

HOUSE BILL No. 2054

By Representative Otto

1-11

9 AN ACT concerning the open meetings law; relating to executive ses-
10 sions; amending K.S.A. 2006 Supp. 75-4319 and repealing the existing
11 section.
12

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

14 Section 1. K.S.A. 2006 Supp. 75-4319 is hereby amended to read as
15 follows: 75-4319. (a) Upon formal motion made, seconded and carried,
16 all bodies and agencies subject to the open meetings act may recess, but
17 not adjourn, open meetings for closed or executive meetings. Any motion
18 to recess for a closed or executive meeting shall include a statement of
19 (1) the justification for closing the meeting, (2) the subjects to be dis-
20 cussed during the closed or executive meeting and (3) the time and place
21 at which the open meeting shall resume. Such motion, including the re-
22 quired statement, shall be recorded in the minutes of the meeting and
23 shall be maintained as a part of the permanent records of the body or
24 agency. Discussion during the closed or executive meeting shall be limited
25 to those subjects stated in the motion. *Any person in attendance at the*
26 *meeting may request that a recording be made of the closed or executive*
27 *meeting. When such a request is made, the closed or executive meeting*
28 *shall be recorded except for that portion of the meeting, if any, which*
29 *involves consultation with an attorney for the body which would be*
30 *deemed privileged in the attorney-client relationship. Any body or agency*
31 *which is subject to this act shall keep and maintain the recording of any*
32 *closed or executive session for a period of time not less than one year after*
33 *the date of the closed or executive session.*

34 (b) (1) *The recording of a closed or executive session shall be sealed*
35 *and not be a public record subject to public inspection under the open*
36 *records act. In any action to enforce this act, upon order of the court, the*
37 *recording of the closed or executive session shall be unsealed and examined*
38 *by the court in camera. If the court determines it is likely that a violation*
39 *of this act has occurred, the court shall determine what portion of the*
40 *recording of the closed or executive session, if any, should be disclosed for*
41 *use in the enforcement proceeding to the party seeking enforcement of*
42 *this act.*

43 (2) *In determining whether any portion of the recording of the closed*

1 *or executive session should be disclosed to a party under this subsection,*
2 *the court shall weigh the prejudicial effects to the public interest resulting*
3 *from the disclosure of any portion of the recording of the closed or exec-*
4 *utive session against the probative value of such portion needed to enforce*
5 *the provisions of this act. After making its determination, the court may*
6 *permit the party seeking enforcement of this act to inspect or use the*
7 *recording of the closed or executive session, or any portion thereof, under*
8 *such conditions as the court may direct.*

9 ~~(b)~~ (c) No subjects shall be discussed at any closed or executive meet-
10 ing, except the following:

- 11 (1) Personnel matters of nonelected personnel;
- 12 (2) consultation with an attorney for the body or agency which would
13 be deemed privileged in the attorney-client relationship;
- 14 (3) matters relating to employer-employee negotiations whether or
15 not in consultation with the representative or representatives of the body
16 or agency;
- 17 (4) confidential data relating to financial affairs or trade secrets of
18 corporations, partnerships, trusts, and individual proprietorships;
- 19 (5) matters relating to actions adversely or favorably affecting a per-
20 son as a student, patient or resident of a public institution, except that
21 any such person shall have the right to a public hearing if requested by
22 the person;
- 23 (6) preliminary discussions relating to the acquisition of real property;
- 24 (7) matters permitted to be discussed in a closed or executive meeting
25 pursuant to K.S.A. 74-8804 and amendments thereto;
- 26 (8) matters permitted to be discussed in a closed or executive meeting
27 pursuant to subsection (d)(1) of K.S.A. 38-1507 and amendments thereto
28 or subsection (e) of K.S.A. 38-1508 and amendments thereto;
- 29 (9) matters permitted to be discussed in a closed or executive meeting
30 pursuant to subsection (j) of K.S.A. 22a-243 and amendments thereto;
- 31 (10) matters permitted to be discussed in a closed or executive meet-
32 ing pursuant to subsection (e) of K.S.A. 44-596 and amendments thereto;
- 33 (11) matters permitted to be discussed in a closed or executive meet-
34 ing pursuant to subsection (g) of K.S.A. 39-7,119 and amendments
35 thereto;
- 36 (12) matters required to be discussed in a closed or executive meeting
37 pursuant to a tribal-state gaming compact;
- 38 (13) matters relating to security measures, if the discussion of such
39 matters at an open meeting would jeopardize such security measures,
40 that protect: (A) Systems, facilities or equipment used in the production,
41 transmission or distribution of energy, water or communications services;
42 (B) transportation and sewer or wastewater treatment systems, facilities
43 or equipment; (C) a public body or agency, public building or facility or

1 the information system of a public body or agency; or (D) private property
2 or persons, if the matter is submitted to the agency for purposes of this
3 paragraph. For purposes of this paragraph, security means measures that
4 protect against criminal acts intended to intimidate or coerce the civilian
5 population, influence government policy by intimidation or coercion or
6 to affect the operation of government by disruption of public services,
7 mass destruction, assassination or kidnapping. Security measures include,
8 but are not limited to, intelligence information, tactical plans, resource
9 deployment and vulnerability assessments; and
10 (14) matters permitted to be discussed in a closed or executive meet-
11 ing pursuant to subsection (f) of K.S.A. 65-525, and amendments thereto.
12 ~~(c)~~ (d) No binding action shall be taken during closed or executive
13 recesses, and such recesses shall not be used as a subterfuge to defeat
14 the purposes of this act.
15 (e) *The presence of a recording device, as required by this act, shall*
16 *not constitute or be construed as a violation of the attorney-client privi-*
17 *lege.*
18 ~~(f)~~ (f) Any confidential records or information relating to security
19 measures provided or received under the provisions of subsection (b)(13),
20 shall not be subject to subpoena, discovery or other demand in any ad-
21 ministrative, criminal or civil action.
22 Sec. 2. K.S.A. 2006 Supp. 75-4319 is hereby repealed.
23 Sec. 3. This act shall take effect and be in force from and after its
24 publication in the statute book.