

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Nancy Brown at 1:30 p.m. on February 24, 1994 in Room 521-S of the Capitol.

All members were present except: Representative Les Donovan (excused)
Representative Carl Holmes (excused)

Committee staff present: Michael Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Lois Hedrick, Committee Secretary

Conferees appearing before the committee:
Representative Rand Rock
Shelley Gasper, Assistant Attorney General
Jennifer Wentz, Legal Counsel and Deputy Assistant Secretary of State
David W. Newcomer IV, Chairman, Legislative Committee of
the Kansas Cemetery Association

Others attending: See Attachment 1.

The chairman stated the committee would consider the bills that have been assigned and remain in committee. The following actions were taken.

HB 2698 (transfer of certain moneys to city of Oxford) was discussed as was the Attorney General's opinion regarding the Oxford City Attorney's inquiry on legality of such money transfer. The chairman suggested a conceptual amendment to the bill to establish a procedure for cities to go to court for abandoned accounts as part of the escheat laws. On motion of Representative Powers, seconded by Representative Wootton, the committee approved the conceptual amendment and voted to pass the bill, as amended.

HB 2710 (library boards, election of members) was considered. Representative Toplikar offered amendments to the bill as set forth on Attachment 2) to establish a procedure for establishing an elected board and to change the percent of required petitioners. Representative Toplikar moved that the amendments to HB 2710 be approved. Representative Powers seconded the motion. The committee approved the amendments. On motion of Representative Toplikar, seconded by Representative Powers, the committee passed HB 2710, as amended.

HB 3015 (smoke detector act) was reviewed. Theresa Kiernan described the balloon amendment which had been suggested (see Attachment 3). Representative Welshimer questioned the alternate penalty of \$500 on the poor, but Ms. Kiernan stated it would rest with the prosecutor as to its assessment. After discussion, on motion of Representative Donovan, seconded by Representative Wootton, the committee passed HB 3015 favorably, as amended.

Chairman Brown then opened the hearing on **HB 2944** (cemetery corporations, regulation of funds). Representative Rand Rock testified in support of the bill, explaining its purposes (see Attachment 4). Shelley Gasper, Assistant Attorney General, testified in support, stating the bill will clarify requirements regarding pre-need sales and establishment of trust accounts to insure safety of those moneys; increases accountability; and provides greater protection to citizens in cases where abandonment occurs (see Attachment 5). She explained that eight cemeteries have been abandoned in the last five years (out of a total of 74 cemetery corporations).

Jennifer Wentz, Legal Counsel and Deputy Assistant Secretary of State, also testified in support of **HB 2944**. She explained the responsibility of the Secretary of State's office with respect to the trust funds of cemetery corporations (see Attachment 6). The chairman suggested an amendment to permit trust accounts to be deposited in trust companies as well as in banks and savings and loan institutions. On motion of Representative Brown, seconded by Representative Watson, the amendment was approved.

David W. Newcomer IV, Chairman of the Legislative Committee of the Kansas Cemetery Association, spoke in opposition to **HB 2944**. He reported the association recommends changes to the bill (see Attachment 7). Mr. Newcomer reported that there are three trust funds for services: endowment care (maintenance); cemetery merchandise, and prepaid funeral funds (casket and other services).

There being no others present to testify, the hearing on **HB 2944** was closed. After discussion, on motion of Representative Watson, seconded by Representative Welshimer, the committee voted to pass **HB 2944**, as amended.

Representative Tomlinson moved, and Representative Toplikar seconded, that **HB 3052** (cemetery districts; annual reports) be placed on the consent calendar. Representative Grant offered a substitute motion that the bill not be placed on the consent calendar. Representative Tomlinson withdrew his motion. On motion of Representative Tomlinson, seconded by Representative Toplikar, the committee voted to pass **HB 3052**, as amended.

Representative Tomlinson reviewed the subcommittee's concerns about **HB 3053** (creation of certain political subdivisions; procedure) and recommended further study to explore the bill's provisions and codification of statutes. After discussion, on motion of Representative Welshimer, seconded by Representative Watson, the committee voted to recommend **HB 3053** for interim study.

Representative Macy discussed **HB 3004** (public access to decision-making and meetings of public and quasi-public bodies) and the balloon amendments (see Attachment 8) developed in response to the concerns of the League of Municipalities and school board. Various committee members raised questions about the bill and the suggested amendments having to do with definition of a quorum. Representative Mays suggested the committee pass **HB 2676** and if **HB 3004** is desired, it could be amended on to **2676**. Representative Macy moved, and Representative Welshimer seconded, that **HB 3004** be passed, as amended. After discussion, the committee voted down the motion.

The committee discussed **HB 2854** (drainage districts; lands outside districts receiving benefits), sponsored by Representative Mills. Representative Mills distributed suggested amendments to the bill. The chairman expressed concerns about the lateness of the revisions offered and suggested that further study is needed. Representative Watson moved that **HB 2854** be placed on interim study. Representative Packer seconded the motion, and the committee approved the motion.

HB 2812 (distribution of lease moneys from flood control project lands; Atchison and Doniphan counties) was reviewed. The Chairman moved the bill be amended to broaden the scope of the bill to statewide.

Representative Hayzlett seconded the motion, and the committee approved the amendment. After discussion, on motion of Representative Alldritt, seconded by Representative Welshimer, the committee voted that **HB 2812** be passed, as amended.

HB 2736 (municipalities; neighborhood revitalization) was discussed. Chairman Brown stated that in discussion with Representative Wagnon they had agreed that the bill raised some concerns in its present form. A substitute bill has been prepared (see Attachment 9) and was distributed. After discussion, on motion of Representative Mays, seconded by Representative Ballard, the committee voted that **Substitute House Bill 2736** be passed.

The meeting was adjourned at 3:28 p.m. The next meeting of the committee is scheduled for March 8, 1994 at 1:30 p.m., in Room 521-S of the Capitol.

HOUSE OF REPRESENTATIVES
COMMITTEE ON LOCAL GOVERNMENT
CONFEREES AND VISITORS
FEBRUARY 24, 1994

NAME AND ADDRESS (Please print)	REPRESENTING
Michelle Clum	Topoka atty. Jon Small
> Barb Newcome	KCA
Chris Wilson	Wamego KS Gov'tal Consulting
Chris McKenji	Topoka League of Ks. Women
Barbara Butts	Topoka Dept of Admin.
Doug Lawrence	Topoka Leg
Cindy Kelly	Topoka KASB
Ren Newcome	Topoka KFDR
Pat Scott	Topoka KS Funeral Directors & Embalmers Assn
Sunny B. Howell	" SOS
Bill Ervin	✓ Dept of Admin
Jol Smallwell	" RTI Topoka

HOUSE BILL No. 2710

By Representative Toplikar

1-21

AN ACT concerning libraries; relating to the governing body thereof; amending K.S.A. 12-1220, 12-1221, 12-1222, 12-1223, 12-1224, 12-1225 and 12-1226 and repealing the existing sections.

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

Section 1. K.S.A. 12-1220 is hereby amended to read as follows: 12-1220. (a) The governing body of any municipality may by resolution, and shall, upon presentation of a petition signed by ten percent (10%) 10% of the qualified electors of such municipality determined upon the basis of the total vote cast for the secretary of state at the last preceding general election, cause to be submitted to the voters of such municipality at the first local or general election thereafter, or if the petition so requires, at a special election called for that purpose, the question of the establishment and maintenance of a library by such municipality. If a majority of the votes cast at such election on such proposition shall be in the affirmative, the governing body shall forthwith establish such library and. *The governing body of the municipality or, in the case of an elected library board, the board* is hereby authorized to and shall annually shall levy a tax for the maintenance of such library in such sum as the library board shall determine within the limitations fixed by law and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county.

(b) (1) *In the case of an elected board, such board may continue to levy the amount previously levied by the appointed board prior to the change in the method of selection of the library board as provided by section 4. Whenever the board determines that the current levy is insufficient to maintain and support the library, the board shall adopt a resolution declaring it necessary to increase the annual levy ~~by an additional amount not to exceed 1/2 mill in any one year.~~ Any such resolution adopted under this paragraph shall state the total amount of the tax to be levied for library purposes and shall be published once each week for two consecutive weeks in the official city newspaper. Whereupon such annual levy in an amount not to exceed the amount stated in the resolution may be*

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made for the ensuing budget year and each successive budget year unless a petition, signed by at least 5% of the qualified electors of the city, requesting an election upon the proposition to increase the tax levy in excess of the current tax levy is filed with the county election officer within 60 days following the date of the last publication of the resolution. If a valid petition is filed, no such increased levy shall be made without such proposition having been submitted to and having been approved by a majority of the electors of the city voting at an election called and held thereon. All such elections shall be called and held in the manner provided by the general bond law.

(2) If the board determines that it is necessary to increase the annual levy by an ~~additional~~ amount exceeding ~~4~~ mill in any one year, such ~~additional~~ amount shall not be levied unless the question is submitted to and approved by a majority of the qualified electors of the city voting at an election thereon. Such election shall be called and held in the manner provided by K.S.A. 10-120, and amendments thereto.

one

Such (c) The tax authorized by this section shall be levied and collected in like manner as other taxes of the municipality and, except for an amount to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county, shall be kept in a separate fund to be known as the library fund of such municipality. If the territory of the municipality includes another municipality which is then maintaining a library, the proposition to establish a library by the larger municipality shall not be voted upon by the residents of the included municipality, nor shall a levy to establish or maintain such library be assessed against property therein, unless the library board and governing body of the included municipality shall give notice in writing that they desire to participate in the library to be established and to pay the tax for the establishment and maintenance thereof as other parts of the municipality establishing such library.

Sec. 2. K.S.A. 12-1221 is hereby amended to read as follows: 12-1221. (a) Any county or township which is maintaining, or has voted to establish a library may erect and equip a library building and procure a site therefor, and may issue the bonds of such county or township for the purpose of paying the cost of such building, equipment and site. Before issuing any bonds hereunder the question of such issuance shall be submitted to the qualified electors of the county or township and if a majority of those voting on the proposition shall vote in favor thereof, such bonds may be issued. A proposition to issue such bonds may be combined with the propo-

(c) Upon establishment of a library the governing body, by resolution, shall provide for the establishment of a library board and shall provide either that the members be appointed by the governing body or that the members be elected by the qualified electors of the city on a nonpartisan basis. If the governing body determines that the board is to be elected, the procedure for holding such election shall be determined by the governing body, by resolution. The laws applicable to the procedure, manner and method provided for the election of city officers shall apply to the election of members of the library board. The library board shall be composed of seven members and terms of office thereof shall be for four years. Members of the board shall be residents of the city in which the library is located.

(d)(1) The governing body, upon being presented with a petition signed by not less than 5% of the qualified electors of the city requesting the manner of selection of the board be changed, shall adopt a resolution providing for the change. The question of changing the method of selection shall be submitted to a vote of the qualified electors of the city at a regular city primary or city general election or, if no regular city election is to be held within six months from the date of adoption of the resolution, at a special election called for the purpose of submitting such question. The resolution shall not be effective until a majority of the qualified electors voting on the question at such election vote in favor of the question. Such question shall not be submitted to the electors of the city at any election more than once ~~in any one year~~.

every four years

(2) The governing body may adopt a resolution proposing to change the manner of selection of the members of the library board. Such resolution shall be published at least once each week for two consecutive weeks in the official city newspaper. If within 30 days after the last publication, a petition signed by at least 10% of the qualified electors of the city is filed with the city clerk requesting an election thereon, the proposed change in the method of selection shall not be made unless the question is submitted to and approved by a majority of the qualified electors of the city voting at an election thereon. Such election shall be called and held in the manner provided by K.S.A. 10-120, and amendments thereto.

(c) Members serving on the library board at the time the method of selecting members to the board is changed pursuant to subsection (d) shall continue to serve until expiration of their respective terms and their successors are elected and qualified pursuant to the resolution adopted by the governing body in accordance with the provisions of subsection (c) and this subsection (e). Members elected to

HOUSE BILL No. 3015

By Committee on Local Government

2-11

- 8 AN ACT concerning fire protection; relating to smoke detectors.
9
10 *Be it enacted by the Legislature of the State of Kansas:*
11 Section 1. This act shall be known and may be cited as the smoke
12 detector act.
13 Sec. 2. When used in this act:
14 (a) "Dwelling unit" means a single-family residence, multiple-
15 family residence and each living unit in a mixed-use building;
16 (b) "smoke detectors" means a device or combination of devices
17 which operates from a power supply in the unit or at the point of
18 installation for the purpose of detecting visible or invisible particles
19 of combustion.
20 Sec. 3. Smoke detectors shall be approved or listed for the pur-
21 poses for which they are intended by Underwriters Laboratory or
22 other approved independent testing laboratories as prescribed by
23 rules and regulations adopted by the state fire marshal.
24 Sec. 4. (a) Every dwelling unit shall be equipped with at least
25 one smoke detector in operating condition within 15 feet of every
26 room used for sleeping purposes. The smoke detector shall be in-
27 stalled on the ceiling and at least six inches from any wall, or on a
28 wall located between four and six inches from the ceiling.
29 (b) Every single-family residence shall have at least one smoke
30 detector installed on every story of the dwelling unit, including
31 basements but not including unoccupied attics. In dwelling units
32 with split levels, a smoke detector installed on the upper level shall
33 suffice for the adjacent lower level if the lower level is less than
34 one full story below the upper level; however, if there is an inter-
35 vening door between the adjacent levels, a smoke detector shall be
36 installed on each level.
37 (c) Every structure which (1) contains more than one dwelling
38 unit, or (2) contains at least one dwelling unit and is a mixed-use
39 structure, shall contain at least one smoke detector at the uppermost
40 ceiling of each interior stairwell. The smoke detector shall be in-
41 stalled on the ceiling, at least six inches from the wall, or on a wall
42 located between four and six inches from the ceiling.
43 (d) It shall be the responsibility of the owner of a structure to

1 supply and install all required smoke detectors. The owner shall be
2 responsible for making reasonable efforts to test and maintain smoke
3 detectors in common stair wells and hallways. It shall be the re-
4 sponsibility of a tenant to test and to provide general maintenance
5 for the smoke detectors within the tenant's dwelling unit or rooming
6 unit, and to notify the owner or the authorized agent of the owner
7 in writing of any deficiencies which the tenant cannot correct. The
8 owner shall be responsible for providing one tenant per dwelling
9 unit with written information regarding detector testing and main-
10 tenance.

11 The tenant shall be responsible for replacement of any required
12 batteries in the smoke detectors in the tenant's dwelling unit, except
13 that the owner shall ensure that such batteries are in operating
14 condition at the time the tenant takes possession of the dwelling
15 unit. The tenant shall provide the owner or the authorized agent of
16 the owner with access to the dwelling unit to correct any deficiencies
17 in the smoke detector which have been reported in writing to the
18 owner or the authorized agent of the owner.

19 The provisions of this subsection shall be subject to K.S.A. 58-
20 2559, and amendments thereto.

21 (e) The requirements of this section shall apply to any dwelling
22 unit in existence on January 1, 1995. Except as provided in sub-
23 section (f), the smoke detectors required in such dwelling units either
24 may be battery-powered or wired into the structure's AC power line
25 and need not be interconnected.

26 (f) In the case of any dwelling unit that is newly constructed
27 after January 1, 1995, the requirements of this section shall apply
28 beginning on the first day of occupancy of the dwelling unit after
29 such construction. The smoke detectors required in such dwelling
30 unit shall be wired permanently into the structure's AC power line.

31 (g) Evidence of failure to install or maintain a smoke detector as
32 required by this act shall not be admissible in any action for the
33 purpose of determining any aspect of comparative negligence or
34 mitigation of damages, nor shall such failure be used to deny payment
35 of a claim under a policy issued by an insurance company.

36 ~~Sec. 5. (a) The governing body of each city shall be responsible~~
37 ~~for the enforcement of the provisions of this act for the construction~~
38 ~~of all dwelling units located within the corporate limits of such city.~~

39 ~~(b) The board of county commissioners of each county shall be~~
40 ~~responsible for the enforcement of the provisions of this act for the~~
41 ~~construction of all dwelling units located within the unincorporated~~
42 ~~area of such county.~~

43 ~~Sec. 6. Compliance with an applicable federal, state or local law.~~

1 ~~or building code which requires the installation and maintenance of~~
2 smoke detectors in a manner different from this section, but which
3 provides a level of safety for occupants which is equal to or greater
4 than that provided by this section, shall be deemed to be in com-
5 pliance with this section, and the requirements of such more strin-
6 gent law shall govern over the requirements of this section.

7 Sec. 7. A civil penalty not to exceed \$100 may be imposed for
8 violation of the provisions of this act.

9 Sec. 8. The governing body of any city or county may elect to
10 exempt such city or county from the provisions of this act by adoption
11 ~~of an ordinance of the city or a resolution of the county.~~

12 Sec. 9. This act shall take effect and be in force from and after
13 its publication in the statute book.

Sec. 5. Any person violating the provisions
of this act shall be guilty of a class C
nonperson misdemeanor.

Penalty: up to 1 month in county jail
and/or a fine up to \$500

SUMMARY OF CEMETERY LEGISLATION PROPOSED BY REPRESENTATIVE ROCK

There is concern in this area due to the fact that several cemeteries per year are deemed to be abandoned. The purpose of this legislation is three-fold: It is first to clarify some requirements regarding pre-need sales and trusting, then to increase accountability to the public, and finally, to provide greater protection to individuals in cases where an abandonment occurs.

One of the purposes of this bill is to clarify the requirements regarding pre-need sales and maintenance fund trusting. The proposed changes would delete language that limits what type of services are covered. Another clarification made is that permanent maintenance funds are required to be trusted if they are over \$45,000. The current law is vague as to trusting requirements.

Another purpose of the bill is to increase accountability to the public. This bill proposes two ways in which this is done. First, the trust documents must be on file with the county clerk, and second, the secretary of state may report the compliance of cemeteries it has audited.

Finally, this bill has a provision to allow for the payment of merchandise out of permanent maintenance funds if a cemetery is abandoned and turned over to a municipality.

from Linda Lee
79th Dist.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

**Statement of
SHELLY GASPER
Assistant Attorney General
Re: House Bill 2944
Before the House Local Government Committee
February 24, 1994**

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

I am here today to speak in support of House Bill 2944 which amends various provisions of the cemetery corporation and pre-need burial contract laws. Several cemeteries per year become abandoned. An abandoned cemetery is one which no longer has the proper care. It is this situation that is addressed by this bill.

The purpose of this legislation is three-fold: It is first to **clarify** some requirements regarding pre-need sales and trusting, then to **increase accountability** to the public, and finally, to provide **greater protection** to individuals in cases where an abandonment occurs.

One of the purposes of this bill is to clarify the requirements regarding pre-need sales and maintenance fund trusting. In section two, the proposed changes would delete language that limits what type of services are covered. Currently, the statute (K.S.A. 16-301) requires pre-need sales of **professional** services to be trusted. The necessity to trust such non-professional services as opening and closings of the grave is unclear at present. The overall purpose of the statute is to make sure money is available at need to cover goods and services sold in advance of need, and this change would make that purpose more clear. At one cemetery alone,

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the owner had sold over \$30,000 worth of opening and closing services. None of those people will receive those services because the owner died last year without trusting the money.

Another clarification made is that permanent maintenance funds are required to be trusted if they are over \$45,000. It became apparent that the cemeteries with smaller funds could not afford trustee fees, but that the larger funds **must** be trusted. The current law is vague as to trusting requirements.

Another purpose of the bill is to increase accountability to the public. Currently, the status of a cemetery's accounts is shrouded in secrecy. Unfortunately, the effect of a cemetery going out of business, or becoming "abandoned," affects every single person who has purchased a marker, vault, opening and closing, or other good or service who has not received it. And in that sense, those who could be affected by the financial condition of the cemetery should have access to its financial status. This bill proposes two ways in which this is done. First, the trust documents must be on file with the county clerk, and second, the secretary of state may report the compliance of cemeteries it has audited.

Finally, this bill has a provision to allow for the payment of merchandise out of permanent maintenance funds if a cemetery is abandoned and turned over to a municipality. Currently, the permanent maintenance funds go to the municipality and people who have purchased goods or services are simply out the money. In a majority of the cases handled by the attorney general's office in the past six years, there was money in the permanent maintenance fund but not in the merchandise trust fund. A good number of the folks who lost everything they invested would have gotten much of what they purchased had this provision been in effect.

Bill Graves
Secretary of State



2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS

House Committee on Local Government
Testimony on HB 2944
February 24, 1994

Mr. Chairman and Members of the Committee: Thank you for the opportunity to appear before you to testify on HB 2944. The Secretary of State's office supports this bill, particularly sections two, four and five.

The Secretary of State's office is charged with examining the permanent maintenance funds and cemetery merchandise trust funds of approximately 74 cemetery corporations, which include "every individual, firm, partnership or other organization hereafter selling or conveying land for cemetery purposes...". Cemetery corporations do not include municipal, county or township cemeteries, religious cemeteries, cemeteries located in urban counties operated by nonprofit organizations, and cemeteries organized prior to January 1, 1900. It is our view that sections two, four, and five of HB 2944 clarify questions and concerns which have been brought to the attention of our office.

The amendments proposed in section two clarify that a cemetery which sells opening and closing services is required to deposit 100 percent of the funds paid in advance for these services. Opening and closing is not defined as cemetery merchandise, and questions have been raised about whether the current language of K.S.A. 16-301 covers funds prepaid for opening and closing.

Section four of the bill clarifies the issue of whether permanent maintenance funds must be trusted. The amendment requires the funds to be trusted if the value of the fund is \$45,000 or more. Currently, some cemetery corporations which maintain the correct level of monies in their permanent maintenance funds do so without using a trust. This amendment would authorize this practice if the value of the fund is less than \$45,000.

Section five of the bill authorizes the Secretary of State's office to disclose certain financial information about a cemetery corporation to the public. We do get inquiries from the media and individuals about whether cemeteries properly maintain their funds. This information is currently confidential.

I will try to answer any questions you may have at this time. Thank you.

Jennifer Chaulk Wentz, Legal Counsel
Deputy Assistant Secretary of State

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David W. Newcomer, IV
Testimony Before The
Local Government Committee
Representative Nancy Brown, Chairman

House Bill 2944

I am the chairman of the Legislative Committee of the Kansas Cemetery Association. I am contacting you on behalf of the Association regarding HB 2944.

Some of HB 2944's amendments have merit. However, the KCA believes those amendments should be addressed with more specific language. The bill's deletion of current statute language will create ambiguity and confusion. After discussing the intent of HB 2944 with the Attorney General's Office, the Association offers the following suggestions.

HB 2944's amendment of K.S.A. §16-301 is intended to require the trusting of prepaid interment fees. The bill should just insert the phrase "or cemetery corporation" after the phrase "funeral director [or] embalmer".

H.B. 2944 amends K.S.A. §17-1311 to preclude trustees of cemetery permanent maintenance trusts from making loans. The Association was advised this amendment was to prevent such trusts from lending to the owners of the cemetery it benefits. However, HB 2944 goes far beyond that purpose and precludes all loans.

As it is currently written, HB 2944 leaves K.S.A. §17-1311 internally inconsistent. The first part of the amended provision sets out those terms under which the trustee can make a collateralized loan. The proposed deletion would then preclude all loans.

Since the intent in amending K.S.A. §17-1311 is to preclude loans to persons having an interest in the cemetery corporation, the Association would suggest inserting the following phrase in place of the deleted language:

"to any cemetery corporation stockholder, officer, employee or other person related to a stockholder, officer or employee by blood or marriage."

HB 2944 also proposes to amend K.S.A. §17-1312 to set a minimum trusting standard of \$45,000 for cemetery permanent maintenance trusts. Cemeteries having permanent maintenance funds of less than \$45,000 would not be required to have a trust. Rather than exempt small cemeteries from trusting, the Association proposes the bill use the following language in lieu of the proposed insertion:

"Each cemetery corporation shall establish a trust for moneys in deposited for permanent maintenance funds in accordance with this section. If the market value

of the trust is less than \$45,000, the trust may have an individual trustee so long as the trust's assets are maintained in an account segregated from the cemetery corporation's assets. If the permanent maintenance trust has assets with a market value in excess of \$45,000, the trustee shall be a state or national bank, savings and loan association, a federally chartered savings bank or a trust company."

The amendment to §17-1312 is intended to help smaller cemeteries reduce the trustees' fees. Accordingly, the Association suggests you support HB 2691, which allows funds to be placed with trust companies which charge lesser fees. (HB 2944 should be revised to include trust companies to be consistent with HB 2691.)

Finally, the Association questions the constitutionality of the bill's proposed changes to K.S.A. §17-1367. Permanent maintenance trusts are funded with deposits made by lot purchasers. The trust funds are held for the benefit of the lot owners to provide income for future upkeep and maintenance to the cemetery. The trust funds do not belong to the cemetery, they belong to the lot owners.

The bill's proposal to have the trust assets vest in the municipality could be found a breach of the lot owners' constitutional rights against the taking of property without due process. The bill has forgotten that the funds are not assets of the cemetery corporation. These funds are not available to fund other cemetery obligations. The Kansas Attorney General's Office has indicated it will further research this issue.

HOUSE BILL No. 3004

By Committee on Local Government

2-10

8 AN ACT concerning certain public and quasi-public bodies; relating
9 to public access to meetings and decision-making thereof; amend-
10 ing K.S.A. 75-4317, 75-4317a, 75-4318, 75-4320 and 75-4320a and
11 K.S.A. 1993 Supp. 75-4319 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 75-4317 is hereby amended to read as follows:
15 75-4317. (a) *This act shall be known and may be cited as the Kansas*
16 *open government act.*

17 (b) In recognition of the fact that a representative government
18 is dependent upon an informed electorate *and that access to the*
19 *decision-making process of government is an important part of having*
20 *an informed electorate*, it is declared to be the policy of this state
21 that meetings for the conduct of governmental affairs and the trans-
22 action of governmental business be open to the public.

23 ~~(b)~~ (c) It is declared hereby to be against the public policy of
24 this state for any such meeting to be adjourned to another time or
25 place, *or other action taken*, in order to subvert the policy of open
26 public meetings giving public access to the decision-making process
27 as pronounced in subsection (a) (b). *This act shall be liberally con-*
28 *strued to protect and encourage the public's right of access to the*
29 *decision-making process of government through open public meet-*
30 *ings.*

31 Sec. 2. K.S.A. 75-4317a is hereby amended to read as follows:
32 75-4317a. As used in this act, *section and* K.S.A. 75-4317, 75-4318,
33 75-4319, 75-4320 and 75-4320a, *and amendments thereto:*

34 (a) "Meeting" means any prearranged gathering or assembly by : (1) A
35 a majority ~~of a~~ quorum of the membership of a body or agency
36 subject to this act public or quasi-public body for the purpose of
37 discussing the business or affairs of the body or agency.

38 (b) "Public body" means any legislative or administrative body
39 or agency of the state or of any political or taxing subdivision thereof,
40 or any subordinate group thereof, receiving or expending and sup-
41 ported in whole or in part by public funds.

42 (c) "Quasi-public body" means either of the following, and any
43 subordinate group thereof:

; or (2) a majority of a quorum of the membership of a public or quasi-public body -- the number of members of the body necessary take binding action, whichever is greater, the purpose of discussing any matter that is scheduled to come before the body

~~(1) An entity described by any two or more of the following:~~
~~(A) It is created by a public body; (B) it receives substantial~~
~~funds, capital or credit from or on behalf of a public body, other~~
~~than for goods or services rendered; (C) it plays a substantial role~~
~~in a public body's decision-making process; (D) it has a primary goal~~
~~to help the public body and the citizens served by the public body;~~
 or

(2) an entity, where a majority of the members are also members
 of a public body that has a contractual relationship with the entity.
 (d) "Subordinate group" means any board, commission, author-
 ity, council, committee, advisory body or other subordinate group
 of a public body or quasi-public body.

Sec. 3. K.S.A. 75-4318 is hereby amended to read as follows:
 75-4318. (a) Except as otherwise provided by state or federal law or
 by rules of the house or senate, and except with respect to any
 impeachment inquiry or other impeachment matter referred to any
 committee of the house of representatives prior to the report of such
 committee to the full house of representatives, all meetings for the
 conduct of the affairs of, and the transaction of business by, all
 legislative and administrative bodies and agencies of the state
 and political and taxing subdivisions thereof, including boards,
 commissions, authorities, councils, committees, subcommittees
 and other subordinate groups thereof, receiving or expending
 and supported in whole or in part by public funds any public
 or quasi-public body shall be open to the public and no binding
 action by such bodies shall be by secret ballot, but any ad-
 ministrative body that is authorized by law to exercise quasi-judicial
 functions shall not be required to have open meetings when such
 body is deliberating matters relating to a decision involving such
 quasi-judicial functions.

(b) Notice of the date, time and place of any regular or special
 meeting of a public or quasi-public body designated hereinabove
 shall be furnished to any person requesting such notice, except that:

(1) If notice is requested by petition, the petition shall designate
 one person to receive notice on behalf of all persons named in the
 petition, and notice to such person shall constitute notice to all
 persons named in the petition;

(2) if notice is furnished to an executive officer of an employees'
 organization or trade association, such notice shall be deemed to
 have been furnished to the entire membership of such organization
 or association; and

(3) the public or quasi-public body may require that a request
 to receive notice must be submitted again to the body prior to the

(1) An entity which is created by a public body
 or which receives 51% or more of its

or for the benefits of membership in a private
 association

single

"Quasi-public body" shall not mean any
 subordinate group created by an employee of a
 public body for administrative purposes.

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PROPOSED BILL NO. ____

By

AN ACT concerning municipalities; relating to neighborhood revitalization.

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

Section 1. This act shall be known and may be cited as the Kansas neighborhood revitalization act.

Sec. 2. As used in this act:

(a) "Municipality" means any municipality as defined by K.S.A. 10-1101, and amendments thereto.

(b) "Neighborhood revitalization area" means:

(1) An area in which there is a predominance of buildings or improvements which by reason of dilapidation, deterioration, obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, the existence of conditions which endanger life or property by fire and other causes or a combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime and which is detrimental to the public health, safety or welfare;

(2) an area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, defective or inadequate streets, incompatible land use relationships, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the actual value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or a combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the

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provision of housing accommodations or constitutes an economic or social liability and is detrimental to the public health, safety or welfare in its present condition and use; or

(3) an area in which there is a predominance of buildings or improvements which by reason of age, history, architecture or significance should be preserved or restored to productive use.

(c) "Governing body" means the governing body of any municipality.

(d) "Increment" means that amount of ad valorem taxes collected from real property located within the neighborhood revitalization area that is in excess of the amount which is produced from such property and attributable to the assessed valuation of such property prior to the date the neighborhood revitalization area was established pursuant to this act.

Sec. 3. The governing body of any municipality may designate any area within such municipality as a neighborhood revitalization area if the governing body finds that one or more of the conditions as described in subsection (b) of section 2 exist and that the rehabilitation, conservation or redevelopment of the area is necessary to protect the public health, safety or welfare of the residents of the municipality.

Sec. 4. (a) Prior to designating an area as a neighborhood revitalization area, the governing body shall adopt a plan for the revitalization of such area. Such plan shall include:

(1) A legal description of the real estate forming the boundaries of the proposed area and a map depicting the existing parcels of real estate;

(2) the existing assessed valuation of the real estate in the proposed area, listing the land and building values separately;

(3) a list of names and addresses of the owners of record of real estate within the area;

(4) the existing zoning classifications and district boundaries and the existing and proposed land uses within the area;

(5) any proposals for improving or expanding municipal services within the area including, but not limited to, transportation facilities, water and sewage systems, refuse collection, road and street maintenance, park and recreation facilities and police and fire protection;

(6) a statement specifying what property is eligible for revitalization and whether rehabilitation and additions to existing buildings or new construction or both is eligible for revitalization;

(7) the criteria to be used by the governing body to determine what property is eligible for revitalization;

(8) the contents of an application for a rebate of property tax increments authorized by section 5;

(9) the procedure for submission of an application for a rebate of property tax increments authorized by section 5;

(10) the standards or criteria to be used when reviewing and approving applications for a rebate of property tax increments authorized by section 5;

(11) a statement specifying the maximum amount and years of eligibility for a rebate of property tax increments authorized by section 5; and

(12) any other matter deemed necessary by the governing body.

(b) Prior to adopting a plan pursuant to this section, the governing body shall call and hold a hearing on the proposal. Notice of such hearing shall be published at least once each week for two consecutive weeks in a newspaper of general circulation within the municipality. Following such hearing, or the continuation thereof, the governing body may adopt such plan.

Sec. 5. (a) Following adoption of a plan pursuant to section 4, the governing body shall create a neighborhood revitalization fund to finance the redevelopment of designated revitalization areas and to provide rebates authorized by this section. Moneys may be budgeted and transferred to such fund from any source which may be lawfully utilized for such purposes. Any

municipality may expend money from the general fund of such municipality to accomplish the purposes of this act.

(b) Moneys credited to such fund from annually budgeted transfers shall not be subject to the provisions of K.S.A. 79-2925 through 79-2937, and amendments thereto. In making the budget of the municipality, the amounts credited to, and the amount on hand in, such neighborhood revitalization fund and the amount expended therefrom shall be shown thereon for the information of taxpayers. Moneys in such fund may be invested in accordance with K.S.A. 10-131, and amendments thereto with the interest credited to the fund.

(c) If the governing body determines that money which has been credited to such fund or any part thereof is not needed for the purposes for which so budgeted or transferred, the governing body may transfer such amount not needed to the fund from which it came and such retransfer and expenditure shall be subject to the provisions of K.S.A. 79-2925 through 79-2937, and amendments thereto.

(d) Any increment in ad valorem property taxes levied by the municipality resulting from improvements by a taxpayer to property in a neighborhood revitalization area may be credited to the fund for the purpose of returning all or a part of the property increment to the taxpayer in the form of a rebate. Applications for rebates shall be submitted in the manner and subject to the conditions provided by the revitalization plan adopted under section 4. Upon approval of an application received hereunder the municipality shall rebate any incremental increases in ad valorem property tax resulting from the improvements within 30 days of payment by the taxpayer.

Sec. 6. Any two or more municipalities may agree pursuant to K.S.A. 12-2901 et seq., and amendments thereto, to exercise the powers and duties authorized by this act.

Sec. 7. This is enabling legislation for the revitalization of neighborhood areas and is not intended to prevent cities and counties from enacting and enforcing additional laws and

regulations on the same subject which are not in conflict with the provisions of this act.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.