

HOUSE BILL No. 2085

By Committee on Elections and Governmental Organization

1-17

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.

26 (b) No subjects shall be discussed at any closed or executive meeting,
27 except the following:

- 28 (1) Personnel matters of nonelected personnel;
29 (2) consultation with an attorney for the body or agency which would
30 be deemed privileged in the attorney-client relationship;
31 (3) matters relating to employer-employee negotiations whether or
32 not in consultation with the representative or representatives of the body
33 or agency;
34 (4) confidential data relating to financial affairs or trade secrets of
35 corporations, partnerships, trusts, and individual proprietorships;
36 (5) matters relating to actions adversely or favorably affecting a per-
37 son as a student, patient or resident of a public institution, except that
38 any such person shall have the right to a public hearing if requested by
39 the person;
40 (6) preliminary discussions relating to the acquisition of real property;
41 (7) matters permitted to be discussed in a closed or executive meeting
42 pursuant to K.S.A. 74-8804 and amendments thereto;
43 (8) matters permitted to be discussed in a closed or executive meeting

- 1 pursuant to subsection (d)(1) of K.S.A. 38-1507 and amendments thereto
2 or subsection (e) of K.S.A. 38-1508 and amendments thereto;
- 3 (9) matters permitted to be discussed in a closed or executive meeting
4 pursuant to subsection (j) of K.S.A. 22a-243 and amendments thereto;
- 5 (10) matters permitted to be discussed in a closed or executive meet-
6 ing pursuant to subsection (e) of K.S.A. 44-596 and amendments thereto;
- 7 (11) matters permitted to be discussed in a closed or executive meet-
8 ing pursuant to subsection (g) of K.S.A. 39-7,119 and amendments
9 thereto;
- 10 (12) matters required to be discussed in a closed or executive meeting
11 pursuant to a tribal-state gaming compact;
- 12 (13) matters relating to security measures, if the discussion of such
13 matters at an open meeting would jeopardize such security measures,
14 that protect: (A) Systems, facilities or equipment used in the production,
15 transmission or distribution of energy, water or communications services;
16 (B) transportation and sewer or wastewater treatment systems, facilities
17 or equipment; (C) a public body or agency, public building or facility or
18 the information system of a public body or agency; or (D) private property
19 or persons, if the matter is submitted to the agency for purposes of this
20 paragraph. For purposes of this paragraph, security means measures that
21 protect against criminal acts intended to intimidate or coerce the civilian
22 population, influence government policy by intimidation or coercion or
23 to affect the operation of government by disruption of public services,
24 mass destruction, assassination or kidnapping. Security measures include,
25 but are not limited to, intelligence information, tactical plans, resource
26 deployment and vulnerability assessments; and
- 27 (14) matters permitted to be discussed in a closed or executive meet-
28 ing pursuant to subsection (f) of K.S.A. 65-525, and amendments thereto.
- 29 (c) No binding action shall be taken during closed or executive re-
30 cesses, and such recesses shall not be used as a subterfuge to defeat the
31 purposes of this act.
- 32 *(d) (1) A member of a public body or agency may object to partici-*
33 *parting in a closed or executive session if the member believes the action*
34 *violates or subverts the intent of the open meetings act. Upon such objec-*
35 *tion, the closed or executive session may commence or continue only if*
36 *such meeting or session is recorded. Such recording shall be kept by the*
37 *public body or agency for a period of time not less than one year after*
38 *the date of the closed or executive session.*
- 39 *(2) The recording of a closed or executive session shall be sealed and*
40 *not be a public record subject to public inspection under the open records*
41 *act. In any action to enforce the open meetings act, upon order of the*
42 *court, the recording of the closed or executive session shall be unsealed*
43 *and examined by the court in camera. If the court determines it is likely*

1 *that a violation of the act has occurred, the court shall determine what*
2 *portion of the recording of the closed or executive session, if any, should*
3 *be disclosed for use in the enforcement proceeding to the party seeking*
4 *enforcement of this act.*

5 (3) *In determining whether any portion of the recording of the closed*
6 *or executive session should be disclosed to a party under this subsection,*
7 *the court shall weigh the prejudicial effects to the public interest resulting*
8 *from the disclosure of any portion of the recording of the closed or execu-*
9 *tive session against the probative value of such portion needed to enforce*
10 *the provisions of this act. After making its determination, the court may*
11 *permit the party seeking enforcement of this act to inspect or use the*
12 *recording of the closed or executive session, or any portion thereof, under*
13 *such conditions as the court may direct.*

14 (4) *The presence of a recording device, as required by this act, shall*
15 *not constitute or be construed as a violation of the attorney-client*
16 *privilege.*

17 (5) *For the purposes of this section:*

18 (A) *“Recording” means the duplicating, or causing to be duplicated,*
19 *of sound by electronic means or otherwise, on a phonograph record, disc,*
20 *wire, tape, film or other article on which sounds are duplicated.*

21 (B) *“Recorded” means the duplication of, or causing the duplication*
22 *of, sound by a recording device.*

23 ~~(e)~~ (e) *Any confidential records or information relating to security*
24 *measures provided or received under the provisions of subsection (b)(13),*
25 *shall not be subject to subpoena, discovery or other demand in any ad-*
26 *ministrative, criminal or civil action.*

27 Sec. 2. K.S.A. 2006 Supp. 75-4319 is hereby repealed.

28 Sec. 3. This act shall take effect and be in force from and after its
29 publication in the statute book.