 represented by a person of the party's own choice. Hearings shall be
29 conducted in accordance with the provisions of the Kansas administrative
30 procedure act. For purposes of the administrative procedure act, the state
31 civil service board shall be deemed the agency head. *The board may take*

32 *the following actions:*

- 33 ~~(1) Affirm the agency action,~~
- 34 ~~(2) reverse the agency action,~~
- 35 ~~(3) modify the duration of a suspension, or~~
- 36 ~~(4) convert a demotion or dismissal into a suspension for a stated~~
37 ~~period of time.~~

38 (c) The board, or the director of personnel services when authorized
39 by majority vote of the board, may take deposition of *depose* witnesses.
40 Either party to a hearing may depose witnesses in accordance with the
41 Kansas administrative procedure act. If books and papers are required to
42 be produced in advance of a hearing date, the person or agency producing
3 the books and papers shall be entitled to receive reasonable compensation

affirm, modify or reverse an agency action and order any other action it deems appropriate.

Senate Ways and Means Committee
Date February 21, 2000
Attachment # 3

Testimony of Andy Sanchez, Executive Assistant to the President
The Kansas Association of Public Employees, KAPE/AFT, AFL-CIO
Before the Senate Ways and Means Committee
On SB138
Delivered February 21, 2000

My name is Andy Sanchez, Executive Assistant to the President of the Kansas Association of Public Employees. KAPE is always appreciative of the opportunity to offer testimony. While not a staunch supporter of Senate Bill 138, we see no reason to oppose it.

Appeals to the State Civil Service Board are made for the sole purpose of resolving differences upon appeal. The result of solving such differences is often complicated, drawn out, and contributes to life's basic necessities, a career and livelihood. Thus, KAPE offers the following points:

*Decisions rendered by the Civil Service Board should not be limited in scope to either affirming or reversing the action of an agency. It has been the experience and belief of KAPE, that this is already in practice at the direction of the State Supreme Court.

*A strict adherence to the thirty-calendar day period is well intentioned. It would seem to promote expediency. But, from a policy standpoint, KAPE would not recommend carving out a special standard for this process. A three-day mail rule is standard in administrative procedures under K.A.P.A..

KAPE can support a clarification of the Civil Service Board to render solutions that according to current statute restrict decisions along the border of extremes. The Civil Service Board does and should continue to modify both extreme measures of discipline and lacking measures of discipline. KAPE knows this is a double-edged sword where decisions can work against and for the members we may be called upon to represent.

If the purpose of the bill is to make civil Service "whole" by clarifying the boards authority to modify disciplinary actions, KAPE cautiously supports the bill.

Thank You.

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 78,947

KANSAS DEPARTMENT OF TRANSPORTATION,

Appellee,

v.

ROBERTA S. HUMPHREYS,

Appellant.

SYLLABUS BY THE COURT

1.

When the legislature revises an existing law, it is presumed that the legislature intended to change the law as it existed prior to the amendment.

2.

Where a reading of a statute leaves its construction uncertain, the court may look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished, and the effect the statute may have under the various constructions suggested.

3.

Under the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*, the Kansas Civil Service Board has the authority to affirm, modify, or reverse a case on its merits and to order any other action it deems appropriate.

Appeal from Shawnee district court; ERIC S. ROSEN, judge. Opinion filed November 6, 1998. Reversed and remanded with directions.

Kevin A. Graham, of the Kansas Association of Public Employees, argued the cause and was on the briefs for appellant.

Vicky S. Johnson, of Kansas Department of Transportation, argued the cause and was on the briefs for appellee.

The opinion of the court was delivered by

LOCKETT, J.: A state agency dismissed an employee. The employee appealed to the review board. The board modified the agency's finding that suspension of the employee and a demotion was the appropriate sanction. The state agency appealed. The district court found that the board had statutory authority to affirm or reverse an agency action but lacked authority to modify the agency's action and remanded the matter to the board to affirm or reverse the agency's action. The employee appealed the district court's finding and remand to the board. While this appeal was pending, the board redetermined the matter and affirmed the agency's dismissal of the employee.

On August 23, 1996, Dean Carlson, Secretary of Transportation, wrote a letter to Roberta S. Humphreys, an employee of Kansas Department of Transportation (KDOT), proposing to dismiss her from her position as a Computer Operator III. Carlson's letter indicates he proposed the action because Humphreys had

misappropriated state funds by claiming work hours in excess of time actually worked.

After a hearing, Carlson decided to terminate Humphreys' employment. Humphreys appealed to the Kansas Civil Service Board (Board). The Board heard the matter on November 5, 1996.

On November 21, 1996, the Board issued its final order, finding that Humphreys seriously abused her break times between January and July 1996. However, the Board determined that KDOT's dismissal of the employee was unreasonably excessive and modified the agency's dismissal. The Board ruled the appropriate sanction was a suspension of the employee without pay for a specified period of time and demotion to Computer Operator II.

KDOT appealed the Board's decision to the district court. Although KDOT made numerous allegations of error to the district court, the appeal turned on KDOT's claim that the Board lacked statutory authority to modify KDOT's disciplinary action.

In reviewing the Board's decision, the district court considered the legislative history of the Board's scope of review regarding dismissals, demotions, and suspensions of state employees. The court observed that prior to 1988, K.S.A. 75-2929e (Ensley 1984) of the Kansas Civil Service Act, K.S.A. 75-2925 *et seq.*, provided that the Board had authority to affirm, modify, or reverse a disciplinary decision of a

state agency. In 1988, the legislature repealed K.S.A. 75-2929e and replaced it with a provision that all hearings before the Board on the issue of the reasonableness of dismissals are subject to the Kansas Administrative Procedure Act (KAPA), K.S.A. 77-501 *et seq.*

Based on the repeal of K.S.A. 75-2929e, the district court concluded that the Board's jurisdiction regarding review of a dismissal decision was limited to a determination of the reasonableness of the dismissal. The district court set aside the Board's modification of KDOT's order of dismissal and remanded the matter to the Board to affirm or reverse the agency's dismissal of Humphreys. Humphreys filed a notice of appeal to the Court of Appeals on April 7, 1997, claiming that the Board had authority to modify the state agency's disciplinary decision. The case was transferred to this court pursuant to K.S.A. 20-3018(c).

Meanwhile, in light of the district court's remand order, the Board reconsidered its prior actions. In a May 1, 1997, final order, the Board then determined that KDOT's dismissal of Humphreys was reasonable.

Jurisdiction

Prior to transfer of this case from the Court of Appeals, the Court of Appeals questioned appellate jurisdiction based on the Board's second order affirming the agency's dismissal of Humphreys, which was filed subsequent to the filing of the notice of appeal in this case. In light of the subsequent order, the Court of Appeals

requested the parties to brief the issue of jurisdiction. KDOT responded that the appellate courts lack jurisdiction to review the district court's remand order because Humphreys did not appeal the Board's subsequent and final order affirming her dismissal. Humphreys asserted that the appellate courts' interest in judicial economy warrants review of the issue at this time.

The Kansas Act for Judicial Review and Civil Enforcement of Agency Actions (Kansas Judicial Review Act), K.S.A. 77-601 *et seq.*, provides the exclusive means of obtaining judicial review of an agency action. See K.S.A. 77-606. Only those persons who have exhausted their administrative remedies may seek review under the Act. *W.S. Dickey Clay Mfg. Co. v. Kansas Corp. Comm'n*, 241 Kan. 744, 751, 740 P.2d 585 (1987). Those who appeal an agency action to the district court pursuant to the Act may appeal the district court decision to the appellate courts, just as parties do in other civil cases. K.S.A. 77-623.

Here, Humphreys exhausted her administrative remedies. KDOT appealed from the Board's final order. The district court remanded the case to the Board. The district court's decision was final. Humphreys appealed the district court's order to the Court of Appeals. This she is permitted to do by K.S.A. 77-623.

Although the Board's second order was signed on May 1, 1997, according to the order, it was considered on April 1, 1997. In light of Humphreys' appeal, the Board did not have jurisdiction to redetermine Humphreys' case. Therefore, the Board's second order affirming Humphreys' dismissal was without affect and does

not impair this court's jurisdiction to hear Humphreys' appeal.

Board's authority to modify agency decisions

Humphreys contends that pursuant to K.S.A. 75-2929d(b), the Board's power to modify agency actions is provided by KAPA. Humphreys concludes that because the agency head has power to issue final orders under K.S.A. 77-526(c) of KAPA, the Board has all the powers of the agency head, which include the power to issue orders modifying unreasonable agency actions. For authority, Humphreys cites K.S.A. 75-2929d(b) of the Kansas Civil Service Act, which states, in part: "Hearings shall be conducted in accordance within the provisions of the Kansas administrative procedure act. For purposes of the administrative procedure act, *the state civil service board shall be deemed the agency head.*" (Emphasis added.)

KDOT contends that KAPA provides only the procedures for civil service proceedings: thus, it provides *procedural* rather than *substantive* rights. KDOT argues that the rights at issue in this case are substantive rather than procedural. Therefore, according to KDOT, KAPA has no bearing on the issue in this case. KDOT's argument is based on K.S.A. 77-503(b) of KAPA, which provides: "This act creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes." We disagree with KDOT's analysis.

This issue is one of first impression in Kansas. The procedure for judicial

review of an administrative agency action is set out in the Kansas Judicial Review Act. K.S.A. 77-621(c)(4) permits judicial review when an agency has misinterpreted or misapplied the law. When a party disputes the district court's interpretation of a statute, the issue raised is a question of law. An appellate court's scope of review on questions of law is unlimited. See *In re Tax Appeal of Boeing Co.*, 261 Kan. 508, Syl. ¶ 1, 930 P.2d 1366 (1997).

Our analysis requires us to consider the administrative review procedures found at K.S.A. 75-2929e (Ensley 1984) of the Kansas Civil Service Act, the current administrative review procedures found in KAPA, and the power of the district court to review administrative actions under the Kansas Judicial Review Act.

When the legislature revises an existing law, it is presumed that the legislature intended to change the law as it existed prior to the amendment. *State v. Clint L.*, 262 Kan. 174, Syl. ¶ 2, 936 P.2d 235 (1997). Where a reading of a statute leaves its construction uncertain, the court may look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished, and the effect the statute may have under the various constructions suggested. *State v. Gonzales*, 255 Kan. 243, 249, 874 P.2d 612 (1994) (quoting *Brown v. Keill*, 224 Kan. 195, Syl. ¶ 3, 580 P.2d 867 [1978]). See *Brown v. U.S.D. No. 333*, 261 Kan. 134, 142, 928 P.2d 57 (1996) (interpreting the Kansas Administrators' Act).

First, we note that prior to 1988, the Kansas Civil Service Act provided, as it does currently, that any permanent employee finally dismissed, demoted, or

suspended, may request a hearing from the Civil Service Board to determine the *reasonableness* of such action. See K.S.A. 75-2949(f) (Ensley 1984); K.S.A. 75-2949(f). In 1988, the legislature amended the Kansas Civil Service Act to provide that hearings before the Board be conducted in accordance with KAPA. See L. 1988, ch. 356, § 301. In so doing, the legislature repealed K.S.A. 75-2929e (Ensley 1984), the section which had provided the procedure for administrative review in cases where an employee in the classified service of the State complained of a wrongful dismissal. See *Pecenka v. Alquest*, 232 Kan. 97, 99, 652 P.2d 679 (1982). K.S.A. 75-2929e had provided the language that is the subject of the controversy in this case: "The state civil service board . . . after hearing and consideration of the evidence shall *affirm, modify or reverse a case on its merits and order any other action it deems appropriate.*" (Emphasis added.)

Because the Board had authority prior to 1988 (and still has that same authority) to determine the reasonableness of an agency's disciplinary action, it cannot be said that the Board's authority to determine the reasonableness of an agency's disciplinary action was a provision specifically crafted by the legislature in 1988 to limit the Board's present authority on review of agency actions to affirm or reverse. As noted previously, the legislature repealed K.S.A. 75-2929e to adopt the KAPA review procedures for agency actions. Therefore, this court must look to KAPA to ascertain the scope of the Board's authority to review agency employee disciplinary decisions.

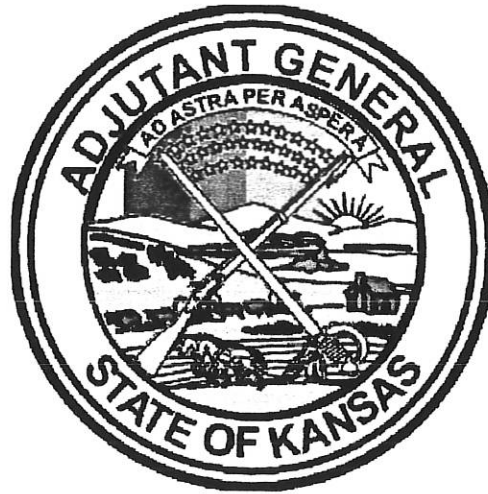
K.S.A. 77-526(c) of KAPA provides that the Board shall, upon review of an agency action, render a final order which shall include

“findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency’s discretion, for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. . . .”

Clearly, a final order authorized by KAPA is more than an affirmance or disapproval of the agency action. The Board is empowered to prescribe a remedy.

Under KAPA, the Board has the authority to affirm, modify, or reverse a case on its merits and to order any other action it deems appropriate. Pursuant to K.S.A. 77-526(c) of KAPA, the Board’s order modifying KDOT’s disciplinary action was a final order. Although the district court had authority pursuant to K.S.A. 77-622(d) of the Kansas Judicial Review Act to remand the case to the Board, the district court erred in concluding the Board acted outside its jurisdiction.

The district court’s determination that the Board was without jurisdiction to modify the agency’s dismissal is reversed. The Board’s subsequent affirmance of the agency’s action on remand of the district court is set aside. The case is remanded to the district court for further action pursuant to K.S.A. 77-622.



**Maj General (KS)
Gregory B. Gardner
Adjutant General**

**Testimony on SB 592
Senate Ways & Means Committee
Feb 21, 2000**

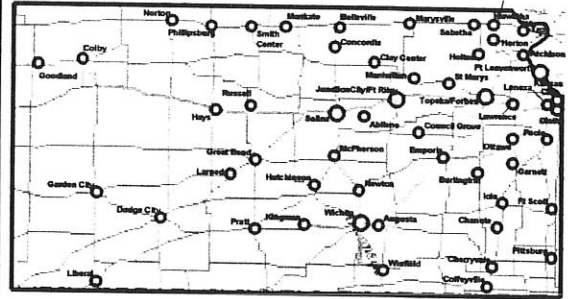
Senate Ways and Means Committee

Date *February 21, 2000*

Attachment # *5*

Preparing
Kansas Army National Guard Armories
for the 21st Century

Kansas Army National Guard



○ Armory ○ Armory & Maintenance Shop ○ Multiple Facilities

FY 99 Missions



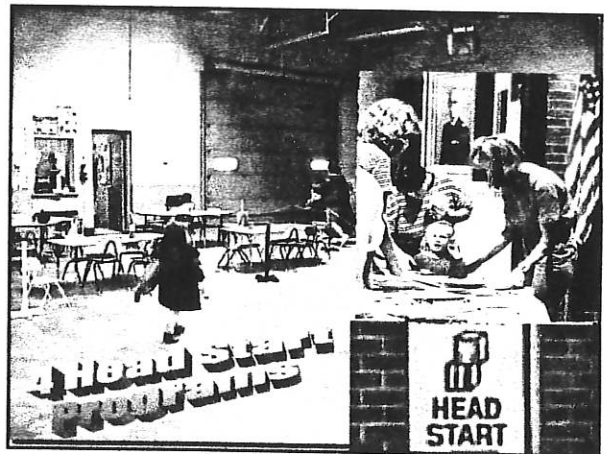
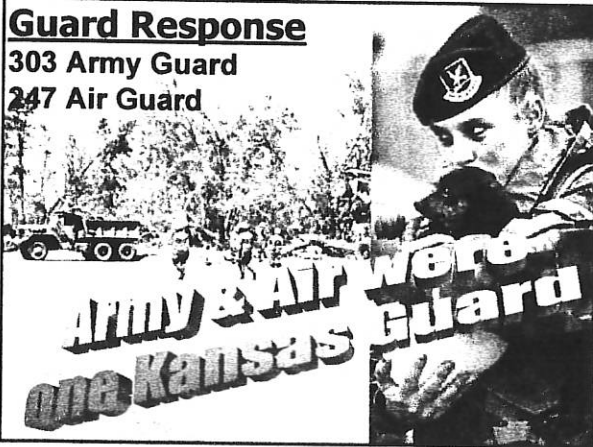
◆ Tornadoes

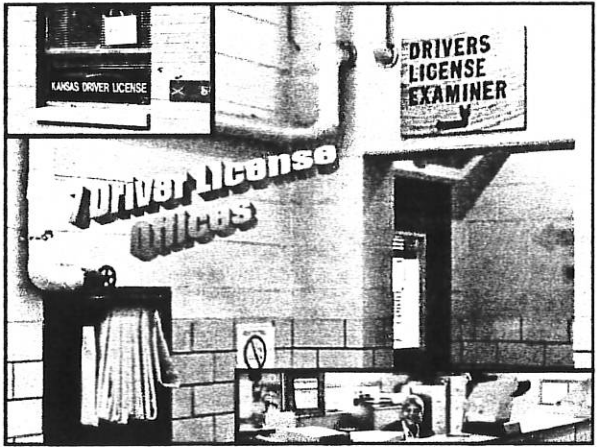
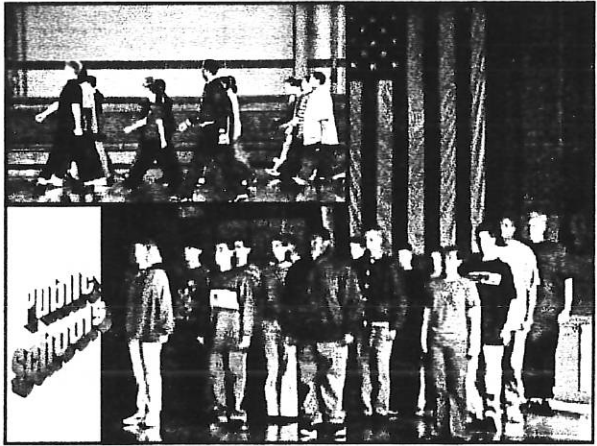
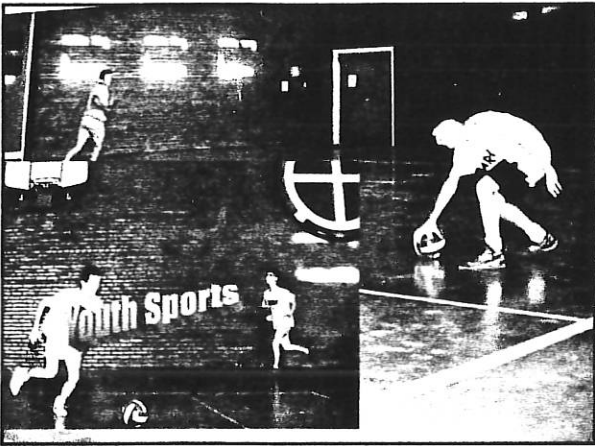
FY 99
in Emergencies



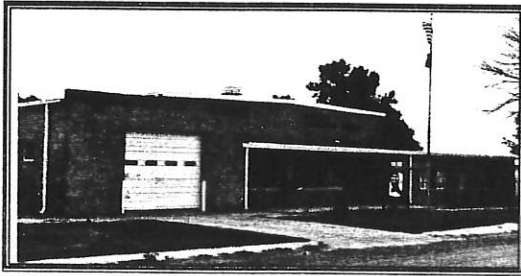
Guard Response

303 Army Guard
 247 Air Guard



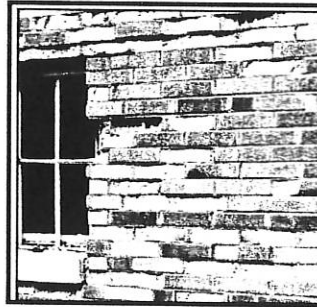


Kansas Armories



Built in early 1950s using Bonds

Structures Deteriorated *Spalling*



Condition

- ◆ Brick spalled by weather erosion
- ◆ Bricks crumble & leave void areas

Solution: Remove & replace unsound brick

Structures Deteriorated *Effervescence*

Condition

- ◆ Cracked mortar joints allow moisture to penetrate wall
- ◆ Chemicals leach from brick & mortar dry on inside walls as powder residue

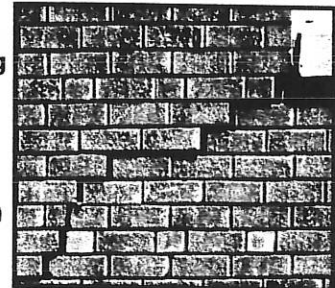


Solution: Retuck & seal exterior, remove effervescence

Structures Deteriorated *Stairstep Cracking*

Condition

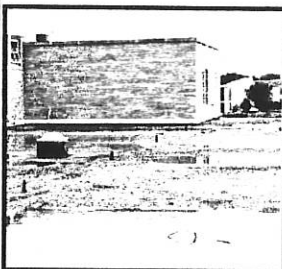
- ◆ Stairstep cracking due to settling of foundation
- ◆ Some > 1 inch



Solution: Stabilize & repair foundation, remove & replace cracked brick, install saw cut control joints

Roofs

22 years past planned life



Multi-level Flat Roofs

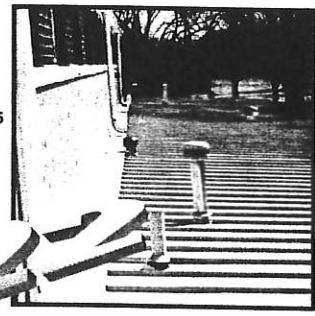
- ◆ Upper - center assembly hall
- ◆ Lower - garage
- ◆ Lower - kitchen, offices, etc.

Condition

- ◆ Deteriorated & water pools
- ◆ Guttering & flashing corroded or missing
- ◆ Leaking causes
 - ◆ Damage to furnishings & equipment
 - ◆ Rot to roof deck increasing repair \$

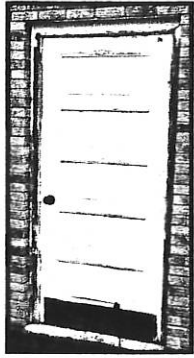
Standing Seam Metal *Roof of Choice*

- ◆ Excellent protection
- ◆ Nominal cost
- ◆ Installed over existing roof
 - ◆ Increases insulation to R-25
- ◆ 1:12 slope = good drainage
- ◆ Most roofs SSM since 1989
- ◆ Service life 25+ years
 - ◆ Insignificant damage in severe hail storms



Solution: Replace roofs with Standing Seam Metal

Exterior Doors
Security Concern



Condition

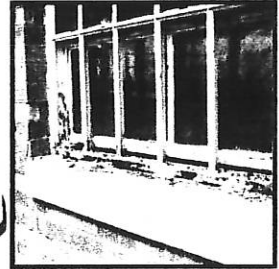
- ◆ Many original doors & windows
 - ◆ Deteriorated, rotted, rusted, peeling
 - ◆ Some permanently closed due to inoperable hardware
- ◆ Degraded safety & security
- ◆ Some openings allow vermin entry



Windows
Energy & Security Concern

Condition

- ◆ Most windows original
 - ◆ Frames warped & rusted
 - ◆ Cracked welds
 - ◆ Panes broken & cracked
 - ◆ Glazing deteriorated/ gone
 - ◆ Hardware inoperable
- ◆ Energy inefficient

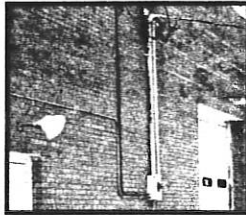
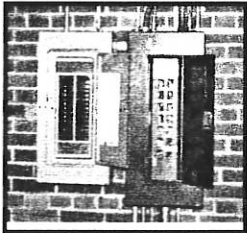


Solution: Replace with energy efficient doors & windows

Electrical & Plumbing
A Safety Concern

Condition

- ◆ Electrical: 200amp capacity insufficient for demand
- ◆ Not code compliant



Condition

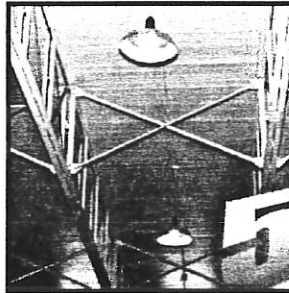
- ◆ Plumbing: Many require total replacement
 - ◆ Need women's shower

Solution: upgrade & replace, meet code compliance

Lighting
Inefficient & Inadequate

Condition

- ◆ Old, poor condition
- ◆ Inadequate
- ◆ Inefficient



Solution: Upgrade electric & plumbing - meet codes, install energy efficient lighting

Heating, Ventilation, and Air Conditioning (HVAC)



- ◆ Cooling: Inefficient, unsightly window units also pose security risk
- ◆ Original heating inoperative or inefficient at best
- ◆ 5 of 7 boilers require replacement

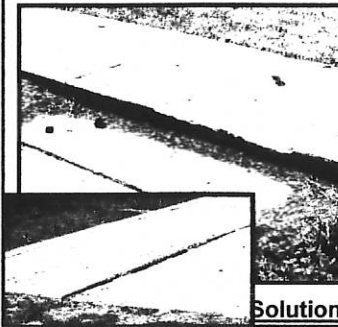


Solution: upgrade & replace HVAC systems

American with Disabilities Act (ADA)

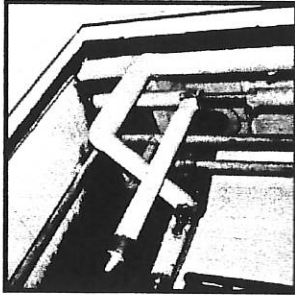
Condition

- ◆ Sidewalks settled, cracked
- ◆ Entry ways & rest rooms do not comply with ADA



Solution: make ADA compliant

Environmental Abatement



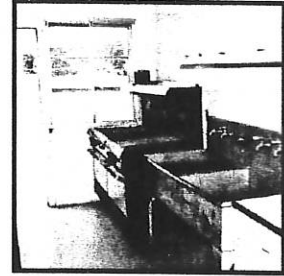
- Condition**
- ◆ Asbestos materials require abatement

Solution: Abate asbestos

Kitchens Code Compliance

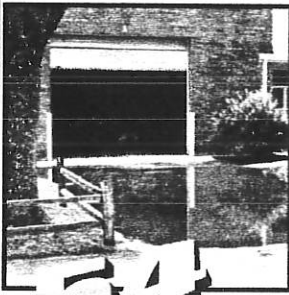
- ◆ Feed approx 150 soldiers
- ◆ Used for civic functions

- Condition**
- ◆ Kitchens lack safety hoods with fire extinguishing systems



Solution: meet ADA & other code compliance

Driveways & Parking



- Condition**
- ◆ Driveways settled
 - ◆ Water pools
 - ◆ Most parking unpaved
 - ◆ Dust/dirt unacceptable today



Solution: replace & pave

Priorities

- ◆ Seal Structure
 - ◆ Repair structure
 - ◆ Replace roofs & waterproof walls
 - ◆ Replace doors & windows
- ◆ Achieve public safety
 - ◆ Meet Code Compliance
 - ◆ Electrical & ADA
 - ◆ Walks, drives, parking
- ◆ Energy Conservation & Interior modernization
 - ◆ Heating & Air Conditioning, lighting
 - ◆ Paint walls & ceilings
 - ◆ Replace/install floor covering
 - ◆ Install range hoods

Compared to State Buildings

- ◆ Low Maintenance on gyms, shops, etc
 - ◆ 1 FTE per \$31,800 SF
 - ◆ National Guard Requirement = 27.5 FTE
- ◆ Normal Maintenance on offices, classes, admin
 - ◆ 1 FTE per 13,900 SF
 - ◆ National Guard Requirement = 21.5 FTE
- ◆ Total Maintenance Personnel Required
 - ◆ 49 FTE = \$1,347,500
 - ◆ 7 FTE = \$ 172,000

50% of requirement

Compared to Industry Standard

- ◆ Annual Maintenance Costs
 - ◆ Normal \$.90 per SF
 - ◆ Major \$1.70 per SF
- ◆ Annual National Guard requirement = \$1.2M

50% of requirement

Compared to Inflation

- ◆ Over last 15 years budget increased .6% less than inflation

\$12.1 million < Inflation

Budget Cuts

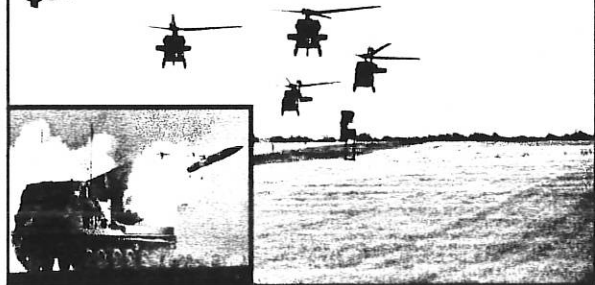
◆ Disaster Relief	\$ 60k	\$450k
◆ Management Operations	\$ 30k	\$ 211k
◆ Training \$ for G	\$107k	\$116k
◆ Maintenance	\$ 25k	\$ 75k
◆ Armory Maintenance	\$155k	\$ 155k
	\$377k	\$ 796k

Proposed Plan

- ◆ 5 Series of 15 year Bonds Total at cost of \$22 mil
 - ◆ FY 01: \$2m, 02 : \$2m, 03: \$6m, 04: \$6m, 05: \$6m
- ◆ Principle & Interest \$34mil
- ◆ Payments
 - ◆ FY02: \$351k (from existing maintenance \$)
 - ◆ FY03: \$778k (existing budget \$ & fed Matching \$)
 - ◆ FY04-FY19: Annual State General Fund \$ \$2.1mil
- ◆ Fed Match for roofs, energy efficiencies, etc
 - ◆ Use to compensate for inflation (3% = \$2.3mil)
 - ◆ Use for contingencies (normally 10-15%)
 - ◆ Use when constructing is smarter than repair

Economic Impact

\$206.5 million

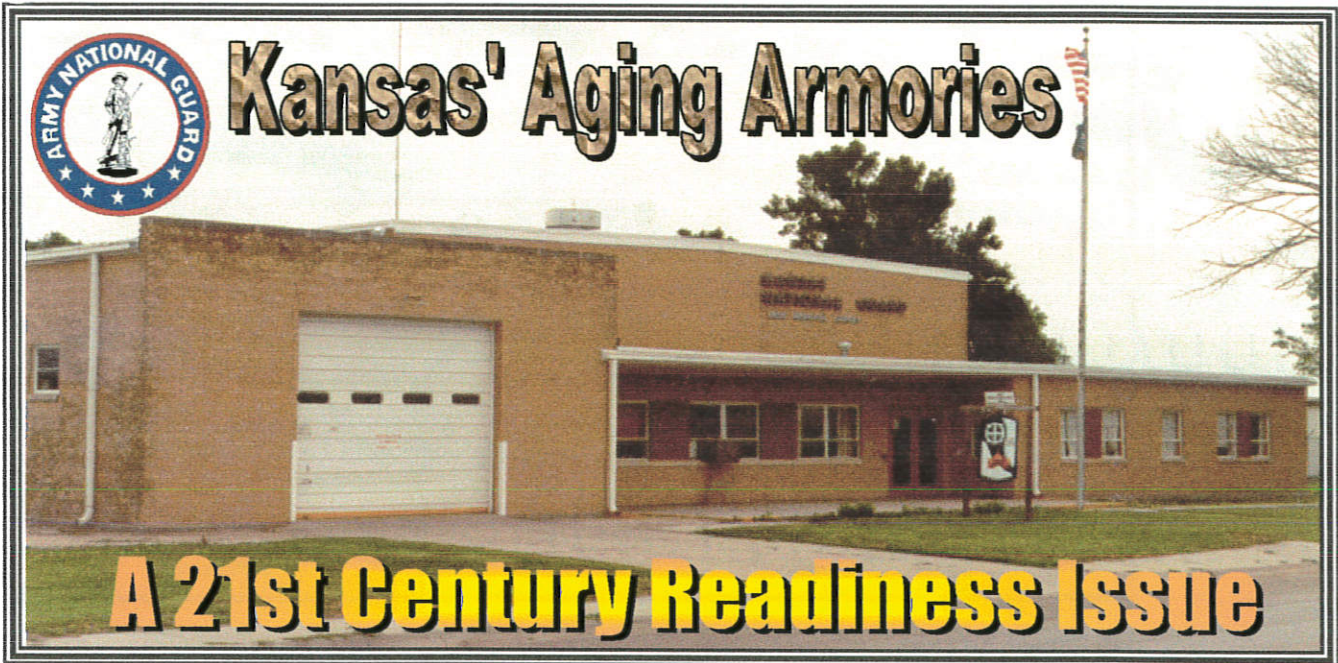


Proposed Plan

- ◆ Bond issue with flexibility to acquire or renovate
- ◆ New Construction:
 - ◆ FY01 Army Aviation Armory - 100% federal at Forbes
 - ◆ Wichita - Joint with city/county (replace 3 armories)
 - ◆ Pittsburgh - Joint with University
 - ◆ Liberal, Lawrence, Manhattan possible one for one replacements
- ◆ Transfer certain facilities to communities based on Kansas Military Board guidance

*You can help us prepare our
Kansas Armories
for the 21st Century*

Please Support SB 592



- **Goal:** Posture the Kansas Army National Guard to successfully execute its state emergency and military missions in the 21st century by repairing or replacing state armories to meet state and federal codes, benefit from energy saving modifications, and ensure structural integrity and safety using a logical, affordable, prioritized approach.
- **Emergency Missions:** In fiscal year 1999, Guardsmen responded to floods, fire, snow storms and wind storms, tornadoes, water outages using over 3800 man days in 30 emergency missions in 14 Kansas counties.
- **Problem:** Of 58 state armories in 51 counties, the average armory is 40 years old, and most were built in the 1950s with no updates since initial construction
 - 13 need structural repair
 - 22 need roofs -18 year life roofs now over 40 years old leak (safety issue)
 - 49 need replacement doors & windows (security & safety issue)
 - 52 need modern heating & air systems (environment & security issue)
 - 56 need electric & plumbing updates to meet codes (safety & mission issue)
 - 53 need accessibility and kitchen updates (code & ADA law compliance issue)
 - 54 need paved driveways & walks (drainage & cleanliness issue)

• **Three Requirements:** Study shows the priority order for repair should be:

**Requirement I
Seal the Exterior
Structure**

- Replace original roofs
- Repair & waterproof the structure
- Replace doors
- Install energy efficient windows

**Requirement II
Achieve Public Safety
(Code Compliance)**

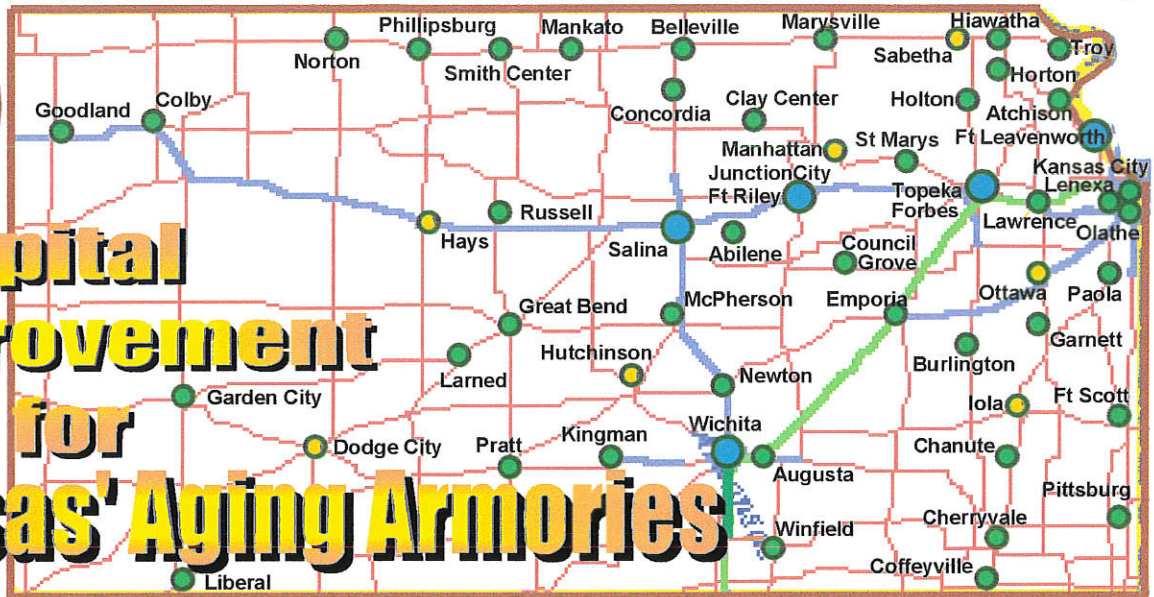
- Remove asbestos
- Upgrade electric (code compliance)
- Comply with ADA
- Pave walks, drives, parking

**Requirement III
Energy Conservation &
Interior Modernization**

- Replace heating & air conditioning
- Replace interior lighting
- Paint interior & install flooring
- Upgrade kitchens (fire code compliance)



A Capital Improvement Plan for Kansas' Aging Armories



● Single Armories ● Armories with Maintenance Shops ● Multiple Facilities

- **The Capital Improvement Plan** implements our goal issuing 15-year bonds over 5 years, one series issued each Fiscal Year (FY) from 2001 to 2005
 - Bonds:

<u>FY 01</u>	<u>FY 02</u>	<u>FY 03</u>	<u>FY 04</u>	<u>FY 05</u>
\$2 mil	\$2 mil	\$6 mil	\$6 mil	\$6 mil
 - Cost: \$22 mil for repair, architect, and project management fees
 - Principal and interest: Kansas Development Finance Authority estimates \$34 mil
 - Repay: FY02 - \$351k from existing maintenance budget
 FY03 - \$778k from existing budget and offset of federal matching funds
 FY04 - FY19 average State General Fund payment \$2.1 mil
 - Federal matching funds for some improvements (roofs, energy efficiencies, etc.) will be used to compensate for inflation (3% over 5 years = \$2.3 mil), unforeseen contingencies, and to supplement new construction costs instead of renovation costs
- **Senate Bill 592** implements our plan and allows expenditure of funds for acquisition, construction, equipping, renovation, and repair of Kansas National Guard Armories
 - We will continue to aggressively work with Congress and the National Guard Bureau to construct new joint facilities taking advantage of 75% federal funding. Possible projects:
 - Wichita: joint facility with City/County (to replace three old armories)
 - Pittsburg: joint facility with University ROTC and recreational athletics
 - Liberal, Lawrence, Manhattan: one for one replacements
 - Based on Kansas Military Board direction, a few state owned Armories may be returned to communities during the plan period to meet projected mission requirements

State Senate Bill 592 makes it possible to raise the Readiness of Kansas Guard Armories to 21st Century Standards

For questions call the Kansas Adjutant General's Department at (785) 274-1001

TESTIMONY BEFORE THE SENATE WAYS AND MEANS COMMITTEE

February 21, 2000

*Roger Aeschliman
Legislative Committee Chairman
National Guard Association of Kansas (NGAKS)*

Chairman Kerr, Committee members,

The National Guard Association of Kansas is the professional organization of both Army and Air Force National Guard officers and retirees in Kansas. Our membership is more than 100 percent of the current strength of the Kansas National Guard officer corps and has been for more than ten years. Members include General Greg Gardner, Colonel promotable Jon Small, General Gene Krase, and retired Generals Rueger, Strukel, and Kennedy. Our ranks include the newest Second Lieutenant. To an officer they all agree, as does our entire membership: Armory Improvements are the number one priority for the Guard Association and our members.

On behalf of Lt. Col. Lyn Smith, the current president of the NGAKS who could not attend today, I am asking you today to recommend this bill favorably for passage. I speak first hand when I tell you armories should not have leaking roofs, crumbling bricks and mortar, broken windows, unsafe water supplies, stinking latrines due to obsolete plumbing, and HVAC and electrical systems that cannot carry the load of current combat requirements. Yet we have these conditions all across our state. Even a cursory tour of any Armory would show these failings.

It is unacceptable that young officers spend money out of their own pockets to replace windows. It is unacceptable that cracks and leaks in walls only get patched through the volunteer efforts of young soldiers because the money ran out on roofs earlier

Senate Ways and Means Committee

Date *February 21, 2000*

Attachment # *6*

in the year. It is unacceptable that critical computer communications crash because the obsolete electrical circuits are overloaded. It is unacceptable that wedding dance guests can find the restrooms by smell. It is unacceptable that soldiers going out to train in the mid-summer heat of Fort Riley leave the Armory with empty canteens because the lead pipes have contaminated the water supply.

Our soldiers love their hometowns and work hard to keep the armories clean and viable. They take pride in their Armories, the symbol of Federal/State/Local partnership. They believe in their leaders. And they believe in General Gardner – an Air Force guy – who came on the job a year ago and said he would do whatever he could to fix the Armories.

The National Guard Association of Kansas supports the armory improvement plan of General Gardner and Senate Bill 592. We hope you will pass this bill. It is the right thing to do for your soldiers, your communities, and your state.

Regardless, the citizen-soldiers of the Kansas National Guard will continue to serve the state in peacetime, through natural disasters, and on wartime footing as it has since the founding of our state and before the founding of our nation.