

HOUSE BILL No. 2157

By Committee on Energy and Utilities

1-22

9 AN ACT concerning broadband technologies; requiring a survey on de-
10 ployment; amending K.S.A. 2006 Supp. 45-221 and repealing the ex-
11 isting section.

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

14 New Section 1. The following definitions apply to this act unless the
15 context clearly requires otherwise:

16 (a) "Broadband" means any synchronous transmission technology ca-
17 pable of speeds in excess of 200 kilobits per second in at least one
18 direction.

19 (b) "Demographic information" means the age, income and educa-
20 tional level of the survey participants.

21 (c) "Geographic information" means a county by county breakdown
22 of the percent of the population in the three categories set forth in sub-
23 section (b), of section 2, and amendments thereto, a breakdown by urban
24 (800 persons or more) and rural populations and a county by county
25 breakdown of the average cost to consumers by technology.

26 New Sec. 2. (a) The state corporation commission shall commission
27 a survey on the deployment of broadband technologies among households
28 and businesses in the state. The survey shall be conducted by an approp-
29 riate entity having expertise in the access and utilization of modern in-
30 formation technologies among underserved populations.

31 (b) The survey shall collect and interpret statistically reliable geo-
32 graphic, demographic, and telecommunications technology information
33 to identify any broadband deployment disparities in the state. The survey
34 shall report the type or types of synchronous and asynchronous broadband
35 options available in each county and the percent of the population able
36 to receive each type. The survey shall also produce a statistically reliable
37 profile of the following:

38 (1) Households and businesses in the state with no available broad-
39 band options;

40 (2) households and businesses in the state with access to broadband
41 options, but who choose not to purchase an option; and

42 (3) purposes for which broadband is used by households and busi-
43 nesses in the state.

- 1 (c) The survey shall be completed by December 31, 2007, and shall
2 be presented to the house of representatives and senate committees with
3 jurisdiction over telecommunications issues.
- 4 New Sec. 3. The state corporation commission shall utilize assess-
5 ments against all telecommunications providers in the state to pay for the
6 cost of the survey. The commission shall include in its fiscal year 2009
7 budget a request for funds from state general funds to reimburse the
8 telecommunications providers for the assessments.
- 9 Sec. 4. K.S.A. 2006 Supp. 45-221 is hereby amended to read as fol-
10 lows: 45-221. (a) Except to the extent disclosure is otherwise required by
11 law, a public agency shall not be required to disclose:
- 12 (1) Records the disclosure of which is specifically prohibited or re-
13 stricted by federal law, state statute or rule of the Kansas supreme court
14 or the disclosure of which is prohibited or restricted pursuant to specific
15 authorization of federal law, state statute or rule of the Kansas supreme
16 court to restrict or prohibit disclosure.
- 17 (2) Records which are privileged under the rules of evidence, unless
18 the holder of the privilege consents to the disclosure.
- 19 (3) Medical, psychiatric, psychological or alcoholism or drug depend-
20 ency treatment records which pertain to identifiable patients.
- 21 (4) Personnel records, performance ratings or individually identifi-
22 able records pertaining to employees or applicants for employment, except
23 that this exemption shall not apply to the names, positions, salaries or
24 actual compensation employment contracts or employment-related con-
25 tracts or agreements and lengths of service of officers and employees of
26 public agencies once they are employed as such.
- 27 (5) Information which would reveal the identity of any undercover
28 agent or any informant reporting a specific violation of law.
- 29 (6) Letters of reference or recommendation pertaining to the char-
30 acter or qualifications of an identifiable individual, except documents re-
31 lating to the appointment of persons to fill a vacancy in an elected office.
- 32 (7) Library, archive and museum materials contributed by private
33 persons, to the extent of any limitations imposed as conditions of the
34 contribution.
- 35 (8) Information which would reveal the identity of an individual who
36 lawfully makes a donation to a public agency, if anonymity of the donor
37 is a condition of the donation, except if the donation is intended for or
38 restricted to providing remuneration or personal tangible benefit to a
39 named public officer or employee.
- 40 (9) Testing and examination materials, before the test or examination
41 is given or if it is to be given again, or records of individual test or ex-
42 amination scores, other than records which show only passage or failure
43 and not specific scores.

- 1 (10) Criminal investigation records, except as provided herein. The
2 district court, in an action brought pursuant to K.S.A. 45-222, and amend-
3 ments thereto, may order disclosure of such records, subject to such con-
4 ditions as the court may impose, if the court finds that disclosure:
- 5 (A) Is in the public interest;
 - 6 (B) would not interfere with any prospective law enforcement action,
7 criminal investigation or prosecution;
 - 8 (C) would not reveal the identity of any confidential source or un-
9 dercover agent;
 - 10 (D) would not reveal confidential investigative techniques or proce-
11 dures not known to the general public;
 - 12 (E) would not endanger the life or physical safety of any person; and
 - 13 (F) would not reveal the name, address, phone number or any other
14 information which specifically and individually identifies the victim of any
15 sexual offense in article 35 of chapter 21 of the Kansas Statutes Anno-
16 tated, and amendments thereto.
- 17 If a public record is discretionarily closed by a public agency pursuant
18 to this subsection, the record custodian, upon request, shall provide a
19 written citation to the specific provisions of paragraphs (A) through (F)
20 that necessitate closure of that public record.
- 21 (11) Records of agencies involved in administrative adjudication or
22 civil litigation, compiled in the process of detecting or investigating vio-
23 lations of civil law or administrative rules and regulations, if disclosure
24 would interfere with a prospective administrative adjudication or civil
25 litigation or reveal the identity of a confidential source or undercover
26 agent.
- 27 (12) Records of emergency or security information or procedures of
28 a public agency, or plans, drawings, specifications or related information
29 for any building or facility which is used for purposes requiring security
30 measures in or around the building or facility or which is used for the
31 generation or transmission of power, water, fuels or communications, if
32 disclosure would jeopardize security of the public agency, building or
33 facility.
- 34 (13) The contents of appraisals or engineering or feasibility estimates
35 or evaluations made by or for a public agency relative to the acquisition
36 of property, prior to the award of formal contracts therefor.
- 37 (14) Correspondence between a public agency and a private individ-
38 ual, other than correspondence which is intended to give notice of an
39 action, policy or determination relating to any regulatory, supervisory or
40 enforcement responsibility of the public agency or which is widely dis-
41 tributed to the public by a public agency and is not specifically in response
42 to communications from such a private individual.
- 43 (15) Records pertaining to employer-employee negotiations, if dis-

1 closure would reveal information discussed in a lawful executive session
2 under K.S.A. 75-4319, and amendments thereto.

3 (16) Software programs for electronic data processing and documen-
4 tation thereof, but each public agency shall maintain a register, open to
5 the public, that describes:

6 (A) The information which the agency maintains on computer facil-
7 ities; and

8 (B) the form in which the information can be made available using
9 existing computer programs.

10 (17) Applications, financial statements and other information sub-
11 mitted in connection with applications for student financial assistance
12 where financial need is a consideration for the award.

13 (18) Plans, designs, drawings or specifications which are prepared by
14 a person other than an employee of a public agency or records which are
15 the property of a private person.

16 (19) Well samples, logs or surveys which the state corporation com-
17 mission requires to be filed by persons who have drilled or caused to be
18 drilled, or are drilling or causing to be drilled, holes for the purpose of
19 discovery or production of oil or gas, to the extent that disclosure is limited
20 by rules and regulations of the state corporation commission.

21 (20) Notes, preliminary drafts, research data in the process of anal-
22 ysis, unfunded grant proposals, memoranda, recommendations or other
23 records in which opinions are expressed or policies or actions are pro-
24 posed, except that this exemption shall not apply when such records are
25 publicly cited or identified in an open meeting or in an agenda of an open
26 meeting.

27 (21) Records of a public agency having legislative powers, which re-
28 cords pertain to proposed legislation or amendments to proposed legis-
29 lation, except that this exemption shall not apply when such records are:

30 (A) Publicly cited or identified in an open meeting or in an agenda
31 of an open meeting; or

32 (B) distributed to a majority of a quorum of any body which has au-
33 thority to take action or make recommendations to the public agency with
34 regard to the matters to which such records pertain.

35 (22) Records of a public agency having legislative powers, which re-
36 cords pertain to research prepared for one or more members of such
37 agency, except that this exemption shall not apply when such records are:

38 (A) Publicly cited or identified in an open meeting or in an agenda
39 of an open meeting; or

40 (B) distributed to a majority of a quorum of any body which has au-
41 thority to take action or make recommendations to the public agency with
42 regard to the matters to which such records pertain.

43 (23) Library patron and circulation records which pertain to identi-

1 identifiable individuals.

2 (24) Records which are compiled for census or research purposes and
3 which pertain to identifiable individuals.

4 (25) Records which represent and constitute the work product of an
5 attorney.

6 (26) Records of a utility or other public service pertaining to individ-
7 ually identifiable residential customers of the utility or service, except that
8 information concerning billings for specific individual customers named
9 by the requester shall be subject to disclosure as provided by this act.

10 (27) Specifications for competitive bidding, until the specifications
11 are officially approved by the public agency.

12 (28) Sealed bids and related documents, until a bid is accepted or all
13 bids rejected.

14 (29) Correctional records pertaining to an identifiable inmate or re-
15 lease, except that:

16 (A) The name; photograph and other identifying information; sen-
17 tence data; parole eligibility date; custody or supervision level; disciplinary
18 record; supervision violations; conditions of supervision, excluding
19 requirements pertaining to mental health or substance abuse counseling;
20 location of facility where incarcerated or location of parole office main-
21 taining supervision and address of a releasee whose crime was committed
22 after the effective date of this act shall be subject to disclosure to any
23 person other than another inmate or releasee, except that the disclosure
24 of the location of an inmate transferred to another state pursuant to the
25 interstate corrections compact shall be at the discretion of the secretary
26 of corrections;

27 (B) the ombudsman of corrections, the attorney general, law enforce-
28 ment agencies, counsel for the inmate to whom the record pertains and
29 any county or district attorney shall have access to correctional records to
30 the extent otherwise permitted by law;

31 (C) the information provided to the law enforcement agency pursu-
32 ant to the sex offender registration act, K.S.A. 22-4901, *et seq.*, and
33 amendments thereto, shall be subject to disclosure to any person, except
34 that the name, address, telephone number or any other information which
35 specifically and individually identifies the victim of any offender required
36 to register as provided by the Kansas offender registration act, K.S.A. 22-
37 4901 *et seq.* and amendments thereto, shall not be disclosed; and

38 (D) records of the department of corrections regarding the financial
39 assets of an offender in the custody of the secretary of corrections shall
40 be subject to disclosure to the victim, or such victim's family, of the crime
41 for which the inmate is in custody as set forth in an order of restitution
42 by the sentencing court.

43 (30) Public records containing information of a personal nature

1 where the public disclosure thereof would constitute a clearly unwar-
2 ranted invasion of personal privacy.

3 (31) Public records pertaining to prospective location of a business
4 or industry where no previous public disclosure has been made of the
5 business' or industry's interest in locating in, relocating within or expand-
6 ing within the state. This exception shall not include those records per-
7 taining to application of agencies for permits or licenses necessary to do
8 business or to expand business operations within this state, except as
9 otherwise provided by law.

10 (32) Engineering and architectural estimates made by or for any pub-
11 lic agency relative to public improvements.

12 (33) Financial information submitted by contractors in qualification
13 statements to any public agency.

14 (34) Records involved in the obtaining and processing of intellectual
15 property rights that are expected to be, wholly or partially vested in or
16 owned by a state educational institution, as defined in K.S.A. 76-711, and
17 amendments thereto, or an assignee of the institution organized and ex-
18 isting for the benefit of the institution.

19 (35) Any report or record which is made pursuant to K.S.A. 65-4922,
20 65-4923 or 65-4924, and amendments thereto, and which is privileged
21 pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

22 (36) Information which would reveal the precise location of an ar-
23 cheological site.

24 (37) Any financial data or traffic information from a railroad company,
25 to a public agency, concerning the sale, lease or rehabilitation of the
26 railroad's property in Kansas.

27 (38) Risk-based capital reports, risk-based capital plans and corrective
28 orders including the working papers and the results of any analysis filed
29 with the commissioner of insurance in accordance with K.S.A. 40-2c20
30 and 40-2d20 and amendments thereto.

31 (39) Memoranda and related materials required to be used to support
32 the annual actuarial opinions submitted pursuant to subsection (b) of
33 K.S.A. 40-409, and amendments thereto.

34 (40) Disclosure reports filed with the commissioner of insurance un-
35 der subsection (a) of K.S.A. 40-2,156, and amendments thereto.

36 (41) All financial analysis ratios and examination synopses concerning
37 insurance companies that are submitted to the commissioner by the na-
38 tional association of insurance commissioners' insurance regulatory infor-
39 mation system.

40 (42) Any records the disclosure of which is restricted or prohibited
41 by a tribal-state gaming compact.

42 (43) Market research, market plans, business plans and the terms and
43 conditions of managed care or other third party contracts, developed or

1 entered into by the university of Kansas medical center in the operation
2 and management of the university hospital which the chancellor of the
3 university of Kansas or the chancellor's designee determines would give
4 an unfair advantage to competitors of the university of Kansas medical
5 center.

6 (44) The amount of franchise tax paid to the secretary of revenue or
7 the secretary of state by domestic corporations, foreign corporations, do-
8 mestic limited liability companies, foreign limited liability companies, do-
9 mestic limited partnership, foreign limited partnership, domestic limited
10 liability partnerships and foreign limited liability partnerships.

11 (45) Records, other than criminal investigation records, the disclo-
12 sure of which would pose a substantial likelihood of revealing security
13 measures that protect: (A) Systems, facilities or equipment used in the
14 production, transmission or distribution of energy, water or communi-
15 cations services; (B) transportation and sewer or wastewater treatment
16 systems, facilities or equipment; or (C) private property or persons, if the
17 records are submitted to the agency. For purposes of this paragraph,
18 security means measures that protect against criminal acts intended to
19 intimidate or coerce the civilian population, influence government policy
20 by intimidation or coercion or to affect the operation of government by
21 disruption of public services, mass destruction, assassination or kidnap-
22 ping. Security measures include, but are not limited to, intelligence in-
23 formation, tactical plans, resource deployment and vulnerability
24 assessments.

25 (46) Any information or material received by the register of deeds of
26 a county from military discharge papers (DD Form 214). Such papers
27 shall be disclosed: To the military dischargee; to such dischargee's im-
28 mediate family members and lineal descendants; to such dischargee's
29 heirs, agents or assigns; to the licensed funeral director who has custody
30 of the body of the deceased dischargee; when required by a department
31 or agency of the federal or state government or a political subdivision
32 thereof; when the form is required to perfect the claim of military service
33 or honorable discharge or a claim of a dependent of the dischargee; and
34 upon the written approval of the commissioner of veterans affairs, to a
35 person conducting research.

36 (47) Information that would reveal the location of a shelter or a sa-
37 fehouse or similar place where persons are provided protection from
38 abuse.

39 (48) *The name and any identifying information of any person, house-*
40 *hold or business participating in a survey commissioned pursuant to sec-*
41 *tion 2, and amendments thereto.*

42 (b) Except to the extent disclosure is otherwise required by law or as
43 appropriate during the course of an administrative proceeding or on ap-

1 peal from agency action, a public agency or officer shall not disclose fi-
2 nancial information of a taxpayer which may be required or requested by
3 a county appraiser or the director of property valuation to assist in the
4 determination of the value of the taxpayer's property for ad valorem tax-
5 ation purposes; or any financial information of a personal nature required
6 or requested by a public agency or officer, including a name, job descrip-
7 tion or title revealing the salary or other compensation of officers, em-
8 ployees or applicants for employment with a firm, corporation or agency,
9 except a public agency. Nothing contained herein shall be construed to
10 prohibit the publication of statistics, so classified as to prevent identifi-
11 cation of particular reports or returns and the items thereof.

12 (c) As used in this section, the term "cited or identified" shall not
13 include a request to an employee of a public agency that a document be
14 prepared.

15 (d) If a public record contains material which is not subject to dis-
16 closure pursuant to this act, the public agency shall separate or delete
17 such material and make available to the requester that material in the
18 public record which is subject to disclosure pursuant to this act. If a public
19 record is not subject to disclosure because it pertains to an identifiable
20 individual, the public agency shall delete the identifying portions of the
21 record and make available to the requester any remaining portions which
22 are subject to disclosure pursuant to this act, unless the request is for a
23 record pertaining to a specific individual or to such a limited group of
24 individuals that the individuals' identities are reasonably ascertainable, the
25 public agency shall not be required to disclose those portions of the record
26 which pertain to such individual or individuals.

27 (e) The provisions of this section shall not be construed to exempt
28 from public disclosure statistical information not descriptive of any iden-
29 tifiable person.

30 (f) Notwithstanding the provisions of subsection (a), any public rec-
31 ord which has been in existence more than 70 years shall be open for
32 inspection by any person unless disclosure of the record is specifically
33 prohibited or restricted by federal law, state statute or rule of the Kansas
34 supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and
35 amendments thereto.

36 (g) Any confidential records or information relating to security meas-
37 ures provided or received under the provisions of subsection (a)(45) shall
38 not be subject to subpoena, discovery or other demand in any adminis-
39 trative, criminal or civil action.

40 Sec. 5. K.S.A. 2006 Supp. 45-221 is hereby repealed.

41 Sec. 6. This act shall take effect and be in force from and after its
42 publication in the statute book.